Government of the District of Columbia
ADVISORY NEIGHBORHOOD COMMISSION 3-D
P.O. Box 40846
Palisades Station
Washington, D.C. 20016

RECEIVED
D.C. OFFICE OF ZONING
2002 MAY 31 PM 4:58

May 30, 2002

16852

Karen Edwards
General Counsel
The Department of Consumer and Regulatory Affairs
941 N. Capitol St. NE—Suite 9400
Washington, DC 20002

Dear Ms. Edwards:

At the suggestion of the Office of Zoning, ANC3D writes to you to register a formal complaint that St. Patrick's School on Whitehaven Parkway is exceeding the cap on size of faculty and staff imposed on the school by the Board of Zoning Adjustment.

In an order issued by the BZA, dated October 17, 1990, a cap of 60 was placed on the size of faculty and staff of the school. That cap still prevails, never changed or altered in subsequent years by the BZA.

In testimony in recent weeks by school officials and representatives of District agencies before the BZA, it has become apparent that the size of faculty and staff at St. Patrick's currently exceeds 80 and may be as high as 100.

For example, under cross-examination at a BZA hearing on May 21, Peter Barrett, headmaster of St. Patrick's, stated, according to my notes, that the school had 50 full time faculty members, 15 part-time faculty members, 21 administrative staff members including full and part-time and four maintenance staff members. From those numbers, Mr. Barrett extrapolated that St. Patrick's had a "full time equivalent" of 84 persons on its faculty and staff. By his own calculations, therefore, St. Patrick's is exceeding the cap of 60 for faculty and staff imposed by the BZA.

Other testimony submitted to the BZA in recent weeks suggests the number of faculty and staff totals 100. For example, in a traffic analysis prepared for the school and submitted to BZA, Wells & Associates, in a report dated April 2, 2002, states on page 6, "There are presently 80 full-time and 20 part-time faculty and staff." That report undoubtedly drew upon figures supplied by the school. Similarly, in a report to the BZA dated April 13, 2002, Kenneth Laden, Associate Director for Planning of the D.C. Department of Transportation, stated, "St. Patrick's currently employs a total of 100 full and part-time teachers at the Whitehaven Parkway School."

BZA
Case No. 16852
Exhibit No. 286

Board of Zoning Adjustment
District of Columbia
CASE NO.16852
EXHIBIT NO.286

In attempting to avoid the obvious conclusion that it has violated the cap on faculty and staff, St. Patrick's has resorted to what we believe is legal legerdemain. In the BZA hearing on May 21, Allison Prince, the lawyer representing St. Patrick's, argued rather vociferously that there was no longer a BZA cap on the size of the faculty at the school, just on the size of the staff. Her argument was that in its 1990 Order #15374, the BZA talked only about a cap on "Staff," thereby excluding the faculty from any cap except that imposed by availability of parking spaces. The argument is a specious one, avoiding the regulatory history of "caps" imposed on St. Patrick's in the past 19 years. As elaborated upon in the attached memo, starting in 1983, BZA has used the term "faculty and staff" in establishing caps for the school. In 1983, BZA Order # 14009 stated, "The total number of 'faculty and staff' ...shall not exceed 48." In 1990, when the school was seeking another expansion, the school application stated that, "The number of 'faculty and staff' will not exceed 60." That statement was reinforced in oral testimony by Ms. Prince who said, "St. Patrick's is also seeking an increase to an absolute maximum 'staff and faculty' of 60."

In its order of Oct. 17, 1990 granting a special exception to the school, there are several references to "faculty and staff" and "staff" in a way that suggests BZA was using the two terms interchangeably. So it is understandable that in the final conditions of its order, the BZA should state that the number of the 'staff' shall not exceed 60, while it is clear from the record that its intent was that number should include both faculty and staff.

To argue otherwise, as does Ms. Prince on behalf of the school, is to ignore the intent of the applications and the oral testimony of the school that the cap should apply to both faculty and staff. We believe that the BZA was using the term "staff" in its broad context to include faculty, and therefore that St. Patrick's currently is exceeding the cap of 60 on faculty and staff imposed in the 1990 order.

We request that you examine whether St. Patrick's is violating a condition laid down by the BZA in establishing the maximum permissible size of its faculty and staff and report back to ANC3D on your findings.

Sincerely yours,

John W. Finney

John W. Finney
Chair, ANC3D

Cc:
Jerrily Kress, FAIA
Director, Office of Zoning
441 4th St. NW
Suite 210 South
Washington, DC 20001

HISTORY OF BZA ACTIONS REGARDING FACULTY AND STAFF CAPS AT ST. PATRICK'S SCHOOL

Background

St. Patrick's School in Washington DC, has been under caps for "faculty and staff" for a number of years. The citations below illustrate that in 1983, the BZA used the term "faculty and staff" to establish caps for the school. In 1990, St. Patrick's Statement of Application signed, by among other representatives for the School, Allison Prince, used the term "faculty and staff" and "staff" interchangeably. Oral testimony at the 1990 BZA hearing further identifies the use of "faculty and staff" and "staff " to mean the same thing. However, in 1999, in oral testimony associated with BZA Order 16517, Ms. Allison Prince, representing St. Patrick's School, noted that the school was not under a "faculty" cap, but only a "staff" cap.

A review of the record will show that the term "staff" as used in the 1990 BZA Order is equivalent to "faculty and staff" and is consistent with the earlier 1983 BZA Order that used the terminology of "faculty and staff" to place caps on St. Patrick's employees.

The issue is key because St. Patrick's has relied on its 1999 interpretation of only having a "staff" cap-- but not a "faculty" cap, to explain why the school is not exceeding the 1990 cap of 60. The current number of full time and part time employees is about 100--well over the 60 limitation imposed in 1990.

Citations

BZA Order 14009 granted December 23, 1983 regarding St. Patrick's School contained Condition 3 that read: "The total number of "faculty and staff" for both facilities shall not exceed forty eight."

St. Patrick's Statement of the Applicant under BZA Application No. 15374 in 1990 regarding another expansion of the school at Whitehaven Parkway (page 6) notes "With the proposed increase in "staff" to a maximum of 60, a total of 40 parking places will be required..." The same Statement of Applicant (bottom of page 4 carried over to the top of page 5) noted "The number of "faculty and staff" will not exceed 60." This Statement of Applicant was signed by among others, Allison Prince acting as counsel for St. Patrick's on October 3, 1990.

In the Oral Transcript for the BZA Hearing on Application 15374 in 1990 (page 53) Ms. Prince says "St. Patrick's is also seeking an increase to an absolute maximum "staff and faculty of 60. The hearing notice reflects 61, but 60 is actually all that is needed."

In the Order issued by the BZA dated October 17,1990 granting special exception to the school, there are several references that tie the concept of "faculty and staff" and "staff." The Summary Order notes (page 1) the change in numbers from 61 to 60 requested by the school (see above) and uses the term "staff" in the following quote. "At the public

hearing, the applicant [St. Patrick's] amended the application for a maximum number of students of 440 and 60 "staff." Condition 2 of BZA Order 15374 notes " The number of students shall not exceed 440. The number of "staff" shall not exceed 60. The 1990 BZA Order contains the most recent conditions of the cap for St. Patrick's.

In oral testimony associated with BZA Order 16517 in 1999, another St. Patrick's expansion of the same school on Whitehaven Parkway, Ms. Prince testified (page 441) "One thing I wanted to explain briefly was that currently...there is a maximum permitted "staff" number of 60, and because of the specifics of the earlier orders governing the property, there is no "faculty" cap. You're probably more used to seeing a "faculty" cap. We only have a "staff" cap. As noted above, it is this interpretation that the St. Patrick's is following as its explanation as to why it is not over its cap at the school.

Of additional interest is that the Office of Public Works in its review of Application 15374 in October of 1990 indicated "The number of "faculty and staff" will likewise increase to 60 from the 51 persons on the "staff "now." The Office of Planning review dated October 10, 1990 likewise uses the term "faculty and staff" and "staff" interchangeably in the following passages. Under the Application section the OP notes the school will increase an existing private school from 51 to 60 "staff". On page 2 of the same OP review under Applicants Proposal section, it states: "In addition, the applicant is proposing to increase the "faculty and staff" from the existing total of 51 to no more than 60 persons." On page 4, the OP report notes " the number of 'faculty and staff" would not exceed 60." Page 5 of the same OP report notes "With the proposed increase in "staff" to a maximum of 60, a total of 40 parking spaces would be required..."