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11 October 2002

Geoffrey H. Griffis, Chairman
Board of Zoning Adjustment
Government of the District of Columbia
441 Fourth Street NW Suite 410
Washington DC 20001

RE: BZA Case No. 16852 – St. Patrick's Day School – 4925 MacArthur Blvd.

Dear Chairman Griffis:

[At the conclusion of the presentation in opposition to St. Patrick's School application for special exception on October 8, Board Member Renshaw asked me to express my extemporized summation in writing and submit it for the record. This is my attempt to recapture the remarks.]

Six days of hearings, a thousand pages of testimony, a thousand pages of documents, and a dozen witnesses, including a half dozen experts… Why, one might think this to be a complicated case. Yet the appearance of complexity is the handiwork of the Applicant, who has labored mightily to persuade the nearby and adjoining neighbors, as well as the Board, to turn off our common sense, and confuse us about both the law and the facts. But it is a simple case if we rely upon common sense, defer to the expressly applicable Regulation, and consider the irrefutable facts. By doing so, they lead directly to a straightforward conclusion that this Application should be denied.

Applicant's efforts to confuse us began in its very first submission to the Board. In its initial brief, it declared itself "entitled" to a special exception for its middle school. But St. Patrick's School is not entitled to an exception as a matter of right, because it is not a public school, and only public schools are permitted such a right. Indeed, if Applicant was *entitled* to open its school it would not be here before you today. Yet Applicant's attempt to confuse us on this legal point was instructive about the nature of its advocacy from the beginning.

More nefarious was Applicant's attempt to confuse us about the applicability of municipal noise regulations to its plans. We all remember St. Patrick's noise expert opining that no rules applied to the proposed student activity because "un-amplified human voices" were not "noise". Fortunately, the Opponents were able to inform the Board of the guidance of Chapter 28 of the municipal regulations. Chapter 28 rules clearly apply to un-amplified human voices for noise control and to the Applicant's plans for 4925 MacArthur. More disturbing than the expert's confusion, however, is the fact that counsel for the Applicant did nothing to correct their expert misstatement of law. But

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for the cross-examination, their attempted confusion of the law might have been perpetrated successfully.

Most instructive are the attempts by Applicant to confuse us about the law with regard to previous Board orders. The Board order relating to faculty and staff caps is especially illustrative. Review of historical Board orders relating to St. Patrick's is, of course, a natural thing for the Board as well at the Opponents to consider, since we can best evaluate whether Patrick's says what it means and means what it says by its historical behavior. Any objective review of the faculty and staff caps order reveals that Patrick's parses words to frustrate common sense understanding and fair interpretation. It defends its violations of the Board's faculty and staff caps order with ambiguities of its own construction.

But the most insidious attempt by Applicant to confuse us about the law is its attempt to persuade the Board to require from the Opponents a higher degree of "reasonability" for objections to the application for special exception than is actually required by the Regulations. Nowhere in Section 206 does the adjective "reasonable" appear to qualify the objections that adjoining and nearby property owners may raise to an application, and the reasons for objections are themselves enumerated with particularity as being those of "noise, traffic, number of students, or otherwise objectionable conditions." Yet Patrick's would lure the Board to apply some ambiguous, higher standard of "reasonability". Well, the 203 nearby and adjoining neighbors opposing St. Patrick's School plans for 4925 MacArthur don't flinch at this challenge, because we are eminently reasonable people. As we have shown, there are numerous good reasons to object to the application among the many irrefutable facts of the case. The fact that Applicant tries to confuse this legal standard illustrates a tactical approach to managing irrefutable facts, as I will describe in a moment.

Two fundamental facts resist all of Patrick's attempts at confusion: The site is too small for a middle school and the neighborhood is quintessentially residential in nature. From these facts arise the numerous, reasonable objections of 203 adjoining and nearby property owners. Patrick's answer to the objections is to attack the facts with plans.

Planning, planning, planning, planning. Has the Board ever seen so much planning? We have original plans and modified plans and supplemental plans and traffic plans and carpooling plans and architectural plans and drainage plans and ever so many plans. The sheer volume of plans is a tactic to frustrate the Opponents' evaluation of constantly moving targets. As the Chairman observed in his remark earlier today, the plans change like a balloon being squeezed. For example, the problem of inadequate buffers for the adjoining neighbors is addressed by modifying the plans for the parking space that, in turn, squeezes the plans for the green space. But the preservation of the green space is supposedly a reason why the neighbors should drop their opposition in the first place!

In fact, while the balloon squeeze is a useful image, the better metaphor might be that of a shell game, with the shells being St. Patrick's different school campuses. The problems of one campus are shifted to another, which in turn creates other problems to be hidden

and shifted. St. Patrick's is the only private school in the District with three campuses, and it will continue to have three campuses after relinquishing its lease at 4880 MacArthur because it intends to acquire a campus for its high school. Patrick's decentralization of school activities is another dangerous precedent that will be established should the Board grant the special exception. It will signal a green light to all private schools that they can poach in residential neighborhoods by decentralizing activities, spreading problems throughout the city.

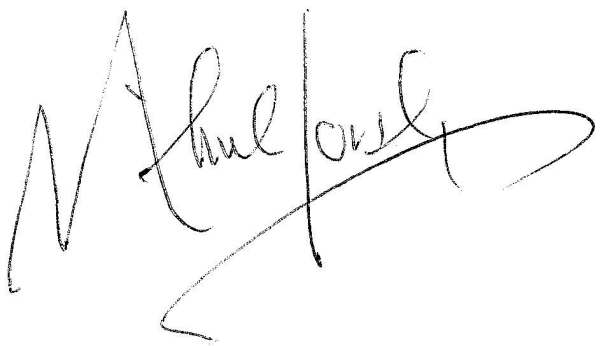
And it is here that the tactic of Patrick's arguing for a higher reasonability standard for Opponent's objections has most potential effect. By appearing to address real, factual problems with ever-shifting plans, the Applicant attempts to portray the Opponents as "unreasonable" not in consideration of the facts, but in our unwillingness to agree to the illusory plans. There is no solution to the fundamental problems of the site being too small and too residential no matter how many plans are thrown at it. Consequently, plans that cannot successfully address irrefutable, problematic facts will be unenforceable.

Again, Patrick's has plans – multiple plans – to address the objection of the unenforceability of its other plans. It will have the community enforce them! But we don't want the job, we already have jobs, and we don't live in homes to have the job of policing our neighbors. Patrick's has a fallback plan here as well: the Board will enforce the plans by hiring a special enforcement officer. But surely the Board will not scapegoat its new compliance enforcement officer with failure from the outset by sending him into the most difficult cases, those where the officer is sure to be condemned by one if not both sides. Surely the Board will choose from among its hundreds of orders those in which enforcement activity will be likely to create a record of success.

And so what remains? The answer is irrefutable, problematic Facts that condemn the Application to rejection because they give rise to reasonable, common sense objections. The site at 4925 MacArthur is too small for a school, too small for a gymnasium, too small for a basketball court, too small for a lunch room, too small for a cafeteria, too small for a nurse's station, too small for students to easily come and go. The plans for student and faculty arrival and departure are objectionable because the addition of 6,300 vehicular trips per year to a quiet residential neighborhood is, as a matter of common sense, objectionable. The plans to address the problems of noise are objectionable because they do not even attempt the maintenance of peace and quiet. Yet quiet and stability are expressly what the zoning regulations promise to residential neighborhoods.

For all these reasons the Board should reject the Application plain and simple. St. Patrick's School plans are not harmonious with residential zoning, and they will not preserve the stability and quiet of our homes and neighborhood.

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Certificate of Service

I hereby certify that on 11 October 2002, a copy of the foregoing was sent by electronic or regular mail to the following:

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