Oct. 2002

Statement of John W. Finney, Chair of ANC3D submitted to BZA re St. Patrick's application for a special exemption to establish a junior high school at 4925 MacArthur Boulevard (BZA case #16852)

I hope you had a chance to read the letter from ANC3D. As you will note, ANC3D voted *unanimously, 5-0, against granting a special exception to* St. Patrick"s school. the reasons are spelled out in the letter, but rather than reading the letter, Iccccccccccccp will summarize ANC3D's case.

Let me emphasize at the outset, it was an extremely difficult case for our ANC3D because by its very nature St. Patrick's request raised some complex socioeconomic questions about private versus public education, about the fiscal desirability of letting residential property be exempt from district taxes, and about the sanctity of a residential neighborhood versus private school education of some of our young.

Rather than try to resolve such issues beyond its ken, the commission chose to focus it deliberations on whether St. Patrick's new school would meet the requirements of zoning regulations in proposing to establish a school in a residentially zoned area. Thus, just as I *presume you will do*, we sought to judge St. Patrick's request against the standards and requirements set forth in zoning regulations 200, 206 and 3018 in Title 11 of D.C. Code.

After long and careful deliberation, the commission came to the conclusion that the location of a private junior high school in a residential neighborhood would not be in harmony with the purpose of section 200 which states the purpose of R-1 zoning is "to protect quiet residential areas now developed with one-family detached dwellings" and "to stabilize the residential areas and to promote a suitable environment for family life."

Let me say at the outset that I agree with Mr. Barrett that St. Patrick's is a good school and he has reason to be proud of what he has accomplished as headmaster. But whether St. Patrick's is a good school is not the question before us. The question is whether St. Patrick's should be permitted to expand into an established, closely knit, middle class residential neighborhood and by its very presence change the character of that neighborhood. ANC3D answered that question with an emphatic NO for this location. I want to emphasize that the ANC3D is not opposed to expansion of St. Patrick's at another *location more contiguous to its existing campus.* We believe that such an option exists for the school.

To appreciate the adverse impact the proposed school would have upon the neighborhood, one has to look at the homes in the residential square where the school would be located. There are 33 homes within 200 feet of the proposed school site. The two closest homes are less than four feet and about 11 feet from the proposed school site. It is a quiet residential neighborhood where most residents have lived for more than 20 years, raised their children and now settled into the rewards of retirement.

BZA
Case No. 16852
Exhibit No. 320
Board of Zoning Adjustment
District of Columbia
CASE NO.16852
EXHIBIT NO.320

Into this residential haven would be imposed a private school with at least 60 students and a dozen or more faculty. In effect the daytime population of the residential square would be doubled, and the noise and bustle of teen-age children in their most vocal phase of pubescence would erode the calm and tranquillity of the neighborhood. Gone would be the privacy of adjoining homes. Seriously eroded would be the residential quality of life that attracted residents to the area in the first place. And with a school in their midst, many residents fear the value of their property would diminish.

Contrary to the impression left by Ms. Prinz and Mr. Barrett, this would not be a school designed to serve the Palisades neighborhood. Only a few of the current students at the school come from the Palisades neighborhood along MacArthur Boulevard. Rather, the stated objective is not a community school but a school that would be part of a grander plan to establish a co-ed Episcopal School located in the city and serving the city of Washington and the goals of the Washington diocese of the Episcopal Church. As such it is misleading to describe this new junior high for the privileged as a community school that will help preserve the urban village of the Palisades, as Ms. Prinze did argue before you. It is not intended to serve the Palisades or the children of the Palisades. It is intended to serve an affluent class that lives in Northwest Washington, Montgomery County and nearby Virginia. The current enrollment is indicative: 62 percent of the students come from the District of Columbia, 28 percent from Maryland and 10 percent from Virginia..

It should be noted that the St. Patrick's proposal represents the first time in the Palisades neighborhood that a private school of such size and intensity of use has attempted to locate in the middle of a residential neighborhood. In the past such schools have been located on the fringes of residential areas or in commercial zones. The case, therefore, assumes precedent-setting proportions in weighing the desire of a private school to expand against the desires of nearby and adjoining residents to preserve the residential nature of their neighborhood.

The commission also concluded that St. Patrick's proposal would not meet the individual conditions set forth in section 206.2. As the Board members know, section 206.2 specifies that a "Private school shall be so located so that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students or otherwise objectionable conditions."

You have and are going to hear a lot of noise about noise. To listen to the proctors of St. Patrick's , their children are so well trained that they will talk in soft, dulcet tones when released from class to play on the meager playground. Of course those children will be noisy. That is in the very nature of children entering teenhood. And their shouts, shrieks, and croaks of changing voices will undoubtedly carry to nearby houses, disturbing the tranquility of the neighborhood. Even the Planning Office, in its somewhat contradictory report to you, seems to concede the noise will be bothersome. Why else did it recommend against summer school but to give the nearby residents a respite from the noise during

summer time. As we all know, our wonderful fall and spring seasons also are times to enjoy our backyards, to gather with our neighbors, to tend our gardens. So if summer school is precluded because of objectionable noise to residents trying to enjoy the privacy of their backyards, then the same logic applies to spring and fall.

Now I appreciate that St. Patrick's hired Polysonics to do an acoustical study measuring the sound of 7th graders at play at the proposed school site. Its logarithmic conclusion was that the sound of the students would be masked by the background noise of traffic on MacArthur Boulevard and airplanes overhead. Oh, it did concede that occupants of two contiguous houses would be aware of the student noise, as if only two was an acceptable number. But given the underlying principle of the Fourth Amendment that ever man's house is his castle, even two is too many. Now it has been a long time since I studied logarithms, so I was bewildered and incredulous when Mr. Harvey explained to us that 70 decibels of MacArthurBoulevard/airplane noise when added to 70 decibels of noise from the students only adds up to a three decibel increase in the noise level in the neighborhood. So I did some of my own experiments into whether the ambient noise of MacArthur Boulevard masks out human voices in adjoining yards. As an experiment, I sat right in the middle of MacArthur Boulevard in a median strip I take care of, and I could clearly hear my wife's voice when from the front porch, perhaps 200 feet away, she called me to lunch. I thought maybe hunger had added to my aural acuity. So I did another experiment. I sat on the front porch of my house, which is next to MacArthur Boulevard, and I could clearly hear the voices of children at play some 300 feet across and Watson Street. And some of those children, I should add, are headed for St. Patrick's school. I don't remember logarithms, but I do remember QED from geometry.

Let me turn to the impact of school-generated traffic upon the neighborhood. To its credit, St. Patrick's has proposed a shuttle bus system to take students to the proposed MacArthur campus and finally is talking about car pooling. That's quite a change in attitude on the part of Foxhall. For years, Ann Heuer, a veteran member of our ANC who has St. Patrick's in her District, told me in a conversation on July 5 that she kept pressing Mr. Barrett to do something about the traffic that was clogging up Whitehaven and spilling over onto Foxhall. She said Mr. Barrett kept replying that "we have done all we can." When she suggested more car pooling, she said Mr. Barrett responded "carpooling doesn't seem to work." "It was like talking to a dead wall," Mrs. Heuer related. But the school's attitude about traffic and carpooling changed abruptly when it decided it wanted to establish a junior high school and had to go to the BZA for permission. It was as if the school had had an epiphanous experience. Do you wonder that our ANC is skeptical about the longterm commitment of St. Patrick's to carpooling and clearing up the traffic mess on Whitehaven that has become virtually its private road at two times of the day?

On the car pooling, it's about time the school acted, for there is a terrible traffic mess every morning and mid-afternoon on Whitehaven, spilling over onto Foxhall, as

parents or nannies come to pick up students on an individual basis. It says something about the school's attitude toward parents and the neighborhood that it has let this situation persist until it was forced to a car pooling decision by a desire to get BZA approval for its expansion plans. On the shuttle bus arrangement, the commission is skeptical it will work as presented. Interestingly, the same skepticism is reflected in the report to you from the Planning Office. Human nature being what it is, we believe that over time, some parents will try to avoid the inconvenience and added time of getting their children to the queue at the top of Whitehaven and will drop their children off at or near the MacArthur campus. And how is St. Patrick's going to know? It sounds as if it plans a military roll call every morning on students taking the bus. And how is it going to enforce use of the shuttle busses? It says it is going to force parents to sign a contract to use the shuttle bus and will expel the student whose parents are found to be sneaking their children directly to the MacArthur campus. It all sounds so authoritarian as to be unworkable and unacceptable to the parents. It is hard to believe that the school is going to expel the student of a tuition-paying, potential gift-making parent. My own experience with the Headmaster of a Episcopalian School is that he was very reluctant to expel a student if the parents were wealthy and likely to contribute generously to the school's endowment if the student was permitted to remain in school. And if St. Patrick's does expel students because parents did not conform to the contract, the word is going to go out to parents thinking about enrolling their children in the new middle school that St. Patrick's may preach but not practice the concept of forgiveness.

And even if the shuttle system works, how about the additional traffic generated by parents driving to drop off or pick up their children. To reach the top of Whitehaven, some of those parents are going to have to drive through the residential streets of the Palisades, including Ashby. Traffic generated byprivate schools has become a major problem for Palisades residents seeking to drivedowntown during the morning drop off period or return from downtown or Virginia during afternoon pickup time. MacArthur Boulevard has become so clogged that some residents now take the back way, scooting over to Garfield, using such streets as Ashby, to bypass MacArthur.

We in the Palisades have been subjected to what Mayor Williams, in a recent letter to ANC's in Ward 3 , described as "a tremendous expansion" of academic institutions. We now have seven private schools–St. Patrick's on Whitehaven, Lab School, Georgetown Day, Field School, River School, Rock Creek International, Our Lady of Victory–plus a college campus at Mount Vernon–all located within about a half mile of the proposed MacArthur site. Permit me to point you to a map, which is part of the record, showing the location of these schools. You will see that just as we established a diplomatic enclave on Connecticut Avenue on the grounds of the former Bureau of Standards, The Palisades is being inundated by private schools and is well on its way to becoming an academic enclave for a separate school system for the affluent. And to this expanding enclave, St. Patrick's wants

to add an eighth school– a middle school located right in the midst of residential Palisades. I sometimes feel our urban village is being turned into an academic camping ground occupied daily by hundreds of students from around the region, so numerous they begin to rival the number of residents in their vicinity. Every academic day, about 5000 students and faculty and staff enter and leave the Palisades precincts of ANC3D. And to that daily onslaught, St. Patrick's would like to add another 72 in students and staff.

Let me now turn to another criteria in Section 206, namely number of students in the proposed junior high. By its very number, the commission believes that a student body of 60 students is likely to create "objectionable conditions" for the neighborhood. In reaching that conclusion, the commission drew heavily upon the precedent set by the BZA in a 1962 case involving the proposed expansion of a student body from 25 to 75 in the same building that St. Patrick's would occupy. In denying that German School Society permission to expand the student body to 75, the Board said the expansion "would result in conditions objectionable to the adjoining and nearby property because of noise, traffic and number of students." Further, the Board said it was of the opinion that the granting of the exception would not be in harmony with the general purpose and intent of zoning regulations and would tend to adversely affect the use of neighboring property.

The Board also noted in that case that considerable opposition to granting of the request was registered at the public hearing. Again in this case, there is considerable opposition from nearby residents, as you will hear. In its deliberations, ANC3D was greatly impressed by the fact that 31 of the 33 homes within 200 feet of the proposed school signed a petition opposing the school.

If in the Board's opinion in 1962, 75 students would result in objectionable conditions, then it would follow that nearly the same number of 60 proposed by St. Patrick's is likely to create objectionable conditions in 2002 and into the future.

St. Patrick's would have you believe that it was just picking up the lease of the Washington Psychoanalytic Institute and Society in continuing the tax-exempt, educational use of the property. Indeed Ms. Prinz was so bold to argue that St. Patrick's really did not have to come to the BZA for permission and that it was just doing the BZA and the community a favor by asking for a special exception. Such a self-serving argument collapses of its own arrogance if you read the BZA's 1963 decision
permitting the Washington Psychoanalytic Institute and Society to use the same building for a post-graduate school for psychiatrists in the Washington area. The Board said then it was of the opinion that in view of the limited use of the property by responsible adults, it was not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students or otherwise objectionable conditions. The board also noted that there was no objection to the granting of the appeal by persons residing in the neighborhood. There is a great difference between the Psycholanalytic Institute's use of the building and that proposed by St. Patrick's. At the institute there were four or five cars parked daily in the parking lot behind the building, and a couple of times a week maybe 15

doctors attended classes there. St. Patrick's will make much more intensive, invasive use of the building five days a week with 60 students and a staff of 12 or more. And we fear that the use may spill over onto parking and traffic on narrow Ashby street. The school claims the 15-space parking area will be sufficient. We question that assertion when you consider the number of parents likely to come to the building during the day for consultations or to take a child off for personal or medical reasons. Remember, the students will be just at the age when they start orthodontic work.

You may have detected a note of skepticism about St. Patrick's. If so, you are perceptive, but there is a reason for the skepticism, born of experience. Over the years, as private schools have moved into the Palisades or expanded, they have offered promises that were not always kept. The Lab school said it would have parking for all its staff on campus. Now their staff cars are parked all over the neighborhood, including Whitehaven. The Field School said it would preserve a buffer of trees protecting adjoining residences. Down came most of the trees. I call it institutional creep, born of righteous dedication. It is not because the schools have evil intent, to use an adjective that has entered weekday use. To the contrary, it because they think they are doing good and in their resulting self-righteousness, the end justifies the means.

Let me take specific cases of institutional creep on the part of St. Patrick's. In 1999, Mr. Barrett, in seeking approval for expansion of the Whitehaven campus, told this board and ANC3D that there would be no additional students, no additional teachers, no additional cars, no additional grades. Now it has gone back on that pledge and proposes to establish two additional grades. We all have the right to change our minds, but in doing so, we have an obligation to consult with those who relied on our pledge. That St. Patrick's did not do. It established a seventh and now an eighth grade in a leased space in a commercially zoned building without consulting with either the ANC or the BZA whether the additional students would conform with the caps and conditions in the 1999 BZA order.

I believe that in the interim the staff at the Whitehaven campus has expanded from 60 to around 100, which would raise a serious question as to whether St. Patrick's is complying with the BZA cap on staff and faculty of 60. And there certainly have been additional cars, as demonstrated by the school's creation of a new parking lot on the east side of the Church. That parking lot is an almost humorous example of institutional creep. The parking lot is on land owned by the Army Engineers. Originally, I believe, it was used as a nursery school playground, but then in 1999 Mr. Barrett told this board that the - playground had been moved to behind the church and the land would "remain green space." It didn't remain green for long. To accommodate all the additional cars of the expanded staff as well as visitors, the school paved over the green space. But it failed to inform or get the permission of the owners of the land–the Army engineers. Or another example of its impetuous ways born of self-righteousness: It constructed a driveway into its new gym without the issuance of the permit it knew was required from the Office of Public Space. Small matter, except it reflects an attitude.

That brings us to the question of enforcement of the many provisions of any BZA order permitting St. Patrick's to establish a middle school at the MacArthur site. Permit me to say there has been a serious disconnect between your orders, your conditions and their enforcement. After many frustrating cases, many frustrating hours, I had concluded that as constituted, when I first wrote this statement many months ago, the enforcement of BZA orders and the zoning code was a charade, a facade in front of a bottomless pit into which complaints are thrown, never to be seen again. Again, I do not think it is evil intent. I think it is a case of an understaffed, lethargic bureaucracy which would rather not hear of or find violations. In a way the zoning office has recognized the lack of enforcement by establishing the position of a compliance specialist in the Office of Zoning. The intent is commendable, but how do you expect one compliance specialist to monitor observance of all your orders with all their conditions? Why in this case alone, I bet you could wind up with 15 or more conditions as you try to fit a square school into a residential circle.

I very much appreciate and applaud the efforts of the Zoning Office to find ways to ensure observance of the conditions laid down by the Board. There is a new attitude in the Zoning Office, signaled by the whistle blown by Jerrily Kress when the Field School attempted to do a end run around this Board in obtaining a certificate of occupancy. But we out there in the neighborhoods are still faced with problem that enforcement of the conditions still rests with the zoning office in the Department of Consumer and Regulatory Affairs with but two inspectors for the whole city. Need I say any more?

Let me say parenthetically at this point that I caution you against accepting without question the reports you received from the Planning Office and the Department of Transportation. They were drafted after extensive consultation with the school but with little or no consultation in the case of the Office of Planning with the ANC. I would suggest, therefore, that they are basically one-sided reports, tilted toward the school.

The Planning Office and the Department of Transportation have proposed the school submit an annual compliance report to the newly created office of Compliance Specialist in the Office of Zoning. They also propose the creation of a Community Liaison Group that would meet twice a year with the school. Contrary to the impression created in the hearing on July 2, the idea of a community liaison group is not some new inspiration that is going to bring harmony between the school and residents and ensure observance of all your conditions. You in the past have in effect created community liaison groups by ordering a school or university to meet periodically with neighborhood groups to explain the status of their expansion plans. I suppose that such a group might help restore a modicum of trust and cooperation that is now sadly missing in our mutual relationship with St. Patrick's. But on the basis of past experience, our ANC is skeptical that such a group will work as an enforcement mechanism or that it will survive over time. Our experience with liaison groups or periodic meeting has been that responsibility is so diffused among the community groups that they do not provide an effective check on compliance by a school. The schools set the agendas and over time individual interest withers away so that few attend the meetings. In

effect, the schools become monitors of themselves–an obvious conflict of interest.

Let me give you a couple of examples of the unresponsiveness, ineffectiveness of the government enforcement system. In late May, with the approval of ANC3D and at the suggestion of the Office of Zoning I sent a letter to the General Counsel of the Department of Consumer and Regulatory Affairs, questioning whether St. Patrick's was in compliance with the ceiling or cap set by the BZA on the size of the school's faculty. Four months later, I have not received a response to my letter. St. Patrick's is not alone in its institutional creep, free-wheeling ways because of lack of enforcement of BZA orders. Take the Lab School. It gave assurances that it would provide sufficient off-street parking when it expanded. Now its cars are parked all over the adjacent neighborhood.

Board members, you can find, if you want, although I would disagree, that the school will not create objectionable noise, that it will not create objectionable traffic, that adequate parking will be provided. But you will still have to contend with the phrase of "otherwise objectionable conditions" in section 206 and the goals set forth in section 200. I would contend that the introduction of a school with 60 students and 12 faculty into an established, tightly packed middle class residential community would create "otherwise objectionable conditions," when interpreted in conjunction with goals set forth in section 200. That section, as you know well, defines the purpose of R-1 zoning "to protect quiet residential areas now developed with one family detached dwellings" and to "stabilize the residential areas and to promote a suitable environment for family life." That is a perfect description of the tightly knit community of modest homes that encompass the proposed school. Under section 200 and indeed under the common law concept, embodied in the Fourth Amendment, that a man's house is his castle protected against government intrusion, those nearby citizens have a right to protect the residential nature of their community. St. Patrick's does not have a right to establish a school there just because it bought a building or because upon graduation its sixth grade students are having difficulty finding a place in a private school.. It has the burden of proving that locating a junior high school there would not create "objectionable conditions" for the residential neighborhood.

I don't think that St. Patrick's has or can meet that burden of proof. That was the considered conclusion reached by ANC3D and I urge you to give that conclusion that "great weight" called for by law and reject St. Patrick's application to establish a private junior high school in the midst of a residential neighborhood. There are other places where it could locate the school without objection, including property down Whitehaven from its existing school. If there is any room for a mediated solution of this difficult case, it would be within the confines of Whitehaven.

I appreciate that some of the parents of St. Patrick's school are having difficulty placing their children in other private schools as they enter seventh grade. I appreciate that St. Patrick's and the Episcopal Diocese of Washington have a goal of establishing a co-ed Episcopal school from kindergarten through 12th grade in the city of Washington. I will concede under our concept of freedom of choice and separation of church and state, the Episcopal Church has a right to establish such a school. But I will not concede that to meet

the desires of parents and the goals of the Episcopal Diocese St. Patrick's has the right to plunk a junior high school right in the middle of a residential neighborhood, disturbing, indeed upsetting the lives of residents, more elderly than young, who thought their home was their castle protected by the zoning codes of the District of Columbia. I know the parents of St. Patrick's feel their children will face hardships if they can not be placed in another private school. But think of the long-term hardships, the discomforts, the loss in value of their homes faced by nearby residents if a school, not a friend, becomes their next-door neighbor. I would suggest that under the provisions of the zoning code, it is your duty to protect them against such hardships, to protect and sustain the residential nature of their neighborhood.

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