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March 10, 2000

By hand-delivery

Ms. Sheila Cross Reid, Chairperson
Board of Zoning Adjustment
441 - 4th Street, N.W.
Room 210
Washington, DC 20001

'00 MAR 10 P3:47
OFFICE OF ZONING
DISTRICT OF COLUMBIA

Re: BZA Application No. 16559
(Field School - Special Exception Request under Sec. 206 of the Zoning Regulations)

Dear Ms. Reid and Board members:

On behalf of Neighbors Against Foxhall Gridlock, in opposition to the proposed special exception request by the Field School to develop the Cafritz Estate as a school, I submit the following:

THE APPLICATION FAILS TO MEET ALL THE REQUIREMENTS OF THE ZONING REGULATIONS

Section 206.1 permits a private school in an R-1 district if approved by the BZA in accordance with the conditions specified in Sec. 3108, as well as the conditions set forth in Section 206.2 (not likely to be objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions) and Sec. 207 (ample parking but no less than that required by Chapter 21). The prehearing statement virtually ignores the conditions set forth in Sec. 3104.1 which are as follows:

> . . . the Board is authorized to grant special exceptions . . . where, in the judgment of the Board, those special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps . . . .

BZA
Case No. 16559
Exhibit No. 77

Board of Zoning Adjustment
District of Columbia
CASE NO.16559
EXHIBIT NO.77A1

The Zoning Maps indicate the area where the school is proposed to be located as R-1-A in Ward 3. (The Cafritz Estate is approximately 10.5 acres in size). The general land use map indicates the predominant use of the Foxhall neighborhood to be low density single family detached and semi-detached housing. The Ward 3 Plan follows, supplements and interprets the first eleven (11) elements of the Comprehensive ("Comp") Plan. See Chapter 14, Ward 3 Plan (Vol. 46, No. 8, Feb. 19, 1999, D.C. Register). The major theme for the Ward 3 Plan is to protect the Ward's residential neighborhoods.

> . . . it is a major theme of this ward plan to protect and maintain the low-density, high quality of the ward. Sec. 1400.2(a)(2).

Accordingly, the Ward 3 Plan seeks to control redevelopment:

> Major redevelopment is often accompanied by undesirable effects, particularly increased traffic. Sec. 1400.2(b)(1) (emphasis added).
>
> One of the Ward's Transportation objectives for private passenger automobiles (including alternative modes) is to improve levels of service at intersections to "C" or better. Sec. 1404.5(a).

Finally, the Ward 3 Plan Land Use Section (Sec. 1409), reiterates the need for ". . . overall protection and enhancement of established residential and commercial areas" as the primary objective of the District's land use policy for Ward 3. It should be noted that the effects of nonresidential development on the ward's residential neighborhood . . . must be carefully controlled and limited (Sec. 1409.1). Under Section 1409.1, the Ward 3 plan seeks to ensure stringent protection against infill at inappropriate locations including very large lots in single family neighborhoods, which is precisely the case here.

Hence, it is clear why the applicant fails to mention the entire standard that the Board must consider in granting the application, as the applicant fails that portion of the test.

Court Cases and BZA Precedent Favor Denial of the Special Exception

a) Court Cases

The applicant cites Bakers' Local Union No. 118 v. D.C. BZA, 437 A.2d 176, 178 (D.C. 1981) for the proposition that if the prerequisites of the Zoning Regulations are satisfied, the Board ordinarily must grant the application. We note that the Bakers' Local Union case stands for the basic proposition that the Board erred because its decision did not meet the substantial evidence test:

> The Board erred in not making "findings of fact of a 'basic or underlying nature' about the future impact on the neighborhood of a continued special exception.
>
> * * *
>
> Its findings, moreover, are not supported by sufficient evidence in the record. (See Exh. A at 181)

Applicant's counsel fails to cite a far more meaningful case, The Cathedral Park Condominium v. The Klingle Corporation Case, D.C. App. No. 98-AA-59, decided Jan. 20, 2000 (See Exh. B) in which applicant's counsel represented the owner-developer of the property (the Kennedy-Warren) in a PUD case before the Zoning Commission.

The case is significant because the D.C. Court of Appeals reversed and remanded the Zoning Commission's decision in favor of the owner to develop a new apartment wing on green space to determine whether the PUD was "not inconsistent" with the Comp Plan. While the court found that the land use element unambiguously permitted high density apartments at the PUD location, the Zoning Commission did not expressly address the Ward 3 Plan that development adjacent to landmark parks "must be low density". The court noted that the "Commission should explain its ultimate conclusion regarding the consistency of the proposed PUD with the Plan as a whole" (at page 478).

As we have shown above, the proposed Field School site is zoned R-1-A, which is described on the general land use map to be predominantly low density single family detached and semi-detached housing. This is in contrast to the case just decided by the Court of Appeals where the plan called for high density apartments at the site and the proposal was for high density apartments.

The Board is required to review the consistency of the proposed special exception with the Comp/Ward Plans both by its own regulations and case law and approve or disapprove the special exception based upon sufficient evidence. As we have demonstrated, and as indicated by our land use planner, whose report was previously submitted to the Board (site too small for a school, out of character with neighborhood, with significant excavation of soil and loss of trees), the proposed site for a school is totally inconsistent with the Comp and Ward 3 Plans.

b) BZA Precedent

We draw to the Board's attention that when the Board granted a special exception for the construction of the Georgetown Day High School with athletic field, App. No. 14278, in an R-2 zone (See Exh. C attached), the traffic study submitted by the applicant indicated the following:

> . . . excellent public transportation access with ten bus routes adjacent to the site and the Red Line Metrorail station approximately three blocks to the southeast (Decision at 4, para. 14).

However, in stark contrast, the traffic report for the applicant in this case admits:

> This site [on Foxhall Road] has limited existing public transportation opportunities with no Metrorail stations within a reasonable walking distance. (Report at 2).

Indeed, there is no Metrobus route on Foxhall Road, as the applicant's traffic report recognizes:

> The nearest public transportation opportunity to this site consists of the D4 Metrobus route that traverses along MacArthur Boulevard and Reservoir Road, which is an approximate 5-minute walk from the relocation site.

Based on these admissions, the Board should reject the application because of the adverse impact of the proposed school on traffic for lack of readily accessible public transportation, given the existing severe traffic conditions on Foxhall Road.

CURRENT AND FUTURE
TRAFFIC CONGESTION
ON FOXHALL ROAD MANDATES
REJECTION OF THE SPECIAL EXCEPTION REQUEST

As evidenced by our expert traffic report, the traffic congestion on Foxhall Road is severe and the location of the Field School on the Cafritz site will make it worse. The Department of Public Works Memorandum, dated March 9, 2000, recognizes this on page 2 where it is stated:

> "It should be noted that Foxhall Road is operating at or over capacity during the A.M. and P.M. rush hours."

The applicant's own traffic consultant recognizes 3 significant traffic issues in relation to the site at page 9 of his February 29, 2000 report:

1. The sight distances along Foxhall Road in the vicinity of the school relocation site are not favorable due to the existing vertical and horizontal curvatures of the roadway.[1]

2. Vehicular speeds along the Foxhall Road corridor exceed the posted speed limit of 25 mph in the vicinity of the relocation site.

3. Foxhall Road serves a significant amount of north-south commuter traffic by providing access from Nebraska Avenue and Loughboro Road to Georgetown and the Whitehurst Freeway. This commuter traffic contributes to the speeding and congestion experienced by motorists in the Foxhall Road corridor.

The applicant offers no less than eight cumulative "maneuvers" needed to relieve increased traffic congestion/gridlock as a result of the proposed school at this site:

1. Moving the southern driveway on the proposed site 80 feet from the southern property line and allow only right hand turns in and out of the property "to avoid difficult left turns into and out of the site at this location." (Traffic Report at 10)

2. Restrict vehicles arriving from the north from making left hand turns into the school off Foxhall from 7:30 am to 9:00 am except for shuttle buses and emergency vehicles and requiring right hand only turns exiting the school during A.M. rush hour. (Traffic Report at 10)

3. Provision for a traffic officer during the morning and afternoon hours. (Traffic Report at 10)

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[1] See Exhibit D attached hereto which indicates the death of a driver on Foxhall Road on January 1, 2000 and the letter in opposition of Dale Meers and Elizabeth Heffernan in the BZA files. The DPW report notes numerous accidents on Foxhall Road in 1997 on page 3.

4. Placement by DPW of school zone warning signs with flashing lights and a posted 15 mph speed limit during school traffic peak hours. (Traffic Report at 10)

5. Installation of traffic lights at W Street and Whitehaven along Foxhall in consultation with DPW. (Traffic Report at 14)

6. A shuttle bus program for students to and from Tenleytown and Foggy Bottom Metro stops and other off-site locations in the vicinity of the intersections of MacArthur Boulevard/Loughboro Road and Massachusetts Avenue/Nebraska Avenue. (Traffic Report at 17)

7. Staggered times for school classes.

8. Restrictions on student, faculty and visitor driver and parking privileges.

We submit that many of these programs won't work, can't work, can't be enforced, are contradictory with other agreements, or will induce drivers to traverse through the neighborhood to arrive at or leave the school, contrary to the agreement worked out with the expansion of GW/Mt. Vernon College on W Street.[2]

- Since vehicles approaching from the south can make only right hand turns in and out of the school, those drivers who wish to proceed to downtown D.C. or Virginia after dropping off students will most likely turn left at Garfield or Dexter and then left on 49th and wind their way through residential streets to get to W Street and Foxhall Road.

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[2] See DPW report at 3 which states:

> "There is no guarantee that traffic coming from the north would access the Field School using the traffic pattern recommended by the applicant: MacArthur Boulevard to Whitehaven Parkway and Foxhall Road."

DPW also states at page 3 of its report:

> "However, it is unclear as to how the Field School will insure implementation of this policy [shuttle bus service] or the requirement that student's car pool."

- Since drivers approaching from the north cannot make a left into the school, excluding shuttle buses, they most likely will take the same path as those coming from the south who need to go to D.C. or Virginia, that is, turning right on Garfield or Dexter, left on 49th Street, left on W Street and left on Foxhall to make the right hand turn into the school. Should they wish to depart for D.C. or Virginia, they will be forced to take virtually the same trip they just made from the north, except to turn right on W Street. All of these maneuvers are contrary to the agreement reached by the neighbors in GW/Mt. Vernon College to keep traffic off the side streets, and in particular W Street, by placing the entrance to the college on Whitehaven Parkway.

- Some of the congestion and need for traffic guards, flashing lights, 15 mph school signs, and no left turns could be alleviated by having an entrance to the school from 44 Street, N.W. However, the applicant has stated that there will be no access to the site from 44th Street, assuring gridlock on Foxhall Road. See pre-hearing statement at 14.

- The staggered A.M. classes will result in later P.M. departures by the students. Also, the applicant's report fails to consider extracurricular activities which will result in P.M. rush hour student departures with no left hand turn restrictions.

- The provision of a traffic control officer at the entrance will be extremely dangerous to that individual and likely increase delays and congestion on Foxhall Road as supported by DPW's report of March 9, 2000 to the Office of Planning. See DPW report at 3. We do not understand how the installation of a light at that location in lieu of the traffic control officer, given poor sight lines and the slope, will be any less dangerous for the drivers. Moreover, the combination of a light at that location and 15 mph speed limits with flashing lights is guaranteed to "strangle" traffic.

- While the applicant's traffic report and the DPW report of March 9, 2000, recommends a traffic signal at W Street and Foxhall to relieve congestion, the applicant has advised the Palisades Citizen's Association that it will oppose a signal at that intersection. See Exh. E attached.

- As part of its parking procedures, the school will require drivers to drive at least one other student in order to receive a parking sticker. The applicant's traffic report assumes 38 student drivers would transport 2.5 students per vehicle. (See report at 11). However, given the Council's recent enactment of the Safe Teenage Driving Amendment Act of 1999, effective September 1, 2000 for youths born after December 31, 1984, the school's requirement and the traffic consultant's assumption is improbable. Under the new law, a teenager could have only family members as passengers until age 17. At age 17 to 18, the teenager could carry up to 2 passengers, but requires supervision at night. Only at age 18, and with a clean driving record, could the teenager be free from restrictions. Ostensibly, unless the student leaves school before

dark, no student under 18 will be carrying passengers other than a family member who would also be going to the school, if any. See Exh. F attached hereto, which is the Council legislation and Washington Post article describing same. We note that Council member Patterson, Ward 3, was the proponent of this legislation.

- We also note that the applicant places no restriction on the maximum number of students/faculty as part of its plan. Our planning report indicates that only minimum facilities are provided, i.e., one tennis court and no cafeteria despite the school's requirement that students can't leave campus during school hours. The history of surrounding schools indicates an expansion of student enrollment and facilities will occur.

- The applicant's traffic report on page 13 shows that 60% of the traffic will arrive at the school via MacArthur Boulevard and Whitehaven Parkway, where there is no traffic signal. Further, the intersection of Whitehaven Parkway and MacArthur Boulevard is the primary drop off for St. Patrick's Episcopal Day School. Further east on Whitehaven is the new entrance for GW/Mt. Vernon College. Accordingly, 60% of the traffic reaching the Field School will of necessity interfere with GW/Mt. Vernon and St. Patrick's traffic. DPW, in its report, questions whether this traffic pattern will be followed (page 3).

- The applicant's traffic report is over 1 year old and fails to consider the effect of the Spanish ambassador's new complex being constructed directly across from the proposed school site.

We question whether the applicant's traffic study truly takes into account the impact of GW/Mt. Vernon campus going to 1,500 equivalent students with the first phase of construction tripling the number of dormitory rooms from 250 to 750.

CONCLUSION

The proposed school site is wholly inconsistent with the land use element of the Comp Plan and major theme of the Ward 3 Plan, which both the zoning regulations and case law require the Board to consider.

The proposed school site will increase severe traffic congestion on Foxhall Road and lead to gridlock and unsafe driving conditions, as evidenced by both our and DPW's reports.

The multi-maneuvers required to allegedly make the project work from a safety and traffic standpoint indicate that the site is totally inappropriate for the proposed school. If implemented, the traffic program will off load severe traffic congestion onto residential side

streets. Finally, many of the procedures cannot be implemented because of side agreements by the school or conflict with new teenage driving laws or other neighborhood school agreements.

For all of these reasons, the special exception request to locate the Field School on the Cafritz Estate on Foxhall Road should be rejected.

Sincerely,

Richard L. Aguglia

Richard L. Aguglia

cc: Phil Feola, Esq.
Counsel for Applicant

ANC 3D
c/o Ann Heuer

Office of Planning
c/o Ellen McCarthy

DPW
c/o Abdoulaye Bah

Council member Kathy Patterson

Alan Bergstein, Esq.
Office of Corporation Counsel, D.C.

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bcc: Jeff Bolotin, Esq.
Sherry and Lou Nevins
Dottie and Ken Woodcock
Ken Doggett
Joe Mehra

special exception to allow continued accessory parking in a residential area. The Court of Appeals, Kern, J., held that the Board's findings and conclusions lacked the support of substantial evidence where the findings and conclusions did not address the concerns of the advisory neighborhood commission concerning the unauthorized use of the parking lot or the recommendation that the parking lot be allowed to remain open with increased supervision, and further, the denial should not have been based solely on examination of the past behavior of the union.

Case remanded.

Newman, Chief Judge, dissented with an opinion.

1. Zoning and Planning ⇐548

Board of Zoning Adjustment's discretion in reviewing applications for special exception is limited to determining whether proposed exception satisfies relevant zoning regulations. D.C.Code 1977 Supp. § 1–171i(D).

2. Zoning and Planning ⇐542

If prerequisites set out in particular regulations are met, Board of Zoning Adjustment must grant application for special exception. D.C.Code 1977 Supp. § 1–171i(D).

3. Administrative Law and Procedure ⇐791

Decisions by administrative agencies of District of Columbia must satisfy substantial evidence test which is derived from contested cases provision of D.C. Administrative Procedure Act. D.C.Code 1973, § 1–1509(e).

4. Administrative Law and Procedure ⇐475

Agency generally is free to credit, without explanation, nonexpert testimony of witness, even in face of directly conflicting evidence by opposing witness, so long as there is sufficient supporting evidence in record for that position. D.C.Code 1973, § 1–1509(e).

BAKERS LOCAL UNION NO. 118, Petitioner,

v.

DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT, Respondent.

No. 80–759.

District of Columbia Court of Appeals.

Argued June 18, 1981.

Decided Nov. 9, 1981.

A union sought review of an order of the District of Columbia Board of Zoning Adjustment denying an application for a

5. **Administrative Law and Procedure** ⇐475, 753

Agencies are not required to accept expert testimony over lay testimony, but some indication of reasons for rejecting expert, as opposed to lay, testimony is required. D.C.Code 1973, § 1–1509(e).

6. **Zoning and Planning** ⇐509

In a proceeding in which property owner sought special exception to allow continued accessory parking in residential area, advisory neighborhood commission concerns were required to relate to statutory criteria for granting special exception. D.C.Code 1977 Supp. § 1–171i(D).

7. **Zoning and Planning** ⇐540

Even if findings and conclusions of Board of Zoning Adjustment satisfied demand for substantial evidence test when Board denied application for special exception to allow continued accessory parking in residential area, those findings and conclusions did not come to grips with advisory neighborhood commission view that there were problems with unauthorized use of lot, but that lot should not be forced to close, and, therefore, denial was not supported by substantial evidence. D.C.Code 1977 Supp. § 1–171i(D).

8. **Zoning and Planning** ⇐540

When Board of Zoning Adjustment denied application for continued accessory parking in residential area by relying heavily on past conduct of property owner, record did not support conclusion that union maliciously, or even consciously, ignored complaints of neighbors, and, therefore, past action was inadequate for determination of whether union could, in future, properly patrol and supervise parking lot. D.C.Code 1977 Supp. § 1–171i(D).

Norman M. Glasgow, Jr., Washington, D. C., with whom Norman M. Glasgow and Carolyn J. Hamm, Washington, D. C., were on the briefs, for petitioner.

Whayne S. Quin, Washington, D. C., also entered an appearance for petitioner.

Leo N. Gorman, Asst. Corp. Counsel, Washington, D. C., with whom Judith W. Rogers, Corp. Counsel, and Charles L. Reischel, Deputy Corp. Counsel, Washington, D. C., were on the brief, for respondent.

Before NEWMAN, Chief Judge, and KERN and HARRIS, Associate Judges.

KERN, Associate Judge:

Petitioner seeks review of an order of the District of Columbia Board of Zoning Adjustment (BZA or Board) denying an application for a special exception to allow continued accessory parking in a residential area. We find that the Board did not address the "issues and concerns" of the Advisory Neighborhood Commission (ANC) in the manner required by statute, D.C. Code 1977 Supp., § 1–171i(d), and precedent, *Kopff v. District of Columbia Alcoholic Beverage Control Board*, D.C.App., 381 A.2d 1372, 1383–85 (1977), and that the Board's findings and conclusions lacked support of substantial evidence. Accordingly, we remand the case for further proceedings.[1]

Petitioner, Baker's Union Local No. 118 (Union), is the owner of two adjacent lots at the intersection of Bladensburg Road and Evarts Street, Northeast. In 1970, the Union constructed its headquarters on the southeastern lot (lot 1) of 2706 Bladensburg Road. This lot is in a zoned C–2–A District (medium density commercial use) in which office buildings may be built as a matter of right.[2] The neighboring lot (lot 2) has been used by the Union for accessory parking. Lot 2 also provides access to the off-street parking on lot 1 required by the zoning regulations for Union headquarters.[3] Lot 2 is in a zoned R–1–B District (high density single-family detached dwellings). Use of lot 2 for accessory parking, therefore, must

1. Our disposition of this appeal renders consideration of petitioner's challenge to the BZA order denying reconsideration or rehearing unnecessary.

2. D.C. Zoning Regs., § 5102.3 (April 1981).

3. *Id.*, § 7202.1.

be authorized by the BZA through a special exception to the zoning regulations.[4]

In 1970 and 1975, the Board, over some opposition by neighbors, granted applications by the Union for special exceptions to allow parking in lot 2. In 1979 petitioner made a timely application to continue the exception. The denial of that application provides the basis of this appeal.

[1, 2] The BZA's discretion in reviewing applications for special exceptions is limited to determining whether the proposed exception satisfies the relevant zoning regulations. *Stewart v. Board of Zoning Adjustment*, D.C.App., 305 A.2d 516, 518 (1973), and the burden of proof is on the applicant to make the necessary showing. *Id.* If the prerequisites set out in the particular regulations are met, the BZA ordinarily must grant the application. *Id.* The applicable zoning regulations in this case provide:

> 3101.1 The R–1 District is designed to protect quiet residential areas now developed with *one-family detached dwellings* and adjoining vacant areas likely to be developed for such purposes. The regulations are designed to stabilize such areas and to promote a suitable environment for family life. For that reason only a few additional and compatible uses are permitted. The *district* is subdivided by different area requirements into R–1–A and R–1–B Districts, providing for *districts* of low and high density, respectively.
>
> 3101.2 Except as provided in Chapter 7 of these regulations, in any R–1 District no *building* or premises shall be used and no *building* shall be erected or altered which is arranged, intended, or designed to be used except for one or more of the uses listed in the following paragraphs.
>
> * * * * * *
>
> 3101.4 The following uses are permitted if approved by the Board of Zoning Adjustment subject to the conditions specified in Section 8207[5] and below in each case:
>
> * * * * * *
>
> 3101.410 Accessory passenger automobile *parking spaces* elsewhere than on the same *lot* or part thereof on which the main use is permitted, except for a *one-family dwelling*, provided that:
>
> * * * * * *
>
> 3101.4104 Such *parking spaces* are so located and facilities in relation thereto are so designed that they are not likely to become objectionable to adjoining or nearby property because of noise, traffic or other objectionable conditions .... [D.C. Zoning Regs., § 3101.1 *et seq.*]

The narrow issue, then, which the BZA was faced with deciding was whether section 3101.4104 had been satisfied.

[3] Decisions by administrative agencies of the District of Columbia must satisfy the substantial evidence test which is derived from the contested cases provision of the D.C. Administrative Procedure Act, D.C. Code 1973, § 1–1509(e). This test was articulated recently in *Citizens Association of Georgetown, Inc. v. Board of Zoning Adjustment*, D.C.App., 402 A.2d 36, 41 (1979), as follows:

> (1) there must be findings on "each contested issue of fact," § 1–1509(e); *see Dietrich v. Board of Zoning Adjustment*, D.C.App., 293 A.2d 470, 472–73 (1972); (2) the decision must rationally follow from the facts, ... (3) there must be sufficient evidence supporting each finding ....

[4, 5] An agency generally is free to credit, without explanation, non-expert tes-

4. *Id.*, §§ 3101.4, 3101.410.

5. Section 8207.2 provides:

> Pursuant to authority contained in the Zoning Act of June 20, 1938 (52 Stat. 797), as amended, the Board is authorized to grant special exceptions as provided in the proceeding Articles of these regulations where in the judgment of the Board such special exceptions will be in harmony with the general purpose and intent of the zoning regulations and maps and will not tend to affect adversely the use of neighboring property in accordance with said zoning regulations and maps, subject in each case to the special conditions specified in said Articles....

timony[6] of a witness, even in the face of directly conflicting evidence by an opposing witness, so long as there is sufficient supporting evidence in the record for that position. *See Citizens Association of Georgetown, Inc., supra*, 402 A.2d at 44–47. Advisory Neighborhood Commissions, however, occupy a special position in the District of Columbia. By statute, when the ANC submits written recommendations to an agency,

> [t]he issues and concerns raised in the recommendations of the Commission shall be given great weight during the deliberations by the governmental agency and those issues shall be discussed in the written rationale for the governmental decision taken. [D.C. Code 1977 Supp., § 1–171i(d).]

[6] This "great weight" requirement was fleshed out in the *Kopff* decision:

> [A]n agency must elaborate, with precision, its response to the ANC issues and concerns. It is a statutory method of forcing an agency to come to grips with the ANC view—to deal with it in detail, without slippage.... [T]he agency must articulate why the particular ANC itself, given its vantage point, does—or does not—offer persuasive advice under the circumstances.... "[G]reat weight" implies explicit reference to each ANC issue and concern as such, as well as specific findings and conclusions with respect to each. [*Kopff; supra* at 1384.]

The requirement, of course, extends only to those issues and concerns that are "legally relevant." *Wheeler v. Board of Zoning Adjustment*, D.C.App., 395 A.2d 85, 91 n.10 (1978). In other words, in a case such as this one, ANC concerns must "relate to ... the statutory criteria for granting a special exception." *Friendship Neighborhood Coalition v. Board of Zoning Adjustment*, D.C. App., 403 A.2d 291, 295 (1979).

In connection with the Union's application for a continued special exception to use lot 2 for accessory parking, the Board held a public hearing, on August 15, 1979, and received written submissions before and after that hearing. Although conflicting evidence was presented, the Board apparently credited that which suggested that the accessory lot had become an after-hours hangout for a group of men and boys whose activities greatly disturbed neighboring and nearby property owners. Faced with deciding whether the accessory lot was designed so that it would not be "likely to become objectionable to adjoining or nearby property because of noise, traffic or other objectionable conditions...," D.C. Zoning Regs., § 3101.4104, the Board looked to this evidence and denied the application.

Through testimony at the hearing and in writing afterwards, the local ANC representative recommended, in essence, that the BZA grant the application subject to specified conditions calculated to end the disturbances. The ANC was concerned that refusing the exception would not stop unauthorized use of the lot. To the contrary, denial of the exception would leave lot 2 "without necessary management and oversight." (Record at 207.) The ANC's recommendation, on the other hand, would serve the interests of both groups—allowing continued accessory parking, but forcing the Union to restrict effectively after-hours use of the lot.

In its Findings of Facts and Conclusions of Law the Board indicated its awareness of the special position of the ANC. Finding No. 17 begins: "The Board is required to give great weight to the issues and concerns of the ANC." (Record at 133.) The Conclusions of Law include the assertion: "The Board has addressed the concerns of the ANC in Finding No. 17." (Record at 134.)

The Board stated further that it "agrees with the ANC that it would appear to be more beneficial to the immediate residents and the applicant that the parking lot remain in operation with the responsibility of its maintenance and use resting with the applicant." (Record at 133.) Nevertheless,

6. Agencies are not required to accept expert testimony over lay testimony, but some indication of the reasons for rejecting expert, as opposed to lay, testimony is required. *Shay v. Board of Zoning Adjustment*, D.C.App., 334 A.2d 175, 178 n.10 (1975).

the application was denied. The Board found

> that the present management has had time to address itself to the concerns of the immediate neighbors and has failed to do so.... Such actions reflect a lack of responsibility on the part of the applicant.... This Board cannot predict that the applicant would be more responsive in the future regardless of the remedial measures it now proposes. [Record at 133.]

[7] Assuming arguendo that these findings and conclusions satisfy the demands of the substantial evidence test, the BZA has failed to comply with the law regarding ANCs. The ANC's major concern in this case, and the impetus for the opposition to this application, was the problem of unauthorized and disruptive use of the subject lot. This concern is "legally relevant," *Wheeler, supra*, as was recognized by the Board. The ANC's aim was to bring the applicant clearly within the restrictions of Section 3101.4104 of the regulations by ensuring that no disruption of the neighborhood would take place. Although the Board acknowledged this ANC concern, mere acknowledgment does not satisfy the mandate of statute and precedent. The BZA must delve deeper, must "come to grips with the ANC view . . . deal with it in detail, without slippage." *Kopff, supra* at 1384. The findings and conclusions here do not meet this standard.

The Board, in Finding No. 17, looked to its assessment of past Union and neighborhood interaction and predicted that the Union would not be more responsive to neighborhood concerns in the future. This forecast may explain why the BZA concluded that the Union should not be given the benefit of a special exception, but it sidesteps the central issue—controlling the use of lot 2. The Board could have suggested feasible alternative methods of dealing with objectionable disturbances that would render the ANC plan unnecessary. In a different context, the Board might point to evidence in the record which suggests that the ANC's concern is misplaced or unfounded. This sort of treatment would satisfy the requirement that the Board "articulate why the particular ANC itself, given its vantage point, does—or does not—offer persuasive advice under the circumstances." *Kopff, supra* at 1384.

An illustrative analogy may be drawn to cases in which this court has held that the findings required of administrative agencies in contested cases, *see* D.C.Code 1973, § 1–1509(e), are insufficient if they merely summarize testimony and other evidence rather than make definite determinations on disputed issues of fact. *See Washington Ethical Society v. Board of Zoning Adjustment*, D.C.App., 421 A.2d 14, 16–17 (1980); *Citizens Association of Georgetown, Inc. v. Board of Zoning Adjustment*, D.C.App., 365 A.2d 372, 375–76 (1976); *Dietrich v. Board of Zoning Adjustment*, D.C.App., 293 A.2d 470, 472–73 (1972). Similarly, the Board in its findings here, has summarized the position of the ANC, and has rejected it, without resolving the ANC's principal concern.

The Board must respond to that concern and must indicate why the ANC's response—to secure the lot with chain or gate, to ensure adequate lighting, to repair broken fencing, to post "No Trespassing" signs, and to put the police on notice that any use of the lot other then for parking is unauthorized—was not sound or necessary. The Board's failure to do so here was error.

Since we must remand, we take this opportunity to point out certain deficiencies in the findings and conclusions of the BZA. All of the findings, other than No. 17, are summaries of the testimony and other evidence. The shortcomings of such findings already have been discussed.

[8] The Board's disposition of this application also is subject to challenge on the grounds of the substantial evidence test. In evaluating compliance with Section 3101.4104 of the regulations, the Board was required to predict the Union's probable future behavior and gauge its impact on the neighborhood. In ordering denial of the application, the Board relied heavily on past conduct, presumably as an indication of a pattern of interaction with the neighbors that would continue.

The record does not support the conclusion that, during the period from which examples of conduct are drawn, the Union maliciously, or even consciously, ignored the complaints of the neighbors. More recent indications in the record were that the Union was taking measures to improve the situation. (Record at 101–06.) Furthermore, although it is not clear from the record whether this information was before the BZA when it entered its order, there were suggestions in the record that the neighbors were interested in settling their dispute with the Union, as recommended by the ANC, rather than having to deal with a totally unsupervised lot.[7]

The Board erred in not making "findings of fact of a 'basic or underlying nature' about the future impact" on the neighborhood of a continued special exception. *Washington Ethical Society, supra* at 17. In this case, lay observations of past conduct of the Union are not sufficient supporting evidence. *See id.* By relying on the remote rather than on the recent in making a prediction about future behavior, the Board fails to follow a rational progression from its findings to its conclusions. Its findings, moreover, are not supported by sufficient evidence in the record. In short, the BZA does not meet the requirements of the substantial evidence test. *See Washington Ethical Society, supra*, at 17–18; *Georgetown Citizens, supra*, 365 A.2d at 374–76.

To correct these deficiencies and to dispose of ANC issues and concerns, this case is remanded to the BZA for further proceedings in accordance with this opinion. *See Washington Ethical Society, supra* at 19.

So ordered.

7. In the Statement of Northeast Community Organization for the Preservation of our Residential Properties (Record at 117), the neighbors ask the BZA to order the Union to construct appropriate fences and gates. This request appears inconsistent with a position urging denial of the Union's application and, therefore, an end to the Union's management of the lot.

NEWMAN, Chief Judge, dissenting:

The three issues presented in this case are: (1) whether the Board of Zoning Adjustment accorded adequate weight to the record of the Advisory Neighborhood Commission; (2) whether the Board's findings were supported by substantial evidence; and (3) whether the Board's refusal to reopen hearings constituted an abuse of discretion. The Board, in my opinion, acted within the scope of its discretion in both the extent of the consideration it gave the ANC's recommendation, and in denying petitioner's motion for reconsideration and reargument or for a rehearing. The Board's findings were supported by substantial evidence of record. For these reasons, the Board's order should have been affirmed. Accordingly, I dissent.

The majority first concludes that the Board's Order is fatally flawed by its failure adequately to address the "issues and concerns" of the ANC. I disagree.

The central issue in this case was whether petitioner had demonstrated that the special exception it proposed to the district zoning plan satisfied the relevant zoning regulations. *See Stewart v. District of Columbia Board of Zoning Adjustment*, D.C. App., 305 A.2d 516, 518 (1973).[1] The subject lot is located in an R–1–B District—an area zoned for quiet residential use, *see* District of Columbia Zoning Regulations § 3101.1 (1979)—and it was incumbent upon petitioner to show that the parking use it sought on the lot was "*not likely to become objectionable* to adjoining or nearby property because of noise, traffic or other objectionable conditions. . . ." *Id.* § 3101.4104 (emphasis added). The Board, to determine whether the proposed exception satisfied the applicable zoning regulation, thus was

1. The majority's analysis goes astray in defining the central issue. The central issue of the case, according to the majority, was "controlling the use of lot 2." *Supra* at 180. However worthy an objective that might be, it is a misstatement of the Board's task in this case, wherein the Board was required merely to judge petitioner's fitness for the special exception it proposed. *See infra* at 181–182.

required to predict the likely future impact of continuation of petitioner's use of the lot for parking on the quiet residential character of the neighborhood. Only the likely impact of petitioner's proposed exception, however, was at issue.

As interpreted by this court, § 1–171i(d) of the D.C.Code 1978 Supp., authorizes ANCs to advise the Board only on "legally relevant issues and concerns," *i. e.*, those specifically relevant to the applicable zoning regulations. *Wheeler v. District of Columbia Board of Zoning Adjustment*, D.C. App., 395 A.2d 85, 91 n.10 (1978). The Board is required expressly to address the ANC's written recommendations on such "legally relevant" issues. *Friendship Neighborhood Coalition v. District of Columbia Board of Zoning Adjustment*, D.C. App., 403 A.2d 291, 295 (1979). In *Spevak v. District of Columbia Alcoholic Beverage Control Board*, D.C.App., 407 A.2d 549, 555 (1979), we held that the Board had satisfied this requirement

> by specifically discussing each concern, by citing evidence and other findings in a reasonable manner, and by explaining why it rejected the ANC's recommendation. Petitioners' complaint, in essence, is that the Board did not follow the ANC's advice. The statute makes no such mandate. What it does require is that great weight be given to, and a reasoned and specific discussion be addressed to, the issues raised.

See also Kopff v. District of Columbia Alcoholic Beverage Control Board, D.C.App., 381 A.2d 1372, 1384 (1977) (ANCs are advisory only). Although the Board, pursuant to D.C.Code 1978 Supp., § 1–171i(d), is required to give "great weight" to issues and concerns raised in the recommendations of the ANC, "'great weight' . . . does not build in . . . [a] presumption of deference to be accorded ANCs [, but rather] that an agency must elaborate, with precision, its response to the ANC issues and concerns." *Kopff v. District of Columbia Board of Zoning Adjustment, supra* at 1384.

The single member ANC in this case found that petitioner had allowed a public nuisance to exist on the subject lot. His primary concern was that this nuisance be eradicated from the neighborhood. To this end, he recommended that the parking lot use be continued on the lot, but that petitioner take specific measures that, he predicted, would mitigate the nuisance.

The Board shared the ANC's concern with the objectionable use of the subject lot. In Finding No. 17, the Board specifically explained its reasons for rejecting the ANC's recommendation. Petitioner, the Board found, had had both prior notice of the nighttime nuisance on the lot and time to correct the condition. Its failure to do so, the Board concluded, reflected "a lack of responsibility" such that, "[t]his Board cannot predict that [the petitioner] would be more responsive in the future regardless of the remedial measures it now proposes."

The ANC's primary concern, however—finding a means for relieving the neighborhood of the nuisance—was not a "legally relevant" issue in this case, and the Board was not required specifically to address the ANC's alternative recommendations to petitioner's proposal.

Moreover, there was substantial evidence upon which the Board reasonably based its finding that petitioner's continuation of the parking use likely would have a deleterious affect on the residential character of the neighborhood. At hearings, testimonial and physical evidence was presented as to the manner in which petitioner had in the past maintained the lot. Mr. Feggans, the Advisory Neighborhood Council member, testified that petitioner had permitted neighborhood children to use the lot at night as a play area.[2] Neighbors testified that at

2. This evidence refutes the majority's assertion, *supra* at 10, that, "The record does not support the conclusion that . . . the Union . . . consciously [ ] ignored the complaints of the neighbors."

The majority also states, "In this case, lay observations of past conduct of the Union are not sufficient supporting evidence." *Id.* at 181 (citing *Washington Ethical Society v. District of Columbia Board of Zoning Adjustment*, D.C.App., 421 A.2d 14, 17 (1980). Although, as

night men and children gathered on the lot, where they littered, gambled, smoked marijuana, made loud, profane, and occasionally threatening noises, and generally disturbed the tranquility of the neighborhood. One neighbor, the owner of an adjacent plot, stated her belief that incidents of vandalism and burglary were directly related to these unsavory nocturnal congregations.

This evidence, summarized in detailed findings of fact, constituted a valid basis for the Board to conclude:

> The general grounds of the opposition were that the applicant had turned the subject parking lot into a playground and hangout where children and adults gathered[,] resulting in litter accumulations, noise from shouting and offensive language, noise from the use of bikes and motor scooters, alleged use of dope and alleged planning to break into neighboring homes.... There were no objections raised to the use of the lot by the applicant or its employees. [Finding 11.]
>
> [T]he present management has had sufficient time to address itself to the concerns of the immediate neighbors and has failed to do so. The applicant was well aware that it had allowed the children to use the lot. In fact it encouraged [such usage.] The applicant was well aware of the destruction to its own property in terms of damaged fences and litter. In permitted its property to remain unrepaired and littered. Such actions reflect a lack of responsibility on the part of the applicant.... The Board finds that the applicant permitted the concerns of the neighbors to grow and deepen while the applicant did little to ameliorate their concerns. This Board cannot predict that the applicant would be more responsive in the future regardless of the remedial measures it now proposes. [Finding 17.]

A third issue, not explicitly addressed by the majority, was also presented. Hearings were held in this case in August, 1979. Following the Board's issuance on March 17, 1980 of its initial Order denying continuation of the special exception, petitioner on March 28, 1980 filed a motion "for Reconsideration, rehearing, or in the Alternative, Reargument." Petitioner asserts on appeal that, because in its motion for reconsideration it brought new evidence to the attention of the Board—to wit, its compliance with the proposals of the ANC, a new grounds maintenance contract, and a police phone log for the time subsequent to the Board hearings—denial of its motion for reconsideration was an abuse of discretion.[3]

22 D.C.R.R. § 5.43 provides: "No request for rehearing shall be considered by the Board unless new evidence is submitted which could not reasonably have been presented at the original hearing." Although the Board was thus empowered to reopen the hearing upon petitioner's motion, there was no requirement that it do so. The Supreme Court has stated:

> Administrative consideration of evidence ... always creates a gap between the time the record is closed and the time the administrative decision is promulgated.... If upon the coming down of the order litigants might demand rehearings

in *Washington Ethical Society*, the Board's predictions of future impact were based on lay observations of current conditions, unlike *Washington Ethical Society*, here the testimony of lay witnesses was unimpeached, and was not contradicted by expert testimony. In my opinion, under these circumstances, testimony as to past and current conditions, including the testimony of the Advisory Neighborhood Council member, provided ample evidence upon which the Board reasonably based its findings as to past conduct and its predictions of likely future conduct.

3. The majority, without addressing the issue of whether the Board was obligated to reopen the case upon petitioner's motion, states, that, "[b]y relying on the remote rather than on the recent in making a prediction about future behavior, the Board fails to follow a rational progression from its findings to its conclusions." *Supra* at 181. It also makes reference to evidence which was not clearly before the Board when it entered its Order. *Id.* at 180. The majority, to the extent that it reviews facts never argued to the Board, clearly exceeds the authority of this court to "determine all appeals *upon the exclusive record for decision before ... the agency.*" D.C.Code 1978 Supp., § 1–1510. (Emphasis added.)

as a matter of law because some new circumstance has arisen, some new trend has been observed, or some new fact discovered, there would be little hope that the administrative process could ever by consummated in an order that would not be subject to reopening. It has been almost a rule of necessity that rehearings were not matters of right, but were pleas to discretion. And likewise it has been considered that the discretion to be invoked was that of the body making the order, and not that of a reviewing body." [*United States v. Interstate Commerce Commission*, 396 U.S. 491, 521, 90 S.Ct. 708, 722, 24 L.Ed.2d 700 (1970) (quoting *Interstate Commerce Commission v. Jersey City*, 322 U.S. 503, 514–15, 64 S.Ct. 1129, 1134–35, 88 L.Ed. 1420 (1944)).]

Accord, e.g., United States v. Pierce Auto Freight Lines, 327 U.S. 515, 535, 66 S.Ct. 687, 697, 90 L.Ed. 821 (1946); *Northeast Broadcasting, Inc. v. Federal Communications Commission*, 130 U.S.App.D.C. 278, 287, 400 F.2d 749, 758 (1968). *See also Vestry of Grace Parish v. District of Columbia Alcoholic Beverage Control Board*, D.C. App., 366 A.2d 1110, 1114 (1977).

A final note. Petitioner, from the time it first received a special exception in 1970, has been on notice that its use of the subject lot was conditioned upon its maintenance of the lot in a manner not deleterious to the quiet residential character of the neighborhood. Petitioner was clearly aware prior to the 1979 hearing that children and adults used the lot at night in a manner distressful to the neighbors. In applying for the renewal of the special exception, petitioner sought to propose the minimum corrective it believed the Board would find acceptable. When its prediction proved erroneous, it sought to "up the ante" or, in the alternative, request an advisory opinion of the Board as to what would be acceptable. When the Board declined to engage in this game, petitioners came here seeking relief. Petitioner could easily have rectified this condition by, for example, the erection of a strong, high, locked fence around the lot. Instead of such a relatively inexpensive and highly efficacious solution to the problem, though, petitioner has dragged this case through substantial administrative and judicial litigation. Even an expensive physical barrier would undoubtedly have been substantially less costly to petitioner than this protracted litigation.[4] The social costs too would have been substantially less.[5] The choice of petitioner to litigate rather than ameliorate, in my opinion "represents superfluity at its zenith, utility at its nadir, and expenditure of time and money at its climatic futility." *Matkevich v. Robertson*, 403 Pa. 200, 205, 169 A.2d 91, 94 (1961) (Musmanno, J., dissenting).



4. On the high cost of lawyers, *see generally*, Green, *The Gross Legal Product: "How Much Justice Can You Afford?"*, in Verdicts on Lawyers 63 (R. Nader and M. Green ed. 1976).

5. Between 1972 and 1980 this court has experienced a steady increase in the number of appeals and petitions for review, from 796 in 1972 to 1,369 in 1980. 1980 District of Columbia Courts Ann.Rep. 34. This increase has had a clear negative impact upon the rate with which we have been able to dispose of cases. *Id.* at 35; D.C. Court of Appeals and the A.B.A. Standards of Judicial Administration 9 (1977) (Report to the District of Columbia Judicial Planning Committee).

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D.C Court of Appeals

ZONING — P.U.D.

Decision approving construction of new wing to Kennedy Warren apartments is approved except for further consideration of P.U.D. as not being inconsistent with Comprehensive Plan.

CATHEDRAL PARK CONDOMINIUM v. THE KLINGLE CORPORATION

D.C. App. No. 98-AA-59 January 20, 2000 Opinion per Glickman, J. (Farrell and Reid, JJ. concur) *A. Newmark, with R.M. Green for petitioner. P.T. Feola, with W.S. Quin and P.J. Kiernan for intervenor. J.A. Robinson, and C.L. Reischel, for respondent.*

Glickman, J: In this case we review the decision of the District of Columbia Zoning Commission ("the Commission") to approve construction, and associated rezoning, of a Planned Unit Development adding a new wing to the Kennedy-Warren apartment building on Connecticut Avenue, N.W. The active parties in this appeal are petitioner Cathedral Park Condominium Committee, representing unit owners in a building across the street from the proposed new wing who oppose the project, and intervenor The Klingle Corporation ("Klingle"), the owner of the Kennedy-Warren property. For the most part, we uphold the decision of the Commission. For the reasons specified herein, however, we vacate the Commission's order approving the project and remand for further consideration of whether the Planned Unit Development application is "not inconsistent" with certain discrete provisions of the Comprehensive Plan for the National Capital.

I.

The project at issue in this case involves the construction of a nine-story addition to the Kennedy-Warren apartment building at 3133 Connecticut Avenue, N.W. Built in the 1930s, the Kennedy-Warren is listed as a historic landmark in the District of Columbia Inventory of Historic Sites and in the National Register of Historic Places, "in recognition," according to the Commission, "of its exceptional architectural design and its contribution to the historical development of the apartment house in Washington." The building is located on a unique site in Ward 3 comprising over 113,000 square feet of land abutting the National Zoological Park to the south and east, Klingle Valley (a tributary valley of Rock Creek Park) to the north, and Connecticut Avenue to the west. Several large apartment buildings, including the Cathedral Park Condominiums, face the Kennedy- Warren site across Connecticut Avenue, but otherwise the site has no adjoining residential uses.

A large portion of the Kennedy-Warren site is undeveloped, including an area that is immediately to the north of the National Zoo and across Connecticut Avenue from the Cathedral Park Condominiums. This area has been vacant since the apartment building was constructed in the 1930s and is planted with grass, some trees and other vegetation. The original 1930 design for the Kennedy-Warren apartment complex contemplated the erection of a south wing in this location. Although that design was approved in the 1930s under the then applicable (and long since superseded) zoning regulations, plans to build the south wing were abandoned as a consequence of the Depression, and the wing was never built. Klingle now proposes to build the south wing, adhering closely to the original 1930 exterior architectural designs. The proposed addition, which would occupy approximately 22,000 square feet of the "green space" at the site, would add 166 rental units to the Kennedy-Warren. It would also include 204 fixed parking spaces in an underground garage (with capacity for an additional 96 spaces in the garage through attendant- assisted parking), as well as approximately 2,000-3,000 square feet of accessory retail space for tenant use. ***.

The Commission issued its final decision, including detailed findings of fact and conclusions of law, on September 17, 1997. The Commission approved the proposed P.U.D., adopted the requested change of zoning from R-5-D to R-5-E with an increase in the maximum allowed FAR to 6.29, and granted the requested waiver of the rear yard and penthouse requirements. In brief, the Commission determined that the P.U.D. would not be inconsistent with the Comprehensive Plan, but would, rather, further the goals of the Plan. The Commission found that the proposed addition to the Kennedy-Warren would promote the stabilization and improve the physical character

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of the surrounding residential neighborhood; would advance the housing, urban design and historic preservation elements of the Plan; and would be consistent with provisions of the Plan providing for the protection of open space (or "green space") at the Kennedy-Warren site. The Commission also found that an increase in the maximum permitted FAR to 6.29 pursuant to 11 DCMR § 2405.3 would be appropriate, specifically noting "the Comprehensive Plan designation of the site as high density residential, and the numerous sections in the Comprehensive Plan which direct the encouragement of housing, particularly in close proximity to Metrorail stations, and enhancement of historic properties." Finally, the Commission determined that Klingle had met its burden of showing that the benefits of the P.U.D. would outweigh any negative impact, particularly in light of "the high level of architectural design, the provision of housing in close proximity to two Metrorail stations, the enhancement of a historic landmark, site planning, parking well in excess of the zoning requirements and increased real estate tax revenues for the District."

II.

CPC, as a committee of five unit owners, petitioned this court to review the Zoning Commission decision in this case. As a preliminary matter, we must address Klingle's contention that the petition must be dismissed as moot. ***. We conclude that CPC retains its standing to pursue this appeal. *See Hunt v. Washington State Advertising Comm'n*, 432 U.S. 333, 342-43 (1977) (holding that an association may have standing solely as the representative of at least one of its members who otherwise would have standing to sue as an individual). ***.

A. Consistency With the Comprehensive Plan

The Commission's enabling statute requires that "zoning maps, regulations, and amendments thereto . . . not be inconsistent with the comprehensive plan for the nation's capital." D.C. Code § 5-414 (1994). In addition, the Zoning Regulations require that the Commission find that a proposed P.U.D. not be inconsistent with the Plan. 11 DCMR § 2403.4. Thus, in this case, the Commission's zoning map amendment changing the designation of the Kennedy-Warren site from R-5-D to R-5-E, its approval of a FAR of 6.29, and its approval of the project as a planned unit development must be consistent with the Plan, whose provisions should be "studied and executed in concert with each other and should be interpreted broadly." 10 DCMR § 112.2.

CPC contends that these decisions violated specific provisions of the Plan relating to the low-density character of Ward 3, development adjacent to landmark parks, the green space in front of the Kennedy-Warren, the height and scale of new construction, and environmental impact.

1. Density

CPC cites provisions in the Ward 3 element of the Plan, 10 DCMR § 1400 *et seq.* (1995), which state that the overall low-density character of the ward should be protected. *See, e.g.*, 10 DCMR § 1401.1 (c) ("any new development . . . must be physically compatible with the predominantly low- and moderate-density character of the ward"); 10 DCMR § 1406.2 (d) (stating that "[l]and use and future development must be carefully controlled to protect the existing scale and low density character . . . of the ward"); 10 DCMR § 1400.2 (a)(2) ("it is a major theme of this ward plan to protect and maintain the low-density, high-quality character of the ward"). CPC claims that in view of these provisions, the high density FAR of 6.29 of the proposed P.U.D. is a violation of the Plan.

In approving an increase in the FAR for the P.U.D. to 6.29, the Commission relied, in part, on the District of Columbia Generalized Land Use Map (the "Map"), which is part of the Land Use element of the Plan. *See* 10 DCMR § 1100 *et seq.* (1995). The Map depicts the land use policies of the Land Use element, in terms of the density (low, moderate, medium or high) and use category (*e.g.*, residential or commercial) in which each segment of the city is included. *See* 10 DCMR § 1139.1. The Map specifically includes the site of the Kennedy-Warren in the "high density residential land use" category. That category is defined as follows:

The high density residential land use category includes *high-rise apartment buildings as the predominant use* and may also include, as appropriate uses, low, moderate, and medium

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pertinent part, that "[d]evelopment adjacent to parks which are designated landmarks must be low density. . . ." CPC argues that the P.U.D. is inconsistent with this requirement, and therefore with the Plan as a whole, inasmuch as the site is adjacent to the National Zoological Park and Klingle Valley. ***.

In its decision the Commission did not expressly address the requirement of § 1407.3 (c) that development adjacent to landmark parks "must be low density." For our part, we are disinclined to interpret and apply that requirement to Klingle's P.U.D. application without benefit of the views of the Commission on the issue. On the one hand, the provision appears sufficiently pertinent to the application that it must be addressed before the application can be evaluated. On the other hand, the import of the provision in the present context is not clear enough to us that we must necessarily agree with CPC that the P.U.D. application is inconsistent with the provision and hence with the Plan as a whole. Moreover, as the Commission is the agency responsible for administering the Plan, we are deferential to its construction of the Plan's provisions. We are therefore constrained to remand to the Commission for findings as to the applicability of the low density development requirement of 10 DCMR § 1407.3 (c) and as to whether the proposed P.U.D. is inconsistent with the Plan in light of that requirement. *Cf. Blagden Alley Ass'n*, 590 A.2d at 147.

In articulating its findings the Commission should specifically address, *inter alia*, (1) whether the P.U.D. would not be a "low density" development within the meaning of 10 DCMR § 1407.3 (c); (2) whether the National Zoo and/or Klingle Valley are "landmark parks" for purposes of that section; and (3) whether the proposed P.U.D. is "adjacent" to Klingle Valley and/or the National Zoo for purposes of that section. If these questions are answered in the affirmative, the Commission must address whether and to what extent the application of 10 DCMR § 1407.3 (c) to the P.U.D. in this case is limited (*e.g.*, by other provisions of the Plan or by ameliorative measures). Finally, in light of its answers to these questions, and any other relevant information, the Commission should explain its ultimate conclusion regarding the consistency of the proposed P.U.D. with the Plan as a whole.

2. The Buffer Requirement

Another requirement of 10 DCMR § 1407.3 (c) is that developments adjacent to landmark parks "shall be further restricted where advisable to . . . promote a green buffer between the built environment and these natural settings." In addition, the development should "minimize any intrusion on views from these parks." *Id.* The Commission found that "[t]o the extent that" a buffer was necessary, the need would be met by a proposed tree preservation plan, developed in coordination with the National Park Service, which would encompass the areas adjacent to Klingle Valley and the National Zoo at the rear of the building (*i.e.*, the east side).

CPC challenges this finding, claiming in particular that a buffer was also required on the south side of the P.U.D. site (to the north of the entrance of the National Zoo) and on the west side (facing Connecticut Avenue and "adjacent" to the landmark Cathedral Park building across the street). Our review of the record satisfies us, however, that the Commission's finding is supported by substantial evidence.

First, the Commission noted that the superintendent of Rock Creek Park testified that the construction of the south wing would have "no visible impact on Klingle Valley." The Commission also cited substantial evidence in the record that the tree preservation plan to the east would "provide for aesthetic improvements, soil erosion controls, tree protection and other improvements to stabilize and enhance the areas adjacent to the parkland." Regarding the south side of the lot, the Commission cited evidence that the P.U.D. would result in "little, if any visual impact on the Zoo." This evidence included the testimony of Klingle's architects that the proposed addition was 330 feet from the Zoo entrance, and that the addition would be separated from the entrance by a "large, wooded berm." A National Zoo representative also testified that the Zoo had no aesthetic objections to the project and that the proposed P.U.D. would have no impact on Zoo operations. Finally, 10 DCMR § 1407.3 (c) does not require a buffer on the west (Connecticut Avenue) side of the proposed P.U.D., since there is no "landmark park" there. We therefore conclude that the Commission did not err in finding that the proposed P.U.D. was not inconsistent with the buffer requirement of 10 DCMR § 1407.3 (c).

3. Specific Protection of Green Space on Kennedy-Warren Property

The Ward 3 element of the Plan contains provisions that specifically address the "green space" in front of the Kennedy-Warren on which the south wing addition is proposed to be built. CPC contends that these provisions flatly prohibit construction on that green space and that the P.U.D. is therefore inconsistent with the Plan.

Section 1409.4 (a)(3) of the Ward 3 element calls for "stringent protection against infill at inappropriate locations," and states that "[e]xamples of inappropriate infill locations include the swaths of green space fronting many apartment buildings, particularly along Connecticut Avenue (such as . . . *the Kennedy-Warren* . . . .)" 10 DCMR § 1409.4 (a)(3) (emphasis added). If the green space fronting the Kennedy-Warren is indeed an "inappropriate infill location," the P.U.D. in this case would appear to conflict with the Plan. *Id.*

Klingle argues, however, that § 1409.4 (a)(3) must be read in light of an earlier section in the Ward 3 element, 10 DCMR § 1407.3 (d). According to Klingle, § 1407.3 (d) clarifies § 1409.4 (a)(3) and establishes that infill development is permissible so long as the green space in question does not "contribute to the integrity of the site or structure." Section 1407.3 (d) states:

> *Many of the apartment buildings* along Connecticut Avenue, such a[s] . . . the Kennedy-Warren . . . were built with great swaths of green space in front or large interior open spaces *as a response to building style and the zoning regulations in the 1920s; where these open spaces are recognized to contribute to the integrity of the site or structure,* stringent protection from inappropriate infill shall be maintained [emphasis added].

10 DCMR §1407.3 (d). Klingle argues that the Kennedy-Warren green space (though it is expressly mentioned in this section) was not in fact intended "as a response to building style and the zoning regulations in the 1920s." *Id.* Rather, as witnesses

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testified and the Commission found, the original developers intended from the outset to construct a south wing on the southern part of the lot, not to create a lawn there. For that reason, Klingle argues, the Kennedy-Warren green space does not "contribute to the integrity of the site or structure" within the meaning of §1407.3 (d). Accordingly, Klingle concludes, the long-delayed construction of a south wing on the Kennedy-Warren green space is not contrary to 10 DCMR §§ 1407.3 (d) and 1409.4 (a)(3).

In finding that the P.U.D. is consistent with those sections of the Plan, the Commission accepted Klingle's position and stated:

> The Ward 3 Plan specifically cites the several historic apartments whose green space should be protected *where that open space is recognized to contribute to the integrity of the site or the structure.* The Kennedy-Warren lawn was *not intended* as open space but rather for the completion of the south wing. The construction of the south wing will not adversely affect the open space *intended* for the site, which would have a lot occupancy of only 59 percent upon completion. The courtyard, which is the central organizing feature of the building and contains approximately 18,000 square feet of open space, would remain. [Emphasis added].

We think that the Commission could reasonably construe §§ 1407.3 (d) and 1409.4 (a)(3) to permit infill in the Kennedy-Warren green space if that space did not "contribute to the integrity of the site or structure." It is true that both sections state more or less explicitly that infill in that very space is inappropriate; but § 1407.3 (d) can fairly be read to incorporate the more general principle that whether infill is inappropriate turns on whether the space *in fact* contributes to the integrity of the site or structure. From that general principle the Commission could reasonably conclude that if – contrary to the evident supposition of §§ 1407.3 (d) and 1409.4 (a)(3) – the Kennedy-Warren green space does not *in fact* contribute to the integrity of the site or structure, then those sections of the Ward 3 element do not prohibit infill in that space. We therefore defer to the Commission's acceptance of that construction of §§ 1407.3 (d) and 1409.4 (a)(3). *See 1330 Connecticut Ave., Inc.*, 669 A.2d at 714-15.

That approach does not quite conclude the issue, however. The Commission determined that the Kennedy-Warren green space does not "contribute to the integrity of the site or structure" within the meaning of § 1407.3 (d) solely because it found that the original owner intended to develop that space when the apartment complex was built nearly seventy years ago. Section 1407.3 (d) juxtaposes the concept of contribution to the integrity of the site or structure with the premise that the green space was created in the first place "as a response to building style and the zoning regulations in the 1920s." This juxtaposition does suggest that the original intent in creating the green space is a relevant consideration. However, § 1407.3 (d) requires stringent protection against infill unless the Commission finds that the space does not contribute to the integrity of the site or structure *at the present time.* Especially since the phrase "integrity of the site or structure" is susceptible to broad interpretation, it is not clear, and the Commission did not explain in its decision, why the original seventy-year-old design for the site is dispositive of this issue.

On remand the Commission must, therefore, revisit the question of consistency with 10 DCMR §§ 1407.3 (d) and 1409.4 (a)(3) and amplify its findings and conclusions. Unless the Commission chooses to adopt a different construction of those sections, it should address whether the Kennedy-Warren green space contributes to the integrity of the site or structure at the present time. To the extent that the Commission considers the original intent to develop the green space to be relevant to, or even dispositive of, that question, it should explain how and why. ***.

2. Benefits and Amenities / Adverse Effects

The Zoning Regulations require that in decisions concerning P.U.D. applications, the Commission "shall judge, balance, and reconcile the relative value of the project amenities and public benefits offered . . . and any potential adverse effects according to the specific circumstances of the case." 11 DCMR § 2403.8. "Public benefits are superior features of a proposed planned unit development that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter of right provisions of this title." 11 DCMR § 2403.6. "A project amenity is one type of public benefit, specifically a functional or aesthetic feature of the proposed development, that adds to the attractiveness, convenience or comfort of the project for occupants and immediate neighbors." 11 DCMR § 2403.7. The regulations identify nine specific categories of amenities and benefits for potential consideration and provide that the Commission may also take into account "[o]ther public benefits and project amenities and other ways in which the proposed planned unit development substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan." 11 DCMR § 2403.9 (a-j). "A project may qualify for approval by being particularly strong in only one or a few of the categories in § 2403.9, but must be acceptable in all proffered categories and superior in many." 11 DCMR § 2403.10. The applicant has the burden of proof in this regard. 11 DCMR § 2403.2.

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In concluding that Klingle met its burden, the Commission found that the applicant had demonstrated a number of public benefits and "meritorious aspects" of the P.U.D. The Commission singled out the "significant public benefit" of 166 additional rental units to "the constricted housing market" in the District, in close proximity to two Metrorail stations. "Housing and affordable housing" is a public benefit specifically identified in the P.U.D. regulations. 11 DCMR § 2403.9 (f). The Commission also cited, among other amenities and benefits, the high level of architectural design of the project, *see* 11 DCMR § 2403.9 (a); the desirable enhancement of a historic landmark, *see* 11 DCMR § 2403.9 (d); the environmental benefits of the project, consisting of storm water runoff controls and a tree preservation plan, *see* 11 DCMR § 2403.9 (h); attractive site planning, *see* 11 DCMR § 2403.9 (b); transportation improvements and parking in excess of anticipated demand, which would even "help mitigate existing parking problems in the immediate vicinity," *see* 11 DCMR § 2403.9 (c); and increased real estate tax revenues for the District. The Commission also concluded that the P.U.D. would have minimal potential adverse impact. It found, for example, that there would be no "light or visual impacts" on adjacent properties, that the tree preservation plan would protect the National Zoo and Klingle Valley, and that the project would not have a negative impact on the neighborhood or the District from an architectural or urban planning perspective. The Commission found that the project amenities and public benefits outweighed potential adverse effects so as to justify the requested zoning relief and approval of the application.

It is not our role to reweigh the evidence in the record in reviewing an agency decision. Rather, we will uphold an agency's finding if it is rational and is supported by substantial evidence. We are satisfied, based on the extensive evidentiary record, that the Commission's benefit findings meet this standard. ***.

As discussed earlier, however, the provision of new housing is an explicit objective of the Ward 3 element. That objective is not limited to housing for the needy, even though such housing is an especial goal. The Ward 3 element therefore did not preclude the Commission from deeming the provision of additional apartment housing to be a public benefit of the P.U.D. in this case. That determination was, moreover, consistent with the identification of housing as a cognizable public benefit in the P.U.D. regulations at 11 DCMR § 2403.9 (f). That said, while the value of additional apartment housing at the Kennedy-Warren site was fairly subject to debate, we conclude that the Commission did not abuse its considerable discretion when it exercised its judgment as to how much weight to give this particular benefit in its overall evaluation of the P.U.D. application.

b. Impact on Neighborhood Parking

The allegedly negative impact of the proposed P.U.D. on neighborhood street parking was a major point of contention in the hearings before the Commission. Louis Slade, the parking and traffic expert for Klingle, and Stephen Petersen, the expert for CPC, differed in their methodologies and in their findings of the number of new parking spaces needed to satisfy demand. Slade calculated that the P.U.D. would generate a need for 118-133 new parking spaces, but Petersen calculated that approximately 240 new spaces would be required. In response to this testimony and to concerns expressed by members of the Commission, the Advisory Neighborhood Commission, and others about possible street parking problems, Klingle ultimately agreed that it would provide 204 fixed and, if need be, 96 attendant-assisted spaces in the new south wing underground garage. Klingle further agreed to require any new tenants of the Kennedy-Warren who own or lease motor vehicles to lease a parking space in the Kennedy-Warren garage as a condition of tenancy. ***.

We are satisfied that the Commission's finding that the P.U.D. should not have detrimental effects on street parking availability is supported by substantial evidence. ***.

IV.

For the reasons stated above, we vacate the order of the District of Columbia Zoning Commission and remand for further proceedings not inconsistent with this opinion. On remand, the Commission must address whether the P.U.D. is consistent with the Comprehensive Plan in light of (1) the requirement of 10 DCMR § 1407.3 (c) that development adjacent to landmark parks "must be low density"; and (2) the proscriptions in 10 DCMR §§ 1407.3 (d) and 1409.4 (a)(3) against infill of open space that is "recognized to contribute to the integrity of the site or structure." In all other respects we affirm the decision of the Commission.

So ordered.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14278, of Lewis E.S. Parker, Trustee, Harry Family Trust, pursuant to Sub-section 8207.2 of the Zoning Regulations, for special exceptions under Paragraph 3101.42 to construct a private high school with an athletic field and under Sub-section 7203.6 to permit a reduction in the number of required parking spaces in an R-2 District at premises 4200 Davenport Street, N.W., (Square 1672, Lot 813, Square 1673, Lots 1, 2, 808-813, 816, 817 and 819, and part of Davenport Street to be closed).

HEARING DATE: April 17, 1985
DECISION DATE: May 1, 1985

FINDINGS OF FACT:

1. The subject site is located on a tract of land fronting on Davenport Street to the north, 42nd Street to the east, Chesapeake Street and River Road to the south and southwest, and 43rd Place to the west. Forty-third Street provides access to the site from its northernmost point. The site is known as premises 4200 Davenport Street, N.W. It is located in an R-2 District.

2. The site abuts residentially zoned and developed property on its north (R-3, R-2 Districts), east, and south sides (R-2 District). The site is located adjacent to a Safeway grocery store and parking lot on the north in the C-2-A District. The site is one block from Wisconsin Avenue.

3. The site contains 4.6 acres of land area. The site is irregularly shaped. The site is known as the Harry Tract. There are three single family structures located on the east side of River Road which are owned by members of the Harry family. The remainder of the site is unimproved.

4. The contract purchaser, the Georgetown Day School (GDS), plans to construct on the Harry Tract a first class high school building with gymnasium, theater, library, arts and classroom space, plus faculty offices and student and faculty lounges. Also included will be a regulation-size soccer field and a running track, and parking spaces for at least sixty-one cars. The proposed lot occupancy is 13.8 percent and the floor area ratio (FAR) is 0.36.

5. The GDS is seeking special exception relief to locate a private high school on the Harry Track, and to reduce the amount of required parking spaces by not more than twenty-five percent.

6. Paragraph 3101.42 of the Zoning Regulations permits with BZA approval through a special exception, a Private school, but not including a trade school, and residences for teachers and staff of a private school, provided that the school is so located that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions and that ample parking space, but not less than that required in Article 72 of these regulations, is provided to accommodate the students, teachers, and visitors likely to come to the site by automobile.

7. Under Sub-section 7203.6, the BZA is authorized to reduce the amount of parking spaces required for nonresidential uses by Sub-section 7202.1 provided that:

A. The amount of required parking spaces shall not be reduced by more than twenty-five percent.

B. The Board shall give consideration to:

1. The nature and location of the structure;

2. The maximum number of students, employees, guests, customers, or clients who can reasonably be expected to use the proposed building or structure at one time;

3. The amount of traffic congestion existing or which the building or structure can reasonably be expected to create in the neighborhood;

4. The quantity of existing public, commercial, or private parking, other than curb parking, on the property or in the neighborhood which can reasonably be expected to be available when the building or structure is in use; and,

5. The proximity to public transportation, particularly Metrorail stations, and the availability of public transportation service in the area, or a ride-sharing program approved by the District of Columbia Department of Public Works;

6. If the applicant relies on a ride-sharing program, the applicant shall demonstrate to the Board that the program shall continue as long as the use continues; and

7. Before taking final action on an application, the Board shall refer the application to the District of Columbia Department of Public Works for review and report.

8. GDS was established in 1945 to be the first desegregated school in the District of Columbia. GDS is a nonprofit, co-educational, nonsectarian school, governed by a Board of Trustees of parents elected by the parent body and administered by an appointed Director. Over eighty percent of the students are residents of the District of Columbia.

9. GDS high school was established in 1969. Since that time, the school has been located in makeshift space. GDS is presently located in a former office building at 4880 MacArthur Boulevard, which it purchased and converted for use as a high school. GDS has been seeking an appropriate location for a new home in the District of Columbia which is designed for its own use, conveniently located for its student
population, in close proximity to public transportation, and which will include an outdoor recreation field and adequate on-site parking. The Harry Tract was identified by GDS as a prime location for the school, given the fact that it satisfied all of the criteria listed above.

10. GDS initiated contact with the Advisory Neighborhood Commission (ANC) and the Friendship Tenley Citizens Association (FTCA) concerning the proposed high school in late 1983. This was followed up by a community-wide meeting held in January, 1984, with GDS representatives to discuss the proposal. Subsequently, an Ad Hoc Committee composed of neighborhood representatives was appointed by the ANC and FTCA for the purpose of articulating community concerns to GDS during the design of the project. GDS then began site planning for the school and selected the architectural firm of Keyes Condon Florance (KCF) in mid-March. During the latter part of March and the month of April, KCF commenced work on the project, developing conceptual plans and layouts. During that time, the Ad Hoc Committee met and formulated the general issue areas which they felt must be addressed by GDS. GDS responded to those issues, and the ensuing meetings and discussions during the following twelve months formed the basis for refinement of the neighborhood concerns and the GDS proposals.

11. The discussions between GDS and the Ad Hoc Committee culminated in a thirty-one paragraph Draft

Agreement with the Ad Hoc Committee which governed the development of the site and the proposed operation of the school, including the number of students and faculty; construction and school operation schedules; traffic and transportation access; fencing, buffering, and landscaping; security; land use; neighborhood input during construction and operation of the school; water drainage; parking; community service projects by GDS; future uses of the site; student discipline; and use of the building and grounds by the community. The said agreement is attached hereto and incorporated in this Order.

12. The site plan for the high school has been developed so that the school building is located as far to the east as possible on the site, adjacent to the Safeway supermarket, and across 42nd Street from the car wash, the rear of the Volvo sales and service facility, and the Central Pension Fund office building. The school parking lot, which will not be lighted at night, is located adjacent to the Safeway parking lot, and will be landscaped to screen it from adjacent dwellings. The athletic field, located along River Road, will be heavily landscaped along its perimeter. The dwellings to the south of the site will be screened by a heavy landscape buffer. The Board finds that school building is thus located in such a manner that it is buffered from the surrounding residences by the grass playing area and/or landscaping.

13. GDS presented a written report and expert testimony by an accoustical engineer that any noise generated by the operation of the school will not exceed the ambient noise levels of the neighborhood, which is located adjacent to the Wisconsin Avenue and River Road corridors, and that the design features incorporated into the plans will serve to buffer the transmission of any noise from the site. He concluded that the proposed high school will have no significant noise impacts on the neighborhood, and that any noise generated will be similar or less objectionable than that generated by a residential development on the site. The Board so finds.

14. GDS presented a written report and expert testimony by a traffic engineer. The report contained an analysis of booth vehicular and pedestrian travel to and from the site. The traffic analysis was based upon surveys and figures of the D.C. Department of Public Works (DPW) augmented by studies and observations made by the traffic expert. The traffic expert found that there is excellent public transportation access, with ten bus routes adjacent to the site and the Red Line Metrorail station approximately three blocks to the southeast. Surveys of transportation mode choice were taken of DGS students and faculty, and were compared with surveys of another private school. At the present school location, with limited public transportation

access, four bus routes, forty-three percent of the students use public transportation. The transportation analysis for the new site, with ten bus routes and a metrorail station in close proximity, along Wisconsin Avenue and River Road, uses a conservative estimate of forty-five percent public transportation users. The Board so finds.

15. All traffic to and from the site, both vehicular and pedestrian, will access the site via the Davenport Street entrance. The traffic report analyzed peak hour traffic volumes, and found that the AM traffic volumes are more critical because they coincide generally with GDS arrivals. GDS departures are spread over a three hour period in late afternoon, prior to the evening rush hour. The traffic study concluded that the directional morning peak period traffic volumes will increase on Davenport and 42nd Streets by approximately 160 cars, or less than three cars per minute per hour. This additional demand is well within the existing street capacity. Parents who drive their children to school will be instructed to pick-up and drop-off students on school grounds, which will not interfere with traffic flow. As compared with a matter-of-right development of residential units, the daily trip generation will be approximately the same for the proposed school. Existing traffic at affected intersections currently operates at level of service "B" or better, with no change expected as a result of the development. Parking demand at the present site is low. Currently, twenty-four spaces serve a school population of 382 students faculty and staff. Not all of these spaces are used all the time, although they are open, free and secure. The proposed site will have at least sixty-one spaces for 456 students, faculty and staff. Thus, with a future increase in school population of nineteen percent, and a future increase in parking supply of 157 percent, the traffic expert found adequate parking to serve the daily needs of the school. Any additional parking needs for special events can be accommodated on the playing field area. There are also metered parking spaces along Davenport Street and 42nd Street that are available for public use. The Board so finds.

16. All GDS faculty, staff and students who are permitted to drive cars to school will be provided a parking space on site. Any student who does not have both permission to drive to school and a place to park on site will be prohibited from driving to school. Students who drive to school and park in the neighborhood will be subject to disciplinary action. The school will prohibit authorized use of the parking lot at night. The lot will be secured at night, and a security service will be employed to prevent authorized parking and other unauthorized use of the school site during non-operating hours. During special events at the school, if the parking spaces on site are inadequate to

meet the parking demand, excess parking will be accommodated on the playing field area to minimize the necessity of school visitors' parking in the neighborhood. The athletic field area has been designed with a curb cut and a cinder track to facilitate this parking. There will be an emergency entrance to the site from 43rd Street. This access point will be secured by a gate which will be locked at all times and used only by emergency vehicles. GDS has met with DCDPW representatives during the design phase of the project and has incorporated their comments into the final site plan. The applicant has also consulted with DCDPW to discuss operational issues as well. The Board so finds.

17. The future total enrollment at the school will be no more than 410 students. The philosophy of the school includes the teaching of respect for the rights and property of one's fellow citizens. DGS students are required to complete sixty hours of community service during their tenure at the school. A partial list of student community service projects was submitted for the record. Students are instructed not to trespass on neighboring property, not to litter, and not to engage in any otherwise objectionable behavior either at the school, or in travelling to and from the school. Students who do not follow these rules will be disciplined by the school. The Board so finds.

18. GDS has presented two alternate plans for parking, one of which meets the strict requirements of the Zoning Regulations, and one of which requires special exception relief. The calculations for both layouts for zoning purposes was based solely upon the number of required spaces on private property. However, when the number of new parking spaces to be created on public space by GDS are included in the calculations, both alternative plans exceed the number of spaces required under the Zoning Regulations.

19. The Board finds that the Zoning Regulations require fifty-seven spaces for the proposed use. The applicant has included one proposal which provides fifty-seven spaces on private property, and another eleven spaces on public space, for a total of sixty-eight spaces. The alternative preferred by the Ad Hoc Committee and by GDS, however, is to delete the parking spaces in the Garden Area adjacent to the intersection of 42nd and Chesapeake Streets. This would result in fifty spaces on private property and eleven spaces on public space, for a total of sixty-one parking spaces. This proposal requires special exception relief. Both alternative parking plans include two handicapped spaces adjacent to the school building. Both alternative parking plans have been reviewed and coordinated with the Department of Public Works. GDS representatives testified that they intend to work with Safeway to return the entire Davenport Street to private ownership. If that is accomplished, the

parking spaces which are now shown as being located on public space will revert to private parking spaces at that time.

20. The school will have a future maximum of approximately 456 occupants (students, faculty and staff). Over one-half of the students do not have drivers' licenses, and therefore are not capable of driving. Student drivers to the school will be strictly controlled, as outlined above, and this policy will be strictly enforced. Students will be permitted to drive to school only in extraordinary circumstances, by permission of the school administration, and only if there is a place to park on-site.

21. The Office of Planning (OP), in its memorandum dated April 10, 1985 and at the public hearing recommended that the application be approved with conditions. The OP noted that the project is in compliance with the building height, bulk and yard and lot occupancy requirements of the R-2 District. The OP was of the opinion that the physical layout and design of the three story school building and grounds will minimize noise on surrounding properties. Students will be instructed by the school to respect the rights of others, and objectionable behavior will not be tolerated. Noise generated by outside sporting events on the athletic field will be buffered by distance and landscaping. The majority of the field is separated from other residentially used properties by public streets. The playing field will not be lighted, and all inter-scholastic events will conclude before 6:30 P.M. to maintain the neighborhood's evening hour tranquility. The OP was of the opinion that the number of students proposed to be enrolled in the school is not likely to become objectionable to adjoining and neighboring property. The OP was further of the opinion that the parking and vehicular access to the site is adequate to minimize any adverse impacts. Students will be prohibited from driving to the site unless they have permission to do so from the school, as well as a place to park on the site. There will be no unauthorized use of the parking lot at night. The OP reported that over one-half of the students do not have driver's license, and that the existing twenty-four parking spaces at the school are adequate to serve the daily needs of 382 students, faculty and staff. The OP also reported that the school is within one block of the Wisconsin Avenue and River Road bus corridors and within a short walking distance of the metrorail station. The OP also reported the high percentage of public transportation used by GDS students. The OP reported that the applicant had demonstrated that its proposal has been planned in such a way as to comply with the requirements for special exception relief. The OP concluded that the application be approved with the

conditions as agreed to with the Ad Hoc Committee. The Board concurs with the recommendation of the OP and its reasoning. The Board will condition the grant herein incorporating the concerns of the Committee over which the Board has jurisdiction.

22. The DPW, in its memorandum dated April 10, 1985, reported that as to the surrounding street system Ellicott Street is a local street with a paved width of thirty-five feet. Residential permit parking restrictions are in effect on both sides of the street. Chesapeake Street is also a local street, with a paved width of thirty feet. Residential permit parking is allowed on both sides of the street. 43rd Place is a local street with a paved width of twenty feet near the site. Residential permit parking is allowed on both sides of the street. River Road is a minor arterial with a paved width of thirty-six feet and an average daily traffic volume of 13,400 vehicles near the site. Unrestricted parking is allowed on both sides of the street near the site. 42nd Street is a local street with a paved width of thirty-four feet and an average daily traffic volume of 3,500 vehicles near the site. Three-hour metered parking is allowed between 7:00 A.M. and 6:30 P.M., Monday through Friday. Wisconsin Avenue is a principal arterial with a paved width of sixty feet and average daily traffic volume of 3,500 vehicles near the site. Metered parking is allowed on both sides of the street. Davenport Street is a dead-end local street, with a paved width of thirty feet. Parking is allowed on both sides of the street, but is limited to three hours between 7:00 A.M. and 6:30 P.M. on weekdays, and 43rd Street is a local street with a paved width of thirty feet, which dead ends north of the proposed school site. Residential permit parking is permitted on both sides of 43rd Street. The DPW further reported that the site is 800 feet from the Tenleytown station on Metrorail's Red Line. In addition, ten Metrobus routes, the T2, T3, T4, T6, T7, 30, 32, 34, 36 and 37 routes, stop near the site on River Road and Wisconsin Avenue.

23. The DPW reported that as to traffic because of the site's excellent access to public transit, the DPW estimated that forty-five percent of the student population would travel to the site by public transit, ten percent will walk, and forty-five percent will arrive and leave by automobile. The DPW concurred in the GDS estimate that approximately 273 daily vehicle trips will be generated by the school. Approximately 160 of these trips will occur between 7:00 and 8:00 A.M., during the morning peak hour on the adjacent streets. This volume of additional traffic will not affect the levels of service at intersections surrounding the site.

Afternoon traffic volumes will be dispersed over several hours; the majority will not coincide with PM traffic peaks on the surrounding streets. All access to the site will be via Davenport Street; vehicles entering and leaving the campus will turn around via a cul de sac on school property. No vehicular or pedestrian access will be permitted from River Road. The emergency access entrance from 43rd Street will be kept locked at all times. The DPW noted that a channelization scheme has been developed by the DPW to improve sight distances at the intersection of Ellicott Street, 42nd Street, and Wisconsin Avenue. The Department hopes to include funding for this safety improvement in the FY 1987 capital budget.

22. As to parking, the DPW reported that the amount of parking will be sufficient to service the site, especially since eleven new public spaces will be available near the school entrance once the Davenport Street access has been improved by the applicant. Also, the GDS has agreed that only faculty members, staff and students who have been specifically assigned a parking space will be permitted to drive to the site. During special events, such as parent meetings and school plays, the athletic field can be used as a parking area.

25. The DPW reported that the GDS should be required to pay the cost of upgrading the two existing street lights on Davenport Street, and of installing a new light on the north side of Davenport Street, approximately 110 feet west of the existing Safeway driveway. All street light work must be coordinated with the DPW's Street Lighting Branch.

26. The DPW further reported that there is water and sewer service available to the site. The closing of Davenport Street will require a drainage easement and a drainage system for handling stormwater flow across the development. The GDS should continue to work with the DPW to develop and implement such a stormwater management system. The Board concurs in the DPW's reasoning and recommendation.

27. Advisory Neighborhood Commission 3E in a report filed April 10, 1985, reported that by a vote of 3-2 the ANC recommended that the application be denied. The ANC reported as follows:

> Whereas, the site of the proposed development falls within the boundaries of Single Member District 03, the preponderence of whose citizens have expressed concern that the quiet residential character of the neighborhood be preserved, that the traffic flow within the neighborhood continue to allow easy, unhindered passage to and from their residences uninterrupted by commuters entering the neighborhood for any reason, that the intersection at Wisconsin Avenue and 42d Street, N.W.

is poorly designed, dangerous, and inviting an accident, and that River Road, N.W. is already overloaded with commuter traffic,

Whereas, the District of Columbia recently proposed a city-wide land use plan that gives voice to local citizen participation in the planning of the future uses of their neighborhood, and,

Whereas, the proposed Georgetown Day School site:

represents an encroachment on the residential character of the neighborhood,

represents a potential precedent for future, unwarranted development of the surrounding neighborhood,

generates additional unwanted traffic in the neighborhood,

has its most significant ports-of-entry to the site through the intersection at Wisconsin Avenue and 42nd Street, N.W. and via River Road, N.W.

would generate a general disruption to the surrounding neighborhood with its various evening social, cultural and sporting events,

preempts the voice of the local citizenry in its right to determine future planning uses within the area in a thoughtful and deliberative manner, by putting in place a major development that will predetermine future uses before the ward area development plan can be created,

Therefore, be it resolved that

1. ANC 3E oppose the special exception relief Georgetown Day School seeks to construct its proposed secondary school on the Harry Tract.

2. That no development of the Harry Tract be approved that does not fit the residential character of the neighborhood and within the scope of the to-be developed ward area development plan.

3. That no development of the Harry Tract be approved that exceeds the current R-2 zoning of the area and

4. That the residential development of the Harry Tract take into account and complement the overall

development of the Wisconsin Avenue Corridor within ANC 3E.

5. That the citizens of ANC 3E, both for and against the establishment of the Georgetown Day School on the Harry Tract work in a united effort for the establishment of a ward area development plan and a coordinated development strategy of out neighborhood that causes the minimal adverse impact to our residents.

Finally, the ANC voted that, if the BZA grants the special exceptions sought in the application, that such approval should be conditioned upon: (a) the conditions negotiated by the Ad Hoc Committee; (b) a stipulation that a cafeteria be included as part of the school construction; and (c) a stipulation that demolition of the three houses on the east side of River Road be delayed as late as possible in the construction cycle.

28. The Board does not concur with the recommendation of the ANC. The Board is required by statute to give "great weight" to the issues and concerns of ANC that is reduced to writing in a resolution. The Board does not concur for the following reasons:

a. A private school is a use which is predeemed compatible with other uses in the R-2 District, subject to review by the Board for consistency with the requirements set forth in Paragraph 3101.42 of the Zoning Regulations. No variances or zoning changes are requested or are necessary in order to allow a private school to be located on the subject site. Any dispute concerning whether a private school should be permitted to locate on the site by special exception should be addressed to the Zoning Commission, rather than to the Board.

b. This Board has no authority to impose a building moratorium on the Harry Tract until such time that the City develops a Ward Plan for this area. Development on the site is governed by the R-2 zoning, and, as further set forth below, the proposed use is consistent with that zoning.

c. The proposed private school use does not exceed the current R-2 zoning of the site. A public high school could be placed on the site without the need for any relief from this Board.

d. Based upon the evidence and testimony, the Board finds that the proposed school development of the Harry Tract will complement the overall

development of the Wisconsin Avenue Corridor within ANC 3E.

e. This Board concurs with the ANC that the conditions set forth in the draft letter of agreement will help to ensure that there will be no adverse impact from the development and operation of the school on this site. The draft agreement includes provisions concerning the use of the student lounge for cafeteria purposes, and a procedure for determining when the three houses along River Road will be demolished during the construction phase.

29. The Friendship Neighborhood Coalition (FNC) testified at the public hearing that on March 12, 1985, the FNC Board voted to support the Georgetown Day School application for a special exception to build a high school on the Harry Tract. Some of the main issues which were raised were:

A. Concern about both the short and long-term disruption to the immediately adjacent residents of any development on that site.

B. Concern about the long-term effects of development on the Harry Tract to the larger neighborhood.

C. The magnitude of the change the GDS proposal has to be compared to matter-of-right residential development.

D. Schools and places of religious worship appear to be generally considered compatible uses in low density residential neighborhoods. Exemplified by the fact that if this proposal were for a public high school, even a large one, it could be built as a matter-of-right.

E. Other possible applications for changes if existing zoning from townhouses, to apartments to office or other commercial use. Remembering that this parcel has commercial uses across the street.

F. Traffic, noise, residential buffering, open space needs, upkeep problems, etc. under various options.

G. A concern that the current architectural plans show a 'back view' to 42nd Street which may at least psychologically cause safety as well as esthetic problems along that street.

30. FNC recognized that some of the immediate neighbors opposed this application. However, FNC had a broader

membership to consider. It appeared that board members immediately next to the development were slightly in favor of the school over other development. It appeared that there was room for legitimate disagreement as to whether people would rather live next door to a high school or semi-detached or town houses. Those who live one block or more from the school almost all indicated that the impact of even residential development on their part of the neighborhood would be considerable worse than that of the school, especially as far as traffic and its associated problems were concerned. On balance it was agreed that any development on the Harry Tract would probably have negative impact on the neighborhood. The FNC Board felt that the school would probly cause no more, possibly fewer, problems than maximum matter-of-right residential development and that the open space afforded by this plan was a plus. FNC believed traffic would increase in any event and that particular attention needs to be paid to the dangerous intersection of Wisconsin Avenue, 42nd Street and Ellicott Street. It was felt that having Davenport Street and 43rd Place remain closed to through traffic was an advantage. Several people at the Board meeting indicated that a high-quality school, whether public or private, was an asset to the community, and since a public high school could be built as a matter-of-right, it seemed unreasonable to withhold approval for a private one. A school would seem to be an appropriate long-term buffer between the commercial properties and the single-family residential neighborhood. FNC was concerned that the longer this parcel lies undeveloped, the greater the pressures will be to change its zoning. Most of the Board Members present felt that the school was the best development that they could reasonably hope for on the site. If these special exceptions were granted, FNC would strongly urge that negotiations between GDS and the Citizen's Ad Hoc Committee be continued to minimize the impact of the school both during the planning and construction phases and on a long-term basis.

31. The American University Park Citizens Association voted to support the application. The vote of the Association was based upon the favorable impact of the school upon the neighborhood.

32. The Friendship Tenleytown Citizens Association voted to take no position on the application. However, the Association requested that, if the application is granted, that the conditions set forth in the draft agreement be incorporated into the approval.

33. Approximately sixty letters and a petition with approximately 390 signatures were submitted in support of the application. In addition, ten persons spoke at the hearing iin support of the application. This support was based upon the belief that the proposed school use would be