NEIGHBORS UNITED
4911 Ashby Street, N.W.
Washington, DC 20007

July 11, 2002

D.C. OFFICE OF ZONING
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Mr. Geoffrey H. Griffis
Chairman
Board of Zoning Adjustment
441 4th Street, N.W.
Suite 410
Washington, DC 20001

Re: BZA Case No. 16852
St. Patrick's School/4925 MacArthur Blvd., N.W.

Dear Chairman Griffis and Members of the Board:

We would like to clarify a point of law raised at the July 9, 2002, continuation hearing on this matter, and provide documentation in which the Board expressed an interest.

The Applicant's sound acoustics expert, Mr. Scott Harvey of Polysonics Corp., in his April 16, 2002, testimony, said, see pages 295 and 296 of the transcript, "There is a D.C. noise code that's applicable for receiving properties when noises are generated on a property and received by a second property, but the unamplified human voice is exempt in all cases from that code, which implies that school zoning or school use is inherently acceptable for a residential area. So to clarify that these voices are not breaking any laws or codes, according to the District." In his summation (at page 303), he repeated, "[t]he human voice is exempt from the restrictions."

In Mr. Harvey's report, dated May 3, 2002, and submitted to the Board, the first point in his summary cover sheet is "According to the District of Columbia Municipal Regulations, the unamplified human voice is exempt from any noise code." On page 2 of the report itself, he identified DCMR Title 20, §2704, "Exemptions, Miscellaneous", and specifically section 2704.8, which reads, "The unamplified human shall be exempt at all times." And again, he interpreted this exemption to mean that student voices would be inherently compatible with residential zoning.

On July 9, 2002, in his cross-examination, Mr. Harvey once again referred to the District's noise code as exempting the unamplified human voice (transcript not yet available).

BZA
Case No. 16852
Exhibit No. 299

Board of Zoning Adjustment
District of Columbia
CASE NO.16852
EXHIBIT NO.299

Section 2704 is a part of Chapter 27, "Noise Control". In Section 2700, "General Provisions", §2700.3 provides that "[c]ertain noise-producing activities are subject to limitation other than the general decibel limitations pursuant to §2701. The activities set forth in ... [§]2704 ... are subject to the noise disturbance standard or other specific limitations and include, among others, ...unamplified speech... All other noise-producing activities are subject to the general decibel limitations set forth in §2701 and §2810." (See enclosure, page 27-1, DCMR.)

In other words, the unamplified human voice is not exempt from the District's noise regulations, only from the particular regulations set out in §2701, because it is one of the noise-producing activities that is subject to other limitations.

This is repeated by §2704.1, the lead-in provision for the §2704 exemptions list, which specifically reminds us that these activities are only exempt from §2701 and enforcement may be taken pursuant to other provisions in Chapters 27 and 28. (See enclosure, page 27-6, DCMR.)

In Chapter 28, "Maximum Noise Levels", Section 2800 applies to "Musical Instruments, Loudspeakers, Amplifiers, and Unamplified Voices". Section 2800.2 provides that" [i]t shall be unlawful for any person to make, continue, or cause to be made any noise disturbance by the .... unamplified voice, for the production ... of sound on private property or public space." Furthermore, §2800.4 states that "[s]ounds shall not project outside a place of business at a level that exceeds (60) dB(A) at a distance of not less than one (1) meter from outside the business establishment..." (See enclosure, page 28-1, DCMR.)

Thus, the unamplified voices of the students may not lawfully rise to the level of a "noise disturbance", which is undefined and therefore fits nicely as part of the analysis of noises emanating from the proposed school that may reasonably be determined "likely to become objectionable to adjoining and nearby property" under §206.2; but the maximum legal level would appear to be 60 dB(A) measured from one meter beyond the outdoor areas, which the school is treating as part of its usable space, the school being non-profit but still a business establishment.

We believe that, as an experienced zoning lawyer and an officer of the court, St. Patrick's counsel should either not have allowed such testimony or at least have brought to the attention of the Board and the other parties the obvious inaccuracy of Mr. Harvey's statements regarding D.C. noise laws' inapplicability to voices.

Sincerely yours,

Nancy L. Feldman, Trustee

Enclosures

CHAPTER 27 NOISE CONTROL

Secs.

2700 General Provisions
2701 Maximum Sound Levels
2702 Exemptions: Pre-Existing Sources
2703 Exemptions: Vehicles Using Only Rails and Tracks
2704 Exemptions: Miscellaneous
2705 Variances and Temporary Exemptions
2706 Variance Procedures
2707 Temporary Exemption Procedures
2708-2709 [Reserved]
2710 Notice of Violations
2711 Emergency Procedures
2712 Interference with Measurement
2713 Enforcement; Penalties
2714 Civil Enforcement
2799 Definitions

2700 GENERAL PROVISIONS

2700.1 It is the declared public policy of the District that every person is entitled to ambient noise levels that are not detrimental to life to life, health, and enjoyment of his or her property. It is hereby declared that excessive or unnecessary noises within the District are a menace to the welfare and prosperity of the residents and businesses of the District. It is the declared public policy of the District to reduce the ambient noise level in the District to promote public health, safety, welfare, and the peace and quiet of the inhabitants of the District, and to facilitate the enjoyment of the natural attraction of the District.

2700.2 It is the intent of the Council of the District of Columbia that D.C. Law 2-53 (the "Act") be liberally construed to carry out its general purpose.

2700.3 Certain noise-producing activities are subject to limitations other than the general decibel limitations pursuant to §2701. The activities set forth in §§2702 through 2704, and §§2800 through 2807 are subject to the noise disturbance standard or other specific limitations and include, among others, the use of musical instruments, loud speakers, amplifiers, or unamplified speech, construction (which is subject to specific decibel limitations), and use of vehicle-mounted loud speakers or amplifiers (which are subject to the noise disturbance standard during permitted hours). All other noise-producing activities are subject to the general decibel limitations set forth in §§2701 and 2810.

2700.4 The agency that administers the noise control program shall conduct programs of public education regarding the following:

2703.4 In taking a measurement pursuant to §2703.3, the slow meter response of the sound level meter shall be used, and the measurement shall be taken approximately five feet (5 ft.) above grade.

SOURCE: Section 5 of the District of Columbia Noise Control Act of 1977, D.C. Law 2-53, 24 DCR 5293, 5305 (December 30, 1977).

2704 EXEMPTIONS: MISCELLANEOUS

2704.1 Sounds emanating from the sources covered in this section shall, to the extent indicated, be exempt from the specific noise limitations contained in §2701 of this chapter; Provided, that no exemption shall preclude enforcement under any other section of Chapters 27 and 28 of this subtitle.

2704.2 Individual pieces of construction equipment shall be exempt at all times. They shall be operated so as to comply with the noise limits established in §2802 of this subtitle.

2704.3 Noise of safety signals, emergency pressure relief valves, and warning or alarm devices shall be exempt (including horns when necessary as a danger warning); Provided, that no person knowingly shall permit a noise to be made or to continue beyond that necessary for the emergency safety purpose, or necessary testing.

2704.4 Noise resulting from any authorized emergency vehicle, when responding to an emergency call or acting in a time of emergency, shall be exempt; Provided, that this subsection shall not be construed to permit law enforcement, ambulance, fire, or other emergency or official personnel to make excessive noise in the performance of their duties when the noise clearly is unnecessary.

2704.5 Noise resulting from emergency work shall be exempt at all times.

2704.6 The use or operation of portable power tools, home snow removal equipment, power garden excluding leaf blowers devices, and other powered equipment for minor repairs or minor improvements of real or personal residential property shall be exempt on weekdays (excluding Saturdays) during the daytime and from 9:00 a.m. to 9:00 p.m. on Saturdays, Sundays, and legal holidays.

2704.7 Motor vehicles and motorcycles shall be exempt at all times. They shall be properly maintained and operated so as to comply with the noise limits established in Chapter 28 of this subtitle.

2704.8 The unamplified voice shall be exempt at all times.

2704.9 Noise resulting from the use of bull-horn amplifiers, permanently installed public address systems, whistles, or other devices, by personnel of the District government, the U.S. government, or other public agencies acting in their official capacities shall be exempt.

2704.10 Church bells or music connected with worship or official church ceremonies shall be exempt.

CHAPTER 28 MAXIMUM NOISE LEVELS

Sec.

2800 Musical Instruments, Loudspeakers, Amplifiers, and Unamplified Voices
2801 Mechanical Equipment
2802 Construction
2803 Construction in Residential Zones
2804 Explosives
2805 Hawkers, Peddlers, and Vendors
2806 Trash Collection in and Adjacent to Residential Zones
2807 Vehicle-Mounted Loud Speakers
2808 Leaf Blowers
2809 [Reserved]
2810 New Motor Vehicles
2811 Operational Limits for Motor Vehicles
2812 Alteration of Motor Vehicle Exhaust System
2813 Motor Vehicle Inspection
2899 Definitions

2800 MUSICAL INSTRUMENTS, LOUDSPEAKERS, AMPLIFIERS, AND UNAMPLIFIED VOICES

2800.1 Noise resulting from the musical instruments, loudspeakers, amplifiers, and unamplified voices shall not exceed the maximum noise levels contained in this section.

2800 .2 It shall be unlawful for any person to make, continue, or cause to be made or continued any noise disturbance by the operation, use, or playing of any musical instrument or device, loud speaker, sound amplifier, or other similar device, unamplified voice, for the production or reproduction of sound on private property or public space.

2800.32 Parades and public gatherings conducted pursuant to a permit issued by the Metropolitan Police Department (as provided for in 24 DCMR, Chapter 7) shall be exempt from the noise disturbance limitation.

2800.4 Sounds shall not project outside a place of business at a level that exceeds sixty (60) dB(A) at a distance of not less than one (1) meter from outside the business establishment. Nothing in the Act shall be construed to prohibit the use of musical instruments, amplifiers, or stereo equipment for the sole enjoyment of the listener; Provided, that the sound does not exceed sixty (60) dB(A) or the applicable noise level for the zone from which the sound emanates at a distance of one (1) meter from the source.

2800.5 It shall be unlawful for any person to make, continue or cause to be made or continued any noise disturbance as that term is defined in 20 DCMR §2799 created by the operation or use of a loud speaker, sound amplifier, radio, or

NANCY L. FELDMAN
Attorney at Law

2200 Wilson Boulevard, Suite 800
Arlington, Virginia 22201

703-528-9399
voicemail 202-965-0654
fax 703-525-2489/202-333-8749

nlfeldmanlaw@earthlink.net
www.lawyers.com/nancyfeldman

FAX MACHINE TRANSMITTAL PAGE

TO: BZA / Zoning Office

ATTENTION: Jerrily Kress, Director

PHONE NUMBER:

FAX NUMBER: 202-727-6072

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COMMENTS: Re: St. Patrick's/4925 MacArthur Blvd
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing letter and enclosures were sent by first-class mail this 11th day of July, 2002, to the following parties:

Allison C. Prince, Esq.
Shaw Pittman
2300 N Street, N.W.
Washington, DC 20037

Peter Barrett
St. Patrick's Episcopal School
4700 Whitehaven Parkway, N.W.
Washington, DC 20007

Lawrence Skrivseth
4913 MacArthur Blvd., N.W.
Washington, DC 20007

Michael Lovendusky
4927 MacArthur Blvd, N.W.
Washington, DC 20007

John Finney
Chair, ANC 3D
5725 Watson Street, N.W.
Washington, DC 20016

Ken Laden
Associate Director, DDOT
2000 14th Street, N.W., 7th Floor
Washington, DC 2009

Maxine Brown Roberts
Office of Planning
801 N. Capitol Street, N.E. ,4th Floor
Washington, DC 20002

Nancy L. Feldman

Nancy L. Feldman, Trustee
Neighbors United