GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 16556 of the Jewish Primary Day School of the Nation's Capital, pursuant to 11 DCMR § 3104.1, for a special exception under 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 on a temporary basis for a three-year term.

HEARING DATES: March 15, 2000; March 21, 2000

DECISION DATE: April 12, 2000

DECISION AND ORDER

Preliminary and Procedural Matters

Applicants. The applicants are the Ohev Sholom Talmud Torah (Ohev Sholom) Congregation and Chevorah Tifereth Israel (Tifereth Israel) Congregation, the owners of the two properties that are the subject of this application, and the Jewish Primary Day School of the Nation's Capital (JPDS), an independent, co-educational, community elementary school. The applicants are represented by Wilkes Artis, Chartered, and Arter & Hadden LLP.

Application. The applicants filed an application with the Board of Zoning Adjustment (Board) on December 30, 1999, pursuant to 11 DCMR § 3104.1, 46 DCR 7853 (1999), for a special exception under 11 DCMR § 206 (1995), to establish a private school at the Ohev Sholom Synagogue at premises 7712 16th Street, N.W. (Square 2745-D, Lot 802), located in an R-1-A zone district, and at the Tifereth Israel Synagogue, located diagonally across 16th Street, at premises 7701 16th Street, N.W. (Square 2739, Lot 804), in an R-1-B district. The applicants sought approval on a temporary basis for a three-year term. The zoning relief requested in this application is self-certified pursuant to 11 DCMR § 3113.2.

Notice of Application and Notice of Public Hearing. By memorandum dated January 6, 2000, the Office of Zoning advised the Office of Planning, the Zoning Administrator, and Advisory Neighborhood Commission (ANC) 4A, the ANC for the area within which the subject properties are located, of the application.

The Board scheduled a public hearing on the application for March 15, 2000. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on January 27, 2000, mailed the applicants, the

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owners of all property within 200 feet of the subject properties, and ANC 4A notice of hearing. Notice was also published in 47 DCR 619 (Jan. 28, 2000). The applicants' affidavits of posting and maintenance indicate that zoning posters were placed and maintained in front of the subject properties beginning on February 28, 2000, in plain view of the public. When the March 15 hearing adjourned, the Board publicly announced the time and place at which on March 21, 2000, the hearing would resume.

Requests for Party Status. The following persons in opposition to the application requested party status: (1) John and Pat Gray, (2) Phillip G. Hampton, II and Audrey B. Little, (3) Arthur W. and Frances Lewis, (4) Earnie E. Jackson and Sally A. Ethelston, (5) Helene M. Harris, (6) Raymond and Barbara Bailey, (7) Harold Bardonille, (8) Stanley Kelly, (9) William and Betty Lawton, (10) Rosa M. Grillo, (11) Derrick A. Humphries, (12) Michael and Joyce Batipps, (13) Fred and Gloria Foss, (14) Michelle Hoyte, (15) Adolph and Jean Johnson, (16) Jan D. Gray, and (17) Sydney O. and Nora F. Hall.

Under 11 DCMR § 3106.3, the Board may grant a person party status only if that person "has clearly demonstrated that his or her interests will be more significantly, distinctively or uniquely affected in character or kind" by the proposed zoning relief than those of the general public. The Board received over 60 letters in opposition to the application from neighborhood residents, most of which were form letters. These letters expressed general concerns relating to the potential for increased traffic, noise, and litter. With the exception of Mr. Bardonille and Ms. Gray, the persons requesting party status relied upon the form letter as the basis of their request. Mr. Bardonille and Ms. Gray's requests were also based upon general neighborhood concerns. The Board determined that only three requests, those of the Lewises and Ms. Harris, who live behind and adjacent to the Tifereth Israel Synagogue respectively, and the Johnsons, who live behind the Ohev Sholom Synagogue, met the party status criteria, since they would be more significantly affected than the general public by the proposed school use, particularly the proposed traffic management plan. These three parties designated Messrs. Hampton, Bardonille, and Humphries to act as their agents at the hearing. In addition, these gentlemen served as spokesmen for the Shepherd Park/Colonial Village Neighborhood Alliance, an unincorporated association of adjacent and nearby property owners opposing the application.

Motion to Dismiss and Motion to Clarify Status of Applicants' Representative. The parties in opposition, through Mr. Bardonille, moved to dismiss the application on the grounds that the applicants failed to (1) file their prehearing statement in a timely manner as required by 11 DCMR § 3113.8, (2) file a proper application as required by Subsection 3113.3, (3) pay the required filing fee under Subsection 3180.1(b)(2), and (4) file documents that would verify the agency of the persons appearing on their behalf. The Board denied the motion by a 3 to 0 vote, with 2 members abstaining (Sheila Cross Reid, John G. Parsons, and Rodney L. Moulden to deny; Robert N. Sockwell and Anne M. Renshaw abstaining). Tr. at 303-05 (Mar. 15, 2000). The Board determined the following:

1. The applicants' prehearing statement was due on March 1, 2000. While Office of Zoning staff accepted the prehearing statement for filing on March 1 at 6:45 p.m. after the office was closed to the public, there is nothing in

the Board's rules or forms that requires materials to be filed before the close of business and there was no showing that the filing after normal business hours prejudiced anyone's rights. To the extent that Subsection 3113.8 might be interpreted as requiring the applicants to have filed their prehearing statement by the close of business, the Board determined that there was good cause to waive the requirements of the rule to accept the filing.

2. Notwithstanding the fact that the application involves two separate parcels of land, separated by a public street, in two different R-1 zone districts, and owned by two separate entities, the applicants could properly file one application form because the application pertains to one private school use.

3. Since the application pertains to one private school, the applicants paid the correct filing fee under Subsection 3180.1(b)(2), the $2500 maximum fee.

4. The Ohev Sholom and Tifereth Israel Congregations submitted the application and authorized the law firm of Wilkes Artis to represent them. Exs. 1, 5, 6. In an accompanying cover letter, Wilkes Artis describes JPDS as the applicant. Ex. 12. Subsequently, both Ohev Sholom and Tifereth Israel authorized JPDS and the law firm of Arter & Hadden to represent them in proceedings before the Board. Exs. 265-66. The JPDS also authorized Arter & Hadden to represent it. Ex. 262. Alexandra Zelickson, an attorney licensed to practice in the District of Columbia, and Madeliene H. Dobbins, an attorney who is not licensed to practice in the District, both from Arter & Hadden, represented the applicants at the hearing. Since Subsection 3106.1 provides that any person may be duly authorized in writing by an applicant to represent the applicant before the Board and does not limit such representation to attorneys, the Board permitted Ms. Dobbins to represent the applicants at the hearing.

Motion to Modify Order of Presenting Evidence. The Board denied the ANC's request to change the order of hearing procedure prescribed in 11 DCMR § 3117.11(b) to allow parties and persons in opposition to the application to precede the ANC presentation, as the ANC's request did not assure any time-saving or other procedural benefits.

Applicants' Case. The applicants presented testimony from Richard J. Scaldini, President of the JPDS Board of Directors; Brenda Krieger, JPDS Facilities Committee Co-Chair; Susan Koss, JPDS Director; Helen Grove, JPDS sixth-grader; Ezra Marcus, JPDS sixth-grader; Louis J. Slade, principal of Gorove/Slade Associates, Inc., transportation consultant; and Sharon Robinson, President of Robinson Associates, LLC, a public relations and community relations firm. The Board recognized Ms. Koss as an expert in school operations, Mr. Slade as an expert in traffic and transportation, and Ms. Robinson as an expert in public and community relations. The witnesses discussed the school's need for a temporary location, proposed operations, traffic impact analysis and proposed traffic management plan, and community outreach efforts.

Office of Planning Report. The Office of Planning (OP) reviewed the application with respect to student enrollment and staffing; hours of operation; building renovation; availability of play areas; noise levels; food service; trash collection; impacts from daily visitors, meetings, and special events; student drop-off and pick-up operations; and traffic impacts. The OP relied upon the Department of Public Works (DPW) to evaluate the traffic impacts. The OP report, dated March 8, 2000, recommended that the application be approved with conditions for a three-year term, with the applicants to return to the Board before the end of the first year for the determination of whether additional conditions would be necessary to eliminate or mitigate any unanticipated adverse impacts. OP consultant David Colby presented the report.

Department of Public Works Report. The DPW submitted a report dated March 14, 2000. The DPW found that the proposed school use would have some local traffic impact, especially during morning drop-off and afternoon pick-up operations. The DPW advised that JPDS would need to ensure that drop-off, pick-up, and queuing operations do not block 16th Street. The DPW supported the applicants' shuttle bus and carpooling plans, but not the proposed fixed traffic routes, which would be unenforceable and require traffic to take circuitous routes through residential streets. In addition, DPW observed that traffic congestion and turning motions in the vicinity of the subject properties would become more difficult in 2001 due to the scheduled reconstruction of 16th Street. Finally, DPW did not review the applicants' parking plans for compliance with the Zoning Regulations, but noted that JPDS' proposed number of 33 parking spaces appears adequate. The JPDS would need to ensure that parked vehicles do not block the alleys.

Correspondence from Government Agencies and Officials. The Board received a letter dated March 14, 2000, from Robert G. Childs, President and At-Large Member of the District of Columbia Board of Education, requesting that the Board of Zoning Adjustment delay its decision on the application pending the Board of Education's evaluation of the effect of the proposed school location upon the nearby Alexander Shepherd Public Elementary School. The Board of Education did not expect to complete its evaluation until April 20, 2000. Dwight E. Singleton, Board of Education Ward 4 Representative, likewise requested a delay pending the evaluation. The Zoning Regulations do not require the Board of Zoning Adjustment to refer special exception applications for private schools to the Board of Education for review. Nonetheless, the Board of Education had notice of the hearing through publication in the *D.C. Register* and the opportunity to submit a report prior to or at the hearing. The Board of Zoning Adjustment was therefore unable to accommodate the Board of Education's request, as JPDS required a decision on its application by early April at the latest to undertake staffing and enrollment for the coming school year.

The Board received also a letter dated March 15, 2000, from Charlene Drew Jarvis, Councilmember from Ward 4, noting the importance of JPDS remaining in the District and constituent concerns with the proposed temporary location. Councilmember Jarvis recommended "that the best solution to the immediacy of the need of the JPDS is for all of us to work aggressively to identify another [temporary] location for the school." Ex. 288. The Board also received a letter from Councilmember-At-Large David A. Catania in support of the application.

The ANC Report. The ANC 4A submitted a report dated March 4, 2000, and a supplemental report dated March 10, 2000, opposing the application. The Board waived the filing deadline of 11 DCMR § 3115.1 to accept the supplemental report which addressed the applicants' traffic management plan. The Board determined that the ANC had shown good cause for the waiver, since the ANC did not have the benefit of the applicants' traffic management plan until the day before the ANC report was due and since the waiver did not prejudice the rights of any party. Among others, the ANC designated Chairperson Joseph H. Hairston and Mr. Humphries to present the report.

The ANC report indicated that the majority of residents attending the ANC meeting on the application raised objections to the proposed special exception, and noted that the applicants' relocation plans were made without community involvement. The ANC argued that the proposed private school use is not in harmony with the general purpose and intent of the Zoning Regulations relating to the R-1 zone district and that it would adversely affect the use of neighboring residential properties through cumulative adverse impacts on parking, parking access, and public safety. The ANC also stated that the application fails to comply with 11 DCMR § 214.7, which requires accessory parking spaces in an R-1 zone to be located and designed so that they are not likely to become objectionable to adjoining or nearby property because of noise, traffic, or other objectionable conditions. The ANC identified the following specific relevant issues and concerns:

1. Traffic Concerns and Other Adverse Impacts. An influx of more than 200 students, 30 or more staff, and numerous parents and visitors would result in increased traffic congestion, parking problems, litter, and noise.

2. Parking Concerns. On-street parking in both directions on 16th Street is already inadequate. On Saturdays and during special events, vehicles routinely double-park and park in the alleys and by fire hydrants.

3. Pedestrian and Public Safety. There is no sidewalk on the east side of 16th Street immediately in front of the Tifereth Israel Synagogue, forcing pedestrians to walk a narrow, grassy path that is dangerously close to northbound 16th Street traffic. In addition, JPDS students would confront safety risks crossing 16th Street from one proposed site to the other and in travelling from both proposed sites to the Shepherd Park recreation fields.

4. Alleged Zoning Violations. The ANC alleges that the existing use of the Tifereth Israel Synagogue for a child development center is in violation of the Board's March 7, 1994, special exception approval. The ANC reports that neighbors have continuously expressed concerns to the Tifereth Israel leadership that have not been addressed, including the following:

A. Despite the fact that the order requires that drop-off and pick-up of children take place on Juniper Street, parents and

other drivers routinely use the alley as a drop-off site. In addition, they stop and/or park (double park) facing east on the south side of Juniper Street and cross Juniper to enter the center;

B. The parking spaces at the rear of the synagogue for the exclusive use of the center are too short, such that vehicles protrude into and block the alley;

C. The order requires Tifereth Israel to establish and maintain a community liaison/advisory council, to meet no less than quarterly to address issues of mutual concern. Tifereth Israel has failed to hold the required meetings despite repeated complaints by the neighbors relating to traffic, parking, traffic accident, fire safety, and trash and litter; and

D. Although the 1994 approval was for a period of three years, Tifereth Israel has not sought an extension or renewal, and is currently operating the center under an expired order.

5. Impacts on Private Dwellings. Private dwellings face three sides of the subject properties. There is no buffer between the proposed school sites and nearby homes.

6. Blocked Alleys. The alleys behind the Ohev Sholom and Tifereth Israel Synagogues provide neighbors with access to their homes and garages. Emergency, repair, delivery, and trash/garbage vehicles use these alleys daily. The use of the alleys for school traffic and the applicants' drop-off, pick-up, and queuing operations would interfere with the use of the alleys.

The ANC also presented testimony at the hearing from Edwin Edowke, DPW Design, Engineering, and Construction Administration; Lieutenant Judith Anderson, Fourth District, Metropolitan Police Department; Helene M. Harris; Alma Gray; Arthur W. Lewis; Jean Johnson; Sally (Jackson) Ethelson; William Rumsey, Jr.; Jan Gray; and Rosa Grillo. Mr. Edowke described the scheduled reconstruction of 16th Street. The remaining witnesses discussed the objectionable conditions they believed would result from the proposed school use, including pedestrian and public safety concerns, traffic congestion, blockage of the public alleys, parking problems, and disruption of the quiet enjoyment of adjacent and nearby residential properties.

Persons in Support of the Application. The following persons testified in support of the application, describing the proposed temporary location and JPDS educational program: Iris Lav, President of the Tifereth Israel Congregation; Leonard Goodman, President of the Ohev Sholom Congregation; Rabbi Kenneth Cohen, Executive Director of the Seaboard Region of the United Synagogues of Conservative Judaism and President of the Washington-Baltimore Region of the Rabbinical Assembly; Rabbi David Saperstein, Director of the Social Justice Program for the National Reform Jewish Movement and Chair of the United States Commission on

International Religious Freedom; Rabbi Ethan Seidel, Tifereth Israel Congregation; John S. Young; Jeremy Goldberg; Joshua Kransberg; Rachel Seidel; Judy White; Francesca Kranzberg; Ruth Lew; Haddassah Lieberman; David Shapiro; Ira Foreman; and Joe Berman.

In addition, the Board received over 200 letters in support of the application, most of which were form letters, and a good number of which were from Shepherd Park residents. As with the persons testifying in support of the application, these letters emphasized the role of JPDS as the only Jewish elementary school in the Nation's Capital in fostering educational and cultural diversity. Several letters addressed zoning concerns, describing the proposed school use of the subject properties as an appropriate extension of the existing synagogue use. Other letters suggested that the Board impose appropriate conditions in its order to mitigate any adverse impacts associated with the proposed school use. In addition, a number of JPDS parents pledged their commitment to working with the community to address matters of mutual concern.

Parties and Persons in Opposition to the Application. The following neighborhood residents testified in opposition to the application: Elizabeth Sadoff, Audrey Little, Joyce Stanley Batipps, William Lawton, and Earnie Jackson. Messrs. Hampton, Bardonille, and Humphries also spoke on behalf of the three parties in opposition. They expressed concerns relating to traffic congestion, obstruction of the alleys, the applicants' parking plan, and noise.

As noted above, the Board received over 60 letters from the Shepherd Park and Colonial Village neighborhoods in opposition to the application. These letters expressed concerns that the proposed school use would result in increased traffic congestion on 16th Street and nearby cross-streets; obstruction of the public alleys behind the synagogues, which would block access to nearby garages and parking areas; disruption of garbage collection services, increasing the risk of rodent infestation; insufficient on-site parking; insufficient on-street parking; and increased noise and litter. The adjacent and nearby property owners were nearly unanimous in their opposition. They submitted a petition signed by 80 individuals opposing the application. Eight members of Neighbors, Inc., also signed a petition in opposition. The Shepherd Park Citizens Association recommended denial on the grounds that the proposed school use would significantly impair the quiet enjoyment of nearby property owners. The Shepherd Elementary School Parent-Teacher Association opposed the application on the grounds that the proposed school use would increase traffic congestion, adversely affecting the safety and welfare of Shepherd Elementary students.

Closing of the Record. At the conclusion of the hearing, the Board left the record open to receive the parties' proposed findings and conclusions and the response of the parties in opposition to the applicants' revised Ohev Sholom parking plan. Under 11 DCMR § 3121.2, parties are encouraged but not required to submit proposed findings and conclusions. As a result of a delay until April 10, 2000, in receiving the transcript of the March 15, hearing, the Board was unable to afford the parties the seven days from receipt of the transcript provided in Subsection 3121.2 for the submission of proposed findings and conclusions. Due to the necessity of announcing the Board's decision in early April to accommodate JPDS staffing and enrollment schedule, the Board waived the provisions of Subsection 3121.2, allowing the parties until April 11 to submit their proposed findings and conclusions.

Decision Meeting. At its decision meeting on April 12, 2000, the Board, by a 4 to 0 vote, with one member abstaining, approved the application subject to certain conditions for a nonrenewable term of one year, to end on July 1, 2001.

FINDINGS OF FACT

The Subject Properties and Surrounding Area

1. The Ohev Sholom Site. This application involves two separate properties. The first lot is located at 7712 16th Street, N.W. (Square 2745-D, Lot 802), on the southwest corner of the intersection of 16th Street and Jonquil Street, in an R-1-A zone district. It is located in the Rock Creek Gardens neighborhood of Ward 4, also known as Colonial Village. The Ohev Sholom Congregation owns and occupies this property.

2. The Ohev Sholom lot is approximately 30,000 square feet in area, with a frontage of 186.17 feet along 16th Street to the east and 151.79 feet along Jonquil Street to the north. A 15-foot wide, north-south, public alley abuts the rear of the lot on the west side.

3. The Ohev Sholom lot is bounded on all sides by single-family detached dwellings. The Washington Ethical Society and its high school are located half a block to the north, and the Lowell School is located just to the northwest on the former Gallaudet University north campus. Rock Creek Park is just to the west. The Hanafi Moslem House adjoins the property to the south. Located diagonally across 16th Street to the southeast is the Tifereth Israel Synagogue.

4. The Ohev Sholom lot is developed with a two-story building with a gross floor area of approximately 36,000 square feet. It houses a main sanctuary, chapel, social hall, administrative spaces, and several classrooms. The synagogue use began in 1960. During the 1970s, a Hebrew school with up to 108 students operated on-site.

5. The JPDS proposes to locate grades kindergarten through three at Ohev Sholom. The existing structure will require substantial interior renovation. On the lower level, JPDS will build eight new classrooms and provide indoor activity space and a large teacher workroom and lounge. It will paint and upgrade existing rooms on the upper level for its school offices, science room, and library, and make use of the small chapel and large sanctuary/auditorium. The JPDS will also use the small, fenced and paved outdoor play area that is located on the south side of the lot, adjacent to the building.

6. Directly to the rear of the Ohev Sholom building and parallel to the alley is an irregular-shaped, unmarked paved parking area that averages 125 by 34 feet in size. The applicants propose to use this area for a loading zone, trash dumpster site, and parking lot for 25 vehicles.

7. The Tifereth Israel Site. The second property is located at 7701 16th Street, N.W. (Square 2739, Lot 804), on the northeast corner of the intersection of 16th Street and Juniper

Street, in an R-1-B district. It is located in the Ward 4 Shepherd Park neighborhood. The Tifereth Israel Congregation owns and occupies this property.

8. The Tifereth Israel lot, rectangular in shape, is 24,566.85 square feet in area, with a frontage of 165 feet along 16th Street to the west and 148.89 feet along Juniper Street to the south. A 15-foot wide, north-south, public alley abuts the rear of the lot on the east side. An east-west public alley meets the abutting alley in a T-intersection at the northeast corner of the lot.

9. The Tifereth Israel parcel is bounded on all sides by single-family detached dwellings. District of Columbia Department of Recreation playing fields are located across Jonquil Street, approximately 150 feet to the northeast. Immediately beyond the playing fields, approximately 750 feet to the northeast, is the Alexander Shepherd Public Elementary School, with 365 students and 45 teachers and staff.

10. The Tifereth Israel lot is developed with a two-story L-shaped structure that has a gross floor area of approximately 36,000 square feet. It houses a main sanctuary, chapel, social hall, existing classrooms, library, and other usable areas. On the Juniper side of the site, near the proposed school entrance and adjacent to the building, there is a small, fenced outdoor play area equipped for preschoolers.

11. The synagogue use began in 1957. A Hebrew school for 85 students is conducted on Sunday mornings and Wednesdays from 4:00 p.m. to 6:00 p.m. On August 7, 1986, in Application No. 14422, the Board granted Tifereth Israel a special exception to operate a child development center at the synagogue. On March 7, 1994, in Application No. 15670, the Board increased the number of children permitted at the center from 48 to 65 and the number of staff from 8 to 13, and approved the use to three years. The Tifereth Israel Congregation did not renew the special exception, and its representatives stated that in the fall of 2000, the center will close.

12. The JPDS proposes to locate grades 4 through 6 at this site. The JPDS will use the existing classrooms on the second floor, the library, chapel, and social hall.

13. Directly to the rear of the Tifereth Israel Synagogue and parallel to the abutting public alley, there is a rectangular shaped paved parking area with five striped, slanted parking spaces. This area also serves as a loading zone and dumpster site. The applicants propose to reconfigure this area to provide parking for seven vehicles.

The Proposed Private School Use

14. The JPDS offers students in kindergarten through sixth grade a dual curriculum in Judaic and secular studies. The JPDS has been located at the Adas Israel Synagogue at 2850 Quebec Street, N.W., since it was established in 1987. It became an independent institution in 1999, and

currently has an enrollment of 180 students. The school is open to children from the metropolitan area, and approximately half of the 135 JPDS families live in the Disrict.

15. The JPDS lease with the Adas Israel Hebrew Congregation, which will not be renewed, expires in June 2000; and JPDS expects that its proposed new permanent facility will not be ready for occupancy for another three years. The JPDS representatives described the difficulties they faced in finding a suitable temporary location. They stated that without an early Board decision on their application, the school would be forced to dissolve or relocate to the suburbs. Upon reaching agreement with the Ohev Sholom and Tifereth Israel Congregations for use of their facilities in December 1999, JPDS initiated community outreach and publicity efforts.

16. The applicants initially proposed to establish a private school for 215 students and 32 teachers and staff, plus 6 part-time specialists, at the two subject properties, on a temporary basis for a period of three years. In its written submissions and at the hearing, JPDS proposed a cap of 205 students. The JPDS proposes to operate grades kindergarten through three, with 120 students and 18 teachers and staff, at Ohev Sholom. The JPDS proposes to operate grades four through six, with 85 students and 14 teachers and staff, at Tifereth Israel. In addition, JPDS plans to employ six part-time specialists, but does not specify the site at which they will be stationed.

17. The proposed core operating hours are from 8:25 a.m. to 3:30 p.m., Monday through Friday, with staggered start times. Teachers and staff will begin arriving at the school at approximately 7:00 a.m., while the students will begin arriving at approximately 8:00 a.m. After-school programs will operate until 6:30 p.m. At the current Adas Israel location, 25 students attend after-school programs, with a few students remaining until 6:30 p.m.

18. On the average, three to four parents come to the school each day to pick-up their children before the school day officially ends.

19. The JPDS proposes to have two parent volunteers in attendance at each site. The JPDS would schedule the volunteers to arrive after morning peak hour traffic.

20. In addition, special consultants and speakers visit the school from time to time.

21. The JPDS physical education program is for the most part conducted indoors. There are no team sports. Students will use the existing play areas at the subject properties for outdoor play and exercise, as well as nearby areas in Rock Creek Park. The JPDS would schedule lunch recess and outdoor playtime to ensure that the number of students in the play areas is appropriate for the amount of space available. The JPDS staff monitors students during outdoor play and exercise. The JPDS is discussing with Tifereth Israel the possibility of upgrading the play area with equipment appropriate for children in grades four through six. It is also exploring the possible use of the nearby Department of Recreation playing fields, but has not as yet firmed up its plans for using or accessing the fields.

22. Students will bring their lunches and snacks to school on a daily basis. Twice a month, pre-cooked hot lunches will be delivered by van and served in the Tifereth Israel social hall. The staff will either escort the students from the Ohev Sholom directly across 16th Street to Tifereth Israel or, alternatively, up 16th Street to the traffic light at the Kalmia Road intersection and then back down 16th Street along the grass path to Tifereth Israel. Susan Koss, JPDS Director, stated that if the hot lunch program does not work efficiently or safely, JPDS will discontinue the program on a school-wide basis and instead serve hot lunches separately at each site.

23. The JPDS proposes to host only three evening events during the school year, Back-to-School Night (September), Chanukah Assembly (December), and Arts and Sciences Night (June). All other events and activities that bring parents and guests to the school, such as the Veterans' Day Assembly, Black History Month Assembly, Women's History Month Assembly, Ice Cream Social, Grandparents' Day, and Graduation, will occur during the daytime when on-street parking is available.

Noise Impacts

24. The JPDS maintains an effective, orderly learning environment, with noise levels at the school appropriate to that environment.

25. The subject buildings will contain interior noise.

26. The noise levels in the outdoor play areas are expected to be typical for the age level of the students and the activities in which they are engaged. There would be additional noise impact from outdoor activities at the Ohev Sholom site. There might be a net reduction in noise at the Tifereth Israel site from replacing the child development center serving two to five-year olds with JPDS students in grades four through six.

Traffic Impacts

27. The Public Street Network. The existing roadway network in the Shepherd Park and Colonial Village neighborhoods includes:

A. Fourteenth Street, a north-south collector roadway to the east of the subject properties, that extends from Maryland from the north to Alaska Avenue and the Walter Reed Army Medical Center to the south. In the vicinity of the subject properties, 14th Street is a two-lane collector roadway with parking permitted on both sides of the street. Fourteenth Street is signalized at Kalmia Road;

B. Sixteenth Street, a north-south arterial roadway that extends from the District line from the north to H Street to the south. In the vicinity of the subject properties, 16th Street is a four-lane divided street with a raised brick

median and parking permitted on both sides of the street during non-rush hours. It carries an average daily traffic volume of 39,800 vehicles in the vicinity of the subject properties, mostly commuters from the northern part of the District and Maryland into downtown Washington. Left-turn bays, approximately 80 feet in length and capable of accommodating three cars, are provided at the intersections of 16th Street and Jonquil Street and 16th Street and Juniper Street. Sixteenth Street is signalized at Kalmia Road and Holly Street;

C. Seventeenth Street, to the west of the subject properties, a short two-lane north-south local roadway that extends from Kalmia in the north to Juniper Street in the south;

D. Primrose Road, a local curving east-west roadway, located several blocks north of the subject properties;

E. Kalmia Road, one block to the north of the subject properties, a two-lane east-west collector roadway that extends from East Beach Drive in the west to Georgia Avenue in the east;

F. Jonquil Street, just to the north of the subject properties, a two-lane east-west local roadway that extends from 17th Street in the west to 13th Street in the east. It carries a light amount of traffic. Jonquil Street is stop-controlled at 16th Street and 14th Street;

G. Juniper Street, just to the south of the subject properties, a short two-lane east-west local roadway that extends from a court in the west to 12th Street in the east. Juniper Street carries significantly more traffic than Jonquil Street, partly as a result of traffic coming out of Rock Creek Park and Lowell School traffic. Juniper Street is stop-controlled at 16th Street and 14th Street;

H. Holly Street, three blocks south of the subject properties, a two-lane east-west local roadway that extends from 17th Street in the west to 12th Street in the east. In addition to the traffic signal at 16th Street, Holly Street is stop-controlled at its intersections with 17th Street and Juniper Street; and

I. Alaska Avenue, extending diagonally from Georgia Avenue in the north near the District line to 16th Street in the south. It forms the southern boundary of the Shepherd Park neighborhood.

28 The Public Alley Network. In the vicinity of the subject properties, there is a network of north-south and east-west public alleys. The neighbors' informal traffic counts showed that the alleys receive a heavy amount of vehicular traffic from neighborhood residents and commuters during the proposed morning student drop-off period.

29. Adjacent and nearby property owners use the alleys behind the subject properties to access their driveways, parking pads, and garages.

30. In addition, emergency, trash collection, service and repair, and delivery vehicles regularly use the alleys behind the subject properties.

31. The alleys also receive pedestrian and bicycle traffic, including youngsters walking and bicycling to the Shepherd Elementary School and playing fields, high school students walking to 16th Street to catch school buses, and senior citizens.

32. The neighbors reported that vehicles stopped at the rear of Tifereth Israel Synagogue have blocked the alley for up to an hour at a time, and complained of noise, exhaust fumes, and safety hazards.

33. Traffic Conditions. The neighbors and ANC reported the following traffic conditions in the vicinity of the subject properties: traffic congestion on 16th Street and cross-streets; speeding and reckless traffic during rush hours; sloping topography resulting in blind spots and difficult winter driving conditions; traffic-backups on the cross-streets to 16th Street resulting from poorly-timed traffic signals; traffic accidents, including accidents that are not reported; deer in the roadway; and snow and ice-bound alleys during wintertime. There is no sidewalk along most of the east side of 16th Street from Kalmia Road to Juniper Street, presenting a safety hazard for pedestrians.

34. Peak Hour Traffic. The JPDS morning peak hour, from 8:00 a.m. to 9:00 a.m., will substantially overlap the neighborhood street morning peak hour from 7:45 a.m. to 8:45 a.m. The school and neighborhood afternoon peak hours differ, with the school peak hour from 2:45 p.m. to 3:45 p.m. and the neighborhood peak hour from 5:00 p.m. to 6:00 p.m.

35. Traffic Management Plan. The applicants' traffic management plan is a conceptual plan, with the details to be refined in the future in an operations plan. It calls for school traffic to use fixed routes to access the subject properties, "right-turn only" restrictions for school traffic, and a one-way clockwise circulation route through the alleys behind the synagogues for purposes of dropping off and picking up students. The plan seeks to force school traffic to use the larger neighborhood roads and to prevent traffic from driving past Shepherd Elementary School and the Lowell School.

36. The traffic management plan also calls for increased car-pooling through a managed car-pool system, an off-site van shuttle, metrocheck subsidies for faculty and staff, coordination of school hours with other nearby institutions, dispersing traffic by staggering school start times and providing after-school programs, and establishing a hotline that neighbors could use to report immediate concerns, traffic or otherwise.

37. The Board finds that applicants' proposed fixed route system problematic for several reasons. First, it requires drivers to take circuitous, longer and/or slower routes, which the

drivers would likely resist. Second, the proposed system increases traffic on the local roads, adding to traffic congestion in residential areas. Finally, the proposed system is unenforceable.

38. Drop-off, Pick-Up, and Queuing Operations. At the existing school at the Adas Israel Synagogue, the students arrive in 92 vehicles. Approximately one-half of the student body arrives in a carpool and a few take the Metrorail, which is within walking distance of the synagogue. The morning student-vehicle ratio is approximately two students per vehicle, while the afternoon ratio, due to a higher rate of carpooling, is approximately 2.7 students per vehicle. The existing maximum morning drop-off queue consists of five vehicles and the maximum afternoon pick-up queue, with approximately 50 vehicles arriving to pick-up students, consists of 24 to 25 vehicles.

39. The nearest Metrorail station is beyond walking distance from the proposed temporary school location, thus nearly all the students will arrive by motor vehicle.

40. The applicants propose, through the use of additional carpooling and two shuttle vans, to reduce their existing maximum morning queue of five vehicles to three vehicles at each proposed site and their existing maximum afternoon queue of 25 vehicles to ten vehicles at Ohev Sholom and seven vehicles at Tifereth Israel. The morning queues are expected to last approximately 20 to 25 minutes, with 40 vehicles arriving at Ohev Sholom and 28 vehicles arriving at Tifereth Israel. The afternoon queues are expected to last approximately 25 minutes, with 22 vehicles arriving at Ohev Sholom and 15 vehicles arriving at Tifereth Israel. The proposed traffic management plan thus calls for JPDS to reduce its morning peak hour traffic volume to 68 vehicles and its afternoon peak hour traffic volume to 37 vehicles.

41. To avoid disruption of the traffic circulation, queuing, and drop-off operations, teachers and staff will be required to arrive and park their vehicles at the subject premises before drop-off begins.

42. The JPDS staff will be stationed outside at critical locations during drop-off and pick-up operations to facilitate traffic flow and to monitor and assist the students. The plan requires students to exit and enter vehicles from the passenger-side only.

43. The shuttle vans will follow the same traffic circulation patterns around the synagogues as the carpool and individual vehicles. The applicants have not as yet identified their remote shuttle sites.

44. Drop-off and pick-up operations at Ohev Sholom will require a right-turn only off of southbound 16th Street onto Juniper Street, then a right turn into and through the alley behind the synagogue where the students will be dropped off, then a right-turn only onto Jonquil Street, and from there, a right-turn only onto southbound 16th Street. The students will walk from the alley along the sidewalk to the Jonquil Street entrance. The JPDS is also exploring the possibility of using the rear entrance. Some parents will park in the parking area behind Ohev Sholom or on the street and walk their children, particularly the kindergarten students, into school.

45. The drop-off and pick-up operations for Tifereth Israel will require a right-turn only off of northbound 16th Street onto Jonquil Street, then a right turn into and through the alley behind the synagogue, then a right turn onto Juniper Street where the students will be dropped off in a drop-off zone between the alley and 16th Street, and from there, a right-turn only onto northbound 16th Street. Vehicles proceeding southbound on 16th Street in the morning will be able to make a left-turn from the left-turn bays at Kalmia Road and Jonquil Street and proceed to the Juniper Street drop-off zone. The drop-off and pick-up queues will form along the north side of Juniper and be contained along the frontage of the property from 16th Street to the alley. The drop-off zone will accommodate six or seven cars, with any additional vehicles having to stop and wait in the alley.

46. Vehicles carrying students for both sites will drop them off behind the Ohev Sholom Synagogue. The JPDS will then shuttle the fourth and sixth graders by van from the alley behind Ohev Sholom to Tifereth Israel. The JPDS has not addressed where or how the afternoon pick-up will occur for those vehicles picking up students from both sites.

47. The alleys behind the two synagogues are narrow and constricted by telephone poles such that a vehicle stopped in the drop-off and pick-up queue cannot be passed safely.

48. The proposed traffic management plan thus provides that if a vehicle needs to access or leave a driveway off the alley, the school traffic monitors will hold up the back part of the queue and direct the front part of the queue to move out of the desired path, turn right on 16th Street, circle the block, and rejoin the queue at the end.

49. The presence of accumulated snow and ice in the alleys, on critical segments of Jonquil Street, Juniper Street, and 16th Street, and on pedestrian walkways could disrupt the drop-off, pick-up, and queuing operations.

50. The Board finds the applicants' video simulation of the proposed drop-off and queuing operations behind the Ohev Sholom Synagogue unrealistic. The efficiency and length of time required for drop-off, pick-up, and queuing operations would be subject to many variables, including the varying length of time required by children to exit and enter vehicles, weather, the presence of left-turning vehicles at the Jonquil and Juniper Street stop signs, traffic delays on 16th Street, and other factors over which the applicants will have no control.

51. The Office of Planning stated that the applicants' traffic management plan would have to be "perfectly executed." The OP report indicated that "there is not a lot of room for error" and that "After a few weeks to work out the bugs at the beginning of the school year, the system will have to function like 'clock work' for it to be a true success and not have an adverse impact on the affected neighborhoods."

52. The Board finds that the proposed drop-off, pick-up, and queuing operations have the potential to create significant adverse traffic conditions, including increased traffic congestion in the alleys which already receive heavy automobile and truck traffic; increased noise and exhaust

fumes from stopped vehicles; blocked access to residential driveways; blocked traffic, including the District's trash collection trucks; and increased pedestrian and bicycle safety risks.

53. The JPDS initially presented a list of possible sanctions that would be imposed on the parents or guardians of JPDS students for violation of the school's traffic management plan. It subsequently proposed a sequence of warnings and penalties that would be imposed for violations of the traffic management plan, and offered to incorporate the plan into the JPDS handbook which in turn is incorporated into the student registration contract.

54. The Board finds the proposed warning and penalty schedule insufficient to deter violations of the school's traffic management plan. The Board has added conditions that are both stringent and mandatory, including penalties for all violations, higher penalty amounts, and the requirement of timely payment.

55. Capacity and Level of Service. There are heavy commuter traffic volumes along 16th Street in the vicinity of the subject properties during the morning and afternoon peak hours. The major commuter through-movements at the 16th Street and Jonquil Street intersection and the 16th Street and Juniper Street intersection operate at very good levels of service. The minor eastbound and westbound approaches to 16th Street from Jonquil Street and Juniper Street experience significantly longer delays due to high commuting volumes along 16th Street. The traffic signals at Kalmia Road and Holly Street provide traffic breaks that allow motorists to turn safely onto 16th Street. The Board finds that the additional school traffic on Jonquil Street and Juniper Street will result in increased delays at the 16th Street intersections, particularly from left-turning vehicles. The Board finds that the level of traffic volume resulting from the proposed school use will have minimal impact on the capacity and level of service of 16th Street, with some increased congestion resulting from school traffic turning left from the left-turn bays at the Jonquil Street and Juniper Street intersections.

56. Reconstruction of 16th Street. Beginning in the spring of 2001, the DPW will undertake a total reconstruction of 16th Street in the vicinity of the subject properties, from Primrose Road to Alaska Avenue. The project is expected to take 18 months. The scope of work includes the total removal and replacement of the existing roadway; removal and replacement of the curb; repair and replacement of the existing sidewalks, landscaping, and streetlights; and installation of permanent drains. During construction, DPW will maintain one lane open in each direction, with an additional lane open during rush hour. Some intersections may be closed, and there will be no on-street parking. The construction project will have a significant impact on the proposed school operations and local residential streets. Traffic congestion will worsen and turning motions will become more difficult.

57. The Board finds that the disruption of traffic that will result from the scheduled reconstruction of 16th Street will negate critical aspects of the applicants' traffic management plan, including the proposed fixed routes; drop-off, pick-up, and queuing operations; and shuttle van operations, including the shuttle from Ohev Sholom to Tifereth Israel.

Number of Students

58. The Board's September 24, 1999 order in Application No. 16027, relating to the JPDS use of the Adas Israel Synagogue, caps student enrollment at 185 and staff at 25.

59. The Board finds that the proposed increased in enrollment to 205 students would create increased objectionable impacts on adjacent and nearby properties, particularly from school traffic; the drop-off, pick-up, and queuing operations; increased demand for parking spaces; and noise. The replacement of 65 children at the Tifereth Israel child development center with 85 JPDS students in grades four through six would result in a relatively small impact. The addition of 120 students at Ohev Sholom would result in a significant impact.

60. To prevent and reduce objectionable conditions associated with the proposed school use, the Board finds that student enrollment should be capped at the present level of 185 students.

61. With the reduction in the number of students, Board finds it appropriate to limit the staff to 29 in number, plus the additional six part-time specialists. This would result in an increase in four more full-time staff and six more part-time staff than are currently approved. The reduction in the number of staff will reduce the demand on the limited number of available parking spaces.

Other Objectionable Conditions

62. There is a potential conflict between use of the alleys for Monday morning residential trash pick-up and student drop-off and queuing operations.

63. There will be a dumpster at each site for trash collection. Both Ohev Sholom and Tifereth Israel use a private trash collection service. The Ohev Sholom trash collection service projected that with the proposed private school use, the synagogue may need a larger dumpster, but that the existing once per week collection schedule should be sufficient. The Tifereth Israel trash collection service confirmed that the existing twice per week collection schedule would be sufficient for the proposed school use and existing programs.

64. To reduce the risk of rodent infestation and other unsanitary conditions, JPDS must provide adequate space for and clear access to the Ohev Sholom and Tifereth Israel dumpsters and not interfere with the District's use of the alleys for residential trash collection. The applicants' trash must be collected during hours that do not conflict with student drop-off and pick-up.

65. The increased activity on the subject properties brings with it the potential for increased litter. The Board therefore has conditioned the order to require the applicants to pick-up litter from the subject premises on a daily basis.

66. The neighbors complained that Tifereth Israel Synagogue rents its facilities to various entities that fail to respect the neighbors' quiet enjoyment of their properties, including groups that host late night dance parties lasting until 3:00 or 4:00 a.m. and that throw bottles and trash into the alley. The Board finds that if JPDS were to rent, license, or use the subject properties in a similar manner, the neighboring properties would be adversely affected and that the Board's order should be conditioned to prohibit JPDS from renting, subleasing, or making the subject properties available for others to use.

67. There are no buffers between the Ohev Sholom play area and the adjacent house along 16th Street or between Tifereth Israel and the houses along Jonquil Street.

68. The representatives of Ohev Sholom and Tifereth Israel acknowledged, and the Board finds, that communications have broken down between the two congregations and the community. The President of the Tifereth Israel Congregation expressed a commitment to an ongoing exchange of information, meetings, and mutual problem solving with the neighborhood. The President of the Ohev Sholom Congregation also acknowledged the need for more dialogue with the community.

69. The JPDS Board of Directors has authorized the creation of a community liaison committee comprised of representatives of the neighborhood and the boards of JPDS, Ohev Sholom, and Tifereth Israel. The JPDS Board of Directors also agreed that the neighborhood representatives to the liaison committee will have the right to put items on the JPDS Board's monthly meeting agenda and to present those items to the Board.

70. To further its community outreach efforts, the JPDS Board of Directors also offered to provide symposia free of charge to the neighborhood residents and the JPDS community, as well as to develop cultural exchange programs with Shepherd Elementary School.

Parking Space

71. On-Site Parking. The applicants' traffic impact analysis indicates that JPDS would be required to have a minimum of 24 full-size parking spaces to provide the minimum number of parking spaces required by Chapter 21 of the Zoning Regulations. Also, the report assumed that the parking spaces available on both lots could be considered in the aggregate for purposes of determining zoning compliance.

72. The applicants propose to provide seven parking spaces behind the Tifereth Israel Synagogue, stacked end-to-end and parallel to the alley. The applicants also propose to provide stacked parking for 25 vehicles behind the Ohev Sholom Synagogue. There would thus be a total of 32 parking spaces, of which JPDS proposes to use 20 for the school. The remaining 13 spaces would be used by the synagogues for their employees and visitors. The applicants' parking plans consisted of illustrative drawings. Their traffic impact analysis report cautions that "A formal survey of the two sites will be necessary to ensure that the existing space would be adequate to provide the planned number of parking spaces."

73. The applicants' parking plan did not address the location, size, and design requirements of Chapter 21 of the Zoning Regulations. It also failed to address the requirements of Chapter 22 with respect to loading berths, loading platforms, and loading spaces. The location and dimensions of loading facilities would affect the amount of space available for the parking spaces and the trash dumpsters.

74. The opponents contend that the Ohev Sholom parking plan fails to take into account the presence of constricting telephone poles. They claim that parked vehicles would block the rear building exit, dumpster site, and access to the play area and protrude into and obstruct the alley. They believe that the parking area can only accommodate 13 to 18 vehicles.

75. The opponents further contend that the Tifereth Israel parking plan includes parking on the grass-covered area beyond the building line. They contend that parked vehicles will block the handicap ramp, fire exits, loading zone, and dumpster site and obstruct the alley. They believe that the parking area can only accommodate three or four vehicles.

76. The Board finds that with the 35 full-time and part-time staff cap imposed by this order, 11 DCMR § 2101.1 requires a minimum total of 23 parking spaces for the use of JPDS. In addition, under Subsection 2116.3, which applies to the Ohev Sholom Synagogue since it was constructed after 1958, at least three parking spaces must be provided on-site for synagogue use. The Board finds that to provide ample parking for this special exception use as required under Subsection 206.3, the applicants must provide a total of 32 on-site parking spaces to accommodate faculty and staff, the parents and guardians who will accompany their children into school, the four parent volunteers, and the various guests and visitors who will drive to the sites, as well as the synagogues' employees and visitors.

77. On-Street Parking. On-street parking is prohibited on 16th Street during the 7:00 a.m. to 9:30 a.m. and 4:00 p.m. to 6:30 p.m. rush hours, Monday through Friday. The JPDS will encourage parents and visitors to visit the school during the times when parking is available on 16th Street. As noted above, parking will not be available during the reconstruction of 16th Street.

78. Two-hour non-residential permit parking is allowed on both sides of Juniper Street east of 16th Street, Monday through Friday, from 7:00 a.m. to 8:30 p.m. Juniper Street west of 16th Street, at 24 feet wide, is significantly narrower than the portion east of 16th Street. The 7:00 a.m. to 8:30 p.m. two-hour parking restriction for non-residential permit holders applies to the north side of the street and there is no parking allowed on the south side. The on-street residential parking restrictions for Jonquil Street mirror those of Juniper Street.

79. The Board finds that the proposed school use will to a certain extent reduce the amount of available on-street parking space. The reconstruction of 16th Street will negate JPDS' plans to encourage parents and visitors to use 16th Street parking, creating a shortage of parking spaces for the use of adjacent and nearby properties.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized under the Zoning Act of 1938, 52 Stat. 797, as amended, D.C. Code § 5-424(g)(2) (1994 Repl.), to grant special exceptions as provided in the Zoning Regulations. The JPDS applied under 11 DCMR § 3104.1 for a special exception under 11 DCMR § 206 for a private school, to be located on two separate lots, one of which is located in an R-1-A zone district and the other, diagonally across the street in an R-1-B district. The notice requirements of 11 DCMR § 3113 for the public hearing on the application have been met.

To meet their burden of proof under Subsection 3104.1, the applicants must demonstrate that the proposed private school is in harmony with the general purpose and intent of the Zoning Regulations and Map; that it will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map; and that it meets the special conditions listed in Section 206 for private schools. Under Subsection 206.2, "The private school shall be located so that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions." Under Subsection 206.3, "Ample parking space, but not less than that required in chapter 21 of this title, shall be provided to accommodate the students, teachers, and visitors likely to come to the site by automobile."

The Board's discretion in reviewing an application is limited to a determination of whether the applicant has complied with the requirements of these subsections. If the applicant meets its 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).

Further, the Board is required under D.C. Code § 5-412.4 (1994) to give "great weight" to the Office of Planning recommendation. The Board determined that the OP report was flawed in that the Zoning Regulations do not authorize the type of conditional approval recommended in the report, such that the approval, if granted, would have to be for a definite time period. Moreover, OP had indicated that the applicants' traffic management plan would have to function "like clockwork," deferring to DPW to evaluate the plan. The DPW determined that there were potential adverse impacts from the proposed traffic circulation patterns, queuing operations, and fixed routes, with the reconstruction of 16th Street to worsen traffic congestion and make turning motions more difficult. The applicants' traffic management plan therefore could not realistically function like clockwork, undermining the OP recommendation.

Under D.C. Code § 1-261(d) (1999), the Board must also give great weight to the affected ANC's recommendation. The Board must "articulate why the particular ANC itself, given its vantage point, does – or does not – offer persuasive advice under the circumstances." *Kopff v. District of Columbia Alcoholic Beverage Control Board*, 381 A.2d 1372, 1384 (D.C. 1977). The Board has carefully considered the ANC's recommendation as previously set forth in this decision that the application be denied, but for the reasons set forth below, does not find the ANC's recommendation persuasive. The Board has addressed, through the conditions imposed in this order, the ANC's specific issues and concerns.

The ANC's reliance on 11 DCMR § 214.7 for the proposition that accessory parking spaces in an R-1 district must be located so as not likely to become objectionable to adjoining or nearby property is misplaced, as Section 214 pertains to accessory parking spaces elsewhere than on the same lot or part of a lot on which the main use is permitted. The applicants have not as yet applied for special exception relief under Section 214.

The Board agrees with the ANC that the applicants did not adequately involve the neighborhood in the JPDS relocation plans. The JPDS expressed regrets for this situation, which arose from the difficult circumstances in which JPDS found itself in securing a temporary location late in the 1999-2000 school year. After filing their application on December 30, 1999, the applicants undertook an outreach and publicity program and presented their plans to the ANC on February 1. However, considering the magnitude of the potential impacts and the serious objections from the nearby and adjacent property owners, the applicants' outreach efforts did not provide the community a meaningful opportunity to participate in the applicants' planning and application development process. The applicants were not prepared to present their proposed traffic management plan at the February 1 ANC meeting and had to return on March 7, just eight days before the Board's hearing. As the neighborhood's concerns primarily involve traffic and parking conditions, the ANC's objection is well taken; however, this does not provide a legal basis for the denial of the application. *See Friendship Neighborhood Coalition v. District of Columbia Board of Zoning Adjustment,* 403 A.2d 291, 294 (D.C. 1979) (the ANC is limited in making a recommendation to the Board to a discussion of the issues that the Board may lawfully consider in making its decision). The Board has nevertheless addressed the ANC's concerns relating to community involvement in the conditions to this order, which require the establishment of a community liaison committee and provide the ANC the lead role in convening the committee.

The Board agrees with the ANC that the proposed number of students, along with the staff, parents, and visitors, would result in objectionable traffic, parking, litter, and noise problems, and accordingly has limited the number of students to 185 and staff to 29 full-time and 6 part-time staff.

While the Board agrees with the ANC that the school use will reduce to some extent the amount of available on-street parking, the Board does not find the ANC's objection a persuasive reason for denying the application. The JPDS will encourage parents and visitors to park on 16th Street during the weekday. The evidence indicated that until the reconstruction of 16th Street, there should be sufficient on-street parking. To the extent the ANC's objection goes to evening and weekend parking, the school will only host three evening events and will only operate from Monday through Friday. The Board has also required the applicants to provide 32 parking spaces, at least 23 of which are for the use of JPDS.

Like the ANC, the Board is concerned with pedestrian safety. The JPDS representatives stated that they will provide monitors, greeters, and crossing guards to assure the students' safety, shuttle students in the morning by van from Ohev Sholom to Tifereth Israel, and, if necessary in light of pedestrian safety concerns associated with 16th Street traffic, cancel the hot-

lunch program on a school-wide basis. The Board has provided for the safety of pedestrians and bicyclists in the alleys by significantly reducing the number of vehicles coming to the sites to drop-off and pick-up students.

The Board is dismayed to hear from the ANC that the Tifereth Israel Congregation may be operating its child development center under an expired approval order and that other violations may have occurred. While the Tifereth Israel Congregation is the owner of one of the subject sites, JPDS will be responsible for school operations. The Board believes that the conditions established in this order relating to the private school use of the facilities will prevent the types of problems that arose with the child development center from recurring.

The Board agrees with the ANC that the adjacent and nearby properties will be affected by the school and has required, among other conditions designed to prevent adverse effects, the installation and maintenance of a high fence to serve as a buffer.

Finally, the Board agrees with the ANC that the proposed special exception, as a result of the drop-off, pick-up, and queuing operations and the parking arrangements, has the potential to result in the obstruction of the alley. To prevent and mitigate the resulting objectionable conditions, the Board has reduced the proposed student enrollment and staffing, reduced the number of vehicles accessing the site, required additional parking, and imposed additional conditions relating to alley use.

The Board believes that with the imposed conditions, the application can be approved pursuant to the requirements of the Zoning Regulations. However, the scheduled reconstruction of 16th Street, which will disrupt the school's traffic management and operating plans and defeat many of the Board's conditions, requires that the approval be limited to a one-year term. The one-year term will afford JPDS the opportunity to find a more suitable temporary location.

Based on the findings of fact and having given great weight to the recommendations of OP and the ANC, the Board concludes with respect to Subsection 203.2 of the Zoning Regulations that the proposed private school use, as conditioned by the Board, can be located so that it will not become likely to become objectionable to adjoining and nearby property. The Board has imposed numerous, stringent conditions on this approval in response to the ANC's and neighbors' concerns, including limiting JPDS use of the facilities; limiting student enrollment and staffing; limiting the hours of operation and special events; reducing the number of vehicles accessing the sites from the proposed 68 vehicles to 35 vehicles; requiring ample parking, to be provided in excess of the requirements of Chapter 21; requiring a community liaison committee and providing a strong role for the ANC; requiring a traffic management plan, to include the requirement of strict penalty provisions; restricting activities in the alleys; prohibiting obstruction of the alleys; requiring the snow removal from the alleys and critical segments of the surrounding streets; restricting signage, noise, and lighting; requiring that litter be picked up daily; and requiring a fence barrier. In addition, the one-year term will prevent objectionable traffic and parking conditions that would likely occur during the reconstruction of 16th Street.

Subsection 206.3 of the Zoning Regulations requires that the proposed private school provide ample parking space, but not less than that required in Chapter 21, to accommodate the students, teachers, and visitors likely to come to the site by automobile. Under Subsection 2101.1, with 35 full-time and part-time teachers and staff, the school requires a total of 23 parking spaces. The Board has required the applicants to provide a total of 32 parking spaces on-site, at least 23 of which must be designated for the use of JPDS. Under Subsection 2118.5, parking spaces for the synagogue use, including the three spaces required under Subsection 2116.3 for Ohev Sholom, may not be considered as providing parking spaces for the private school use.

The opponents assert that the proposed parking plan does not meet the requirements of Chapter 21 of the Zoning Regulations. They cite Subsection 2116.1, which requires that all parking spaces must be located on the same lot with the building they are intended to serve; Subsection 2116.4, providing that the required parking spaces may not be located in the area between the building line and lot line abutting a street; Subsections 2115.1 to 2115.4, relating to the size of the parking spaces; and Subsections 2117.4 and 2117.5, relating to the design of the proposed stacked parking and alley access. Pursuant to Subsections 2100.2, 2200.2, and 2200.3, the applicants are required to address all issues relating to the location, size, and design of the parking spaces and loading facilities during the building permit and certificate of occupancy permit process and, if necessary, to seek appropriate special exception or variance relief from the technical requirements of Chapters 21 and 22. The Board concludes therefore that with the requirement of the 32 parking spaces the requirements of Subsection 206.3 have been met.

Both the R-1-A and R-1-B zone districts are low density residential districts that allow single family dwellings, churches or other places of worship, embassies, low density community-based residential facilities, and other appropriate accessory uses and structures as a matter of right. Uses permitted, with Board of Zoning Adjustment approval, include child development centers, private schools, private stables, community centers, and colleges and universities. The Board concludes that use of the subject properties for a private school, as conditioned by the Board, is an appropriate use of the existing synagogues and in harmony with the general purpose and intent of the Zoning Regulations and Map.

Finally, as discussed above with respect to the requirements of Subsection 206.2, the Board concludes that the proposed private school use, as conditioned by the Board, will not adversely affect the use of neighboring property.

The Board required the applicants to submit prior to the issuance of this Decision and Order copies of its lease agreements with the Ohev Sholom and Tifereth Israel Congregations, with the lease agreements to contain provisions requiring the terms of the leases to end no later than July 1, 2001, and providing that the leases are non-renewable. The applicants submitted copies of the lease agreements containing the required terms for the record on May 31, 2000.

For the reasons stated above, the Board concludes that the applicants have met their burden of proof. It is hereby **ORDERED** that the application be **GRANTED**, subject to the following **CONDITIONS**:

1. The JPDS shall not rent, sublease, or otherwise make available any space or facilities at the subject properties to any other persons or organizations for any purpose.

2. The JPDS shall hold only those activities at the site that are directly related to the school's educational purpose.

3. The number of students shall not exceed 185.

4. The number of staff shall not exceed 29 full-time staff and an additional six part-time staff.

5. The school's hours of operation shall not extend beyond 8:15 a.m. and 6:30 p.m., Monday through Friday.

6. The JPDS shall host no more than three evening events at the subject properties. Evening events must be completed by 9:00 p.m.

7. The applicants shall provide 32 parking spaces on-site, at least nine of which must be full-size spaces and at least 23 of which must be designated for JPDS use. The applicants shall address all issues relating to the number, location, size, and design of the parking and loading spaces required by Chapters 21 and 22 of the Zoning Regulations during the building and certificate of occupancy permitting process and, if necessary, apply for appropriate zoning relief.

8. The JPDS shall submit its certificate of occupancy applications to ANC 4A for review ten days in advance of filing the applications with the Department of Consumer and Regulatory Affairs.

9. The JPDS shall establish a community outreach program to include:

   a. A community liaison committee to meet at least once every two months, beginning with the month in which the order is issued, to discuss and resolve issues of mutual concern. The ANC 4A may take the lead in convening the committee, with the applicants and the Shepherd Park and Colonial Village neighborhood communities to determine committee membership and operating protocol;

   b. Cultural exchange programs with Shepherd Elementary School; and

c. Symposia open to neighborhood residents and the JPDS community at no charge.

10. The JPDS shall implement the provisions of its traffic management plan, to include:

    a. Encouraging fixed routes;

    b. Extensive use of monitors, greeters, and crossing-guards;

    c. Encouraging car and van pooling and other methods of reducing school traffic, including a shuttle bus system from a remote staging area, to result in no more than 35 morning peak hour vehicles traveling to the subject properties;

    d. Staggering school start times;

    e. Providing after-school programs, to end no later than 6:30 p.m.; and

    f. Coordinating school hours with those of nearby schools.

11. The JPDS shall provide all parents and guardians of prospective and registered students with a copy of its traffic management plan in its parent handbook; and shall make the traffic management plan an integral part of each student registration contract. The JPDS shall fully implement the provisions of the traffic management plan, including the imposition of fines on parents and guardians who do not comply. The traffic management plan and the following penalty schedule apply, regardless of who drives the students to or from school. The JPDS shall impose a fine of $50 for the first offense; $100 for the second offense; and $200 for the third offense. The fourth offense shall result in mandatory expulsion. All fines must be paid within 14 calendar days after the citation is issued. Fines that are not paid within 14 days shall be doubled, except that a fine for a third offense that is not paid within 14 days shall result in mandatory expulsion. The community liaison committee shall decide how any monies collected from the fines are to be spent.

12. The JPDS use of the subject properties shall not cause any roadway safety or operational deficiencies, and shall not affect the health, safety, or general welfare of roadway users or adjacent neighborhoods.

13. Public alleys must be kept open for two-way traffic at all times, unless specified otherwise by the Department of Public Works.

14. The JPDS use of the subject properties shall not result in the creation of an easement, constructive or otherwise, with regard to any use of the abutting public alleys.

15. The JPDS shall, as needed, undertake snow removal and salting of the public alleys abutting the subject properties and of critical segments of Jonquil, Juniper, Jonquil, and 16th Streets, N.W.

16. In order to minimize any adverse impacts on neighborhood streets and public alleys, all buses serving the JPDS sites during rush hours shall load and unload passengers on-site and not on Juniper, Jonquil, or 16th Streets, N.W. All buses, except passenger vans, must be parked on the subject properties and not on neighborhood streets.

17. Loading and deliveries and refuse collection shall be restricted to the weekday hours of 7:30 a.m. to 3:30 p.m. The applicants may not operate any trash compactors on-site between the hours of 6:30 p.m. and 7:30 a.m. or on weekends.

18. The JPDS shall ensure the installation of appropriate signage indicating the presence of elementary school age children in the vicinity of the school, and coordinate with the Department of Public Works and the Metropolitan Police Department to provide the required signage.

19. No sign advertising the school or other activities on the subject premises shall be visible from 16th Street, N.W.

20. The JPDS shall pick up litter daily around the perimeter of the subject properties.

21. Any exterior lighting used to illuminate the subject properties must be installed and operated so that all direct rays of such lighting are confined to the surface of the subject premises.

22. Noise levels from instruction, monitoring, and play activities must be consistent with noise levels at the Shepherd Elementary School.

23. The applicants shall install a high wood fence between the Ohev Sholom parcel and the house along 16th Street, N.W., and between the Tifereth Israel parcel and the houses along Jonquil Street, N.W. The applicants shall maintain and replace the fences as necessary. The height of the fences must be the maximum height permitted by regulation.

Chapter 32 of the Zoning Regulations sets forth provisions with respect to enforcement and penalties for violations of the regulations. Section 3205 requires compliance with conditions in orders of the Board and provides that if a building permit or certificate of occupancy has been issued pursuant to a decision of the Board to approve a special exception, then each condition to

the approval of that special exception shall be treated as a condition to the issuance of the building permit or certificate of occupancy as well. 11 DCMR § 3205.3 (1995). The failure to abide by the conditions, in whole or part, shall be grounds for the revocation of any building permit or certificates of occupancy issued pursuant to this order.

The applicants' request for a three-year term of approval is **DENIED. This approval shall be valid from the effective date of this order through July 1, 2001, and nonrenewable.**

VOTE: 4:0:1 (Robert N. Sockwell, Anne M. Renshaw, John G. Parsons, and Rodney L. Moulden (by absentee vote) to grant; Sheila Cross Reid, abstaining).

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

Each concurring member has approved the issuance of this Decision and Order and authorized the undersigned to execute this Decision and Order on his or her behalf.

ATTESTED BY: Jerrily R. Kress

JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: JUN 15 2000

PURSUANT TO D.C. CODE § 1-2531 (1999), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANTS ARE REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. TITLE 1, CHAPTER 25 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF THE APPLICANTS TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6 OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE AND UPON ITS FILING IN THE RECORD AND SERVICE ON THE PARTIES.

PURSUANT TO 11 DCMR § 3130.3, THIS ORDER OF THE BOARD SHALL NOT BE VALID FOR A PERIOD IN EXCESS OF SIX MONTHS UNLESS WITHIN SUCH TIME THE PERMITTED USE IS ESTABLISHED; PROVIDED THAT WHERE THE PERMITTED USE IS DEPENDENT UPON THE ALTERATION OF A STRUCTURE, THE REMAINING PROVISIONS OF § 3130 SHALL APPLY.