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October 5, 2004

BY HAND DELIVERY

Mr. Geoffrey H. Griffis
Zoning Commissioner
District of Columbia Office of Zoning
Suite 210 South
441 4th Street N.W.
Washington, DC 20001

Re: Parkmont School

Dear Commissioner Griffis:

Attached please find the proposed findings of fact and conclusions of law of Parkmont School in connection with Application No. 17209. By copy of this letter, Parkmont is also serving the attached on ANC 4C in accord with 11 DCMR § 3121.4.

Please contact me at the number above if you have any questions.

Sincerely,

William J Curtin III /bmg

William J. Curtin III

Enclosures

cc: Ron McClain (w/ encls.)
Christy Ross (w/ encls.)
Susan Cook (w/ encls.)
Craig Cronheim (w/ encls.)
Timothy Jones (w/ encls.)

BZA
Case No. 17209
Exhibit No. 34

Board of Zoning Adjustment
District of Columbia
CASE NO. 17209
EXHIBIT NO. 34

Application No.17209 of Parkmont School, Inc. (the "Applicant") pursuant to 11 DCMR § 3104 for a special exception to operate a private school in an R-1 district, and pursuant to 11 DCMR §§ 3103 and 206for a variance from the strict application of 11 DCMR §§ 206 and 2101.

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.

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. Although not required to do so under applicable law, 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.

OP Report OP's report indicated that the application meets the tests for special exception and variance approval, and 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.

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 #13989 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 a document 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 in faculty from 8 staff persons to 12. 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 less 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 any 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.

20. The Board credits OP's opinion that 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.

21. Modification of the previous Order will not change the material facts upon which the Board made its earlier decisions.

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 without a variance.

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 no 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 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. The Applicant reported that 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. A 5-year term is not necessary to mitigate any potential adverse impact of the zoning relief granted.

37. Neighbors with concerns regarding the Applicant's satisfaction of any conditions of its special exception or variance have recourse by way of a Complaint of Non-Compliance.

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. 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 is in harmony with the general purpose and intent of the zoning regulations and should not result in any adverse impact on neighboring properties.

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 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."

A 10-year variance meets the requirements of section 3103. The Applicant has established that 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 an providing an explanation of why the Board did or did not find their views persuasive advice under the circumstances and making specific findings and conclusions with respect to each of the ANC's issues and concerns. In this case ANC 4C and OP supported the application, which called for a period of 5 years. However, the Board has found that a 5-year term would be unnecessary to mitigate any potential adverse impact of the relief granted. Moreover, the Board has found that a 5-year term would place an additional and unnecessary burden on both the Board and Applicant that would outweigh any benefit to the Applicant's neighbors.

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 shall be for ten (10) 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.

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 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.