GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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 MEETING: April 12, 2000

DECISION AND ORDER: June 15, 2000

ORDER DENYING MOTION FOR STAY

The Shepherd Park/Colonial Village Neighborhood Alliance and its members (hereinafter collectively referred to as the "Alliance") filed a motion with the Board of Zoning Adjustment requesting the Board to stay its decision and order in the above-captioned case. The applicant, the Jewish Primary Day School of the Nation's Capital (JPDS), opposes the motion. After reviewing the motion and the opposition thereto at its public meeting on July 5, 2000, the Board determined to deny the motion.

Under 11 DCMR § 3125.9, the Board's decision and order, which was filed in the record and served on the parties on June 15, 2000, became effective on June 25th. The decision and order remain effective in the event of an appeal "unless stayed by the Board or a court of competent jurisdiction." 11 DCMR § 3130.4.

The Alliance did not request party status in the Board's proceedings; however, it states that it intends to file a petition for review of the Board's decision and order with the Court of Appeals shortly. Under D.C. App. R. 18, a motion for a stay of an agency decision pending appeal "shall ordinarily be made in the first instance to the agency." The Board therefore concludes that upon filing a petition for review in the Court of Appeals, the Alliance would have standing to file a motion for stay with the Board. In light of the Alliance's stated intent to request the court to expedite its appeal and JPDS' need to undertake construction and preparations for the start of the school year in September, the Board concludes that it is appropriate to entertain the Alliance's motion at this time.[1]
[2]

1 If the Board had granted the motion, the Board would have included the condition that the stay would not have gone into effect until the petition was filed with the Court of Appeals.

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To prevail on its motion, the Alliance must show that it is likely to succeed on the merits, that irreparable injury will result if the stay is denied, that the opposing parties will not be harmed by a stay, and that the public interest favors the granting of the stay. *See Kuflom v. District of Columbia Bureau of Motor Vehicle Services,* 543 A.2d 340, 344 (D.C. 1988). The Board finds that the Alliance has not met the requisite showing for the following reasons.

1. The Alliance Has Not Shown that it Is Likely to Succeed on the Merits. The Alliance asserts that the Board's decision and order do not provide sufficient findings of fact as to the traffic and parking issues in this case and that the conditions imposed in the order are not adequately supported by the Board's findings. The Board made extensive findings of fact and conclusions of law on the contested traffic and parking issues and discussed at length the supporting evidence and ANC report. The Board also explained in its decision the reasons for the conditions imposed on the approval. For example, the Board explained that by reducing the proposed enrollment and staffing and by reducing the number of vehicles travelling to the site, there would be a corresponding reduction in traffic and parking impacts. The Board therefore concludes that the Alliance is not likely to succeed on the merits of its argument that the decision is unsupported by substantial evidence in the record.

The order also required the applicants to provide 32 parking spaces on-site, at least 23 of which must be designated for JPDS use. The Zoning Regulations in Subsection 206.3 require applicants for special exception approval for private school use to provide ample parking space, but not less than that required by Chapter 21. The Board acknowledged that the opponents and the ANC had raised questions relating to the location, size, and design of the parking spaces and directed that those questions be resolved in the building permit and certificate of occupancy permitting process. The Zoning Regulations in Subsections 2100.2, 2100.3, 2200.2, and 2200.3 contemplate that technical questions relating to the parking space and loading facility requirements of Chapters 21 and 22 will resolved during the permitting process and any necessary variances or special exceptions obtained prior to issuance of the permits.

The affected ANC, which opposed the application, is entitled to notice of the building permit application by virtue of Section 13 of the Advisory Neighborhood Commission Act of 1975 (D.C. Law 1-21, as amended, D.C. Code § 1-261(c)(3)); *see Tenley and Cleveland Park Emergency Comm. v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331 (D.C. 1988), *cert. denied*, 489 U.S. 1082 (1989), and to notice of the certificate of occupancy application by virtue of condition number 8 of the Board's order.[2] Thus the Alliance, through the ANC, will have the opportunity to learn of the permit applications. If the Alliance believes that under the Zoning Regulations the permits are issued in error and can demonstrate that it has been aggrieved thereby, it will have the right under the Section 8 of the Zoning Act of June 20, 1938 (52 Stat. 799, as amended, D.C. Code § 5-424(f)), to appeal to the Board. If JPDS requires additional zoning relief from the Board to comply with the requirements of Chapters 21 and 22, the Alliance and the ANC will receive public notice of the application under 11 DCMR § 3113.13 and have the right to participate in the hearing on the application. *See* 11 DCMR § 3117.11(b). Therefore, the Board does not believe that the Alliance is likely to prevail on its

2 Condition number 8 provides that "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."

arguments that the Board failed to address the parking requirements of the Zoning Regulations or that the Alliance will not have the opportunity to examine and/or contest the JPDS parking plan.

Based on the above, the Board concludes that the Alliance is not likely to prevail on the merits of its appeal and thus does not meet the criteria for a stay.

2. The Alliance Will Not Suffer Irreparable Injury if the Stay Is Denied. The Board imposed numerous conditions in its decision and order that are designed to prevent and mitigate any adverse effects associated with the proposed school use. Since the Board conditioned its order to prevent injury, the Board concludes that the Alliance will not suffer irreparable injury if the stay is denied.

3. A Stay Would Result in Harm to the Opposing Party. A stay would deprive JPDS of a temporary location for the 2000-2001 school year, which will begin in two months, making it difficult for JPDS to maintain its enrollment and staffing. The JPDS might be forced to relocate to the suburbs or even to close its doors. While the school leadership might have planned and undertaken the JPDS relocation efforts differently, the harm from a stay would befall the children who attend the school and their families by disrupting their education plans. To the extent the predicament in which JPDS finds itself is self-inflicted, the Board concludes the equities overall do not warrant granting a stay.

4. The Public Interest Does Not Favor Granting a Stay. It is in the public interest to preserve the District's educational and cultural diversity, as well as the character of its residential neighborhoods. In granting JPDS a special exception for a one-year term, the Board imposed many conditions in its order to protect the Shepherd Park and Colonial Village neighborhoods from adverse effects associated with the private school use. The Board previously determined that as conditioned in its order, the private school use met the criteria established in the Zoning Regulations for special exception approval, including the criterion that the school not adversely affect neighboring property. The Board therefore concludes that the public interest would not be served by staying the effectiveness of its order.

For the reasons stated above, the Alliance's motion for stay is **DENIED.**

VOTE: 5:0 (Robert N. Sockwell, Anne M. Renshaw, Sheila Cross Reid, Rodney L. Moulden, and John G. Parsons (by absentee vote) to deny).

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

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

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: AUG 2 2000

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16556

AUG - 2 2000

As Director of the Office of Zoning, I hereby certify and attest that on _____, a copy of the foregoing Order Denying Motion for Stay in BZA Application No. 16556 was mailed first class, postage prepaid, or via D.C. Government interoffice mail, to each party or government agency who appeared and participated in the public hearing concerning this matter and who is listed below:

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ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning