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

November 22, 2002

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

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Re: BZA Case No. 16852, St. Patrick's School/4925 MacArthur Blvd., N.W .
Proposed Findings of Fact & Conclusions of Law
Response to Post-Hearing Submission

Dear Chairman Griffis and Members of the Board:

Enclosed please find the opponents' Proposed Findings of Fact & Conclusions of Law, and Response to Post-Hearing Submission.

Sincerely yours,

Nancy L. Feldman, Trustee

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing letter and enclosures were delivered this 22th day of November, 2002, to the following parties:

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

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

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

BZA
Case No. 16852
Exhibit No. 344

Board of Zoning Adjustment
District of Columbia
CASE NO.16852
EXHIBIT NO.344

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, Trustee
Neighbors United

BOARD OF ZONING ADJUSTMENT

Application No 16852 of St. Patrick's Episcopal Day School, pursuant to 11 DCMR Section 3104, for a special exception under 11 DCMR Section 206.1 to allow a private school for a maximum of 60 students grades seven through nine in an existing building in an R-1-B Zone District at premises known as 4925 MacArthur Blvd., N.W. Washington, D.C. (Square 1393, Lot 823).

HEARING DATES: April 16, May 21, July 2, July 9, October 8, 2002

DECISION DATE: December 3, 2002

DECISION AND ORDER

After a public hearing, the Board denied the application on the grounds that the proposed private school was likely to become objectionable to adjoining and nearby property because of traffic impacts, noise, parking problems and, due to the number of students and other school-related persons as compared to the size of the property of less than half an acre, probable adverse impact upon privacy, safety, and property values of the surrounding residences.

PRELIMINARY AND PROCEDURAL MATTERS:

Applicant. The Applicant in this case is the St. Patrick's Episcopal Day School, the owner of the property; at the time of application filing this entity was the "purchaser", and the sale and transfer were subsequently completed. The applicant is represented by the law firm of Shaw Pittman. Hereafter, the term "applicant" refers to St. Patrick's Episcopal Day School.

Application. The applicant filed the application with the Board of Zoning Adjustment ("Board") on January 22, 2002, for a Special Exception under 11 DCMR §3104.1, to establish a private school in compliance with 11 DCMR §206 in an R-1-B Zone District at 4925 MacArthur Blvd., N.W. (Square 1393, Lot 823). The zoning relief requested in this application is self-certified pursuant to 11 DCMR §3113.2.

Notice of Application and Notice of Hearing. By memoranda dated January 28, 2002, the Office of Zoning advised the D.C. Office of Planning, the Zoning Administrator, Dept. of Health, DPW, the D.C. Councilmember for Ward 3 and Advisory Neighborhood Commission (ANC) 3D, the ANC for the area within which the subject property is located, of the application.

The Board scheduled a public hearing on the application for April 16, 2002. Pursuant to 11 DCMR §3113.13, the Office of Zoning, on Feb. 28, 2002, mailed notice of the hearing to the applicant, the owners of all property within 200 square feet of the subject property, and ANC 3D. Notice was also published at __DCR ____ (_____, 2002). [Affidavits and posting information.] Due to the Board's crowded agenda and the complexity of the case specifics, in particular the traffic aspects, the hearing was continued to May 21, July 2, July 9, and October 8, 2002.

Requests for Party Status. The Board granted party status collectively to 25 adjacent and nearby property owners as the Neighbors United Trust ("Neighbors United"), in opposition to the application. The Neighbors United group generally reside on or adjacent to Square 1393, where the subject property lies. Neighbors United trustees and representatives Alma H. Gates, Katherine Van Sickle Demallie and Nancy L. Feldman were granted leave to speak for the trust in the proceedings. Party status was also granted by the Board to Lawrence T. Skrivseth to represent the two abutting properties, Mr. Skrivseth and his wife Cathy M. Wright, of 4913 MacArthur Blvd., N.W., and Charles J. Houy and his wife, Sharon A. Houy, of 4922 Ashby Street, N.W., in opposition to the application. And finally, the Board granted party status to Michael Lovendusky, of 4927 MacArthur Blvd., N.W., who with his wife, Maleva Lovendusky, resides directly across from the subject property and its driveway and sight line. All of the parties in opposition were pro se. The parties in opposition met the party status criteria in 11 DCMR §3106.3, since they would be more significantly affected by traffic, noise, number of students, parking and other potentially adverse impacts related to the proposed use than other persons in the general public.

Applicant's Case. The applicant presented testimony and evidence from Katherine Bradley, Chairperson of the Board of St. Patrick's Episcopal Day School; Peter Barrett, headmaster of St. Patrick's Episcopal Day School; Martin Wells, the applicant's traffic engineer, at Wells & Associates; Scott Harvey, the applicant's sound technician, at Polysonics, Inc.; and David Konapelsky, the applicant's architect on the project, at GTM Architects. During the course of the hearing, applicant submitted a number of revised or supplemental traffic reports and site plans, and a revised noise study. The applicant did not call a structural engineer as a witness.

Office of Planning (OP) Report. OP filed its report with the BZA on April 9, 2002, with a supplemental report on April 15, 2002, and a post-hearing report on November 8, 2002. In its review of the application, OP analyzed the impact of having a junior high school in the midst of a residential neighborhood, the use of the property under prior BZA special exceptions, and it identified projected impacts and concerns regarding traffic, noise and number of students.

1. Traffic

OP acknowledged the significant neighborhood concerns regarding the drop-off and pick-up of students and the anticipated impact on the residents of MacArthur Blvd. and Ashby Street, as well as the applicant's proposed potential traffic mitigation measures, i.e. a shuttle bus service to ferry the students from St. Patrick's Day School Campus at 4700 Whitehaven Parkway to the 4925 Macarthur Blvd. site and a viable carpooling program. On page 5 of its 4/9/02 report, OP noted that the proposed shuttle plan by St. Patrick's would require logistical integration with St. Patrick's existing day school operations on Whitehaven, and while a shuttle would reduce student pick up and drop-off at 4925 MacArthur Blvd., it would shift the additional school-related traffic to Whitehaven. OP stated, "As a consequence of the children being dropped off and picked up at the Whitehaven campus, the existing traffic problems that are currently being experienced at the Whitehaven campus will be significantly exacerbated by the additional drop-off and pick ups", and advised that OP could not support this application if the problems at the Whitehaven campus were not addressed and remedied to the satisfaction of DDOT (page 5).

2. More Intense Use of Property by School - Number of Students

In its report of 4/9/02, OP noted that a private middle school at 4925 MacArthur Blvd. would be "more intense than" prior uses (page 1). OP found that although the subject property had housed educational uses for over 41 years, the character, scale, number of students and traffic impacts of the prior use were more compatible to the residences and were less intrusive than the proposed St. Patrick's use (page 4). OP acknowledged that, in prior decisions, the Board had limited the number of German students to 24, and that for many decades thereafter the property's use by the Washington Psychoanalytic Society had been restricted to adult physicians primarily on Saturday mornings, with limited night uses.

3. Noise

OP reported that noise from the school would be an issue, noting the proximity of adjoining and nearby residences that were built prior to modern zoning. It noted that the residence on the southern side of the subject property has only a 4 foot side set-back from the property line instead of 8, and there is no buffer along a property line that has a severe drop-off between the two properties (4/9/02 report, page 4). OP recognized that the school would introduce activities outside on the grassy area, and suggested that although the play would be largely limited to passive recreational activities, there was a high probability that the students could get loud at times, with toys needing to be retrieved from the neighbor's yard (page 5). OP recommended different types of fencing in different places in its report, see pp. 4, 7 and 10.

4. OP Approval Contingent on Conditions

Despite all of its concerns, OP proposed approval contingent upon a series of 17 conditions including maximum enrollment, number of faculty and staff, conditions of operation at the proposed site, establishment of a carpool program by the school and approved by DDOT, evaluation by DDOT on a yearly basis, and provision of buffering. OP subsequently revised its proposed conditions; on April 15, it recommended adding a community liaison program run by the school with participation by neighbors, civic groups and the ANC, and a one-year trial period before allowing an increase from 40 to 60 students; and on 11/8/02 it issued a revised set of conditions with a proposed permanent limit of 40 students, no neighbors in the liaison group and no described DDOT traffic plan for the school to comply with, plus a 10-year term limitation for the Special Exception.

District Department of Transportation (DDOT) Reports. DDOT filed its report with the Board on April 11, 2002. The department, in reviewing the application, recognized that it was not feasible to have individual student pick-up and drop-off at MacArthur Blvd., and therefore favored the school's plan to have commuting between the MacArthur and Whitehaven campuses, at p. 2.

However, DDOT further advised that "the current configuration at Whitehaven Parkway would likely not be able to accommodate the increased traffic volume from the new school", at p. 2. After detailing the foreseeable problems, DDOT focused upon three aspects: (1) a reversed traffic flow and lengthened queuing space; (2) removal of public parking to create an extra lane; and (3) adoption of a viable carpool plan. Other changes were also stipulated, relating to parking, striping and potential raised crosswalks and speed bumps. DDOT's support of the application was conditioned upon "full implementation" of the plan and "adherence to all conditions", see bottom of p. 2.

DDOT expressed reservations because"some of the most crucial conditions are behavioral ones that will be difficult to monitor and enforce", p. 3. These include "carpooling, stationing of off-duty officers at key locations, and restricting drop-offs at the MacArthur building", p. 3.

DDOT also recommended that parents and teachers be required to use major streets to access the MacArthur facility, without suggesting any methodology for achieving that result.

And the DDOT report went into considerable detail on the carpooling necessity, in significant part because "it will help reduce the volume of school-related traffic on public streets... At a minimum, the plan should establish as a requirement that the number of trips generated by the school not increase as a result of the increased number of students." See p. 7.

DDOT filed a supplemental report on May 10, 2002, endorsing OP's suggestion of a one-year trial period before increasing student numbers to 60, as a short-term enforcement mechanism; and the establishment of a community liaison group as a long-term solution. It also included a chart for monitoring compliance, to be self-certified by the applicant, with an annual pass/fail format for each condition.

Another supplemental report was filed on July 5, 2002. It recited the applicant's responses regarding carpool implementation, meeting AVO goals (anticipated in Sept. 2002), and clarification of financial disincentives, which, if repeated efforts failed, could be put into place in January 2003. After that, if success still eluded the program, the school would "hold conversations" with various entities to "design revised initiatives". DDOT indicated that these answers were acceptable to meet its "viable carpool plan" recommendation.

On July 2, 2002, the Associate Director of DDOT and a staffer testified at the hearing and confirmed the substance of their reports.

Metropolitan Police Department. No official report or testimony was received from the DCPD regarding the impact of the proposed school use on public safety or traffic congestion and control, although the head of traffic control, Lt. Patrick Burke, who lives in the affected area on W Street, did sign the opponents' petition in his personal capacity.

Fire and Emergency Medical Services. No official report or testimony was received from the EMS or Fire Dept. regarding the enhanced risks related to a substantial increase in occupancy levels and activity; the practical aspects of evacuating a large number of students and other persons from the various stairways, exits and driveway, even if the property were brought up to code; and potential impacts upon neighboring properties.

National Park Service. No official report or testimony was received from the NPS, even though:

1. There is a land swap proposed, to transfer NPS parkland located at Foxhall and Whitehaven to the Casey Foundation for an additional entrance to the planned mayoral residence, precisely where the applicant's proposed junior-high shuttle buses will be merging with GW/Mt. Vernon buses and cars, St. Patrick's carpoolers, personnel and other school traffic, Lab School and Our Lady of Victory school drop-offs and pick-ups, and the general public. See the appendix to the Palisades Traffic Study, put into evidence by DDOT in its 4/9/02 report; and

2. There is a serious storm-water run-off issue regarding the subject property and its impact on an abutting neighbor (4913 MacArthur Blvd.), the neighborhood arterial and the lower Palisades parkland, all of which are in NPS's purview.

ANC Report. After holding three lengthy public meetings in February, March and April 2002 on the subject, comprising applicant presentations and the expression of views by a variety of community members and discussions held by the Commissioners, ANC 3D, at a duly noticed public meeting held on April 3, 2002, voted 5 to 0 to recommend that the Board deny the application. The ANC submitted its written report to the Board on April 4, 2002, and ANC 3D Chairman John Finney testified on October 8, 2002.

Although the applicant and its supporters argued the need for more private schools in the District, especially a co-educational Episcopal middle-school alternative, and the desirability of preserving the old building as a school rather than the possibility of several new houses at the location, the ANC reported that its decision was based upon the zoning regulations at 11 §§200 and 206, and §3108 (now recodified at §3104).

The ANC noted that Section 200 describes the R-1-B district as designed to protect quiet residential areas now developed with one-family detached dwellings and adjoining vacant areas likely to be developed for those purposes and the zoning is intended to stabilize the residential areas. It reasoned that the burden of proof lay upon the applicant to show that its proposed school would be in harmony with the general purpose and intent of these zoning regulations and 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, and with ample parking space to accommodate the students, teachers and visitors likely to come by automobile (the "Section 206" conditions).

The ANC cited the character of the neighborhood, noting the exclusively single-family nature of Square 1393 surrounding the proposed school, with 33 residential properties within 200 feet of the school, and observed that in effect the proposed daytime population of the school facility would double the population of the immediate neighborhood. The ANC took into consideration that, traditionally, private schools have located on the fringes of residential areas or in commercial space, and it would be the first time, in the Palisades, that a private school attempted to locate in the middle of a residential square.

ANC 3D did not find that St. Patrick's met the conditions set forth in Section 206. The Commission was impressed with the opposing petition signed by 31 of the 33 households within 200 feet of the subject property (the other two properties being neutral), identifying them as adjoining and nearby neighbors as described in Section 206, and gave greater weight to these immediately affected neighbors than it did to the vote of the general membership of the Palisades Citizens Association covering a broad area, especially given several of the Commissioners' personal reservations regarding the conduct of that meeting.

The ANC found it probable that the noise from playtime recess and other outside activities conducted by the school would disturb the tranquility of the neighborhood. In reviewing St. Patrick's proposed traffic plan including shuttle buses to limit direct pick-up and drop-off of students at Ashby Street, the Commission concluded that the program would not likely be endurable or enforceable, as parents over time would probably decide that rather than queuing in a line at St. Patrick's Whitehaven campus, they would bring the students directly to Ashby Street. This direct drop-off would create congestion on Ashby Street as well as 49th Street and W Street, N.W., all local residential streets. ANC 3D also noted that MacArthur Blvd would be negatively affected by the shuttle bus and its stopping at the WMATA bus stop.

The ANC indicated its belief that that the number of students would likely be excessive and objectionable to the neighborhood, and cited a BZA precedent preventing an increase of young students beyond 25 at the proposed property in 1962. It further contrasted the current application, with a large number of persons to be present all day during Monday through Friday, with the prior use of the property as a center for Saturday morning classes and occasional night-time use by a group of doctors; it was noted that the classroom hours alone would be about five times the prior use. The ANC felt that under the circumstances the amount of parking space would be insufficient, leading to parking spillover onto Ashby Street and depriving residents of parking spaces by their homes.

In his oral testimony, Chairman Finney discussed the ANC findings, and explained the Commission's concern that the school by its very presence would change the character of the neighborhood. He pointed to the continued growth of St. Patrick's at its Whitehaven campus, including the unauthorized increase in number of faculty and staff and adoption of Army Corps of Engineers property for its parking lot without prior approval, and noted the deterioration of public use and access of this connecting street, characterizing it as "institutional creep" and commenting that Whitehaven Parkway had become "virtually a private road of the school two times a day".

For these reasons, ANC 3D determined that the residential quality of life of the neighborhood would be eroded and the nearby and adjoining homes would suffer negative impacts on their privacy and tranquility, were this applied-for use to be granted. The Commission found that St. Patrick's had failed to prove that the proposed school use would meet the stringent Section 206 requirements regarding objectionable conditions. Accordingly, the ANC concluded that the proposed location of the junior high would not be in harmony with the intent and purpose of the zoning regulations' protection of quiet residential areas.

In a post-hearing submission, ANC 3D Commissioner Ann Heuer submitted a letter to the Board regarding the difficulty of reliance on shuttle bus operations, citing the recent experience of Field School's violation of its required route, with bus drivers taking short-cuts through small local streets because of congestion and delays on the authorized routes.

Persons in Support of the Application. Many persons, for the most part parents of St. Patrick's students, testified in support of the application. Several of these witnesses lived in the Palisades. The supporters made very positive statements about the quality of the current school program (pre-K through sixth grade) and its personnel and operations, and what a benefit to and improvement of the Ashby Street neighborhood it would be for the residents to have such a fine organization and such nice youngsters in their midst. They also described the convenience for District families of having a co-educational Episcopal junior high school in town rather than commuting to the suburbs, and many of them suggested that the neighbors were being selfish and unreasonable in trying to deprive families of this option. They assured the Board that the carpool plan was workable and enforceable despite its past record of failure, and that the school would live up to all of its assurances and any conditions imposed. The Board also received letters, many of them form letters from St. Patrick's church members and school parents and staff, in support of the school.

One community organization, the Palisades Citizens Association ("PCA"), supported the application, voting to overrule its board's 13 to 2 (with 2 abstentions) recommendation to ask the BZA to deny approval. While there is controversy regarding the number of new member sign-ups and inactive-member renewals that occurred on the night of the vote meeting on April 2, 2002, the vote of 169 to 99 clearly carried the question, without having to consider a further and more lop-sided vote taken at 10:30 p.m. after the agenda items were concluded and most of the long-time members had departed. In addition, the chairman of the PCA zoning committee, who held a meeting on the topic but did not call for a committee vote on it, testified personally in favor of the application, principally on aesthetic grounds, i.e. that the facade of the old manor-type house and its grounds were more likely to be preserved by the school's proposed use than by sale for residential use.

Parties in Opposition. The parties in opposition disfavored the application on three principal grounds:

1. The property, at less than half an acre, is inherently too small for a junior high school function, and its size renders it incapable of adequately protecting the surrounding purely residential neighborhood from its activities;

2. The traffic, parking and congestion, noise, privacy intrusions, over-use of off-site athletic and other local public resources, and generally intensive level of adolescent activity that the neighbors believe would be generated by the school use, would irreparably disrupt the tranquility of the quiet residential area; and

3. The complex inter-related conditions, restrictions, governmental and private implementations, testing, monitoring and community meetings that would be required under even the most optimistic scenario, in order to force-fit the plan into workability, are unrealistic and would put a tremendous, continual burden on the neighborhood and its volunteer civic participants.

The parties in opposition all made presentations, which included a video placed in evidence showing Whitehaven Pkwy on two school days in September at pick-up and drop-off times as well as the streets at the subject site. The Board also heard a presentation and received a report from the opposing parties' traffic engineer, Joe Mehra of MCV & Associates.

Persons in Opposition.

Councilmember Phil Mendelson wrote to the Board on May 20, 2002, in opposition to the application and in support of the nearby property owners. His letter focused on whether the site would be suitable for this school, noting the change in District private school enrollment from neighborhood-based to regional, the prior rejection of a school of approximately this size at the site, and the extensive and unusually detailed conditions recommended by OP and DDOT as indicative of the objectionable nature of the project without such artificial safeguards. He remarked upon the difference from the previous use, the critical point made by DDOT about achieving behavioral changes that are difficult to monitor and enforce, and reflected that, in his considerable experience, private schools inherently seek to expand, as already exemplified in this case by the applicant's quick change of plans. Viewing the site in its residential setting with a narrow street and close-in abutting property, he concluded that it would be most appropriate to protect the property owners from such adverse impacts, and joined with ANC 3D in recommending denial of the application.

Councilmember Kathy Patterson wrote to the board on May 17, 2002, on this case. Although not as adamant as Mr. Mendelson and recognizing the divergent views on the issues, she asked the Board to consider carefully the points raised by the ANC, i.e. whether the application was in harmony with the purpose and intent of the zoning rules to protect quiet residential areas and stabilize those areas, whether the immediately adjacent neighbors had raised "considerable objections", and if the commuter plans were safe, reasonable and effective means of managing traffic, and ended by asking the Board to give the ANC's views great weight.

The opponents also presented two petitions to the Board, the first of which had signatures from 31 of the 33 households within 200 square feet of the subject property (the other two being neutral), and the second of which represented 173 individuals just outside of that perimeter. The opponents' submission included a map indicating the location of their households, and graphically demonstrated unified and substantial opposition among the close-in homeowners.

As opposing witnesses were not called until approximately 8 p.m. on the last hearing date, they were allowed to submit written comments, and a number of them did so; these were Palisades residents and taxpayers who lived or used the public facilities near the proposed site. They generally addressed the increasing problems of traffic, congestion, off-site parking and other negative impacts of a surfeit of private schools in the immediate area, dissatisfaction with St. Patrick's pattern of behavior at Whitehaven Parkway and its previous location, and the anticipated worsening of these problems and establishment of a bad precedent if St. Patrick's were allowed to establish a satellite campus in a stable residential neighborhood. The Board also received letters earlier in the proceedings from local residents in opposition, individually written, generally sounding variations on these themes and the threat to the residential character of the neighborhood.

Closing of the Record. At the conclusion of the public hearing on October 8, 2002, the Board did not announce a specific closing record date but rather confirmed those items which were to be received or would be acceptable for receipt in future regarding this case. These were: a supplemental report by the Office of Planning regarding possible term-limitation approval, and discussing existing community liaison programs; ANC 3D Chair Mr. Finney to provide information about property values of residential properties located close to residential buildings; Cathy Wright (Mr. Skrivseth's wife) to provide if possible a statement from the District assessor confirming her advice to Ms. Wright that institutional properties near residences lower the residential value, and the evidence of this effect on Field School neighbors; applicant's traffic engineer, Mr. Wells, to provide clarification of data he discussed in rebuttal comments, and the"Sept. 25th" materials he referenced in cross-examination; Mr. Barrett to delineate the times when the school estimates the students would be outside of the structure but in or around it, including pick-up and drop-off periods; written submissions from persons in support and those in opposition; Mr. Lovendusky's written testimony (from his oral testimony as well as testimony he had to curtail); the applicant's provision of an overlay of the parking lot, in its existing and anticipated future condition; and a copy of the Palisades Traffic Study from DDOT. The applicant and all parties were invited to submit proposed conditions and proposed findings of fact and conclusions of law.

The dates announced were November 8, 2002, for submission of materials; November 22, 2002, for responses and proposed findings of fact and conclusions of law; and December 3, 2002, for the Board's decision meeting.

Decision Meeting. At its decision meeting on December 3, 2002, the Board, by a __ to __ vote, denied the application.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property at 4925 consists of lot 823 on square 1393. The subject lot is located at the corner of Ashby Street N.W. and MacArthur Blvd. The property is slightly less than a 1/2 acre with an existing large residential building, a paved area for parking and a yard with grass and a few trees and shrubs. The most frequently used entrance and the driveway to the parking lot are located on Ashby Street N.W., a narrow residential street approximately 400 feet long and 25 feet wide. With on-street parking, Ashby Street is equivalent to a one-lane street, and only the frontage next to the subject property has a strip of sidewalk.

2. The subject property dimensions include frontage on the western perimeter along MacArthur Blvd of 150 feet. The length of the southern perimeter is 141.42 feet, and the property is primarily abutted by the Skrivseth/Wright house with a side wall approximately 3 feet from the perimeter of the subject property. The length of the eastern perimeter is 150 feet and is abutted by the Houy family residence with a side fence approximately 11 feet from the perimeter of the subject property . The length of the north side the property measures 139.63 feet and faces Ashby Street NW.

3. The driveway to the subject site is on Ashby Street. Because of the narrowness of Ashby Street, there are 3 residential driveways in the immediate vicinity of the subject property that would be immediately affected by use of the subject property's driveway, and a total of 8 driveways along Ashby Street that would likely be adversely affected by school traffic that was more intense than the usual residential traffic patterns.

4. The geography of the property creates a dramatically sloping westward movement toward MacArthur Blvd. Along the southern perimeter of the subject property there is a sharp drop in gradient toward the south with a retaining wall at the boundary of the subject property and the Skrivseth property. This drop is approximately 11 feet at the eastern edge of the Skrivseth property, 6 feet near the Skrivseth residence and about 4 feet toward the western end of the Skrivseth property. The retaining wall is subject to storm water run-off damage from the subject property, and already is cracked in several locations.

5. The subject property is bordered by MacArthur Blvd on the west, Ashby Street on the north, 49th street on the east and W street on the south. Square 1393 and the neighboring streets are zoned R-1-B, and are comprised for the most part of relatively modest single family residences housing a mix of retired and working population (including a number who work at home). There are 33 single residential properties within 200 feet of the subject site.

6. The subject property was owned and used for almost 40 years by the Washington Psychoanalytic Society, which received a Special Exception for limited use of the premises by adult physicians, under BZA Order #7360 (7/16/63), at which time the then-Board found that "[in] general, the activities of this medical organization are extremely quiet and are less than that which would occur in many private homes." The activities consisted of small-sized post-graduate seminars on Saturday mornings, twice-monthly evening seminars, a few administrative and committee meetings each month, a medical library for physician members, and 3 administrators on the premises during the day. The BZA also found that its determination that the use was not likely to become objectionable to adjoining and nearby property was "substantiated by the fact that there was no objection to the granting of this appeal by persons residing in the neighborhood."

7. The current parking lot is set up for 8 vehicles, as shown in the applicant's site plan, SP 1.0, dated 2/26/02, submitted with the Statement of the Applicant, dated April 2, 2002.

8 The subject property is approximately 1/2 mile from St. Patrick's main campus at 4700 Whitehaven Parkway.

The Proposed Private School Use

9. The applicant proposes a junior high school facility for 60 students, 12 faculty and staff (4 of whom would be part-time). The grade levels would be seventh and eighth, and a limited inclusion of ninth grade for the current eighth graders, as clarified by the applicant during the hearing. It is presumed that the student number refers to enrollment, not presence at the facility, and that, similarly, faculty/staff numbers are total employment numbers rather than the number of such persons present at the facility at a given moment. It is understood that at the present time, the school has a total of 29 students in seventh and eighth grades, currently taking their classes at 4880A MacArthur Blvd. in a commercially zoned matter-of-right leasehold at the River School.

10. The proposed school would require major upgrades and retro-fitting to the existing building, including the addition of a three-story life-safety addition and elevator for handicapped persons. These improvements would increase the floor area of the existing structure by about 25 percent, and are estimated by the applicant to cost approximately $700,000.

11. The subject property would not be large enough to accommodate sports, which would be conducted off-site after the end of the school day, either at the main campus or at public facilities or other school or institutional settings.

12. The students would also go off-campus during the school day for appointments, e.g. orthodontia, as well as chapel, lectures and other special events, trips to the Palisades Public Library, trips to the science lab at 4880A MacArthur, week-day community service activities, occasional field trips, and possibly music and art electives, either at the Whitehaven campus or elsewhere in the metro area. In addition, the students would be on-campus but outside at the subject site, on the grassy area or the terrace, walkways and parking lot bordering the property, at various times: upon arrival beginning at 7:30 a.m. every weekday morning, arriving in successive shuttle-bus drop-offs, and awaiting and boarding the buses on reverse trips; on good weather days at lunch and on the several outdoor breaks described by the Headmaster on May 21, 2002, which would take place in shifts of student groups, as many as four groups in succession; and as a starting and ending point for cross-country training (See 5/16/02 transcript at pp. 234 through 245). Based upon the school's extensive and detailed testimony during the hearing, we find that the students' daily outdoor presence would be substantially in excess of the average 70 minutes described in applicant's submission dated November 8, 2002.

13. The academic day at the site would be approximately 8 a.m. to 3 p.m., with personnel leaving by 6 p.m. and deliveries and trash pickups occurring within that time span.

14. The school proposes to shuttle the junior-high school students from Whitehaven to 4925 MacArthur Blvd, a half-mile distance, utilizing a 3.5 mile loop starting at Whitehaven, going along MacArthur to the subject property at 4925 MacArthur, traveling to Arizona Avenue, along Arizona to Loughboro Pkwy., along Loughboro to Foxhall Road, along Foxhall to Whitehaven and back to the school. The route includes numerous lights and stop signs that will be exacerbated by additional signals to be constructed in 2003 at Field School at Whitehaven and Foxhall. This loop would be repeated at the end of the school day.

Noise Impacts

15. Applicant's sound engineer took decibel readings from the subject property with 17 children during lunch hour and concluded that the noise level would not be louder than the existing environment associated with airplanes and ambient sound from MacArthur Blvd. (Polysonics Report dated 5/3/02). This finding, based upon a comparison of so-called background noise and the noise of the children, is questionable because the report used higher background levels in selected cases to show no impact from the addition of the students. 1) The sound-level meters were placed in close proximity to MacArthur Blvd.,at the front of the Skrivseth house (7/9/02 transcript, p. 398), which provided higher background noise levels than where the nearby residents were likely to be spending their time. 2) There were no documented background noise levels presented for the Houy residence on the east side of the subject property, where the life-safety addition would be placed with its opening directly across from the Houy residence. 3) The background levels were measured at midday, when the background noise is higher than would occur at the 9:30 to 10am period when the school has identified that it will have midmorning breaks. (7/9/02 transcript, p. 437).

16. Other problems with the persuasiveness of the sound engineer's findings included the following: (1) Although noise levels of the children of up to 73 decibels might be as high as some airplane flyovers, in the quiet between overhead flights, as shown in the applicant's report (graph included in May 3, 2002 Polysonics Report), the children's activity becomes the predominant noise factor, above the background levels of MacArthur Blvd. (2) Reliance upon the 6-foot fence along the Houy property is unlikely to provide sufficient mitigation of student noises, because the unusual elevation of the Houy house is such that the first floor is actually higher than the 6-foot fence, so all living quarters would have no buffer from the noise. (3) Any test of noise which looks only at decibel levels ignores the fundamental fact that the special character of nearby human voices, especially adolescents along with their music and other sound effects, are different and distinct from the steady drone of traffic and the known duration of airplane flights, and could certainly be noticeable and a distraction and disturbance to adjacent neighbors. It would be like having a continual series of block parties.

17. The applicant has advised that any condition regulating the students' outdoor time would be difficult to enforce without impeding scheduling flexibility. Such uncertainty leaves the neighbors with no way to plan around these activities. See applicant's Nov. 8, 2002 submission.

18. Regarding the issue of school children's auditory impact on nearby residences, the applicant's sound engineer based his whole approach in this case upon the mistaken notion that the District of Columbia noise regulations do not apply to the "unamplified human voice". Because of that threshold error, he assumed that student voices of any magnitude were inherently compatible with residential zoning. Of course, the DC Municipal Regulations noise code at 11 DCMR Part 2800 does apply to human voices, see Neighbors United letter to the BZA dated July 11, 2002, on this matter; and the question is rather whether the proposed use and its sounds will likely be objectionable to adjoining and nearby property.

19. It is possible that adequate buffers could sufficiently dampen the sound effects reaching the neighbors from the subject property. The Board recognizes, however, that dedicating significant space along the periphery of the two abutting properties, plus some buffering along the Ashby Street frontage at the path to the buses and front door and porches, which is close to the neighbors across the street, could have a "squeezing" effect upon other aspects of the proposed use such as adequate parking, access to emergency vehicles, pathways, landscaping and open green space. And given the Board's finding that the students will be outside of the facility a fair amount of time each day, as shifts of youths take breaks, go to various activities, go to and from buses, etc., the Board finds that the proposed school use is likely to become objectionable to adjoining and nearby property because of noise.

Traffic Impacts

20. MacArthur Boulevard is a two-way, four-lane, north-south minor arterial that extends from the Maryland line to Reservoir Road. The subject property at 4925 MacArthur Boulevard is located on a four-lane section of MacArthur Boulevard at the intersection with Ashby Street. The average daily traffic volume on MacArthur Boulevard in the vicinity of the subject property is 21,800, according to the August 2002 Palisades Traffic Study.

21. Ashby Street is a small, effectively one-lane street with parking on both sides, eight driveways at present, and no sidewalks other than at the subject property. Maximum queuing space on the south side of Ashby Street, adjacent to the school, is five vehicles. Peak queues would occasionally exceed this capacity and back up onto MacArthur Boulevard if there were direct drop-off and pick-up at the site (Wells Report dated 4/2/02, at p. 19).

22. Adjacent to Ashby Street is 49th Street, a narrow lane that extends along Battery Kemble Park on one side with access to Foxhall Road at Garfield Street, six streets away. On the other side of the subject square is W Street, another narrow street when cars are parked on both sides, which accesses Foxhall Road six blocks up its hill past the GW/Mt. Vernon college campus.

23. OP felt strongly that junior high pick-up and drop-off should not be at the Ashby/MacArthur campus (see OP report of 4/9/02, proposed condition #7), and so a commuting arrangement evolved to utilize Whitehaven for that purpose. The proposal is to have students dropped off in the mornings at the Whitehaven campus, placed on shuttle buses and driven to the MacArthur Boulevard satellite campus. At the end of the academic day, the buses would take the students back to Whitehaven. The buses would load and unload at the public bus stop at the corner of MacArthur and Ashby, with students using a new front entrance to the building.

24. DDOT would require the school shuttle buses to follow a prescribed 3.5 mile route between the Whitehaven campus and MacArthur school building. Buses would leave the school site on Whitehaven Parkway, turn right onto MacArthur Boulevard, drop the children in front of the school, continue on MacArthur to Arizona Avenue, turn right on Arizona, turn right on Loughboro, turn right on Foxhall and turn right on Whitehaven Parkway. (DDOT report dated 4/11/02, p. 4.) The buses would be housed at Whitehaven.

25. The question has always been whether parents or other drivers would go to Whitehaven, with its heavy traffic from several schools, queue-line waits and then a lengthy bus trip around the area for the students, instead of dropping them off at or near the Ashby facility. A critical element in DDOT's view was an effective carpool plan, recognizing the change in behavior it would require, especially as the school had had poor experiences in attempting to impose carpooling in the past. In connection with this case, the school has issued assurances of its plans to enforce carpooling in order to reduce the traffic congestion on Whitehaven that would face the drivers of vehicles transporting junior high students and to keep them away from the subject property.

26. One critical element of the carpool plan as espoused by DDOT was that the total number of cars should not be increased from pre-existng levels as a result of the addition of junior high students commuting to Whitehaven. On October 8, 2002, the applicant and its traffic engineer advised the Board that they had already exceeded their carpooling goal, by an increase in students per car. Reference was made to a September 25th analysis not available to the Board or the opponents at that time. That report was submitted on November 8, 2002, and the Board finds that, in fact, from the before-carpool testing to the after-carpool testing, the actual number of cars increased from 175 to 224 (in the period 2:30 to 4:30 p.m.) or an increase of 49 vehicles. This increase held firm in a more compressed time-frame: 106, increased to 155, from 2:30 to 3:30 p.m. See Shaw Pittman's Nov. 8, 2002 letter to the Board, tab 4, and Opponent's Response to Post-hearing Submissions, Attachment 4. Thus, there may be more students per car, but the major goal of reducing vehicles on Whitehaven has not been met, at least in the afternoon period. The morning drop-off period testing did show a slight decrease in vehicles, from 223 to 212.

27. However, another, unexplained, result of the testing was that, in comparing the before-carpool and after-carpool data, there was a significant increase in students being dropped off and picked up: 71 more in the morning and 145 more in the afternoon, even though the school's student cap has not been increased and the current junior high students at 4880A MacArthur do not commute from the Whitehaven campus. This factor suggests that the student count was unusually low at the time of the applicant's first self-certified testing, and if the carpooling efforts flagged somewhat in future, there could be a large number of additional St. Patrick's-related cars on Whitehaven. The Board has not had any comment from DDOT regarding this statistical development.

28. The applicant recognized the importance to DDOT of its Whitehaven traffic improvement efforts with regard to that agency's recommendation of Special Exception approval, and it agreed to implement immediately all of the elements of its new traffic plan other than the shuttle buses, whether or not it received approval (5/21/02 transcript, p. 267). However, as of the end of the hearing in this matter, on October 8, 2002, no steps had been taken, e.g. to revise or adjust the old traffic configuration, re-do the curb lane or hire off-duty policemen, nor has the applicant advised the Board since then of any changes having been made.

29. DDOT testified at length before the Board on July 2, 2002, about the critical traffic-control elements the agency saw in this application. Offering to do its part, it agreed to post "no parking" signs and restore those that had been damaged; remove significant additional street parking on Whitehaven, and test that option for four months beginning in July 2002 in order to assess the impact on neighboring streets and design alternative plans if it didn't work; and add a third lane to extend the St. Patrick's queuing capacity and free up a lane for through traffic. However, it is the Board's understanding that the parking-space removal and testing was begun only recently, on Oct. 23, 2002, and DDOT has publicly acknowledged (remarks of Collen Smith, Ward Three Transportation Planner) that the loss of public spaces has caused significant problems for merchants in the neighborhood. To the Board's knowledge, DDOT has not made any other changes on Whitehaven to date.

30. The Board notes that at times there appears to be a lack of coordination between the applicant, DDOT and OP in the Whitehaven traffic planning process, and although the Board recognizes and appreciates that traffic plans and transportation initiatives may well need to be adjusted and a degree of flexibility retained in order to react to changes in circumstances, the inconsistencies and frequent revisions make it difficult to assess whether there is a reasonable chance that the program will work, or whether the participants are only reacting improvisationally without a well-grounded plan.

    For example, several different scenarios have been advanced regarding the location of shuttle bus pick-up and drop-off at Whitehaven. DDOT advised (4/11/02 Report, p. 4) that for the safety of the children and motorists, pick-up and drop-off location for the shuttle buses must occur off the street. The school first proposed and DDOT supported a location in the gymnasium garage driveway, westbound side. However, the configuration of the gymnasium parking lot would not not allow the bus to be stationed in the westbound driveway because it would block the flow of traffic into the lot, and the interior driveway of the parking lot is not wide enough for flow-through traffic. The school then suggested that students be picked up and dropped off in the east parking lot and the west school driveway. (DDOT, Rachel MacCleery, e-mail dated 7/5/02.) That land, however, belongs to the Army Corps of Engineers, and the school has not yet received official permission to use the lot, which applicant also referred to in testimony as a visitors' parking lot. See 5/21/02, p. 283. Even if used, it would require buses to pull into traffic in order to turn around and back into the driveway. Meanwhile, in its Nov. 8, 2002 revised conditions, OP still thinks that the gym is the location for drop-off

and pick-up. While only one of many details, this is the type of issue that could frustrate parents and cause them to head directly to the satellite campus on MacArthur.

31. The applicant has assured the Board that it is serious about carpooling, and would employ contractual scare tactics, financial rewards and penalties, and preferential time-slots, in order to enforce its plan. But, to the Board, these approaches do not sound very practical. It is unlikely that a student would be expelled for this reason, there will be many reasonable-sounding circumstances put forward for not carpooling, some parents will be more than pleased to pay a fee or come late for pick-ups, etc., and over time, perhaps even in the short run, response levels are likely to fall.

    The Board notes that, in 1990, the school had 3.2 students per car, and in January 2002 the average had fallen to 1.3, despite carpool encouragement and inclusion of marketing materials in the contract packets, etc. The reasons given for this drop in AVO, such as new seat-belt rules, have not changed, nor presumably has the geographic spread of the school's families into 23 zip codes been helpful to carpooling efforts. And now in September 2002, after a very well-organized effort in support of this application, intense carpool lobbying , DDOT support, and the need to make a great showing on this issue, the best the school could do in eight months was an increase to 1.8, and even that was mitigated by the prohibited increase in vehicular traffic of 49 cars in the pick-up period, before the future junior-high cars even enter the mix. The Board believes that DDOT gave the school a rather easy target to make, i.e. no increase in vehicles (the "1.6 students per car" being an artificial figure based on car counts), and it did not succeed.

32. The Board recognizes the efforts that applicant has made to improve its traffic problems in light of this application and to create new traffic procedures for the proposed expansion. However, the Board finds that many "best case" aspects would have to come together and stay together in order for there to be a reasonable expectation that parents and other household drivers would resolutely avoid a direct trip to Ashby and MacArthur in favor of an excursion to Whitehaven. Even if carpooling proceeds at an admirable pace in the short run, Whitehaven will always be a more or less frustrating experience and it is clearly still a clean-up project "in progress". The Board also notes the contribution to Whitehaven difficulties of many others, on or near the site, that St. Patrick's cannot control, namely the Lab School, Our Lady of Victory school, GW/Mt. Vernon (with its main entrance right above the applicant's facilities and 145 buses that enter and exit daily), Field School, the new Mayoral residence with a proposed entrance right at Whitehaven

on Foxhall, the Army Corp of Engineers and the National Park Service, and of course rush-hour commuters. Accordingly, the Board thinks it not unreasonable that the neighbors in the vicinity of the proposed site would anticipate plenty of new, school-related traffic.

33. Commuter traffic between main campus and satellite, as well as vehicular visitors, commercial vehicles, volunteer helpers, parents with permission to pick up children for appointments, etc., would be at a level of intensity during the day far exceeding the use of the property by the former occupant. The Board believes it likely that the neighbors on Ashby Street and immediate environs could find themselves inconvenienced regularly by the blocking of driveways, traffic stoppages in the one lane, horns sounding, street parking unavailability and a backup at the bus stop while the shuttle buses take on or discharge their charges. And as the students would be adolescents, we believe that the shuttle bus times offered by applicant in testimony may be somewhat understated.

34. For all of the above reasons, the Board finds that the proposed school use is likely to become objectionable to adjoining and nearby property because of the traffic it may reasonably be expected to generate.

Parking Impacts

35. The subject property contains a parking lot with its entrance on Ashby Street. The existing lot is located on the east side of the property. The Statement of Applicant included a site plan, SP 1.0, dated 2/26/02, showing eight designated parking spaces and an existing line of evergreen buffering on that east side. The application originally indicated that the school would be providing 15 parking spaces at the site, without expanding the area of the lot.

36. The applicant has submitted several revised site plans during the course of this proceeding. In its latest revision, dated 11/8/02 and included at tab 2 at applicant's counsel's post-hearing submission, the applicant indicated expansion of the parking lot to accommodate 17 spaces. This apparently would be accomplished by removal of all of the existing plant buffer along a portion of the east border (the Houy residence) to make room for parking space #4, and a reduction of approximately half of the existing green buffer along the remainder of the eastern side, to accommodate parking spaces ## 5 through 10. In addition, the existing parking lot would be extended to the south (the Skrivseth/Wright residence) to provide a turning-aisle radius, plus parking space #11 and a portion of parking space #12.

No structural engineering report was offered, although the applicant admitted that it did have a consultation, to ascertain whether the parking lot gradient smoothing in the back part of the lot would support the car loads.

37. The current parking lot has "no parking" signs along the east side of the perimeter, to provide a fire lane. This area would be utilized to accommodate parking spaces #1, 2 and 3.

38. The Board notes the applicant's assertion that it is legally required to provide only eight spaces, although inclusion of ninth grade would appear to increase that number and the regulation uses the requirement as a minimum for "ample". However, the Board also notes the neighbors' concern that, notwithstanding this theoretical number of parking spots, the modest size of the lot and narrow driveway could often result in instances of congestion in the lot and consequent street parking, especially given the numbers of 12 faculty and staff as well as anticipated visitors, volunteers, maintenance workers, delivery vehicles, parents and so on.

39. What gives the Board the most pause, however, is that the proposed parking configuration does not take into account any reasonable buffering of the eastern- and southern-bordering properties. (The applicant occasionally refers to the parking lot itself, with its noise and exhaust, as a buffer.) Even a modest 12-foot planted buffer along those boundaries would appear to eliminate at least 10 of the parking slots as drawn, see color analysis of revised site plan in Opponents' Response to Post-Hearing Submissions at Attachment 2. The Board takes note that the applicant was required by a predecessor Board to provide 16- to 18-foot buffers between its gymnasium (where children play inside) and an adjoining neighbor, Marshall Hornblower. So, if the traffic plan were not completely successful, or school-related personnel did arrive in most cases by car (the Board notes that there is no subway nearby, and bus and taxi service is very limited), there could be substantial street parking spillover.

40. Because it would not be reasonable to judge the adequacy of the parking plan without considering the impact of an effective buffer area, the Board finds that the application would not meet the requirement of 11 DCMR §206.3 to provide ample parking space to accommodate the students, teachers and visitors likely to come to the site by automobile.

Number of Students

41. The current population of the entire square 1393 is in a range of 27 to 35. The school's proposed daytime population of students and adults would at least be two times that, or an increase of threefold. The time spent by school participants on or about the premises would be five times that of the previous medical group. These are very adverse effects to impose on a neighborhood, and as ANC 3D has advised, the Board believes it would be likely to change the character of this residential area.

42. Because of the small size of the property, much smaller than other schools in the area, there can be no athletic space, no reasonable opportunity to provide buffers for the neighbors, and an intensity of activity that would be very much in evidence to the householders nearby and immediately surrounding the site. There would also be frequent travel to and from this satellite facility to the main campus, with the residents in the middle.

43. Given the exuberance and inherent need for physical activity of adolescents, there is even a safety issue for them and the neighbors, seeing that the southern border encompasses a steep drop-off only about 10 feet from the retaining wall. In addition, there is an expanse of about 90 feet of unfenced low prickly hedge frontage along the retaining wall on MacArthur Blvd., which could be dangerous for horseplay, and frisbees and similar objects sailing over the hedge would land on the sidewalk and pedestrians below or, even more of a hazard, in boulevard traffic. The Board is not persuaded to accept the school's assurances that the outdoor areas would be used for 'passive recreational use' only.

44. For these reasons, the Board finds that the subject property is not large enough to accommodate a junior high school facility and its attendant activities.

Other Factors

45. Privacy The nature and small size of the subject site and its proximity to abutting property lead to a number of privacy issues. The Board credits OP's concern about student activities and the impact of potential "toys" finding their way into neighboring yards. The Board is also mindful that the private and quiet enjoyment of these properties could be detrimentally affected, and takes note of the number of older, retired homeowners residing on square 1393, many of whom spend a lot of time in their gardens and other outdoor spaces.

Because we have found that the students are likely to be outside, whether in transportation mode or on the grounds, considerably more time than the 70 minutes a day estimated by the applicant, and on a more randomized basis, the Board recognizes the impact that the presence of large groups of youngsters may have upon the personal routines and home enjoyment of the neighbors. The students and their attendant adults, coming and going in sizeable groups throughout the day, are likely to disturb the normal residential tranquility of the neighborhood.

46. Adverse Impact on Property Value

In testimony (10/8/02 transcript at p. 339), Cathy Wright, an abutting homeowner, related her conversation with her D.C. assessor, Carolyn Monk, in which Ms. Monk told her that even the potential location of a school locating near housing would drive down the property values. In a follow-up call, Ms. Monk confirmed to Ms. Wright that the latter's property tax assessment had been lowered partly on that basis. Ms. Monk asdo noted that property assessments around Field School had declined. However, Ms. Monk, citing agency policy, would not memorialize her remarks in writing.

Michael Lovendusky, also a party, who lives across from the subject property and has a direct sight line to the property and the driveway, etc., appealed his assessment solely on the grounds of the school application, and received approximately a 10-percent tax reduction, see letter to the BZA file dated November 7, 2002.

And ANC 3D Chair John Finney, in a post-hearing submission to the Board as requested, brought to the Board's attention a study of properties on Loughboro Road across from Sibley Hospital, see letter dated Oct. 26,2002. The assessed total value of 18 homes declined, while similar properties a block away on Watson Street (where Mr. Finney lives) increased in value. This was attributed to the fact that Watson Street has retained its residential nature, while the residential ambience on Loughboro has diminished as Sibley has expanded as an institutional presence. The Board finds that neighbors located near the subject site may reasonably fear a reduction in property values if St. Patrick's is granted a Special Exception.

CONCLUSIONS OF LAW AND OPINION

The Board of Zoning Adjustment is authorized under the Zoning Act of June 20, 1938, (52 Stat. 797, as amended, D.C. Code §6-641.07(g)(2) (2001)), to grant special exceptions as provided in the Zoning Regulations. The applicant applied under 11 DCMR §3104.1 for a special exception pursuant to 11 DCMR §206, to allow the use of the subject premises as a private school. The notice requirements of 11 DCMR §3113 for the public hearing on the application have been met.

To meet its burden of proof under Subsection 3104.1, the applicant must demonstrate that the proposed private school use is in harmony with the general purpose and intent of the Zoning Regulations and maps, that it will not adversely affect the use of the neighboring property in accordance with the Zoning Regulations and Maps, and that it meets the special conditions listed in Section 206 for private schools. Under Subsection 206.2, "The private school shall be 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." Under Subsection 206.3, "Ample parking space, but not less than that required in chapter 21 of this title, shall be provided to accommodate the students, teachers and visitors likely to come to the site by vehicle.

The Board's discretion in reviewing a special exception application is limited to a determination of whether an applicant has complied with the requirements of these subsections. If the applicant meets its burden, the Board ordinarily must grant the application. *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 432 A. 2d 695, 698 (D.C. 1981).

Furthermore, the Board is required under D.C. Code §1-309.10(d) (2001) to give "great weight" to the affected ANC's recommendation. The Board must "articulate why the particular ANC itself, given its vantage point, does - or does not - offer persuasive advice under the circumstances." *Kopff v. District of Columbia Alcoholic Beverage Control Bd.*, 381 A. 2d 1372, 1384 (D.C. 1977). The Board has carefully considered the ANC's report and, as discussed below, finds the ANC's recommendation pertaining to the inappropriateness of this bustling, intensive use on a relatively small lot in a purely residential neighborhood of close-in, moderate housing, to be persuasive, as well as the ANC's insights regarding the Section 206 factors as they apply to this case.

Based upon the findings of fact, and having carefully considered the ANC's recommendations and the submissions of the applicant and opposing parties, as well as the government officials who have given so much time and attention to this matter, the Board concludes that the proposed private school use does not meet the requirements of the Zoning Regulations. Specifically, the Board finds that the proposed use will adversely affect adjacent and nearby properties in the following ways: the likelihood of excess traffic and noise, spillover parking and street congestion at the site, privacy incursions, and a level of activity and intrusiveness incommensurate with the generally quiet and tranquil residential ambience.

Square 1393 in which the property lies is zoned R-1-B. Section 200 of the Zoning Regulations define 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."

The previous uses of the property, briefly as a nursery school with 25 embassy toddlers and a live-in custodial couple, and then as home to a medical society that provided some post-graduate seminars and administrative work, were non-residential but very low-key and suitable to blend into this serene little enclave. A sizeable contingent of adolescents, arriving early each morning and in residence all week, would have a more difficult argument in satisfying the regulations. While the Board appreciates all of the time and effort the applicant has put into making that argument, it must conclude that the use is just not appropriate for this particular setting.

The Board agrees with the Office of Planning and the D.C. Department of Transportation (DDOT) in those agencies' expressions of concern regarding traffic problems, carpooling needs, and other potential impacts on the MacArthur neighbors, but cannot share with them their optimism regarding the solutions proffered.

The plethora of proposed conditions, which have gone through many versions, remain weak: hortatory, conclusory, and often either too vague for the applicant or the neighbors to know what is expected and sufficient compliance (the carpool plan, "fencing", the liaison program, reference to a site plan that changes monthly), or too detailed and doomed to technical non-compliance (the shuttle bus program). In OP's latest version, dated November 8, 2002, the Board was disappointed to notice that no buffering whatsoever is required except possibly for a fence on one border, apparently to be chosen by the applicant; and the neighbors have been shut

out of the community liaison program despite the fact that they are the protectees in the applicable zoning regulation. Moreover, the proposed carpool plan would be created and monitored solely by the applicant, with its annual self-evaluation sent to DDOT and no community input at all. These cannot be considered serious efforts to deal with the real problems arising from the attempt to blend different uses in a residential environment.

In addition, the Board is concerned that the process has become so cumbersome and burdensome for citizens who are interested enough to spend considerable time learning the zoning procedures and the appropriate manner of participating in these matters, that they will in effect be locked out because of an inability to defend themselves in a rational fashion without devoting full time to committees, compliance reviews and formal proceedings of all kinds, simply to assert their rights under the zoning laws. The uses have to reasonably stand on their own with few conditions, and those clear and transparent, with little room for argumentation. It is not right to avoid these problems by putting the burden on the neighbors.

Objectionable Conditions (11 DCMR § 206.2). The Board concludes under Subsection 206.2 that the proposed private school, really a satellite of the more comprehensive Whitehaven facility, to which the junior high students would repair for a number of activities, would generate substantial additional traffic for the MacArthur/Ashby site. The Board sides with common sense in this matter, and judges that families will quickly do whatever is necessary to avoid the Whitehaven back-up. Already, with fewer than two children on an average per car, the school is not exactly getting an enthusiastic response to the carpool program. And even with the best will in the world, St. Patrick's can't control the larger entities that will continue to congest that busy crossroads.

Along with traffic will come parking problems on Ashby and surrounding streets, in derogation of 11 DCMR § 206.3. The Board cannot ignore the need for substantial buffers, and that would significantly cut down on the available off-street parking, which might still be barely within the §21 requirements but would not in the Board's view be "ample".

And the other §206.2 factors, all relating to the inadequate space for the junior high program, would not be met by the applicant for the reasons set forth in the findings of facts set forth above, namely, the number of students, noise, privacy intrusions and safety concerns, as well as a probable diminution of value in surrounding properties.

Accordingly, the Board concludes that the proposed use would not be in harmony with the Zoning Regulations and Maps under §3104.1 and under that subsection the proposed special exception would also adversely affect the use of neighboring properties and thus requires denial of the application.

For the reasons stated above, the Board concludes that the applicant has not met its burden of proof. It is hereby ORDERED that the application is DENIED.

Neighbors United Trust
4911 Ashby Street NW
Washington DC 20007

November 22, 2002

By Hand Delivery

Mr. Geoffrey Griffis
Chairperson
District of Columbia Board of Zoning Adjustment
441 4th Street NW
Washington DC 20001

Re: BZA Application No. 16852 for Special Exception at 4925 MacArthur Blvd.

Dear Chairperson Griffis and Members of the Board:

This letter represents the consolidated response of the Neighbors United Trust, the Lovendusky party opponent, and the Skrivseth/Wright party opponent to the post-hearing submissions filed by ShawPittman LLP on behalf of St. Patrick's School in the matter cited above.

It further includes the opponents response to the Office of Planning's post-hearing submission in its letter of November 8, 2002 signed by Andrew Altman, Director, in respect of this matter.

The response is structured as follows:

I. Response to St. Patrick's submissions:
   - A. Tab 1: Full text version of Ms. Bradley's closing statement
   - B. Tab 2: Revised site plan
   - C. Tab 3: Synopsis of outdoor activity plan
   - D. Tab 4: Submission from Wells & Associates

II. Response to Office of Planning letter
   - A. Time Limit
   - B. Community Liaison Committees
   - C. Conditions of Approval

I. Response to St. Patrick's submissions

A. Closing statement by Ms. Bradley

Ms. Bradley observes that "a school has operated at 4925 MacArthur for 42 years with full BZA approval and enjoying broad community support." There is, however, a material difference between a training institute for professional adults and a middle school for a considerably larger number of adolescents. The increase in adverse impacts on the community occasioned by usage five days a week, rather than six days or evenings a month, is palpable, and constitutes reasonable grounds for objection.

Ms. Bradley cites the lopsided final vote of the Palisades Citizens Association, yet does not mention the considerably closer initial vote, the unanimous ANC vote against supporting the Special Exception, the PCA Board's 13 votes recommending that the Association not support the application, the massive opposition to the proposal expressed by abutting, adjacent, and other neighbors within 200 feet of the subject property, and the broad community support recognized by the number of signatures on the neighborhood petition. The vast majority of the various forums voicing opinions on the application have been and remain opposed to it.

Ms. Bradley has asked how low a degree of impact we can expect schools to have. With respect to the intensity of the school's impact, the BZA noted in its 1963 Order 7360 that its approval for the special exception for the Washington Psychoanalytic Society was based on the limited use of the premises, and that the activities of the medical organization were "extremely quiet" and "less than that which would occur in many private homes." Neither applies to the application at hand. It is the inadequate size of the subject property for the proposed use that is inherently objectionable and motivates the community's apprehensions and objections. The applicant has the burden of proof to show that its behavior will not adversely impact the neighbors, and it has failed to do so.

Ms. Bradley noted that schools should minimize impacts. Attempts to mitigate objectionable impacts are laudable. However, a special exception ought not to be granted if mitigation is not likely to be successful, as opponents and expert witnesses have testified.

As to noise, because of grade differences none of the fencing proposed is likely to protect the Houy's residence from parking lot noise, which will be considerably greater than under the subject property's former use. Indeed, the current site plan removes a large amount of evergreen between that house and the parking lot. Nor would the solid fencing proposed meet the Office of Planning's concerns that fencing/buffering not cut off light and restrict air circulation to the abutting property at 4913 MacArthur Blvd.

Ms. Bradley argues that St. Patrick's has demonstrated success with carpool efforts, "with a real net reduction in total traffic." Yet in the backup data on Average Vehicle Occupancy submitted by Mr. Wells on November 8, a total of 175 vehicles were counted in the 2:30 to 4:30pm period on January 31,2002. In the comparable period on

September 25, 224 vehicles were observed, an increase of nearly 50. Even in the peak hour of 2:30 to 3:30 there was an increase of roughly 50 vehicles. This does not appear to meet the test of no net increase of vehicles required by Mr. Laden. In addition, there are serious and unresolved differences of opinion as to the potential for traffic backups during school bus loading and unloading.

B. Revised site plan

The revised site plan contains a number of errors and omissions, and raises a number of other issues as well. In some instances, these anomalies are illustrated on the color-coded copy of that site plan attached in the interest of enhancing clarity.

1. The site plan indicates expansion of the paved area along the fence line adjacent to the Houy property on the east (left) side of the plan, in parking space #4. It fails to note that the newly paved area in question is part of an existing evergreen buffer and that a number of 7-foot-tall plants would need to be *removed.* (See area marked DARK BLUE.)

2. Parking spaces #1, #2, and #3 are situated on space that is currently designated as a fire lane with no parking signs posted.

3. The site plan understates the width of the remaining portion of that evergreen buffer, which ranges from 7 to 8 feet rather than the 4 feet noted on the drawing. Cutting the vegetation back to 4 feet in width would seriously impair any visual and noise buffering of the existing vegetation. (See area marked in YELLOW on left side of site plan.)

4. The additional 399 square feet of paved area identified on the latest site plan misrepresents the actual increase in paved area. The east-west width of the existing parking lot at 4925 MacArthur Blvd is 55 feet, as clearly indicated in numerous earlier site plans and acknowledged by Mr. Konapelsky in cross examination on October 8, 2002. It is proposed to expand this width to 58 feet. The extra 3-foot-wide strip of new paved area on the western ends of parking spaces #12, #13, #14, #15, #16, and #17 is not marked as "additional paved area" in accordance with the key. This area, marked in ORANGE on the attachment, covers approximately 132 square feet south of the cut for the beech tree, and 33 square feet between that cut and the sidewalk adjacent to the parking lot.

5. The increase in paved area also fails to include the surface area of the sidewalk from the van accessible handicapped parking space, which is currently green space. The total area in question, also marked in ORANGE on the attachment, is roughly 152 square feet.

6. Assuming that the area calculations on the drawing are correct for the areas shaded by the architect, correction for the unreported expansions of paved areas noted above come to (132+33+152=) 317 square feet. Additional paved area

therefore comes to 716 square feet, bringing about a net change of -611 square feet, more than twice the loss of green space indicated on the revised site plan. This does not include the loss of green space associated with the footprint of the life safety addition itself.

7. The site plan does not show the proximity of the residences of abutting neighbors. These have been marked in LIGHT BLUE on the attachment. On the east side of the property, the Houy residence is 11 feet from the property line. The applicant does not propose to supplement existing plantings to provide buffering from additional parking lot noise, and instead seeks to eliminate them from parking space # 4. This leaves the *entire* Houy residence, other than the back porch, unshielded from sound by anything but a wooden fence. On the south side of the property, the proximity of the proposed solid fencing to a structure that has been in place since the 1920s would block light and air to the Skrivseth/Wright residence at 4913 MacArthur Blvd.

8. Finally, the revised site plan misrepresents the size and placement of existing vegetation. The areas shaded in YELLOW represent the correct driplines of existing large trees. The large black dots within the yellow areas represent the location of the trunks of the major trees. Noteworthy negative impacts that can be identified from this corrected information are as follows:

   a. There is a significant overlap between the excavation area required for the life safety addition and the dripline of the Magnolia tree to the east of the proposed addition. The applicant has noted that no arborists have yet been consulted, but would be brought in during construction if the special exception is approved. An overlap of this size poses a significant risk to the long-term survival of that tree.

   b. Regarding the very large beech tree south of the structure, there is no such impact of excavation within the dripline. However, the extra paving associated with the parking lot expansion and the new sidewalk from the handicapped access parking space would place well over half of the tree's root system under paved surfaces, and could seriously undermine the health of a stately old tree that already shows signs of damage to the trunk.

   c. The correct placement of the three existing trees closest to the southern property line shows that (a) the trunk of the oak tree furthest to the left would be covered by the expanded parking lot, and presumably, it would have to be destroyed; (b) the location of the walnut tree farthest to the west (right), closest to MacArthur Blvd., is perilously close to the line of the proposed solid fence. Fence construction could seriously damage the tree's root system, which is of concern to the Skrivseth/Wright household in view of their home's proximity to the trunk (about 11 feet); and (c) the third and by far largest of these three trees (species unknown with leaves

down) is similarly jeopardized by fence construction, in that its trunk is within about 2 feet of the proposed fenceline.

9. The broad line in PURPLE is explained in the comments on conditions at the end of this document.

C. Synopsis of outdoor activity plan

Applicant has made a number of contradictory statements about the outdoor use of the space. In the Polysonics report for example, the time outside was estimated at about 2 hours per day, which on cross examination was determined to have been a figure provided to Polysonics by counsel for St. Patrick's. In this revised submission, it is assumed that students will not use the lawn as a waiting area, even in the best of weather. The opponents suggest that such an unnatural constraint upon the behavior of healthy adolescents is mandated only by the fact that the subject property is too small for its intended use. The total projected time for morning breaks and lunch breaks is now reported as about 70 minutes, but St. Patrick's itself concedes that "any type of condition limiting time to specific intervals would be difficult to enforce." This is tantamount to a suggestion that many types of problems that might reasonably be anticipated to arise because of operation of the school would fall outside the scope of enforceability.

D. Submission from Wells & Associates

This submission is addressed in the separate report from Mr. Mehraj enclosed

II. Response to Office of Planning Letter

The November 8, 2002 letter to the Board of Zoning Adjustments from Mr. Andrew Altman, Director of the Office of Planning, is divided into three sections. These will be addressed in turn.

A. Time Limit and Enrollment Cap of 40

The opponents are unconvinced that a ten-year time limit and/or an enrollment cap of 40 students do much if anything to address the basic issue of a proposed use of the subject property which is excessive given its size and location. Neither of these proposed condition would results in a significant amelioration in the proposed operating conditions for the school. Class hours, arrival and departure times and methods, frequency of intense use of the property, substantially increased parking lot use from that of the former owners, remain unchanged.

It could be argued that a cap of 40 students as distinguished from 60 would conceivably reduce the number of shuttle bus runs in the morning and afternoon. But that very system, its possible impact on MacArthur Boulevard traffic, the need to run a long and circuitous return route through residential neighborhoods, and the risk that students' families might ultimately seek to circumvent the constraints that a shuttle arrangement

imposes, remain entirely untested and would not be substantially altered by a lower enrollment number. In the view of the opponents, the likely result would be roughly the same number of shuttle bus runs with lower student head counts per run, not much more. The objectionable impacts would remain objectionable, only their precise characteristics might shift marginally. The proposed usage of the subject property would still constitute a significant and objectionable increase over the usage pattern observed in a quiet, stable, residential neighborhood for more than 40 years.

As to the proposed 10-year time limit, the time horizon would appear to be altogether too long. The Office of Planning (OP) observes that "there are ways of checking to ensure that the applicant complies with the conditions of approval." While these ways are not specifically identified, it is unreasonable to expect a residential community to bide its time for a decade before "checking," when only a formal hearing mechanism with force of law will truly provide any teeth, i.e., enforcement, to such checking. A 10-year lag before formal BZA review would deprive the community of the most effective tool in its very small arsenal for seeking redress from continued slippages in, retrenchments from, or flat-out failures to observe BZA conditions. It would unduly weaken the reasonable and reasoned efforts of neighbors of the proposed school to ensure that it toed the line and fully met all its commitments.

Introduction of a middle school onto a small property in the midst of a quiet residential neighborhood would already harm the fabric of area residents' daily lives substantially. To even suggest that such a radical change in the community should not be subject to formal and enforceable review before ten years have passed would render said change irrevocable.

Think of your car, your computer, your electronic banking arrangements, or of any core component of your life, and imagine being told "Oops, it's broken. Sorry, but we can't even talk about fixing it for seven more years."

A 10-year time limit is simply unacceptable.

B. Community Liaison Committees

OP references two liaison groups, at page 2 of its November 8, 2002 submission, although it actually mentions three, but only provides some detail with regard to one of them, the Washington International School.

We are not familiar with WIS's program, but are aware that Rock Creed International has had substantial problems with its liaison program, because the head of school has been reluctant to disclose expansion plans and only did so after filing with the BZA. There have been a number of unmet community concerns, including overuse of the public playground at Hardy. The situation became so stressful that the community demanded a public forum, which was eventually held but did not result in the receipt of useful information by the neighborhood.

We do not know of liaison groups at Georgetown University, other than the Georgetown Citizens Association, although it is well known that Georgetown has had a rocky relationship with affected neighborhoods for at least 30 years, punctuated with regular bouts of litigation, for example in the cases of the South Entrance, the co-generator project, and all of its campus plans.

We note with some surprise that OP omitted to mention the liaison group at Field School. That group, of recent vintage, has not met since April of this year. Nor has it helped to mediate the neighbors' concerns regarding the shuttle buses abandoning their official routes and taking shortcuts through local streets, parental noncompliance such as picking up children on neighboring streets, shuttle buses and other vehicles making dangerous and illegal turns left onto Foxhall Road, and the intermittent absence of the off-duty policemen serving as traffic officers.

C. Conditions of Approval

The letter from the Office of Planning reports consultations between OP and the applicants which, in whole or in part, led to modifications in the conditions initially proposed by OP. These modifications, it would appear, were discussed with the applicant beforehand.

The revision of condition #1 is addressed above in the section on Time Limits and Enrollment. The revision of condition #2 provides a clarification that is duly noted. The revision of condition #13, allegedly to address buffering, removes the term "buffering" and replaces it by "fencing," This issue will be addressed below. The addition of a new condition to limit the special exception to 10 years has also been addressed in the section on Time Limits and Enrollment above. The deletion of condition #18 is self-explanatory.

It is and always has been the position of the opposing parties that the proposed use of the property at 4925 MacArthur Blvd. NW gives rise to reasonable objections that have been expressed repeatedly throughout the course of the hearing process. The opposing parties have steadfastly maintained that no set of conditions would suffice to make the proposed use of the subject property unobjectionable.

This said, a number of the changes in the proposed conditions cannot go without comment. The new condition 8 (former condition 7) removes all reference to giving the ANC, abutting neighbors, and the residents of 4927 MacArthur Blvd. the opportunity to comment on any proposed lighting, fencing, and signage. As the adjacent and abutting neighbors would be exposed to these features on a daily basis all year round, this deletion seems to fly in the face of St. Patrick's professed desire to be a cooperative neighbor.

The former condition 9, which stated that "there shall be no summer school program at the subject property" seems to have disappeared altogether. It is unclear whether this was a strategic decision or simply an oversight.

Condition 12 (former condition 13) on the carpool program is anodyne, completely lacking in enforcement mechanisms or specific targets. A program that is a failure could be evaluated year after year, be described as a failure, yet never be changed, and still the terms of that "condition" would be met. No condition that has no objective spelled out should even be described by that term.

Condition 16 (formerly condition 11) on storm water management controls does not mandate that the Skrivseth/Wright party be provided with an opportunity to discuss any management plans, this despite the fact that their property is subject to water runoff from 4925 MacArthur Blvd. and the retaining wall at the property line is cracked in several places as a result of hydrostatic pressure.

Condition 17 in its most recent version deletes any reference to the inclusion on the neighborhood liaison committee of abutting and adjacent neighbors or representatives of other Ashby Street residents. The liaison committee mechanism is described in unclear language, the length of the advance notice of meetings is not specified, no procedures for bringing items to the agenda are stipulated, and no reporting requirements established. Here again is a condition that has no enforcement mechanism whatever.

Finally, condition 13 (formerly condition 14) addresses the issue of "fencing" (formerly "buffering") along the southern property line. This contentious issue, it would seem, is being skirted owing to the lack of specifity. The language is unclear as well, as the term "property owner" is not linked to a particular property, though presumably the reference is to 4913 MacArthur Blvd. No reference whatever is made to buffering to the east, along the parking lot side abutting the Houy property.

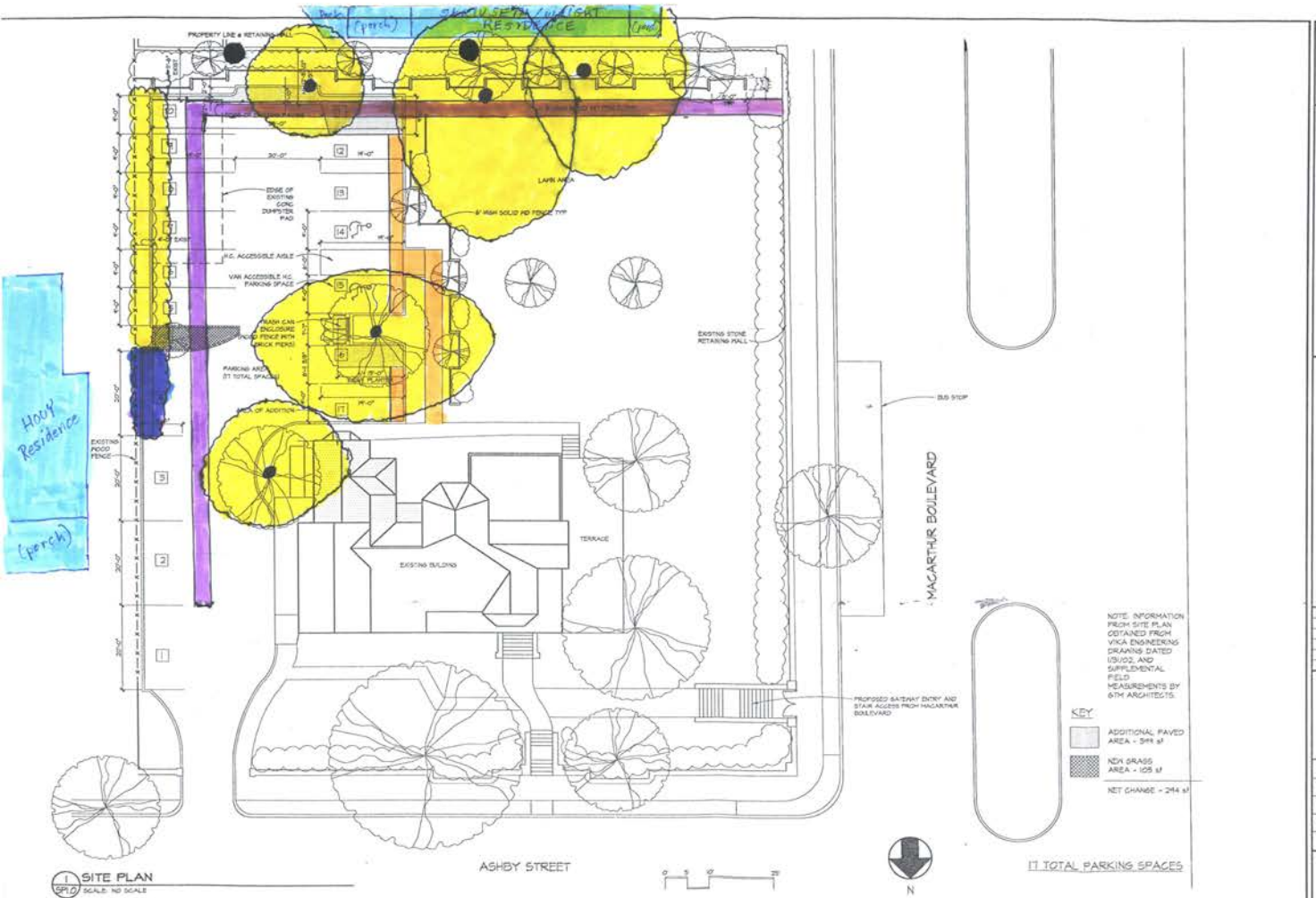
Replacement of the word "buffering" by "fencing" is telling. Furthermore, the location of such fencing is not clearly spelled out, and perhaps with good reason. When the applicant sought BZA approval to build its gymnasium it was required to provide 16 feet of plant buffering around the site. The broad line in PURPLE on the color coded copy of the applicant's site plan illustrates the impact on the planned parking lot of either a 12-foot buffer (side closest to property line) or a 16-foot buffer (side closest to parking lot and lawn area) along the Skrivseth/Wright and Houy property lines. The introduction of buffers of a width deemed reasonable at other locations has a deleterious impact on the configuration of the proposed parking lot, and makes manifest that the subject property is altogether too small to accommodate the proposed use.

This latest set of proposed conditions has clearly illustrated that there are no conditions that might make that use unobjectionable to adjacent and nearby property owners.

Respectfully submitted,

Lawrence T. Skrivseth

Alma H. Gates (for Neighbors United)



1 SP1.0 SITE PLAN
SCALE: NO SCALE

GTM ARCHITECTS
4115 ARMORY AVENUE,
KENSINGTON, MD 20895
(301)942-9062
(301)942-9929 FAX

4925 MACARTHUR BLVD, NW
WASHINGTON, DC 20007

SITE PLAN

ST. PATRICK'S EPISCOPAL DAY SCHOOL

REVISIONS:

SEAL:

DRAWN BY: TM, JAA
CHECKED BY: DPK
SCALE: AS NOTED
DATE: 11.06.22
PROJECT NO: 01.0649
DRAWING NO: SP1.0

4605-C Pinecrest Office Park Drive
Alexandria, Virginia 22312-1442
(703) 914-4850
FAX (703) 914-4851
Email - MCVAssoc@aol.com

PLANNING • ENGINEERING • INFORMATION TECHNOLOGY

MEMORANDUM

TO: Ms. Nancy Feldman

FROM: Joe Mehra

SUBJECT: St. Patrick's School

DATE: November 21, 2002 **JOB:** J-349

I have reviewed the Post Hearing Traffic Submission by Wells & Associates, LLC. dated November 4, 2002. Based on my review, I have prepared the attached report that shows the following:

1. There are errors and discrepancies in the traffic data used to compute delays, queues and levels of service. The traffic volumes used in the Synchro model are as much as 28% below the MCV balanced traffic flows during the AM peak hour and 19% below the MCV balanced traffic flows during the PM peak hour for certain movements. The use of these lower traffic volumes by Wells will result in shorter queues, less delay and better levels of service than the use of corrected balance traffic flows.

2. The carpool program seems to be based on a reduction of the after school activities and the magnitude of participation by students. An effective carpool program is meant to increase carpool occupancy and reduce the number of vehicles. This program actually increases the number of vehicles during the peak hour. The higher peak hour traffic volumes will obviously result in longer queues, greater delays and worse levels of service than presented in the Wells reports.

3. The Synchro/Sim Traffic model was used to estimate queues, delays and levels of service. The model does not replicate existing conditions accurately. The reliability of the model to predict future delays, queues and levels of service are questionable.

C:\Job02\J349.Rep.wpd

FROM : MCV ASSOCIATES INC. FAX NO. : 703 914 4851 NOV. 22 2002 02:39PM P2

This memorandum has been prepared to respond to the Post Hearing Traffic Submission by Wells & Associates, LLC. (Wells) dated November 4, 2002. It is presented in three sections as follows:

Traffic Data

There are errors and discrepancies in the traffic data submitted to the BZA on July 5, 2002 and the post hearing submission by Wells is an attempt to explain the errors and discrepancies. The Wells Post Hearing Submission shows that the AM peak 15-minute count was balanced by reducing inbound and increasing outbound traffic. It is industry practice to typically start from one end of the street and balance the traffic flows without reducing the school traffic. Exhibit 1 shows three sets of numbers: 1. the first set is the raw traffic data collected by Wells during the peak 15-minute period 2. the result of balancing of traffic flows during the 15-minute period by MCV by starting from the east driveway and working towards the west driveway and 3. The traffic volumes on Whitehaven Parkway and the school driveways based on the balanced 15-minute counts. As can be seen in Exhibit 1, the east driveway has volumes of 460 vehicles (left turn in to the school) and 340 vehicles (eastbound on Whitehaven Parkway) for the 'Four Times Balanced 15 Minute Volumes'. This compares with 428 and 246 by Wells in their Post Hearing Submission, Figure 1.

Figure 2 of Wells Post Hearing Submission shows a balanced in/out flow of 60 vehicles for the school traffic during the PM peak 15-minute period. However, on page 2 of the submission, 3rd paragraph, 2nd line states, " Minor changes were made to exiting traffic volumes and traffic on Whitehaven Parkway to achieve a better balance for eastbound and westbound traffic." The keyword here is "better balance". Wells has switched the traffic flows as counted by them. In Figure 2, the raw peak 15 minute counts show 32 vehicles exiting from the center driveway and 24 vehicles exiting from the western driveway, making left turns out of the school. During the balancing process by Wells, the numbers have been switched. The 32 vehicles have been switched to 26 from the center driveway and 24 vehicles have been switched to 31 from the western driveway. There is absolutely no reason to make this switch.

Exhibit 2 by MCV shows the result of balancing traffic flows during the PM peak hour by MCV (without switching traffic flows) and as can be seen the center driveway has 128 vehicles (left turn out of the school) and the western driveway has 96 vehicles (left turn out of the school) for the 'Four Times Balanced 15 Minute Volumes'. This compares with 104 and 124 by Wells Post Hearing Submission.

This brief comparison of "balanced traffic flows" shows that Wells traffic volumes used in the Synchro model are as much as 28% below the MCV balanced traffic

FROM : MCV ASSOCIATES INC. FAX NO. : 703 914 4851 Nov. 22 2002 02:39PM P3

flows during the AM peak hour and 19% below the MCV balanced traffic flows during the PM peak hour for certain movements. This will result in better levels of service.

Average Vehicle Occupancy

The before Car pool program survey was conducted on Thursday, January 31, 2002 and the after car pool program survey was conducted on Wednesday, September 25, 2002. The school peak period, as per Wells is 7:00 to 8:30 AM and 2:30 to 4:30 PM. The following table summarizes the data presented in the Wells Post Hearing Submission.

Status	Time Period	Total Vehicles	Total Passengers	Students Per Vehicle
Before Carpool	7-8:30 AM	223	311	1.39
After Carpool	7-8:30 AM	212	382	1.80
Difference		-11	+71	
Before Carpool	2:30-4:30 PM	175	235	1.34
After Carpool	2:30-4:30 PM	224	380	1.70
Difference		+49	+145	
Before Carpool	2:30-3:30 PM	106	141	1.33
After Carpool	2:30-3:30 PM	155	286	1.85
Difference		+49	+145	

The above summary leads to the following conclusions:

1. The number of students during the AM peak period jumped from 311 to 382 and the total enrollment is the same, where were these 71 students in the January survey?

2. The number of students during the PM peak period jumped from 235 to 380 and the total enrollment is the same, where were these 145 students in the January survey?

3. The number of vehicles during the PM peak hour jumped from 106 to 155, an increase of 49 vehicles. The Wells analysis is based on the fact that the PM peak hour vehicle trip generation is 106 vehicles and not 155, an increase of 46%. The

FROM : MCV ASSOCIATES INC. FAX NO. : 703 914 4851 Nov. 22 2002 02:40PM P4

use of the higher peak hour traffic volumes will obviously result in longer queues, greater delays and worse levels of service than presented in the Wells reports. An effective carpool program is meant to increase carpool occupancy and reduce the number of vehicles. The St. Patrick's School's carpool program actually increases the number of vehicles during the peak hour.

4. The Wells Report submitted with the application states that there are a significant number of after school activities such as study hall, dance cooking language, sports, etc, which start at 3:15 or 4:00 PM and last for 45 minutes. The January survey shows a significant amount of after school activity and therefore only 141 students out of a total of 455 students left in the PM peak hour. In the September after carpool program survey, it seems that the after school activities have been significantly reduced with 286 students (more than double the January number) leaving in the PM peak hour.

I testified before the BZA that the timing of the after school activities and the magnitude of participation by students, makes it difficult to develop an effective carpool program. I standby my testimony. The data provided by Wells actually supports my testimony. The new data provided by Wells show that the timing and magnitude of the after school activities have been changed to increase carpooling. In the "before carpool program" 141 students left during the PM peak hour and the remainder (other than those who leave at noon) stayed back for after school activities. The "after carpool program" shows that 286 students left during the PM peak hour or in other words 145 students (286-141 = 145) did not stay back for the after school activities, although they did in the "before carpool program".

Levels of Service Analysis

The Wells report shows that the Synchro/Sim Traffic model was used to estimate queues, delays and levels of service at the school driveways and adjacent intersections. Before the model can be used to predict traffic impacts, the model has to be calibrated, in other words, verify that it replicates the existing conditions accurately. A model that does not replicate existing conditions accurately, cannot be used to forecast future conditions (with the expanded school). The model by Wells shows that the existing queue (95th percentile) on eastbound Whitehaven Parkway at Foxhall Road during the AM peak hour is 112 feet and the levels of service is LOS C (See Table 6, page 32 of April 2, 2002 Report). However, on page 37 of the report, item no 5 states, " Queues on eastbound Whitehaven Parkway at Foxhall Road very occasionally back up to the school driveway." The school driveway is approximately 600 feet from Foxhall Road. Therefore, Wells report shows that the queue length does extend to 600 feet on eastbound Whitehaven Parkway at Foxhall Road. The model is not predicting a queue length of close to 600 feet for the existing conditions. The reliability of the model to

FROM : MCV ASSOCIATES INC. FAX NO. : 703 914 4851 Nov. 22 2002 02:40PM P5

predict future delays, queues and levels of service are questionable.

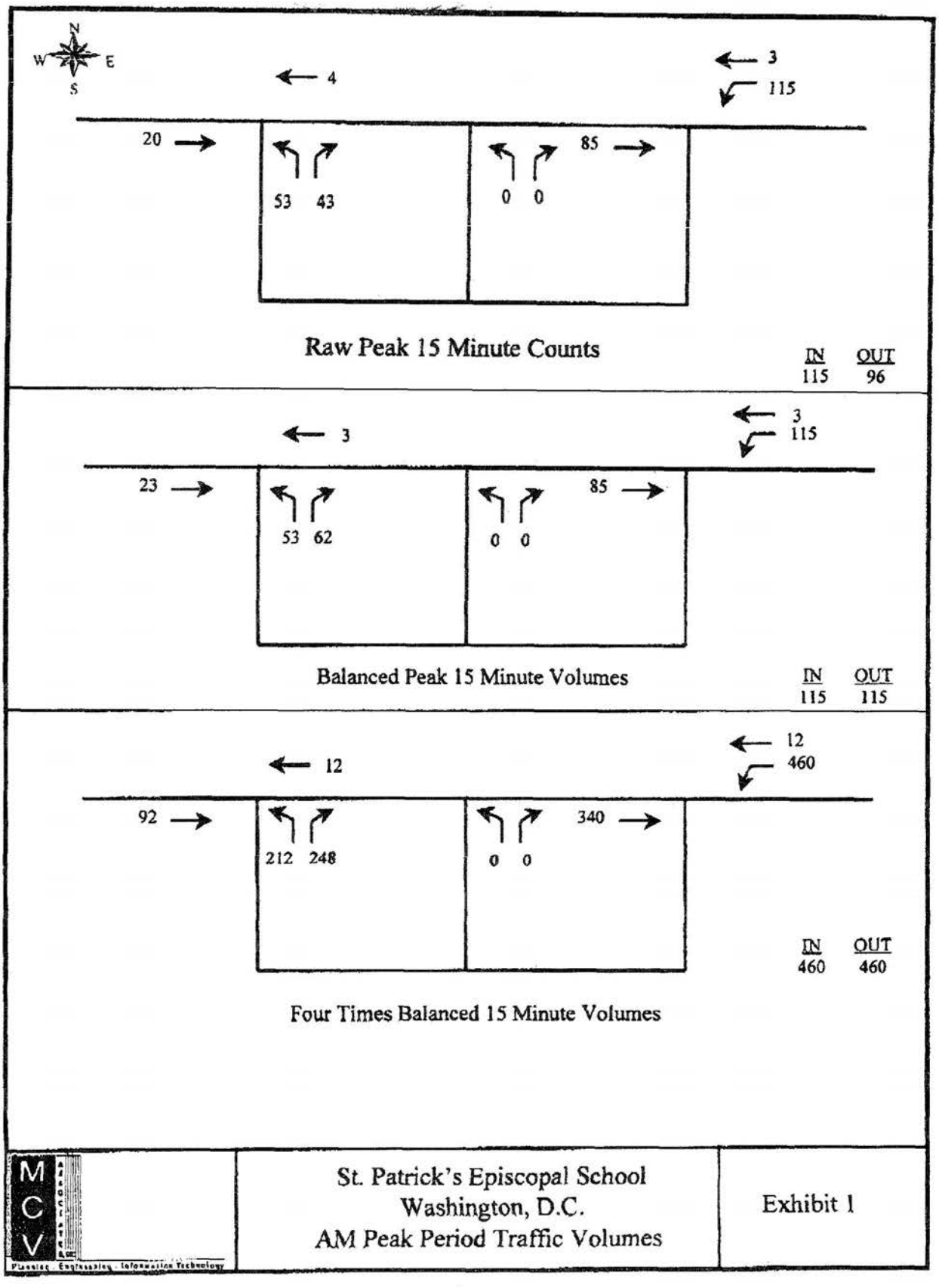
Conclusions

1. There are errors and discrepancies in the traffic data used to compute delays, queues and levels of service as shown in Exhibits 1 and 2. The traffic volumes used in the Synchro model are as much as 28% below the MCV balanced traffic flows during the AM peak hour and 19% below the MCV balanced traffic flows during the PM peak hour for certain movements. The use of these lower traffic volume numbers by Wells will result in shorter queues, less delay and better levels of service than the use of corrected balance traffic flows.

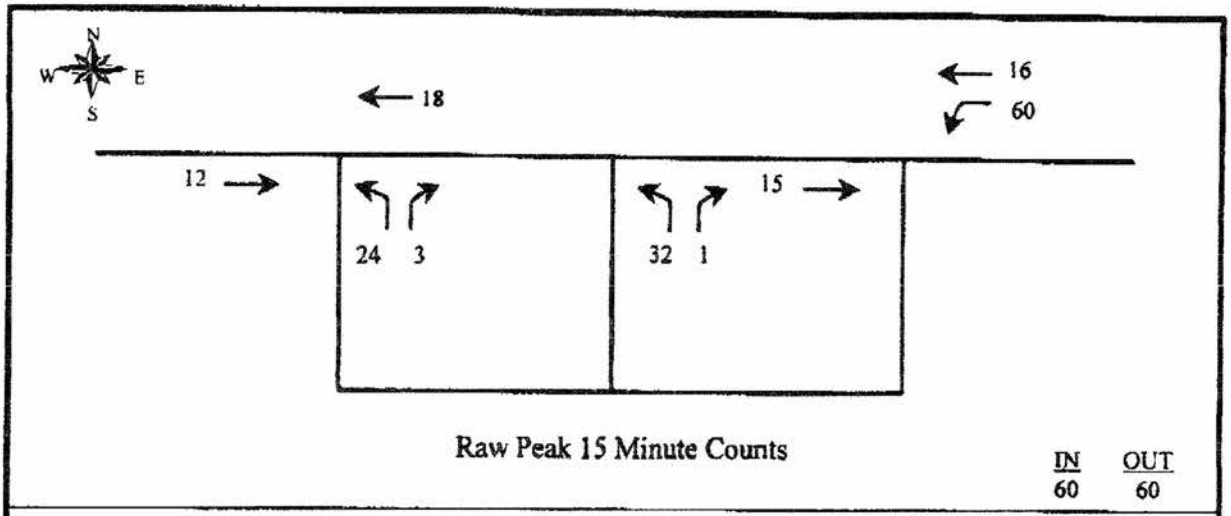
2. The carpool program seems to be based on a reduction of the after school activities and the magnitude of participation by students. An effective carpool program is meant to increase carpool occupancy and reduce the number of vehicles. This program actually increases the number of vehicles during the peak hour. The use of the higher peak hour traffic volumes will obviously result in longer queues, greater delays and worse levels of service than presented in the Wells reports.

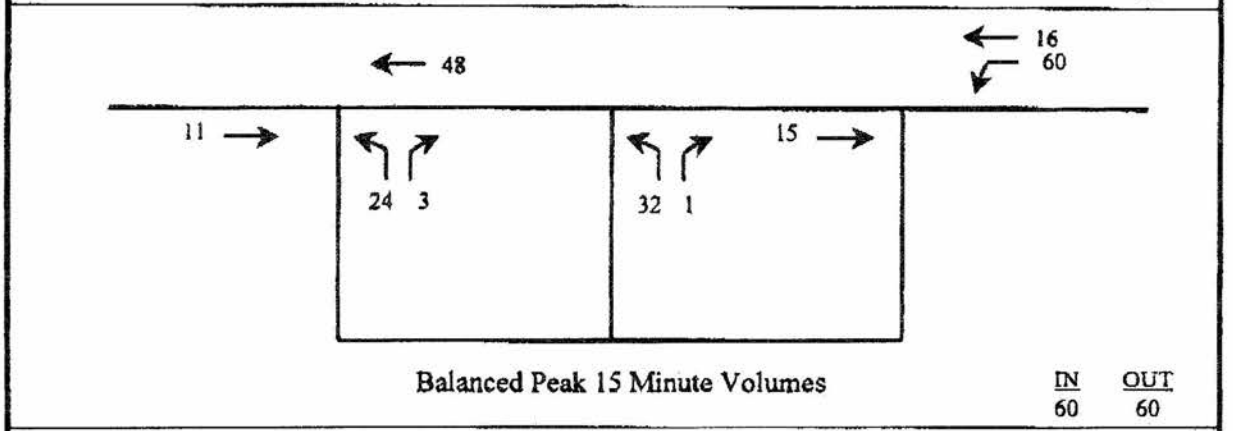
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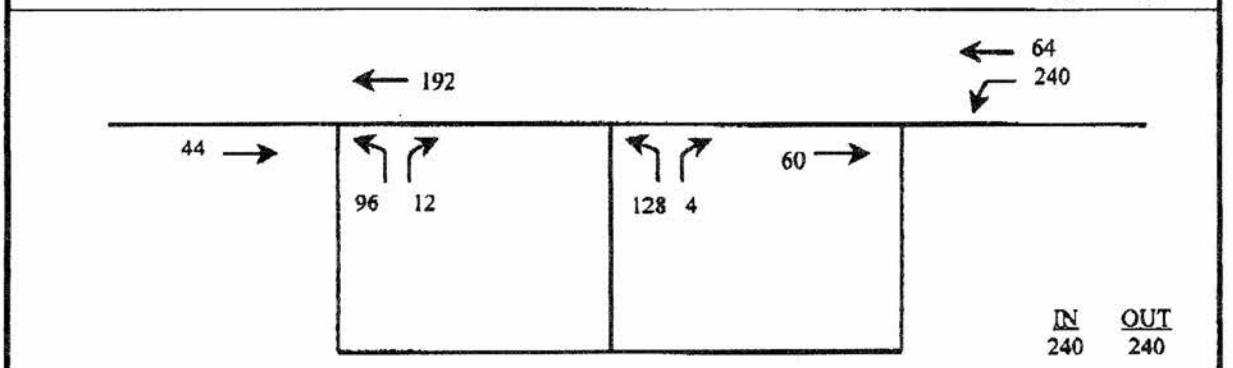
FROM : MCV ASSOCIATES INC. FAX NO. : 703 914 4851 Nov. 22 2002 02:41PM P6



FROM : MCV ASSOCIATES INC. FAX NO. : 703 914 4851 Nov. 22 2002 02:42PM P7







MCV Associates	St. Patrick's Episcopal School Washington, D.C. PM Peak Period Traffic Volume	Exhibit 2

FROM : MCV ASSOCIATES INC. FAX NO. : 703 914 4851 Nov. 22 2002 02:42PM P8