GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 17209 of Parkmont School, Inc., pursuant to DCMR § 3103.2, for a variance from the off-street parking requirements under subsection 2101.1, and pursuant to 11 DCMR § 3104.1, a special exception to operate a private secondary school (65 students and 8 staff) last approved under BZA Order No. 16473, in the R-1-B District at premises 4842 16th Street, N.W. (Square 2654, Lot 34).

HEARING DATE: September 28, 2004
DECISION DATE: September 28, 2004 (Bench Decision)

DECISION AND ORDER

On September 28, 2004, the Board of Zoning Adjustment voted to grant the above application subject to the revisions and for the reasons stated below.

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief.

PRELIMINARY AND PROCEDURAL MATTERS

Notice of Public Hearing The Board of Zoning Adjustment (the Board) scheduled a hearing for September 28, 2004. Pursuant to 11 DCMR §3113.13, notice of the hearing was sent to the Applicant, all owners of property within 200 feet of the subject site, the Advisory Neighborhood Commission (ANC) 4C, and the District of Columbia Office of Planning (OP). The Applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect.

ANC 4C The subject site is located within the jurisdiction of ANC 4C, which is automatically a party to this application. The Applicant appeared at a regularly scheduled ANC meeting on September 14, 2004 to discuss the application. Following that meeting, the ANC voted unanimously to support the application.

Parties No party appeared at the public hearing in opposition to this application.

OP Report OP's report recommended that the application be approved with the following conditions:

1. Approval shall be for five (5) years from the date of this Order. The applicant shall reapply to the Board prior to expiration of the approval granted herein for evaluation of the parking situation and for permission to provide parking as set forth in this Order.

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2. Operation of the school shall be limited to the Parkmont School.
3. The number of students shall not exceed sixty-five (65) and the number of faculty shall not exceed twelve (12).
4. There shall be no non-school-related activities on the subject premises.
5. Landscaping on the premises shall be maintained as approved in BZA Order #13985 and in a healthy growing condition.
6. Three parking spaces shall be provided on the site.
7. There shall be no enlargement of the existing paved area on the site.

OP's recommended conditions are identical to those contained in the Applicant's most recent zoning approval, Order No. 16473 (1999), with the exceptions that condition 3 was changed to permit 12 faculty instead of 8, and condition 5 was changed to require that the landscaping be maintained in a "healthy growing condition" rather than in accord with documents referenced in Order No. 16473.

Materials Received in Support The Board received a unanimous Resolution Supporting Application Number 17209 from ANC 4C. The Board also received three letters in support of the application from neighbors of the Applicant: Frederick Boyd and Roberta Ujakovich; Sally Pfund; and Melvin and Toni Baker.

Closing of the Record

The record closed at the conclusion of the public hearing on September 28, 2004, with the exception of the Applicant's proposed findings of fact and conclusions of law.

FINDINGS OF FACT

The Subject Property and the Application

1. The Applicant holds a special exception to operate a private school at 4842 16th Street N.W., Square 2654 Lot 34, and a variance from the strict application of the minimum parking space requirements imposed by the zoning regulations. The special exception and variance were first granted by this Board to Somerset School, the Applicant's predecessor, in Order No. 13985 (1983). The Board granted continuances in Order No. 15176 (1991) and Order No. 16473 (1999).

2. The Applicant is located on a triangular shaped lot bounded by 16th Street and Blagden Avenue, N.W., which is zoned R-1-B. The lot is improved with a large four-story structure of 8,700 square feet and a paved area to the south and rear of the property, which provides 3 on-site parking spaces. The building was constructed as a private dwelling and was subsequently occupied by a church, which in turn sold the property to the Somerset School in 1983.

3. The Applicant's building contains 3 second floor classrooms, 2 first floor classrooms, and 2 basement classrooms. The school's main office is on the first floor and the director's office is in the basement. There are 5 bathrooms in the building.

4. As the Applicant's previous special exception and variance were to expire in July 2004, on June 25, 2004 it filed with the Board the instant application. The application included one change to the conditions contained in the Board's previous Orders: an increase from 8 faculty members to 12 staff members.. There was no requested change to the existing structure or for an increase in the student enrollment.

Special Exception and Variance Requirements

Sections 3104, 206 and 3103

5. Section 3104.1 permits the Board to grant a special exception where a proposed use will be "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps."

6. Section 206.1 permits the use of property located in an R-1 district for a private school if the requirements of section 3104 are met.

7. Section 206.2 requires as a condition of a special exception under section 206.1 that the private school be "located so that it will not likely become objectionable to adjoining or nearby property because of noise, traffic, number of students, or otherwise objectionable conditions."

8. Section 206.3 requires as a condition of a special exception under section 206.1 that "[a]mple parking space, but not less than that required in chapter 21 of [Title 11] shall be provided to accommodate the students, teachers, and visitors likely to come to the site by automobile."

9. Section 2101.1 requires that high schools provide "2 [parking spaces] for each 3 teachers and other employees, plus 1 for each 20 classroom seats . . . ."

10. The Board is authorized under 11 DCMR 3103.2 "where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reasons of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application to as to relieve the difficulties or hardship; provided, that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the plan as embodied in the Zoning Regulations and Map."

Impact on neighboring properties – Sections 3104.1 and 206.2
Applicant's use of the subject property

11. The Applicant currently accommodates a student enrollment of approximately 53 and a staff of 8. The school is in session from early September until mid-June each year. Regular school hours are weekdays from approximately 8 am until 4 pm. The Applicant generally has not offered after-school or evening programs.

12. In some years the school has provided a summer session to allow students to accumulate additional credits toward their diplomas. When summer school has been offered, it has been held during weekday mornings and has attracted fewer than 10 students.

13. The Applicant has not allowed the use of its facility to outside organizations for non-school activities. The Applicant's facility does not contain any large meeting rooms that could accommodate functions of any substantial size.

14. The Applicant occasionally holds school-related events, such as a poetry festival, in the evening or on a weekend, but less than 5 times annually.

15. The Applicant currently operates in conformance with the conditions of Order No. 16473, and has effectively anticipated and controlled student enrollment during its decade and more of operation.

16. Since its inception, the Applicant has agreed to work with the community to address any concerns with respect to parking and other issues in the neighborhood.

17. The school has not become objectionable to its immediate neighbors due to traffic or noise in the course of its existence.

Applicant's addition of four staff persons

18. The Applicant's requested increase in staff capacity reflects an intention to assign additional staff to administer similar courses and to improve the student staff ratio in support of the school's academic offerings.

19. The Board credits OP's opinion that, with the addition of 4 staff persons, traffic management in the immediate vicinity of the school, including parking, drop-off and pick up, and over-flow parking for special events, will not likely change from its current level.

20. Modification of the previous Order to allow an additional 4 staff persons will not change the material facts upon which the Board made its earlier decisions.

21. The Board finds that negative impacts are unlikely if the school is allowed the flexibility to increase its faculty from 8 to 12 within the stated hours of operation and in conformance with the other conditions in the previous Order No. 16473.

Parking requirements – Sections 206.3, 2101.1 and 3103.2
Applicant's parking situation

22. The Applicant currently has 3 on-site parking spaces, which is less than the number required by section 2101.

23. The irregular shape and slope of the Applicant's site and the large size of the building on the lot restrict the number of parking spaces available on the site to three.

24. The Applicant has been restricted by prior Orders from expanding its on-site parking. This restriction was imposed because of neighbor concerns that additional paved space would change or be inconsistent with the character of the neighborhood.

25. Since 1989, staff and students who could not be accommodated by the Applicant's parking capacity have used the publicly available parking space at the Carter-Barron amphitheatre. The Carter-Barron lot, which is one block from the subject premises at the corner of 16th Street and Colorado Ave., contains 336 parking spaces. On an average day only approximately 25 of those spaces are used at all, and only approximately 6 are used by the Applicant's staff and students. Use of the Carter-Barron lot has been restricted only once per year, for a summer tennis tournament, when the Applicant is not in session.

26. The majority of the Applicant's students, who range in age from 12-18, travel to and from school via public transportation. The school's location is well served by public transportation (Metrobus).

27. Neither the Board nor OP is aware of any complaints of "spillover" or overflow parking into the residential neighborhood.

28. The parking needs of the Applicant's students and staff persons have been adequately accommodated by the existing 3 parking spots as well as the nearby parking lot for Carter-Barron Amphitheatre.

Applicant's addition of four staff persons

29. The Applicant's parking needs will not change significantly with the addition of 4 staff persons.

30. The Applicant's existing 3 parking spaces and the Carter-Barron parking spaces are more than sufficient to accommodate the parking needs of an additional 4 staff persons.

31. Modification of the previous Order to allow an additional 4 staff persons will not change the material facts upon which the Board made its earlier decisions.

Term of the Special Exception and Variance

32. The Applicant applied for, and the ANC, OP, and three neighbors supported, a special exception and a variance for a term of 5 years. At least one of the neighbors strongly

preferred a 5-year term due in part to such neighbor's concern that the school might suffer a change in administration or ownership during the course of a longer term.

33. The Board's initial Order No. 13985 in 1983 was limited to a period of 5 years in order to assess the impact that the school would have on the neighborhood.

34. The initial concerns supporting a limitation to 5 years have not been realized.

35. A 10-year special exception and variance would reduce the burden on both the Board and the Applicant of more frequent applications for renewal.

36. There was no evidence of adverse impacts caused by the Applicant in the past, and a 5-year term is not necessary to mitigate any potential future adverse impacts.

CONCLUSIONS OF LAW

The Applicant Qualifies for a 10-Year Special Exception

The Board is authorized to grant a special exception where, in its judgment, the special exception will be "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property." 11 DCMR § 3104.1. Certain special exceptions must also meet the conditions enumerated in the particular section pertaining to them. In this case, the Applicant had to meet the requirements of both sections 3104 and 206 of the zoning regulations.

A 10-year special exception meets the requirements of section 3104. The Applicant has proven itself to be a positive addition to its neighborhood over the past 20 years. There was no opposition to the application and no evidence of adverse impacts on neighboring properties. Provided the Applicant complies with the conditions specified in this Order, a special exception providing for an additional 4 staff persons and a 10-year term should not result in any adverse impacts on neighboring properties and is in harmony with the general purpose and intent of the zoning regulations.

The Applicant Qualifies for a 10-Year Variance

The Board is authorized under 11 DCMR 3103.2 "where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reasons of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; provided, that relief can be granted without substantial detriment to the public good and without substantially impairing the intent,

purpose, and integrity of the plan as embodied in the Zoning Regulations and Map." A 10-year variance meets the requirements of section 3103.

The Applicant has met the three prongs of the variance test. It is located on an oddly-shaped triangular lot in an R-1-B zoning district. The size, irregular shape, and amount of land occupied by the building on the lot restrict the area available for parking. Three parking spaces are provided on the lot, but to retain and protect the residential quality of the neighborhood, the Applicant is precluded by its previous Board Order from enlarging the existing on-site paved area. These factors create an insurmountable practical difficulty for the Applicant in providing the requisite on-site parking. Instead, the Applicant's faculty and students use the nearby 336-space parking lot of the Carter Barron Amphitheatre.

The combination of the 3 on-site parking spaces and the additional parking spaces at the Carter-Barron amphitheatre amply accommodate the Applicant's modest parking needs. Provided the Applicant complies with the conditions specified in this Order, a variance from the number of parking spaces required by the zoning regulations to accommodate the Applicant's permitted capacity of 65 students and 12 staff for a 10-year term should not result in any substantial detriment to the public good and should not substantially impair the intent, purpose, and integrity of the plan as embodied in the zoning regulations and map.

Great Weight

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by OP. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledging the issues and concerns of these two entities and providing an explanation of why the Board did or did not find their views persuasive. In this case, ANC 4C and OP supported the application, which called for a term of 5 years. However, the Board concludes that a 5-year term would be unnecessary to mitigate any potential adverse impacts on neighboring properties. Nor can the Board hinge either its conditions, or its term limits, on whether there is a change of ownership or school administration during a special exception's term. *See, e.g., National Black Child Development Institute, Inc. v. D.C. Board of Zoning Adjustment,* 483 A.2d 687 (D.C. 1984). The Board further concludes that a 5-year term would place an additional and unnecessary burden on both the Board and the Applicant. In granting a 10-year term, the Board concludes that "a reasonable accommodation has been made between the Applicant and the neighbors, which does not interfere with the 'legitimate interests' of the latter." *Glenbrook Road Ass'n. v. D.C. Board of Zoning Adjustment,* 605 A.2d 22, 32 (D.C. 1992).

Based on the record before the Board and for the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a special exception to continue the operation of a private school pursuant to 11 DCMR §§ 3104 and 206, and for a variance from the strict enforcement of 11 DCMR §§ 206 and 2101 pursuant to 11 DCMR § 3103. It is therefore **ORDERED** that the application be **GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS:**

1. Approval of the special exception and variance shall be for **TEN (10)** years from the date of this Order.

2. Operation of the school shall be limited to the Parkmont School, and there shall be no non-school related activities on the subject premises.

3. The number of students shall not exceed sixty-five (65) and the number of faculty/staff shall not exceed twelve (12).

4. Landscaping on the premises shall be maintained as approved in BZA Order No. 13985 and in a healthy growing condition.

5. Three parking spaces shall be provided on the site and there shall be no enlargement of the existing paved area on the site.

VOTE: **4-0-1** (Geoffrey H. Griffis, Carol J. Mitten, Ruthanne G. Miller, and John A. Mann, II, to approve; Curtis L. Etherly, Jr., not voting, not participating.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member has approved the issuance of this order.

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

FINAL DATE OF ORDER: OCT 15 2004

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN

ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO. 17209

As Director of the Office of Zoning, I hereby certify and attest that on OCT 15 2004 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

William J. Curtin III
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rsn

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