Levine School
09574/082

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15984 of the Carnegie Institution of Washington, as amended, pursuant to 11 DCMR 3108.1, for a special exception under Section 206 to convert an existing nonconforming structure into a private music school and to allow the addition of a performance wing to the existing structure in an R-1-A District at premises 2801 Upton Street, N.W. (Square 2049, Lot 809).

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HEARING DATES: November 9, 1994, January 11 and February 22, 1995
DECISION DATE: April 5, 1995

ORDER

PROCEDURAL MATTERS:

The application was originally filed and advertised as a special exception for a private school (11 DCMR 206) and to locate more than one structure on a single subdivided lot (11 DCMR 2516). The application was amended by the applicant to eliminate the special exception under Section 2516.

The application was initially scheduled for the public hearing of November 9, 1994. On November 9, 1994 a quorum of Board members was not available to hear the application and the case was rescheduled for January 11 and continued on February 22, 1995.

PRELIMINARY MOTIONS:

Counsel for neighbors on Upton Street, the Van Ness East Condominium Association and the Van Ness South Tenants Association filed a motion for disclosure of ex parte evidence and reasonable opportunity to rebut. The Chairman of the Board spoke on behalf of himself and other Board members, indicating that there had been no ex parte communications to any Board member hearing this application or to Angel F. Clarens (Board member who has recused himself from hearing the case) and Maybelle Taylor Bennett (a member of the Zoning Commission).

Other motions filed by parties in opposition were withdrawn.

SUMMARY OF EVIDENCE OF RECORD:

1. The subject site consists of all of Lot 809 in Square 2049. The subject site is bounded by the Howard University Law School on the east, the Chancery of the Netherlands on the north, Upton Street, N.W. on the west and south. The street boundaries of the site are Yuma Street to the north, Upton Street to the south,

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Connecticut Avenue to the west and Linnean Avenue to the east. The site is known as premises 2801 Upton Street, N.W. and is located in the R-1-A District.

2. The site is irregularly shaped and has a land area of 193,517 square feet (4.45 acres). It is currently occupied by a main building and two ancillary buildings. The site formerly was the Geophysical Laboratory of the Carnegie Institution of Washington, D.C. The Geophysical Laboratory was constructed on the site in 1906. The laboratory occupied the site for 87 years. In 1989 the Carnegie Institution closed the laboratory, and the site has been vacant ever since. The site was designated a historic landmark in 1991. The rear portion of the site, where two smaller buildings were razed, was not considered to contribute to the property's historic significance. Currently, the three buildings on the site are the main building, the boiler room and a separate x-ray laboratory, and a caretaker's cottage.

3. A majority of the site consists of open space with mature trees and other vegetation. Approximately six percent of the site is currently developed. The site's topography slopes significantly. The difference in the site's elevation between the highest and the lowest point is approximately 35 feet. The irregularly-shaped property has a 760-foot frontage along Upton Street. Also, a 15-foot wide building restriction line runs along the property's frontage. There are two existing access roads (one of which is currently closed) from Upton Street. The site does not have access to an alley.

4. The site is located in the Ward Three neighborhood of Forest Hills. Institutional and residential uses surround the site. The Howard University School of Law abuts the site to the west. The 19-acre campus is open and spacious. The Netherlands Embassy and Chancery occupy two tracts of land totaling approximately four acres to the northeast of the site. Residential development is located to the south of the site, with single-family, detached dwellings located across the street. To the northwest, the land is developed with the Van Ness East and Van Ness South high-rise apartment buildings.

5. A number of institutional facilities are located in the general vicinity of the site. The facilities include: the main campus of the University of the District of Columbia; the International Center; the International Telecommunications Satellite Organization; the Howard University School of Law; the Edmund Burke School; the Netherlands Embassy and Chancery; and the Hillwood Museum. In addition, other land uses located in the area immediately surrounding the site are: residential (single-family dwellings and high-rise apartment houses); commercial (office buildings and retail goods and services); the Van Ness/UDC Metrorail Station; and open space (Soapstone Valley Park and Rock Creek Park).

6. The R-1-A District permits private schools, not including trade schools, and residences for teachers and staff of the private school with special exception approval by the Board pursuant to Section 206 of the Zoning Regulations.

7. The Applicant is seeking a special exception to occupy the existing buildings on the site as a private school and to build an addition to the Main Building on the site in order to accommodate its educational needs.

8. The Selma M. Levine School of Music ("Levine" or "Applicant") is the contract purchaser of the subject property. The Selma M. Levine School of Music is a nonprofit community music school founded in 1976. Levine offers individual and classroom music instruction for students of all ages. Levine has an open admissions policy and classes are designed for all levels of skill from beginner to advance performance instruction. The School's purpose is to provide high quality music education in order to foster an atmosphere that encourages the love of music and the satisfaction of accomplishment through commitment and hard work. The School has an extensive educational outreach program in which it provides instruction and other activities in the District of Columbia. The School participates in the Arts Enterprise Zone and the Major Access Initiative. The School also participates in recitals in conjunction with the District's public and private schools and performs concerts in local hospitals and other community facilities. Classes at the School are given in orchestral instruments, piano and voice.

9. Levine is presently located at 1690 36th Street, N.W. in accordance with a special exception as a private school granted by the Board pursuant to Order No. 14556 in leased space.

10. The Applicant plans for the site to include a total student enrollment of 1,500 with a faculty of 98 professionally-trained musicians who teach at the School on a part-time basis and an administrative staff of 20. Classes at the subject site will be, in the majority, carried out on a one-to-one basis, although there are classes for group instruction. There are usually no more than 50-75 school students at the site at any given time with a maximum projected student capacity of 129 students at peak usage due to ochestra rehearsal schedules. Given the nature of the classes and the staggered scheduling, the maximum number of people (student/ faculty/staff) that will be on site at any one time during normal school hours will be 150.

11. The Applicant proposes to renovate and reuse the existing Main Building and the Boiler Room into classroom/teaching facilities with a small recital area (without fixed seating) and administrative support space. It also intends to restore the existing Laboratory Building for use either by a resident care-

taker, an artist-in-residence or a parent/student lounge. As part of the application, Levine proposes to build an addition of approximately 33,000 gross square feet to the Main Building which will house additional teaching studios, large classrooms, rehearsal facilities, offices and a 300-seat performance auditorium (hereinafter referred to as "Addition" or "Performance Training Facility").

12. The Applicant will occupy the entire complex although, as it does now pursuant to Board Order No. 14556, it will make administrative office space available to its affiliates whose missions are related to music education and the performing arts. These groups currently include the Washington Bach Concert, the Contemporary Music Forum, Gay Men's Chorus of Washington, the Oratorio Society of Washington, the Washington Area Music Association and the Washington Concert Opera. These six groups bring a total of 12 people to the facility during the work week, thus, affiliate use of the subject site will be less than 10 percent of the maximum occupancy of the facility.

13. The proposed Addition is within the height, FAR, lot occupancy and other requirements of the R-1-A District. The height of any new construction will not exceed 36 feet. The lot occupancy including the Addition is 14 percent. Even with the approval of this application and construction of the Addition, the site will have an excess of 3.8 acres of open space. Further, the proposed Addition is set back approximately 200 feet from the nearest curb on Upton Street, N.W. This distance, coupled with the natural steep slope of the land, ensures an adequate buffer between the Addition and the nearest residential dwellings.

14. Levine also proposes to build a 114-space parking facility in order to accommodate existing and future parking demands for uses on the site. The Zoning Regulations require the provision of 69 parking spaces.

15. The District of Columbia Historic Preservation Review Board approved the design of the complex in concept on October 27, 1994.

16. Levine is a well-established private school that has been operating in the District for nearly 20 years. It adheres to the highest standards of music education and its doors are open regardless of race, religion or national origin. Through its financial aid program, it makes music education possible for economically disadvantaged District residents. Levine is an accredited music school, one of only 17 community music schools so accredited by the National Association of Schools of Music.

17. The President of the Levine Board of Trustees testified that since 1976, the School has grown from a handful of students with a budget of $30,000 to an institution with an enrollment of approximatelty 1,000 in its headquarters facility (with an additional 2,500 in the D.C. school system). She stated that the ages of its diverse student body range from 3 years to 83 years and presently the School's budget exceeds $2.5 million. She stated that, like many institutions, the School, which is currently in rented space, needs to establish a permanent home in order to stabilize itself and to be able to tailor that space to the School's needs and national accreditation standards. She testified that Levine began its search for a permanent home in 1982 with four goals in mind with regarding a prospective property: (a) it had to be accessible to the students who attended the home base; (b) it had to be accessible to the entire city; therefore proximity to a metrorail station was a prime factor; (c) it needed to be large enough to accommodate the School's existing and expanding programs; and (d) it had to be located in the District of Columbia. The Levine Board identified the Carnegie site as, by far, the best location available because of its geographic location, its proximity to public transportation, the wonderful character of the site, the flexible nature of the Main Building's interior space and enough room to add educational facilities that the School currently does not have.

18. The President of the Board of Trustees testified that the School entered into a contract to purchase the Carnegie property in December 1992 and began a communication process with the neighbors in the immediate vicinity of the property in April 1993. She indicated that over 15 meetings have been held with the neighbors. She indicated that while there has not been agreement from all groups participating in those discussions, the School has made major concessions in its proposed plans for the site. First, the School reduced the size of the audience chamber of the new performance facility from 458 seats to 300 seats. Second, the School agreed to provide parking on-site for all of the School's activities, including classes and performances. Third, the School accepted a limitation on the number of performances that will occur at its facility. Finally, the School agreed not to rent its facilities to the general public. She testified that she believed that the School has made bona fide efforts to address the concerns raised by members of the community. She also indicated her strong disagreement with the characterizations made by some of the opponents of the application that there was substantial agreement on the terms of a settlement between the parties. She indicated that any points of agreement reached needed to be viewed in the context of a whole agreement which was not achieved, thus, there has been no substantial agreement.

19. The Executive Director of the Levine School of Music, testified that Levine will offer classes and private instruction geared to three age levels at the subject site. There will be Early Childhood Music classes which teach rhythm, singing and movement through play for children between the ages of 18 months and eight years. The Preparatory Division, serving more than 650 students between the ages of seven and 18 years, will offer comprehensive training to develop enhanced musical skills, understanding and appreciation. The Adult Division, which enrolls approximately 300 students, is designed to meet the full spectrum of adult musical interests from the novice to the accomplished player. He stated that, from a music education perspective, an ideally-sized performance auditorium for a school like Levine would be approximately 450 seats. He further testified that performances are the logical and ultimate outcome of music education and that a music school cannot exist without the ability to allow the students to perform and grow. He indicated that the affiliates who are part of Levine's community do not perform at the School. They do utilize the School's facilities for administrative offices on a daily basis and have significant educationally-related interaction with the Levine faculty and students.

20. The Executive Director of the Levine School entered Levine's current certification from the National Association of Schools of Music into the record of this case.

21. The Executive Director indicated that the School's estimated cost to buy the Carnegie site and to renovate the existing buildings is approximately $6 million. He indicated that in excess of $4.5 million has been raised in pledges or donations towards this end. He also indicated that the School has received a $1 million pledge for the construction of the Addition. Nonetheless, he requested that the Board allow the project to be built in phases so that appropriate fundraising mechanisms can be put in place while Levine begins operations on the site.

22. The Executive Director testified that the School can accept all of the conditions recommended in the Office of Planning report with the exception that the School would like to extend its Saturday teaching hours until 4:00 p.m. He indicated that: the School can "cap" enrollment at the site at 1,500; ensure that no more than 150 persons will be at the site during regular School activities; that there will not be simultaneous performances in the Boiler Room and in the new Performance Wing; and, reluctantly, accept the condition to not have more than 45 performances in the Performance Wing and 23 performances in the Boiler Room annually.

23. The Executive Director testified that to further reduce the auditorium in the Performance Training Facility to a smaller seating capacity would do injustice to the School's educational mission. He indicated that there is a natural progression for

music students that requires them to start in smaller performance spaces and graduate to larger performance spaces. He indicated that the performance facility is essential and that, in the case of larger productions, students participate in costume design, stage preparation and stage operation. He also indicated that because of the nature of the School, "sets" for such performances need to be in place sometimes for up to four weeks in order to accommodate rehearsals prior to the performances of a show. The Executive Director also indicated that the School needs to have Saturday classes since it serves mostly children who are in school during the rest of the week. He also indicated that Sunday performances are necessary in order to accommodate the faculty, students and their families' schedules. He stated that in its current facility, Levine runs practically the same program (slightly smaller) and that it enjoys extremely good relations with its residential neighbors. He read into the record a letter from the School's landlord, the Sisters of the Good Shepherd, a cloistered order of nuns located in the immediately adjacent building, in which the Sisters indicate Levine has not caused any nuisance, noise or other conditions which interfere with the Sisters' meditation and prayers.

24. The Executive Director stated that of the 23 recitals planned for the Boiler Room, virtually none are expected to be at the capacity of the Boiler Room (130 persons) and, in fact, an average recital attracts 50-75 persons. Additionally, he stated that, of the 45 events planned annually for the Performance Training Facility, only two-thirds would be expected to be capacity events seating 300 persons with a total population on the site not to exceed 350 including staff, performers and audience members.

25. The Executive Director stated that the term "enrollment" at the School means each music lesson or a rehearsal. Thus, enrollment does not represent a total number of persons, since many students take more than one lesson, but each lesson or rehearsal is considered, for enrollment purposes, an enrollee. He stated that the School's affiliate music organizations do not bring in outside performers to give concerts at the facility. In fact, the most common use the affiliates will make of the facilities, in addition to using office space, is that their soloists may use a classroom for practicing in groups of six or less. This use allows younger students to hear more advanced artists practicing and permits them to interact with them in an informal way in the School's corridors. Many of the affiliates' members are also faculty members and integrate students into their groups and performances. He testified that the primary purpose of sharing the facilities is to benefit the educational mission of the School and its students and not to raise funds. He stated that the School would actually do better financially by using this space for music lessons rather than leasing it to the affiliates.

26. The Applicant's architect described the proposed plan for the re-use of the historic buildings as well as the proposed Addition to the building and parking area. He indicated that the existing historic buildings lend themselves perfectly for adaption as a music school. The Main Building's original design included interior load-bearing wall construction which easily allows the building's reconfiguration to provide small music studios and the like. The vibration resistant original design, necessary for Geophysical Laboratory experiments assists the accoustic isolation design necessary for the music studios and classrooms. He further testified that the existing buildings are not large enough to accommodate Levine's current and future program. In order to accommodate that program, an Addition was designed to the Main Building. While this Addition has been called a "performance wing," the architect noted that 60 percent of its gross floor area would be devoted to traditional education functions such as classrooms, studios, technical support spaces and offices. He also indicated that for a music school, the performance areas are a necessary part of the teaching facility. He testified that the layout of the site, the site's terraced areas and slopes and its heavy vegetation lend itself easily to the Addition to the building. He testified that the plan was designed to retain as much of the existing mature vegetation as possible, respecting the natural contours and slopes of the land and placing the Addition in an area where it would be virtually unseen from the public streets. He also stated that the area of the site upon which the Addition is proposed is the area of the site which was deemed not to contribute to the landmark and had been the site of other "out-buildings," mostly concrete block buildings, and an organic trash area where lawn cuttings and other vegetation refuse was deposited.

27. The architect testified that the Main Building and its Addition would comply in every respect with the height, density, lot occupancy and other restrictions of the R-1-A Zone District. He indicated that the existing Main Building has 31,000 gross square feet and is 51.5 feet in height. He indicated that the Addition will add 33,000 gross square feet to the building, with a height of 36 feet. He testified that the architecture and detailing of the proposed Addition would be compatible with the existing structures and pointed out that, after an informative site visit, the design concept has been approved by the Historic Preservation Review Board. It was his opinion that the Addition has been sited on the property in order to make it as unintrusive to neighboring properties as possible.

28. The architect also testified that the parking area was located in such a manner as to minimize its impact on adjacent property owners. He pointed out that the entrance drive had been simplified as a way to control traffic and create safer conditions

on Upton Street; that the parking lot was designed to allow for on-site parking of all the School's needs; and that the parking area is tucked into the site's natural contours and slopes.

29. The architect testified that the architectural elements of the stage, orchestra area and audience chamber of the Addition were carefully designed to maintain the correct spatial proportions while providing the volume necessary to support good acoustic design for musical performance and education.

30. The neighborhood, in the architect's opinion, is a mixed-use urban area with a wide variety of uses, including other institutions, multi-family and single-family houses along and close to a major vehicular, commercial and mass transit corridor. He also testified that the site is designated for institutional use by the District of Columbia Comprehensive Plan. He further indicated that the proposed use of the facility and all the facilities on the site were designed to house only music educational uses. He testified that, in his opinion, the use of the site was quite modest and that 3.8 of 4.45 acres would remain in open space. He believed that the proposed Addition, with the improvement to the landscaping, would actually enhance the qualities of the site and its aesthetics. He indicated that the project has been downsized significantly at the urging of some members of the residential community, but believed that any further reduction in the size would do damage to the architectural and spatial relationships between the various internal functions of the space and the relationship of the Addition to the historic buildings. He also testified that the School had retained an acoustical consultant and that after the renovation is complete, the buildings will be virtually soundproof. He pointed out that, because of the nature of the School, this aspect of design is of extreme importance since it is important that sound from one studio, or classroom, not transmit into the adjoining space. The natural benefit of this programmatic need for acoustic isolation is that sound will not be transmitted to the outside community.

31. The architect illustrated for the Board various land use alternatives for the site and suggested that the Board should not measure this application against the currently vacant property, but against various other uses that the site might logically be used for, such as a church, nursing home, chancery and/or other private school. It is his professional opinion that the proposed use, including the new construction, is an appropriate use for this urban neighborhood. The architect opined that the special exception, if approved, will not have an adverse effect on neighboring properties and the Addition is unlikely to become objectionable to neighboring and adjoining properties due to noise or other objectionable conditions. He further testified that he believed this special exception is in harmony with the general purpose and intent of the Zoning Regulations and Map.

32. The architect also testified that the plans had been reviewed by the District of Columbia Fire Department, which found the parking layout acceptable for emergency vehicular access. He entered into the record minutes from the meeting with the Fire Marshal's office indicating such approval.

33. The applicant's landscape architect, recognized by the Board as an expert in landscape architecture, described her proposed landscaping design for the subject site. She indicated her plan had two major objectives, the first of which was to retain as much of the mature vegetation as possible, and in this regard, the Applicant retained an urban forester who has identified vegetation that is mature, in good health and can be included in such a design. Second, utilizing the existing vegetation as a baseline, the landscape architect described that her design intention is to plant in-fill vegetation on the site which would create an effective screen to the neighboring properties. She indicated that great care was given to retaining the existing slopes with the strategic placement of retaining walls in order to maintain those slopes and the existing vegetation. She opined that, if the project were approved, the overall aesthetics of the site layout will be significantly improved. Her landscaping plan includes new evergreens to shield parking, a clean and controlled existing ground cover and new flowering trees to provide color and density to the slopes leading to the public street. The plan also proposes to place new canopy trees in in-fill locations between the large existing canopy trees on the site.

34. The applicant's traffic consultant, who was recognized by the Board as an expert in transportation analysis and planning, testified that the proposed use of the subject site would not have a detrimental effect on traffic on the public streets in the vicinity of the property. The traffic consultant indicated that he had conducted an in-depth traffic impact analysis of the traffic caused by this community music school. He indicated that he based his data on actual observation and surveys done at the existing school and concluded that, in all respects, the project would not create objectionable conditions due to traffic in this urban neighborhood.

35. The traffic consultant indicated that the site is within acceptable walking distance (only 2,850 feet) from an existing metrorail station on Connecticut Avenue. In addition, he indicated that two metrobus routes converge at this station, with several stops on Connecticut Avenue closer to the site. He indicated that the principal streets in the vicinity of the site are Connecticut Avenue, which is a six-lane arterial; Tilden Street, which is a four-lane arterial; and Upton Street, which is a two-lane local street with parking on both sides. He indicated that Upton Street connects to Tilden via 29th Street, N.W., which is a one-block long local street. He testified that he had completed three detailed

technical memoranda, all of which were submitted for the record, evaluating the School's use of the site and its impact on the transportation network. His oral testimony highlighted the summary findings and conclusions of these analyses. He indicated that in several surveys, the peak directional flow on Connecticut Avenue was between 3,000 and 3,200 cars per hour. He indicated that the traffic on Upton Street is less than five percent of the traffic on Connecticut Avenue and that during the ten-hour period of the Department of Public Works standard surveys, the total volume of traffic on Connecticut Avenue is in the range of 25,000 vehicles (as it has been for approximately the past ten years), while the volumes on Upton Street are less than 1,000. He testified that Upton Street is a 30-foot wide street from face-of-curb to face-of-curb, which is a standard street cross section in Washington, D.C. He stated that it is typical for a street with this cross section to carry as many as 4,000 to 5,000 cars per day and, thus, Upton Street was significantly underutilized as a city street. He also indicated that, even though there is parking on both sides of the street, the width of the street is adequate for two vehicles to pass.

36. The traffic consultant opined that the parking facility proposed for the subject site of 114 spaces was more than adequate to accommodate all of Levine's daily parking needs. He indicated that he developed parking demand estimates based on actual surveys for daily classes and lessons. He conducted in-depth studies of the existing Levine faculty and students to determine how many of those persons currently arrive by car. He indicated that he maintained this modal split even though, in his opinion, it is extremely conservative since the existing Levine School is not proximate to a metrorail station, and the subject site is within easy walking distance of the Van Ness/UDC Metrorail Station. He than indicated that he took the existing modal splits and projected them to the increased size of the school (from 1,000 currently to 1,500 ultimately). He indicated that he charted class and lesson schedules in 15-minute increments of time and determined the arrival and departure pattern of faculty, staff, affiliates and students through an entire peak weekday and a Saturday. He indicated that he chose the weekday which had the most intense scheduling. He indicated that for his parking analysis, he allowed for the overlap of parking of both arriving and departing students before and after their scheduled lesson time. He indicated that all of his analyses were very conservative. For example, he assumed that 100 percent of the students, faculty, staff and affiliates would be present in all situations and there would be no absentees; that every student who was dropped off generates one vehicle arrival and one vehicle departure, thus, assuming no carpooling; and that the level of metrorail and metrobus utilization would not change when the campus is relocated to Upton Street notwithstanding its close location to the transit system. His analysis for parking showed that the peak need for parking spaces

on the campus, for approximately one hour and 15 minutes on Saturday morning and one hour in the weekday afternoon, would reach 80 cars. Parking needs at other times of the day and during other days of the week would be significantly less. It is his opinion that the 114 car parking facility would easily accommodate the maximum need for the School during the regular school day.

37. The traffic consultant also analyzed the parking needs for performance events. This analysis, based on actual surveys, showed that the staff, performers and patrons arrived in carpools at approximately 2.7 persons per vichicle. But to be conservative, he assumed no mass transit use or other non-private automobile modes and a ratio of only 2.5 people per automobile for the analysis. He indicated that for peak performances in the recital area (Boiler Room), which would not be held in conjunction with other performance activities on the site, there would be more than adequate parking. He assumed that the Boiler Room would hold a maximum of 130 people, which, at 2.5 people per automobile, translates into a parking demand requirement of 52 parking spaces. He indicated that a capacity performance at the performance facility, which would accommodate 350 persons, would require parking spaces for 140 vehicles. He indicated that, given the 114 conventional parking spaces provided, an additional 36 spaces would be needed to serve these capacity performance events. These spaces could be stacked easily along a drive aisle as shown on the plans by Levine's architect. He also indicated that because some of the spaces would be needed by performers and staff persons who would tend to arrive earlier and leave later than the audience, these persons could be required to park in spaces that would be blocked by 36 later arrivals. The consultant indicated that people would self park in the 114 conventional parking spaces and that once these spaces were full, parking attendants would direct the later arrivals into the 36 additional stacked spaces provided. Keys to these 36 cars would be managed by the parking attendants who could then move these cars in the event that a "blocked" car needed to leave. He indicated that Levine would provide this parking attendant service for the 20 or so times a year when the need for these additional spaces would arise.

38. The traffic consultant stated that the proposed facility would have more than ample parking to accommodate both the existing daily needs of the institution and the planned performances. He stressed that his analyses were extremely conservative and based on actual data derived in extensive surveys and in the field.

39. The traffic consultant indicated that the impact on the existing traffic conditions which Levine would have on a day-to-day basis as a result of class and lessons, would be virtually unnoticeable to the public or on the street network. He indicated that his analysis looked at five intersections: Connecticut Avenue and Van Ness Street; Connecticut Avenue and Tilden Street; Connec-

ticut Avenue and Upton Street; Upton Street and 29th Street; and Tilden Street and 29th Street. His analysis evaluated three hours on the maximum weekday when either Levine traffic was at a peak or the network traffic was at a peak. He utilized a critical lane volume analysis, a recognized standard technique for evaluating urban traffic, at the five intersections and, while the Connecticut Avenue and Upton Street intersection is congested, Levine's incremental addition to this intersection is almost statistically unquantifiable. The consultant indicated that the normal fluctuation on Connecticut Avenue greatly exceeds the 95 additional critical movements added to that intersection as a result of Levine's traffic. All the other intersections had virtually no change in level of service as the result of adding the Levine traffic to the network.

40. Similarly, the traffic consultant looked at the performance activities and determined that because the performances are essentially held during non-peak traffic hours, there would be virtually no impact on the traffic network as a result of Levine's occupancy of the site. He indicated that while Levine will certainly cause an "increase" in the traffic on the local streets, because the streets are so significantly under capacity, the total traffic on these streets and at the intersections will remain well within their capacity because streets are so significantly underutilized at present. He stressed that the additional traffic caused by Levine will result in virtually no change in the existing levels of service.

41. The traffic consultant summarized his conclusions and findings as follows: the School's access and on-site circulation plans insure that there will be minimal impact on Upton Street; this on-site circulation plan allows flexible operation to insure efficient patterns of arrival and departure; the proposed parking demand which will reach a maximum of 80 cars during weekdays and 140 cars during capacity performances in the Addition can be accommodated easily on the site; metrorail and metrobus access will greatly enhance the Levine School's ability to provide service to the community; the Levine School enrollment, faculty, staff and affiliates constitute a population of approximately 1,600 persons during the work week, but, through scheduling, no more than 150 people will be on the site at any one time during regular operations and the traffic generated will be spread evenly over the operating hours of the School; performances will be limited to 350 persons and that traffic will affect the area streets for only the hour immediately before and after the performances, thus, the impact will be no more than that of a church with 350 parishioners; the nearby local streets have considerable reserve capacity and can easily absorb the additional traffic congestion on Connecticut Avenue which do affect the neighborhood streets, but Levine will

not materially add to these existing problems; and Levine has developed a management program which will efficiently reduce and control its traffic generation.

42. The Office of Planning ("OP") by report dated November 2, 1994 and by oral testimony delivered at the public hearing, stated that it recommended approval of the application with certain conditions. OP indicated that the Levine School of Music provides a significant resource to the District and that the School can provide a significant resource and amenity to the immediate community. OP believes that the increased activity in the area that will result from the project, mostly in terms of traffic or traffic-related impacts, can be accommodated by the network system. OP stated that it is clear that certain performances had to be held at the School for logistical purposes, but the School could operate at the subject site with certain mitigating measures. OP concluded that the School meets the special exception tests outlined in Section 206 and Subsection 3108.1 of the Zoning Regulations. OP recommended approval of the application subject to the following conditions:

a. Approval shall limited to the Levine School of Music.

b. The maximum number of students enrolled shall not exceed 1,500.

c. The maximum number of people on site at any one time shall not exceed 150, except during performances.

d. No more than 45 performances shall be hosted in the performance training facility annually, and no more than 23 performances shall be hosted in the recital hall.

e. The school's hours of operation shall be limited to 9 A.M. to 9 P.M., Monday through Friday, and 9:00 A.M. to 2:30 P.M. on Saturdays, excluding recitals and events in the performance training facility. No more than 40 students shall attend classes at the site after 1:00 p.m. on Saturdays.

f. No addition shall be constructed to any building on the site (and no new buildings shall be constructed) which would enable an increase in the enrollment or capacity of performance facilities.

g. The school shall work with the neighborhood and major traffic generators using Upton Street to produce a neighborhood special events schedule to avoid overlapping major events which would have a negative impact on Upton Street.

h. The school shall take the lead in working with the community, the major traffic generators and DPW to develop a transportation management plan. The plan must address the issues referenced in this report and in the applicant's traffic report.

i. The school shall submit a detailed landscaping plan identifying the trees and other vegetation that would be removed and material to be planted, as well as screening for the parking spaces, particularly along the rear of the site.

j. No outdoor concerts shall be held at the site.

k. The primary mission of the school's six affiliate organizations at the site shall be educational.

l. The school shall establish a community liaison program with members of ANC 3F and representatives of the community. The school is responsible for meetings (four per year), administrative functions, coordination and follow-up. The group shall consist of no more than 12 community and ANC members.

43. By memorandum dated August 5, 1994 to the Office of Planning, the Fire and Emergency Medical Services Department indicated that it has no objection to the application so long as fire and life safety features, which are required by city codes, are provided.

44. The Department of Public Works ("DPW") by memorandum dated December 1, 1994 to the Office of Planning and by oral testimony delivered at the public hearing, believes that the routine daily operation of the School can be accommodated within the existing transportation system, but recommended that the Applicant provide a bus or van shuttle to supplement the proposed parking spaces although DPW's witness acknowledged that its analysis was based on the provision of a 99-space parking facility, not the 114-space parking lot ultimately proposed by the Applicant. DPW specifically found in its judgement, the amount of traffic generated by Levine "is not significant to materially change the existing level of service at the intersection of Connecticut and Upton Street." With respect to the impact of the School during major performance events, DPW notes that the events would bring traffic to the street system at times when traffic is otherwise light on Connecticut Avenue. DPW did note, however, that the attendant parking system be re-evaluated for event parking. The DPW witness admitted at the hearing that it did not fully understand the "valet" system, believing that all 140 cars would be

"jockeyed" to spaces; it feared a queuing problem. As the Applicant pointed out, only the last 36 cars would be "jockeyed"; thus, there would not be a queuing problem.

45. Advisory Neighborhood Commission (ANC) 3F, by letters dated November 1 and December 12, 1994 and by testimony at the public hearing, indicated that at a duly held public meeting, after proper notice, the ANC voted to oppose the granting of a special exception for the subject application. The ANC resolution, which was passed on October 17, 1994, asks that the Board "not approve the application by the Levine School of Music for a special exception to operate a school and build a performance facility." The ANC letter of December 12, 1994 states that the aforementioned "resolution constitutes the recommendation of the Commission which is to be accorded great weight by the BZA."

The ANC resolution raises issues regarding increased traffic on Upton Street and the surrounding streets and alleys during the week and on weekends. The resolution further indicates that off-street parking will be inadequate and inconvenient during performances and will affect the availability of on-street parking in the neighborhood. Finally, the ANC urges continued negotiations between the Applicant and community representatives until they are completed.

46. Twenty-two persons testified in support of the application at the public hearing. Many of the supporters lived in the immediate vicinity and others lived in diverse communities throughout the District of Columbia, including the southeast and the northeast area of the city. Most of the supporters indicated the need for institutions like Levine in the District of Columbia community and cited Levine's long-standing history of reaching out to those parts of the community in greater need and Levine's reputation as a good "corporate" citizen. In particular, the President of the Burleith Citizens Association ("BCA"), the citizens association within which the current Levine School is located, testified in support of the application indicating that while his organization had some reservations about Levine prior to its occupancy of its current site, the early opposition has turned to affection. He indicated that his constituents' concerns at the time of the earlier Levine Board approval were not proven true and that his organization has never heard a complaint about Levine, or its operation, from its members. The general feeling throughout the BCA membership is that Levine is a community-oriented institution that wants to be, and is, a good neighbor.

47. A neighbor of the site who lives at 2949 Upton Street and is a registered architect in the District of Columbia, testified that the proposed use of the subject site is appropriate and congruous with the neighborhood. He believed that institutions such as Levine are what make Washington vibrant and that the

neighborhood should embrace and support this institution. He also indicated that it was his opinion that the proposed restoration and Addition to the now vacant building would be an aesthetic improvement to the neighborhood.

48. An urban planning consultant previously recognised as an expert in urban planning matters by the Board in other applications, testified in support of the application, but not as part of the Applicant's team. She indicated that she was appearing as a public member of the community with no stake in the outcome except her personal and professional goal to ensure the District's vitality. She stated that in her professional opinion, the opposition's statements were either overstated or false. She believed that this use for the site is appropriate and will not create an adverse impact on the community or the city, but rather, strengthen both.

49. The Upton Street Preservation League ("League") petitioned the Board to be a party in opposition to this application. This request was granted unopposed. The League's President testified that the League has supported Levine's desire to move to the Upton Street site so long as acceptable limitations could be placed on the future growth of the School's size; its hours of operation in the evening and on the weekends; and if an acceptable traffic flow can be devised. The League opposes the current plan before the Board on the basis of excessive hours of operation, affiliate group use, parking and traffic. The President stated that the Levine proposal would overwhelm the Upton Street neighborhood and destroy its peaceful quality. The League alleges that Levine failed to mitigate the adverse effects of its new performance facility by failing to pursue the use of other theaters in the immediate neighborhood with specific reference to the 930-seat theater at the nearby University of the District of Columbia. The League believes that the inclusion in the neighborhood of another institutional use will create an unacceptable intrusion into its neighborhood. The League also objected to the amount of parking on the site, which it did not believe to be adequate. It also questioned the attendant parking plan for overflow events and finally, that the traffic generated by the Levine School would severely burden local streets such as Upton Street. The League showed a video tape of traffic in the neighborhood during certain periods of time and entered it into the record. In summary, the League opposed the application because it would have a serious impact on the neighborhood due to significant increased traffic flow to an already saturated area; overflow parking that would fill limited public spaces, excessive hours of operation, performances, the number of people coming and going to the site and the unknown use by large affiliate groups which would bring commotion, noise and danger to the neighborhood.

50. Three other neighborhood groups, represented by the same counsel, also petitioned the Board for party status. One group, Neighbors on Upton Street ("Neighbors"), was admitted as a party in opposition unopposed. The other two groups, the Van Ness East Condominium Association ("Condominium") and the Van Ness South Tenants Association ("Tenants"), were admitted as parties in opposition over objections by the Applicant. The Van Ness East Condominium Association, through its President, testified in opposition to the proposal because the traffic, lack of parking and congestion caused by the proposal would create an adverse effect on the Van Ness East Condominium, a building of 433 units with a population of 600 residents located at 2939 Van Ness Street. The Van Ness South Tenants Association, through its President, presented testimony on behalf of its 625 families in opposition to the application because: the proposal does not provide enough parking spaces; Levine has failed to apply for a use variance since it is the position of Tenants that a music school does not qualify as a private school under the zoning definition; that the music school is just one component of an art center proposed for the site; that the affiliates' use is inappropriate for Levine; Levine has not established a good relationship with the community; and Levine should avail itself of other choices, such as the downtown area.

51. Neighbors on Upton Street, through its co-chairs, testified that the organization was opposed to the application due to traffic and parking problems caused by classes, shows, rehearsals and other activities; the length of hours of operation; the days of those operations at the School; the use of the site by outside groups called affiliates; and the significant increase in use of the neighborhood streets by vehicles generated from Levine's use of the site.

52. Neighbors, Condominium and Tenants Associations presented a traffic consultant, recognized as an expert by the Board, who testified and prepared a written report indicating that it was his conclusion that the report of the Applicant's traffic consultant failed to show that the proposed "arts center theater" is not likely to become objectionable to nearby and adjacent property because of unacceptable traffic impacts. The consultant indicated that it was his opinion that the traffic increase estimated by Levine was seriously underestimated and that it was likely to be 1.5 to 2 times that shown by the School although he could not explain to the Board the basis for this conclusion. He also critized the Applicant's traffic consultant because he believed that accurate data was not used and did not project traffic growth along Connecticut Avenue caused by new construction along that Avenue. He also indicated that the distribution of traffic used by the Applicant's traffic consultant was flawed even though he admitted that it was done based on existing specific data compiled by zip code analysis of existing students. Finally, he

seriously doubted that anyone would use the metrorail to access the School although he gave no credible rationale for this conclusion. He concluded by indicating that the intersections in the area were unsafe due to an excessive amount of vehicular accidents and that the traffic management plan proposed by the applicant was deficient. He indicated that he had not studied alternative uses on the site; that virtually any use of the subject site would generate additional traffic on the neighborhood streets; and that his analysis was only a cursory review of the Applicant's traffic reports due to the lack of funding for his own work.

53. Other neighbors in the vicinity of the subject site testified in opposition to the application, including representatives of the Netherlands Chancery. The opposition centered around the increase in traffic, congestion and noise in the area.

54. The Applicant's architect testified in rebuttal that it was his opinion that the description of the neighborhood given by the project's opponents was misleading in that it focused on the single-family nature of parts of the neighborhood. It was his opinion that the neighborhood is more aptly described as a mixed-use, urban neighborhood with a significant presence of institutional uses. He also opined that, compared to most other logical uses of the site, this proposed use would be in keeping with the purposes and intent of the Zoning Regulations and would minimize intrusion into the neighborhood and the neighbors' daily lives. The Applicant's architect also testified that no variance from the Zoning Regulations is needed to implement the subject plans especially with regard to the location of the parking spaces and the widths of the drive aisles in the parking lot. He also indicated that, despite the opposition to the size of the auditorium, that the auditorium itself was rather modest. He showed an exhibit of the layout of the Zoning Commission hearing room which could accommodate, rather comfortably, approximately 150 seats for a music recital and, while the auditorium in the Performance Wing would be twice this size, the illustration aptly demonstrates the modest spatial dimensions of a 300-seat theater.

55. The applicant's traffic consultant, also delivered rebuttal testimony indicating that, notwithstanding many of the comments raised by the opposition, that the project itself would not create anywhere near the traffic volume suggested by the opponents. In fact, the traffic consultant opined that the increase in traffic would be barely noticeable on the city street system. He indicated that currently Upton Street carries approximately 1.0 vehicle every 30 seconds and that with the peak Levine traffic that this may increase to 1.5 cars every 30 seconds. He also stated that, while he heard comments that the proposed parking was not sufficient to accommodate Levine's needs, that he, based on actual survey data, determined that the parking facility will have almost 50 percent more parking than is needed by the School at its

peak period of usage. Further, that for the performance events at capacity, the parking could easily be accommodated on the site. Finally, he stated that the opponents' traffic consultant's analysis was severely flawed in that (1) it did not look at actual data; and (2) did not take into account the detail level provided in his analysis. For example, he suggested that the opponents' traffic consultant's statement that the volume of traffic in his reports did not include all trips to, and from, the site was wrong. The Applicant's consultant testified that his analysis did count all trips including all student, faculty, staff, affiliates and visitors. The only traffic that was not included in the Applicant's consultant's reports were delivery trucks. Since the hearing began, however, he evaluated these delivery trips and indicated that, at a maximum, those trips would be only three per day, which, again given the volume of traffic in the vicinity of the site, would be virtually unnoticeable. He was puzzled as to how the opponents' traffic consultant could suggest, without documentation, that his figures were flawed by 50 percent. He again opined that the increase in traffic created by Levine would be negligible on any of the streets in the neighborhood. He indicated that the introduction of Levine's traffic to Connecticut Avenue is not even close to the amount of fluctuation that occurs on Connecticut Avenue on a daily basis. He also stated that compared to virtually any other use of the site such as a church or other private school, because of Levine's staggered hours of operation and relatively low volume of traffic, the proposed use is easily the one with the least traffic impact.

56. The Executive Director of the School, also presented rebuttal testimony in which he reiterated his position that any reduction in the size of the auditorium in the Performance Training Facility would jeopardize Levine's educational program. He also indicated that the number of events proposed by the Office of Planning, including weekend times, were virtually the "bottom line" for Levine. He restated the affiliates' role in the Levine educational process and believed it was a critical element to the School's value to its students and the communuity. He also indicated that the affiliates currently exist within the specifications of Levine's BZA Order and that all the affiliates have an educational purpose and presence in the School's educational program. He indicated that he has reviewed the UDC auditorium and had discussions with the appropriate UDC personnel. He found that the ANC representative's suggestion to forego building a performance facility and utilize UDC's is flawed in two respects. In the first respect, the UDC facility is virtually booked up the entire year. Secondly, the UDC facility, which is over 900 seats, is just too large for Levine's needs in terms of teaching children how to perform before audiences. The Executive Director also indicated that the School would proffer a daily cap of 800 persons in order to address the concerns of some of the neighbors. He also indicated that the School was willing to implement the shuttle bus

as proposed by the Department of Public Works to encourage further use of mass transit and will incorporate it in the School's plans for the site.

57. At the conclusion of the hearing, the Board requested that the applicant submit a formal transportation management plan, which was filed in the record on March 15, 1995 which identified further methods to mitigate School related traffic.

FINDINGS OF FACT

1. The proposed use is within the definition of Section 206 of the Zoning Regulations and is a private school and can be approved in accordance with the standards of that Section of the Regulations.

2. The subject site provides an adequate opportunity to develop the project and the proposed Addition is properly located on the site in order to minimize adverse negative impact. The Addition will be approximately 200 feet from the nearest public street, screened appropriately by existing vegetation and the site's natural slopes which will be enhanced by the landscape plan proposed by the Applicant.

3. The property is a historic landmark and its renovation, restoration and addition will be ultimately reviewed and governed by the District of Columbia Historic Preservation Review Board.

4. The proposed project will substantially advance the purposes of the Zoning Regulations and the Comprehensive Plan.

5. The proposed use of the site for a private school is not inconsistent with the site's institutional designation by the Land Use Element of the Comprehensive Plan.

6. The architectural design of the project and the Addition's proposed location on the site will enhance the features of the site in the vicinity in which it is located.

7. Vehicular access and ingress are located so as to improve safety and minimize intrusion into the residential neighborhood and, while the approval of this project will increase the amount of traffic and persons in the neighborhood, there is adequate capacity in the existing street system so that the project will create no dangerous or otherwise objectionable traffic conditions. The nature of the proposed use of the subject site compares favorably with other matter-of-right uses when evaluating the impact caused by additional traffic or pedestrian activity. The test before the Board is not whether there will be an increased activity as a result of the approval of this application, but whether or not such additional activity will create an adverse impact on neighboring

properties. The Board has reviewed the expert analyses of the Applicant's traffic consultant, DPW and the opponents' traffic consultant and finds that the weight of the evidence supports a finding that there will be no adverse impact on neighboring properties.

8. The landscape plan of the Applicant presents an adequate buffer to the site from nearby residents and properties.

9. The size of the parking area, 114 spaces, is ample parking for the daily operation of the School. The attendant parking system for the 36 additional cars that will be needed for capacity performances in the Addition can be managed effectively so as to prevent a negative impact on parking on the neighboring streets.

10. There is no adverse impact due to the bulk or height of the proposed Addition. The proposed Addition is scaled appropriately to enhance the character of the buildings on the site and those neighboring properties.

11. The proposed use with the Addition does not impact the neighborhoods adversely because of traffic, noise, operations, number of students, or other objectionable conditions.

12. Ample off-street parking is provided for occupants, employees, students and visitors.

13. Advisory Neighborhood Commission (ANC) 3F, through a resolution and testimony at the public hearing, opposed the approval of the subject application based on traffic and parking issues. However, the Board finds that the ANC's concerns with regard to traffic and parking are unsupported by the evidence, and any possible impacts may be mitigated by conditions of this Order.

14. The Office of Planning, DPW and other government agencies' reports are appropriate, including the conditions recommended therein, as modified by this Order.

15. Parties in opposition to the application listed concerns and fears about the proposed use but the weight of the evidence suggests that these fears are either misplaced or without substance or can be mitigated by the conditions of this Order.

16. Many persons appeared in support of the application indicating the appropriateness of this use for this location.

17. Some persons appeared in opposition to the application due to perceived fears of increased traffic, noise and other conditions.

18. The Board finds that the proposed physical changes to the site will have no adverse impact on the surrounding community. The total amount of square footage being added to this site is relatively small when considering the context of the 4-45 acre site, the allowable lot occupancy, height and other density requirements of the Zoning Regulations. There are substantial set-backs from all surrounding lot lines and the proposed Addition is sited in such a way as to be virtually invisible to public areas.

19. In response to points raised by parties in opposition to the application, the Board finds as follows:

a. The staggering of classes and the relatively few persons on the site at any given time will mitigate against adverse traffic impact.

b. The amount of parking provided on the site is more than ample for the daily operation of the School. The few times a year that attendant parking would be required can be accommodated on the site through reasonable traffic management. In addition, the provision of a shuttle bus to and from the metrorail station will mitigate against any adverse impact caused on the neighboring streets.

c. The Board credits the expert testimony of the Applicant's traffic consultant and the report of the Department of Public Works in the evaluation of the impacts on traffic conditions on the area streets, the provision of adequate parking to accommodate students, faculty, staff and visitors and the increased traffic caused by the School's presence on the site. It finds that these increases are not materially different than virtually any other matter of right use of the property.

20. The Board finds that the Applicant's architect, landscape architect, and planning experts, the testimony of the Office of Planning, present sound, credible and irrefutable evidence that the project will not have a negative impact from an architectural or urban planning perspective.

21. With regard to traffic and transportation issues, the Board finds that the Applicant's transportation consultant and the report and testimony of the Department of Public Works were done in significantly greater detail and are more credible than the opponent's transportation expert who admitted on the record that his analysis was either general in nature or cursory due to lack of funding.

CONCLUSIONS OF LAW AND OPINION

Based on the foregoing Findings of Fact and Evidence of Record, the Board concludes that the Applicant is seeking a special exception, pursuant to Section 206 of the Zoning Regulations, to use the existing buildings on the site and build an Addition to the Main Building for use as a private school in the R-1-A District. A special exception must meet the criteria set forth in Section 3108.1 of the Zoning Regulations, which requires that the application be in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to adversely affect the use of neighboring property. In addition, the Board must find that the Applicant has complied with Section 206 of the Zoning Regulations.

The Board concludes that the Applicant has met its burden of proof. The site is a significantly underutilized, 4.45-acre tract of land which has been used for institutional purposes for almost 90 years. The proposed use, including the Addition to existing buildings, occupies less than half the permitted lot occupancy. Further, the proposed Addition is located so that it is not likely to become objectionable to adjoining property because of noise, traffic, operations, number of students or other objectionable conditions. Because of the nature of the use, the care for acoustical control and the staggering of the schedules inherent in a community music school, there will be minimal additional noise created by the use of the property. Further, with the restrictions imposed herein, the proposal will have no adverse impact on the traffic network. There will be no objectionable conditions with respect to the size, height, mass, lot occupancy, landscaping or other conditions. The Board concludes that the School will be located so that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or other objectionable conditions and that ample parking is provided to accommodate students, teachers and visitors likely to come to the site by automobile.

The Board concludes that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zoning Regulations and Map. Additionally, the proposed use will not adversely affect surrounding uses or the zone plan for the area.

The Board concludes that it accorded to ANC 3F the "great weight" to which it is entitled. Accordingly, it is hereby **ORDERED** that the application is **GRANTED, SUBJECT** to the following **CONDITIONS:**

1. Approval shall be for a period of **25 YEARS** from the final date of the order.

2. The normal school operating hours shall be Monday through Friday, 9:00 a.m. to 9:00 p.m.; Saturdays, 9:00 a.m. to 4:00 p.m.

3. The maximum number of students enrolled at the facility shall not exceed 1,500. "One student" shall be equivalent to one lesson.

4. The maximum number of people on site at any one time shall not exceed 150, except during performances and the annual fundraisers.

5. On Saturdays between 1:00 p.m. and 4:00 p.m., no more than 40 students shall be at the facility.

6. The maximum daily density for the site shall not exceed 800 persons.

7. There shall be no more than 35 performances hosted in the Performance Training Facility annually, and no more than 23 performances hosted in the Recital Hall (Boiler Room) annually.

8. The maximum number of persons at the site during performances in the Performance Training Facility shall not exceed 350 persons, which includes 300 spectators and 50 performers.

9. For performances in the Recital Hall (Boiler Room), the maximum number of persons shall not exceed 150.

10. All performances shall end no later than 10:30 p.m.

11. The applicant may schedule performances on no more than 12 Sundays in a given year.

12. No other use shall occur at the site during the 35 performances hosted in the performance training facility.

13. The maximum number of persons to attend fundraisers at the site shall not exceed 350.

14. No more than four of the 35 performances at the site shall be by affiliates.

15. No outdoor concerts shall occur at the site.

16. Construction shall be in accordance with plans marked as Exhibit No. 24A and revised by Exhibit No. 150A of the record.

17. The applicant shall implement the transportation management plan marked as Exhibit No. 243 of the record. The applicant shall also consider providing shuttle bus service after concerts on an as-needed basis.

18. The applicant shall implement Parking Plan Alternate B, Exhibit No. 175A of the record. This plan includes 114 regular spaces and 47 valet parking spaces.

19. Landscaping of the site shall be in accordance with landscaping plans marked as Exhibit Nos. 24 and 24A of the record. The applicant shall landscape the performance facility in such a manner as to diminish its impact on neighboring properties, including maintaining a natural and constructed border along the northern property line near the Netherlands Embassy.

20. The applicant shall establish a liaison committee. Membership in this committee shall be afforded to the local ANC, the Hillwood Museum, Howard University Law School, the Edmund Burke School and all parties to this application. The committee shall meet quarterly, record minutes and maintain documents related to issues addressed.

VOTE: 4-0 (Jerrily R. Kress, Susan Morgan Hinton, Laura M. Richards and Craig Ellis to grant; Angel F. Clarens - not participating, not voting, having recused himself).

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

ATTESTED BY: Madeliene H. Dobbins
MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER: NOV - 1 1995

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

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

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

ord15984/RCL/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 15984

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on NOV 21 1995 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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Madeliene H. Dobbins

MADELIENE H. DOBBINS
Director

DATE: NOV 21 1995