Application No. 16556 of The Jewish Primary Day School of the Nation's Capital, pursuant to 11 DCMR 3104.1, for a special exception 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 temporary period of three years.

HEARING DATES: **March 15 and March 21, 2000**

DECISION DATE: **April 12, 2000**

'00 ABR 21 P2:21

DECISION AND ORDER

PRELIMINARY MATTERS:

1. The Board granted party status to three members of the community whose properties abut the subject sites, Jane Johnson, Arthur and Faye Lewis, and Helene Harris (hereinafter, collectively, the "Parties"). The Board determined that their interests would be more significantly, distinctively or uniquely affected by the proposed zoning action. The Board authorized Derrick Humphries, Philip Hampton and Harold Bardonille to represent the parties (hereinafter, collectively, the "Designated Representatives", and individually, the "Designated Representative").

2. The Board denied the request of Advisory Neighborhood Commission 4A (hereinafter the "ANC") to permit the parties in opposition to proceed prior to the ANC's presentation.

BZA
Case No. 16556
Exhibit No. 342

Board of Zoning Adjustment
District of Columbia
CASE NO.16556
EXHIBIT NO.342

3. The motion to dismiss made by Designated Representative, Harold Bardonille, for failure to comply with Chapter 31 of the DCMR was disposed of as follows:

a) To dismiss for failure to file a timely prehearing submission pursuant to Section 3113.8 -- denied 3:0:2 (John Parsons, Rodney Moulden, Sheila Cross Reid to deny, Robert Sockwell and Anne Renshaw to abstain). The Board determined that the regulations do not require that the Applicant's prehearing submission be filed by close of business on the date said submission is due.

b) To dismiss for failure to pay appropriate fees -- denied 5:0 (John Parsons, Rodney Moulden, Sheila Cross Reid, Robert Sockwell and Anne Renshaw to deny). The Board determined that the instant application for one school, on two separate sites, by one applicant comprised one application and that the appropriate fees had been paid.

c) To dismiss for failure to file an appropriate application -- denied 5:0 (John Parsons, Rodney Moulden, Sheila Cross Reid, Robert Sockwell and Anne Renshaw to deny). The Board determined that while there are two sites, there is only one school, requiring only one application.

(d) To dismiss for failure to verify the agency of the parties appearing on behalf of owners -- denied 5:0 (John Parsons, Rodney Moulden, Sheila Cross Reid, Robert Sockwell and Anne Renshaw to deny). The Board determined that the Applicant presented sufficient evidence of authorization by the two synagogues permitting the Applicant to represent them in the instant application. The Board found that Madeliene H. Dobbins and Alexandra Zelikson of the law firm of Arter & Hadden LLP are the proper

representatives of the Applicant. In addition, the Board found that there is no requirement for the representative of an applicant before the Board to have a license to practice law in the District of Columbia.

4. One of the Designated Representatives presented a letter from the District of Columbia Board of Education and the Ward 4 School Board representative requesting a delay in the hearing to permit the District of Columbia Board of Education additional time to evaluate the impact of the instant application on the school district. The Board denied the request and determined that ample notice and time were provided to the school board in the regular course of the proceedings to permit it to evaluate the effects of the application. In addition, the Board noted that the school board is not an agency that must be notified of this type of application.

SUMMARY OF EVIDENCE:

1. The properties that are the subject of this application are located at 7712 16th Street, N.W. and 7701 16th Street, N.W. The property at 7712 16th Street, N.W. houses the Ohev Sholom Talmud Torah Congregation (hereinafter the "Ohev Sholom Synagogue") and is zoned R-1-A. The property at 7701 16th Street, N.W. houses the Chevorah Tifereth Israel Synagogue (hereinafter the "Tifereth Israel Synagogue") and is zoned R-1-B.

2. The Ohev Sholom Synagogue at 7712 16th Street, N.W., in Square 2745-D, Lot 802 is located on the southwest corner of the intersection of 16th and Jonquil Streets and currently houses the Ohev Sholom Talmud Torah Congregation. The two-story building houses the sanctuary, administrative spaces and several classrooms. The lower level will house eight classrooms and other associated space. The site also contains a fenced outdoor play area on the

south side of the site. At the rear of the site, a 15-foot wide alley provides access to the parking lot. Single-family detached dwellings bound the site on all sides. The Tifereth Israel Synagogue is located almost directly across 16th Street to the east. In addition, the Lowell School is located just to the northwest on the former Gallaudet University north campus.

3. The Tifereth Israel Synagogue at 1701 16th Street, N.W. in Square 2739, Lot 804 is located on the northeast corner of the intersection of 16th and Juniper Streets and currently houses the Chevorah Tifereth Israel Synagogue. The two-story structure houses existing classrooms, a library, a chapel, social hall and other usable areas. There is a small fenced play area on the Juniper Street side of the site. The 15-foot wide alley at the rear provides access to the parking area. Single-family detached dwellings bound the site on all sides. The Ohev Sholom Synagogue is located almost directly across 16th Street to the west. In addition, the Alexander Shephard Public School (elementary school) is located just to the northeast.

4. In 1960, Ohev Sholom Synagogue was granted permission to use the first and second floors of the building located on the subject property as a synagogue. A religious school operated on the site as an accessory use to the synagogue during the 1970s. The accessory use no longer operates at the site.

5. On August 7, 1986, the Board approved Order No. 14422 permitting a child development center at Tifereth Israel Synagogue. The Board placed no conditional time limit on its approval. On August 2, 1988, the Board approved Order No. 14791 changing the conditioned hours of operation of the child development center at the request of Tifereth Israel. The Board placed no time limits on its approval. On March 7, 1994, the Board approved Order No. 15670 increasing the number of children permitted at the child development center from 48 to 65 and the number

of staff from 8 to 13 and limiting the use to three years. The ANC, Councilmember Charlene Jarvis and Neighbors, Inc supported the approval. Beginning in the Fall of 2000, the child development center will no longer operate at the site.

6. A Hebrew school for 85 students is conducted at the Tifereth Israel Synagogue on Sunday mornings and on Wednesdays from 4:00 p.m. to 6:00 p.m.

7. The sites are zoned R-1-A (Ohev Sholom Synagogue) and R-1-B (Tifereth Israel Synagogue). Both the R-1-A and the R-1-B zone districts are low-density residential zone districts which allow one-family dwellings, churches or other places of worship, embassies, low density community-based residential facilities, and other appropriate accessory uses and buildings as a matter-of-right. Uses permitted, with the approval of the Board of Zoning Adjustment, include child development centers, private schools, private stables, community centers and colleges and universities.

8. Facing the expiration of its lease at the Adas Israel Synagogue, the Applicant proposes to remain in the District of Columbia by temporarily locating at the Ohev Sholom Synagogue and Tifereth Israel Synagogue for a period of three years.

9. The Applicant proposes to establish a private school for 215[1] students, 32 teachers and 6 part time specialists. Fall enrollment will include children in kindergarten through sixth grades. Grades kindergarten through three will be housed at the Ohev Sholom Synagogue and will enroll no more than 120 students over the three-year temporary occupancy period. Grades four, five

[1] Although the formal application requests 215 students, the Applicant proposes a maximum total of 205 students during the schools 3-year tenure at the proposed sites.

and six will be housed at the Tifereth Israel Synagogue and the maximum enrollment during the three-year period will be 85 students.

10. The Applicant testified that The Jewish Primary Day School of the Nation's Capital is an independent, co-educational community day school providing its students with an education in both general and Judaic/Hebrew studies. The Applicant further testified that the school is the only Jewish day school in the District of Columbia and that approximately half of its families reside in the District of Columbia. The Applicant testified that the school would likely close its doors if the requested zoning relief is not granted.

11. The Applicant provided evidence and testimony that the educational experience at the Jewish Primary Day School emphasizes academic excellence, a firm foundation in Jewish learning, and the development of a positive self-image and cultural identity:

a) Superior Academic Program – Students are challenged to reason, question and analyze. They are provided opportunities for independent thinking and creative expression.

b) General Studies – The program emphasizes written and spoken English, science, mathematics, social studies, physical education and the arts.

c) Judaic Studies and Jewish Living – Students are taught written and spoken Hebrew, Bible with commentary, prayer, laws and customs, ethics and values, history and the geography of Israel and its neighbors.

d) Active Learning Experiences – High value is placed on problem solving and on projects that encourage inquiry and discovery. The learner-centered teaching helps to develop

students' ability to reason question, connect, compare, compute and communicate at a very high level. Developmentally appropriate opportunities are offered for both experiential learning and direct instruction.

e) Curricular Integration – Students are provided an integrated curriculum that emphasizes the ways in which all areas of study, both secular and Judaic fit into a comprehensive whole.

f) A Pluralistic Jewish Environment – The program emphasizes the positive value of the diverse backgrounds from which the students and teachers come, and teaches respect toward practices that may differ from those observed at school.

12. The Applicant testified that the core school hours would be from 8:25 a.m. to 3:30 p.m. The after school program will operate until 6:30 p.m. Teachers will arrive at approximately 7:00 a.m. These hours will be coordinated with the operating hours of Shephard Elementary School and the Lowell School in order to minimize the impact on morning and afternoon traffic. At its current Adas Israel Synagogue location, 25 students attend the after school program, with few students remaining until 6:30 p.m.

13. The Applicant testified that students will utilize the existing on-site play areas for outdoor play, with the likelihood that nearby park areas will also be used. Outdoor time will be scheduled so that the number of students in the play area is appropriate for the outdoor space. For a short time at the beginning of the school year, outdoor time may occur in the mornings for the younger children at Ohev Sholom until they are acclimated to being in school. After further discussion and coordination with Shepherd Elementary School and the District of Columbia Department of

Recreation, the Shepherd playing fields will be used as well. The Shepherd playing fields are facilities of the District of Columbia Department of Recreation that are used by Shepherd Elementary School and other organizations.

14. The Applicant presented testimony indicating that the students will bring their lunches, except that twice monthly, pre-cooked hot lunches will be delivered by van and served at Tifereth Israel. The Applicant further testified that if the pre-cooked hot lunch program does not work efficiently and safely at the new sites, the program would be discontinued for the temporary three-year period.

15. The Applicant testified that trash will be collected in a dumpster currently located at each site. Trash will continue to be picked up by a private trash service during hours that do not conflict with school pickup and drop-off and with city use of the alleys for trash collection. Trash pickup at the two sites currently occurs twice weekly at Tifereth Israel Synagogue and once weekly at Ohev Sholom Synagogue. The Applicant testified that conversations with the private trash service verified that Ohev Sholom Synagogue might need a larger dumpster but that the once per week collection will be sufficient for the school program and all other programs at the site. The private trash service for Tifereth Israel Synagogue verified that the current twice per week collection will be sufficient for the school programs and other existing programs.

16. The Applicant testified that only three evening events will be held annually. Other events bringing parents to the school will be held during the daytime, with parking allowed and generally available along 16th Street.

17. The Applicant testified that the few parents who might park and visit the school during the day will be able to utilize the on-site parking spaces not allotted to the school staff or they may park along 16th Street. The Applicant presented evidence that on average, three to four parents come to the school each day to pick up their children before the school day officially ends.

18. The Applicant's expert on school operations presented evidence that noise levels stemming from indoor use of the schools will be contained. The Applicant expects that outdoor noise from the use of the play areas would be that normally associated with young children at play. However, due to the academic focus of the Applicant's program, the use of the play area will be more limited than is usual for a school.

19. The Applicant's Facilities Committee chair presented evidence that the school will undertake interior renovations at Ohev Sholom Synagogue to accommodate the school, but that there are no plans for exterior renovations. She testified that Tifereth Israel Synagogue will be undertaking its own renovations to its facilities. She further testified that the sites, though not ideal, are sufficient for the school's program during the temporary three-year period.

20. The Applicant's expert on school operations testified that students will be dropped off and picked up in the alley behind Ohev Sholom Synagogue. Students at the Tifereth Israel Synagogue site will be picked up and dropped off at the curb on the north side of Juniper Street. In the case where a car carries students for both facilities, the children will be dropped off at Ohev Sholom Synagogue (housing the lower grades) and the older children will take a shuttle provided by the school to Tifereth Israel Synagogue.

21. The Applicant's traffic expert prepared and submitted a Traffic Impact Analysis and concluded in the report that based on Department of Public Works standards and with the implementation of the Traffic Management Plan, which the Applicant proposes to utilize, the instant Application would not create significant capacity, safety or operational deficiencies in the area surrounding either of the two sites. The traffic expert further testified that the key intersections within the area operate at acceptable levels of service during the morning and afternoon peak hours, with the exception of Juniper and Jonquil Streets at 16th Street. The school's impact on the existing levels of service will be minimal due to the relatively small amount of traffic generated by the school. The neighborhood morning peak hour runs from 7:45 to 8:45 a.m. and the Applicant's projected morning peak hour will run from 8:00 to 9:00 a.m. The neighborhood evening peak hour runs from 5:00 to 6:00 p.m., whereas the Applicant's peak evening peak hour will run from 2:45 to 3:45 p.m. The transportation expert testified that the school will stagger school start times and provide after school activities in order to disperse drop off and pick up traffic. The other major findings of the study are as follows:

a) The key intersections within the area of the subject site currently operate at quite acceptable levels of service during the morning and afternoon peak hours of traffic flow with the exception of Juniper and Jonquil at 16th Street during the morning and afternoon peak hours. However, the impact on the level of service on these selected intersections will be minimal due to the relatively small traffic increase generated by the school.

b) The existing site currently staggers the school start times to disperse the traffic to and from the school in the morning. The existing school does not stagger its dismissal times, but does provide after school programs.

c) The existing maximum morning vehicle queue consists of five vehicles. Similarly, in the afternoon, the maximum evening vehicle queue consists of 24 vehicles. These queues will now be divided between two sites. Therefore a projected maximum morning queue of three cars is expected at each site. A maximum afternoon queue of ten vehicles is expected at the Ohev Sholom Synagogue site, and an afternoon queue of seven vehicles is expected at the Tifereth Israel Synagogue site.

d) The proposed circulation and access routes allow for dispersion of school traffic around the synagogues and through two public alleys.

e) Student drop off and pickup will occur on the passenger side, which is facilitated by the clockwise circulation of traffic.

f) There will be a total of 32 spaces between the two synagogues. The School will use 20 of the 32 spaces, and the remaining spaces will be for use by the synagogues and visitors.

22. The Applicant's traffic expert presented the Applicant's proposed Traffic Management Plan. In pertinent part, the Applicant's traffic plan involves a system of fixed routes to and from the school sites. Morning queues are expected to average no more than three vehicles at either site. During the afternoon, the maximum queue is expected to be ten vehicles in the alley at the Ohev Sholom Synagogue site. At the Tifereth Israel Synagogue site, the afternoon queue is expected to be no more than seven vehicles along the north side of Juniper Street. Accordingly, the queue would not extend into the alley. Both afternoon queues are expected to last no more than 20 minutes. School personnel will monitor the process for each school and ensure that

queuing vehicles do not block access or egress of residents. The traffic and parking mitigation measures contained in Applicant's proposed Traffic Management Plan are as follows:

(a) Reducing school traffic volume to the lowest possible level through:

(i) Additional carpooling to reduce the morning peak hour drop off volume by 21 vehicles. Thus reducing the total number of vehicles from 103 to 82 on a daily basis.

(ii) Off-site van shuttle (two vans with a total capacity of 30 students) to reduce the morning peak hour vehicles from 82 to 70; and

(iii) The afternoon pickup vehicle number is anticipated to be only 37.

(b) Required fixed routes on major thoroughfares (including Eastern, Georgia and Alaska Avenues), with specified options for gaining access to the sites.

(c) School hours coordinated with the nearby Lowell and Shepherd Elementary schools; and

(d) "Right turn only" queuing as noted above for pickup and drop-off, with the assistance of traffic monitors.

The Applicant will enforce its Traffic Management Plan through a system of monitors who will be posted in key areas along the route ensuring compliance and noting each instance of violation. The contract which the parents of the students will be required to sign to enroll their children in the school will require compliance with this Traffic Management Plan as set out in the school's handbook. The Applicant submitted a draft enforcement plan that detailed penalties

for failure to adhere to the Traffic Management Plan. The enforcement plan was submitted subject to adoption by the Applicant's Board of Directors.

23. The Applicant's traffic expert presented the following Traffic Accident Data from the District of Columbia Department of Public Works showing that overall, very few reportable accidents occur in the area surrounding the sites:

Intersection	1993	1994	1995	1996	1997	Total
14th Street/Kalmia Road	n/a	n/a	0	n/a	1	1
16th Street/Kalmia Road	3	5	8	n/a	3	19
16th Street/Leegate Road/Myrtle Street	1	n/a	n/a	n/a	1	2
16th Street/Juniper Street	4	7	1	n/a	4	16
16th Street/Jonquil Street	6	1	1	n/a	1	9
Military Road/Nebraska Avenue	n/a	n/a	11	n/a	n/a	11

24. The Applicant testified that in most instances, the school will follow the District public schools in determining its school closing procedure in times of snow. The school will employ an independent contractor to diligently remove the snow from the property and keep the area safe for pedestrians and vehicles alike.

25. The Applicant submitted its draft Traffic Management Enforcement Plan that would impose a series of penalties on parents who violate the Traffic Management Plan. The penalties range from fines to requiring parents to use the shuttle service provided by the school.

26. The Applicant's Community Outreach expert outlined the pro-active, exhaustive approach that the Applicant took with the community, reaching out to accommodate the community concerns and present positive solutions to existing problems. The Applicant's Community Outreach expert testified that in January, 2000, the Applicant contacted the ANC commissioners for the single member districts in which each of the synagogues is located and the chair of the ANC and secured approval to give a presentation at the February 2, 2000 ANC meeting. The ANC distributed notices to every neighbor within the 200-foot radius of the synagogues and over 60 people attended the meeting. The ANC then authorized another presentation for its March 7th meeting to review the Applicant's Traffic Management Plan.

27. The Applicant's Community Outreach expert testified that the Applicant launched an extensive community outreach campaign consisting of the use of face-to-face meetings, daily Internet Townhall discussions, 4 community meetings, 3 flier distributions and 2 mail distributions.

28. The Applicant's Community Outreach expert further testified that parents, friends and neighbors who live in Shepherd Park went door-to-door to meet with the 56 neighbors who live within the 200-foot radius of both synagogues. In February, the Rabbi at Tifereth Israel distributed a letter inviting neighbors to come to Ohev Sholom and Tifereth Israel synagogues for a series of community dialogues. He went to every household and rang each bell. In

addition, the Applicant mailed over 150 copies of the Rabbi's letter to members of the major community organization, Neighbors, Inc.

On February 12 and 19, supportive neighbors and parents went to the homes of neighbors within 200 feet and distributed the Jewish Primary Day School Fact Sheet and invitations to attend a community dialogue at Ohev Sholom Synagogue.

The Applicant's representatives held individual meetings and/or talks with various members of the community to discuss the school's application.

29. The Applicant's representative testified that the Applicant made presentations at the February 1, 2000 and the March 7, 2000 meetings of ANC 4A.

30. The Applicant's representative further testified that nearly 60 neighbors attended the community dialogues hosted by the Applicant at the synagogues to discuss the instant application. The purpose of these dialogues was to educate the community and to obtain community input and feedback on the proposed Traffic Management Plan and other aspects of the proposal. The feedback received in these meetings was used to further refine the Traffic Management Plan and the proposal. Each comment from neighbors was considered and the Traffic Management Plan was specifically revised and refined based on the comments and input from the neighborhood. The community dialogues were held on February 16th and 17th at Tifereth Israel Synagogue and February 23rd at Ohev Sholom Synagogue.

31. The Applicant's Community Outreach expert testified that the Applicant's leadership, its traffic management consultant, and its community outreach consultant met with Lieutenant Judith Anderson, Sergeant Edwards and another officer of the Fourth Precinct to review the

proposed Traffic Management Plan. The feedback received from this meeting was used to refine the plan.

The Traffic Management Plan was hand delivered to the neighbors who lived within a 200-foot radius of the synagogues on February 22 and 23, 2000. In addition, a copy of the Traffic Management Plan was placed at the Shepherd Park Library for public review and comment.

32. The Applicant's expert testified that the following communications materials were distributed to over 500 people in the Shepherd Park neighborhood. These materials were either mailed, hand delivered, distributed at meetings, and/or posted at the Shepherd Park Library:

- Letter from the Rabbi of Tifereth Israel inviting neighbors to the series of community dialogues
- Citizens for the Jewish Primary Day School Fact Sheet
- The Applicant's Traffic Management Plan
- Letter from the Rabbi of Tifereth Israel Synagogue, and the president of Ohev Sholom announcing the synagogues' Year 2000 community outreach schedules.
- Community Update - a flier describing the Applicant's offer of neighborhood benefits.

She testified that Shepherd Park neighbors who support this application conducted telephone calls to neighbors to discuss the Fact Sheet, the Traffic Management Plan, and the Applicant's Community Update.

33. The Board received a letter from Mayor Anthony Williams supporting the Applicant's efforts to remain in the District of Columbia.

34. Councilmember David A. Catania by letter dated February 29, 2000 supported the Jewish Primary Day School's application for temporary occupancy of Tifereth Israel and Ohev Sholom synagogues.

35. Councilmember Harold Brazil submitted a letter to the Board in support of the Applicant's efforts to remain in the District of Columbia.

36. The District of Columbia Office of Planning ("OP"), by written report and testimony presented at the public hearing, recommended approval of the application. The OP noted that the Applicant could and should, with a continuing focus on the details of a plan to mitigate or eliminate adverse impacts, be an asset to the surrounding community and the District of Columbia. The OP recommended approval of the application because the opportunity for and likelihood of success outweigh the risk of failure. OP conditioned its recommendation for approval on the following:

(a) The number of students shall not exceed 205.

(b) The number of faculty and staff shall not exceed 32, and an additional 6 part time specialists.

(c) The school's hours of operation shall not extend beyond 8:15 a.m. to 6:30 p.m. recognizing the staff may arrive as early as 7:00 a.m. and that the core program ends at 3:30 p.m.

(d) There shall be parking spaces for 33[2] vehicles on-site, nine of them full size spaces.

(e) The Applicant shall fully implement the provisions of its Traffic Management Plan, including:

(i) fixed routes;

(ii) extensive use of monitors;

(iii) car and van pooling to result in no more than 70 morning peak hour cars;

(iv) after school programs to extend afternoon pickup; and

(v) continued coordination of school hours with those of nearby schools.

(f) The Applicant, as needed, shall undertake snow removal and salting of alleys and critical segments of Juniper, Jonquil and 16th Streets.

(g) The Applicant shall pick up litter daily around the perimeter of the two sites.

---

[2] The Office of Planning report was written before the revised parking plan for Ohev Sholom Synagogue was submitted which shows 25 spaces on the site instead of 26. With the seven spaces at Tifereth Israel Synagogue, the total spaces will be 32.

(h) Any additional lighting of parking shall not be obtrusive to neighbors.

(i) The Applicant shall undertake community outreach programs to include:

(i) cultural exchange programs with Shephard Elementary School;

(ii) adult courses and lectures aimed at neighborhood residents; and

(iii) an ongoing community, applicant and synagogue liaison committee to meet at least once every three months (monthly for the first six months) to discuss and resolve issues of mutual interest.

(j) Although the approval period should be for the full three years [3]requested, the Applicant's efforts to implement its community outreach program and traffic management plan should be evaluated after the first year to determine what, if any, changes need to be made to either of the plans to ensure that the stated goals are met.

37. The Department of Public Works (DPW), by report dated March 14, 2000, stated that the potential impacts on traffic and parking would be minimal. DPW supports the Applicant's proposal for the provision of a shuttle bus service and additional carpooling. DPW felt that the Applicant's proposed use of only right turn routes to travel was not, on its face, enforceable, and therefore recommended that the Applicant use the left turn lanes provided at Jonquil and Juniper Streets. This is consistent with the Applicant's revised proposal.

[3] On cross-examination, the OP representative stated that OP favored a three-year approval, but would like to see a mechanism that would allow for review after one year.

38. ANC 4A by reports dated March 4, 2000 and March 10, 2000, respectively and testimony delivered at the public hearings opposed the application. The ANC presented witnesses in opposition to the application, including the three persons in opposition who were recognized as parties by the Board. The ANC voiced the following reasons for its opposition:

(a) The plans for relocation of the Applicant were made without community involvement.

(b) Increased traffic congestion, parking problems, litter and noise caused by additional students, personnel, and the parents and visitors concomitant with such use.

(c) Pedestrian safety concerns.

(d) Current violations and unneighborly behavior of the synagogues located at the sites.

(e) The imposition of yet another private school with its concomitant problems on a quiet residential neighborhood.

(f) Non-compliance of application with DCMR Title 11, Section 214.7 stipulating that accessory parking spaces be located, and facilities in relation to the parking lot shall be designated such that they are not likely to become objectionable to adjoining or nearby property because of noise, traffic or other objectionable conditions.

(g) Too many institutional uses in a residential neighborhood.

39. The ANC held two meetings, on Tuesday February 1, 2000 where the ANC voted unanimously to oppose the application and a meeting on March 7, 2000 where the ANC voted 6:0:1 (one abstaining) to oppose the application.

40. The ANC presented testimony to the effect that 16th Street will be further congested in the future due to the impending road repairs due to begin in Spring 2001 from Primrose to Alaska Avenues. Two ANC witnesses presented counts of traffic (pedestrian and vehicular) using the alleys to cut through the neighborhood. ANC Commissioner Judith A. Anderson, who is also a member of the Metropolitan Police Department, testified about accidents in the area of the proposed sites.

41. The Board heard testimony from 14 witnesses in support of the application. Four witnesses represented organizations in support including, Iris Lav, the president of Tifereth Israel Synagogue; Leonard Goodman, the president of Ohev Sholom Synagogue; Rabbi Kenneth Cohen, Executive Director of the United Synagogue of Conservative Judaism and Rabbi David Saperstein of the Religious Action Center of Reform Judaism.

The other witnesses in support included residents of the Shepherd Park neighborhood and parents and students of the Applicant. The witnesses testified that the school is a much-needed asset in the District of Columbia and that it meets an educational need not otherwise available in the District. Parents testified that they currently adhere to a strict Traffic Management Plan and would abide by any Traffic Management Plan that would be required at the new locations.

Additionally, residents in support from the Shepherd Park area testified that the ANC did not speak for all residents of the area and that it did not represent or consider the views of those neighbors who are in support of the application.

42. The President of Ohev Sholom Synagogue testified that the synagogue site is currently underutilized and that the matter-of-right use of the synagogue would permit the influx of

hundreds of more visitors to the site, who would not be required to follow any sort of restrictions as to traffic or parking in the area, other than those currently posted. He noted that at one time there were more than 600 congregants and currently there are about 200. The building is capable of handling many more people and programs than the number currently using the site.

43. The Board received more than 100 letters from organizations, schools and individuals in support of the application. These letters detailed the need for the school and the school's commitment to be a good neighbor. Organizations and entities that submitted letters of support include: The Lowell School; the Jewish Historical Society of Greater Washington; Norman C. Neverson the President of the Ward 4 Democrats; the Jewish Community Council of Greater Washington; the District of Columbia Jewish Community Center; the Washington Chapter of The American Jewish Committee; many synagogues in the City; and the National Child Research Center. In addition, a letter of support signed by rabbis of every synagogue in the District of Columbia was submitted to the record of this application.

44. The Designated Representatives of the three parties in opposition did not call witnesses to present evidence to the Board. The Designated Representatives personally testified regarding their concerns regarding traffic congestion, parking, safety, trash, noise, exacerbation of existing conditions, mischaracterization of the neighborhood, reasons for the loss of the Applicant's current home, the accident rate, snow removal, and the unreasonableness of the application.

45. Councilmember Charlene Drew Jarvis by letter dated March 15, 2000 indicated her support for the Jewish Primary Day School remaining in the District of Columbia. She stated that given the concerns of both supporters and opponents of the application before the BZA, the best solution is to work aggressively to identify another location for the school.

46. The Board received a number of letters in opposition to the application. The major issues discussed in the letters include concerns about traffic, congestion, safety of children and trash.

47. Five persons in opposition testified during the public hearing. Their issues included those presented by the ANC and the parties in opposition.

FINDINGS OF FACT:

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

(1) The application was properly noticed.

(2) The application complies with the provisions of 11 DCMR Sections 3113, et. seq., 3104.1 and 206 of the Zoning Regulations.

(3) Section 214 is not applicable to this application.

(4) The application will substantially advance the intent and purposes of the Zoning Regulations and the comprehensive plan.

(5) A special exception use is deemed compatible with other uses permitted in a particular zoning classification provided that certain requirements are met. In reviewing applications for special exceptions under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the requirements set forth therein.

(6) The noise emanating from the subject sites will be consistent with or less than that of other sites housing schools.

(7) The current site of the Ohev Sholom Synagogue is currently underutilized and can, as a matter-of-right, accommodate at least several hundred more visitors to the site. Therefore, the addition of approximately 120 students and several staff, most of whom will not park at or near the property and most of whom will be dropped off and picked up according to strictly enforced guidelines, is less of an imposition on the community than the matter-of-right allowance.

(8) The existing on-site play areas are sufficient for outdoor play in conjunction with the occasional use of the Shepherd playing fields and the surrounding parks.

(9) Trash will be adequately disposed of and contained at both sites.

(10) The Traffic Management Plan and Traffic Enforcement Plan proposed by the Applicant, subject to the conditions imposed by this Board, are sufficient to mitigate some of the adverse impacts related to parking and traffic.

(11) The parking on the sites is sufficient and complies with the requirements of the Zoning Regulations for attended parking. The Zoning Regulations require a total of 25 spaces for the school; the Applicant will provide 32 spaces. The provision of 32 spaces will ensure that parking related to the school will not become objectionable to neighboring property.

(12) The snow removal plan is sufficient to ensure that circulation around the school sites will not be impaired.

(13) The Applicant made extensive efforts to continually reach out to the community.

(14) The safety of pedestrians and vehicles using the alleys will be enhanced by the presence of the Applicant's monitors.

(15) The proposal will not cause any adverse effects on neighboring properties that cannot be mitigated. Based on the DPW report and the analysis of the Applicant's Traffic Consultant, the impact on the street network will be negligible and the amount of parking provided will be adequate. The Board is persuaded that the traffic and parking analysis of the DPW and the Applicant's Transportation Consultant is detailed and sound. The Board further finds that the roadway repairs planned for 16th Street will exacerbate the existing heavy traffic on 16th Street, and although the amount of traffic generated by the School is minimal, the combination of the additional traffic and the construction will have an impact on the traffic surrounding the proposed sites. The Board further finds that the school will have a minimal impact on traffic if approved for a limited period of time.

(16) The behavior of the synagogues located on the sites is of no relevance to the determination of whether the Applicant will be a good neighbor.

(17) The residential character of the neighborhood will not be changed by the approval of the instant application for a private school.

(18) The application will not have an adverse effect on the present or future character of the neighborhood.

(19) The Traffic Accident Data from DPW shows a low incidence of accidents on the streets surrounding the sites.

(20) It is reasonable to expect a residential community to be willing to accept a use that is allowed by special exception and deemed appropriate for the residential zoning classifications. A private school use will maintain the diverse character of the District and the neighborhood and will not add as intense a use at the sights as those permitted as a matter-of-right. Therefore, the Board finds that this application is not unreasonable for a temporary period.

(21) The Board finds that ANC 4A opposes this application and has presented its issues and concerns.

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 approval in order to establish a private school at 7701 and 7712 16th Street, N.W. for the Jewish Primary Day School of the Nation's Capital, in the R-1-A and R-1-B districts. The granting of such special exception relief requires that the Applicant demonstrate that it has complied with the requirements of Sections 206 and 3104.1 of the Zoning Regulations.

The Board concludes that the Applicant has met the applicable burden of proof. The Board concludes that the application will not be detrimental to the public good, and the temporary location of the day school for a period less than proposed is not likely to become objectionable to adjoining and nearby property. Further, the proposed day school will be in harmony with existing institutional uses on neighboring properties. The application is not inconsistent with the policies set forth in the Comprehensive Plan. The Board concludes that the application will not impair the intent, purpose or integrity of the zone plan as embodied in the Zoning Regulations and Map.

The Board concludes that it has accorded ANC 4A the "great weight" to which it is entitled.

Accordingly, it is hereby ordered that the application be

GRANTED, SUBJECT to the following Conditions:

1) The approval shall be for a period of ONE YEAR to end on July 1, 2001.

2) The number of students shall not exceed 185.

3) The number of faculty and staff shall not exceed 29, and an additional 6 part time specialists.

4) The school's hours of operation shall be between 8:15 a.m. and 6:30 p.m., Monday through Friday. Staff may arrive as early as 7:00 a.m.

5) There shall be parking spaces for 32 vehicles on-site, nine of them full size spaces.

6) The Applicant shall fully implement the provisions of its Traffic Management Plan, including:

a) encouraging the use of fixed routes;

b) extensive use of monitors;

c) buses and car and van pooling to result in no more than 35 morning peak hour cars;

d) after school programs to extend afternoon pickup, but not to exceed 6:30 p.m.;

e) continued coordination of school hours with those of nearby schools; and

f) the traffic enforcement plan shall consist of penalties and sanctions as follows: first offense -- $50.00 fine; second offense -- $100.00 fine; third offense -- $200.00 fine; fourth offense – expulsion. If a fine is not paid within 14 calendar days it will double and if the fine for the 3rd offense is not paid within 14 calendar days it reverts to the fourth offense.

7) Applicant, as needed shall undertake snow removal and salting of alleys and critical segments of Juniper, Jonquil and 16th Streets.

8) The Applicant shall pick up litter daily around the perimeter of the two sites.

9) The alleys shall be kept open for two-way traffic unless designated by the D.C. Department of Public Works for one-way traffic.

10) The Applicant shall undertake community outreach programs to include:

a) cultural exchange programs with Shepherd Elementary School;

b) symposia aimed at neighborhood residents and the Jewish Primary Day School community; and

c) an ongoing community, applicant and synagogue liaison committee to meet at least once every two months, beginning with the month of the order, to discuss and resolve issues of mutual interest. Representation from JPDS, ANC 4A, Shepherd Park community, Colonial Village and the synagogues is expected.

11) 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.

12) The Applicant shall not rent, lease, or otherwise make available any space or facilities of the synagogues to any persons or organizations for any purpose.

13) The Applicant shall submit its application for the certificates of occupancy to ANC 4A for review.

14) The Applicant shall hold/host only activities directly related to its educational purposes.

15) The Applicant's use of the sites shall not result in the creation of any roadway safety or operational deficiencies, and shall not affect the health, safety or general welfare of roadway users or the adjacent neighborhoods.

16) The Applicant shall load and unload all buses, during rush hours, on the sites and not on 16th Street, Juniper Street, Jonquil Street, or in the public alleys.

17) The Applicant shall install a wood fence *(as high as is allowed by regulation – BZA said six feet and backed off and the opposition said seven feet)* between Ohev Sholom Synagogue and the house along 16th Street, N.W. and install a wood fence *(as high as is allowed by regulation – BZA said six feet and backed off and the opposition said seven feet)* between Tifereth Israel Synagogue and the houses along Jonquil Street, N.W, and shall maintain and replace these fences, as necessary.

18) The Applicant shall, in coordination with the Department of Public Works and the Metropolitan Police Department, ensure the installation of all appropriate and required signage indicating the presence of elementary school age children in the vicinity of the school.

19) The Applicant shall monitor noise levels to ensure that they are within acceptable levels for the activities of an elementary school.

20) Prior to occupancy, the Applicant shall ensure that the structures at both sites meet all D.C. Code requirements for occupancy as a private school.

21) The Applicant shall use only lighting designed to prevent spillage into the neighborhood.

22) Refuse collection and deliveries for the sites shall be restricted to the hours of 7:30 a.m. to 3:30 p.m., weekdays. Any trash compactors on the sites shall be operated between the hours of 6:30 p.m. and 7:30 a.m.

23) No signage advertising school or *other school activities* at the sites shall be visible from 16th Street.

VOTE:_____ (_____- to approve).

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

Attested By: _____

Jerrily R. Kress, 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 WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE TITLE 1, CHAPTER 15 (1987), AND THIS 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 PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR SECTION 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT.

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