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November 22, 2002

Mr. Geoffrey H. Griffis
Chairman
District of Columiba Board of Zoning Adjustment
441 Fourth Street, N.W.
Suite 410
Washington, DC 2001

D.C. OFFICE OF ZONING
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2002 NOV 22 PM 4:38

Re: BZA Case No. 16852

Dear Mr. Griffis:

Enclosed are the Applicant's final filings for BZA Case No. 16852.

Included are:

1. The Applicant's Proposed Findings of Facts and Conclusions of Law;

2. A Response to the Argument submitted by the ANC that schools decrease property values; and

3. A Response to the Office of Planning Report dated November 8, 2002.

If you have any questions, please feel free to contact me at (202) 663-9062.

Sincerely,

Martin P. Sullivan

Enclosures

Document #: 1289742 v.1

BZA
Case No. 16852
Exhibit No. 345

Board of Zoning Adjustment
District of Columbia
CASE NO.16852
EXHIBIT NO.345A1

APPLICANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

GOVERNMENT OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

Application No. 16852 of Washington Psychoanalytic Society/St. Patrick's Protestant Episcopal Church, pursuant to 11 DCMR § 3104.1 for a special exception to allow a private school under Section 206 for a maximum of sixty students and a maximum of 12 faculty and staff in the R-1-B District at premises 4925 MacArthur Blvd., N.W. (Square 1393, Lot 823) (the "**Property**").

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

DECISION DATE: December 3, 2002

DECISION AND ORDER

The Board of Zoning Adjustment approved Application No. 16852 of St. Patrick's Protestant Episcopal Church to allow a private school in an R-1-B District, subject to conditions.

PRELIMINARY MATTERS

Applicant. The application was filed on January 22, 2002, on behalf of St. Patrick's Protestant Episcopal Church, the contract purchaser at the time of the filing of the application. At the time of filing, the Property was owned by Washington Psychoanalytic Society ("**WPS**") As of March 22, 2002, St. Patrick's Protestant Episcopal Church is the fee simple owner of the Property. St. Patrick's Protestant Episcopal Church is now the successor Applicant to WPS, and operator of the proposed St. Patrick's Episcopal Day School. St. Patrick's Protestant Episcopal Church is represented in these proceedings by Shaw Pittman LLP. Hereinafter, the word

"**Applicant**" refers to St. Patrick's Episcopal Day School.

Application. The application requests a special exception under 11 DCMR § 3104.4, 46 DCR 7853 (1999), to establish a private school under 11 DCMR § 206 (1995) in an R-1-B Zone District at premises 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 29, 2002, the Office of Zoning advised the D.C. Office of Planning, the Zoning Administrator, and Advisory Neighborhood Commission ("**ANC**") 3D, the ANC for the area within which the 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 February 28, 2002, mailed notice of the hearing to the Applicant, the owners of all property within 200 feet of the Property, and ANC 3D. Subsequent hearing sessions were held on May 21, 2002, July 2, 2002, July 9, 2002, and October 8, 2002.

The Applicant's affidavits of posting and maintenance indicate that two zoning posters were placed at the Property's two street frontages (1) MacArthur Blvd, N.W., and (2) Ashby Street, N.W., beginning on March 29, 2002, in plain view of the public.

Requests for Party Status. The Board granted party status to Lawrence Skrivseth and Cathy Wright, residents of 4913 MacArthur Blvd., N.W., the property located adjacent to and immediately south of the Property. The Board also granted party status to Michael Lovendusky,

resident of 4927 MacArthur Blvd., N.W., the property located directly across the street from the Property. The Board also granted party status to The Neighbors United Trust ("**NUT**"), a group of nearby property owners in opposition to the application. NUT was represented by Nancy Feldman, Alma Gates and Catherine Van Sickle DeMallie. Michael Italiano and Reva Hamilton, of 4919 Ashby Street, N.W., requested party status on March 29, 2002. On April 15, 2002, they withdrew their request for party status and withdrew their opposition to the application.

Request for Continuance. At the initial hearing on April 16, 2002, the Board denied a request by NUT for a continuance.

Applicant's Case. The Applicant presented testimony and evidence from Peter Barrett, Head of School at St. Patrick's Episcopal Day School; Katherine Bradley, Board Chair of St. Patrick's Episcopal Day School; Marty Wells, principal of Wells & Associates, Traffic Consultants, an expert traffic operations engineer; David Konapelsky, an architect with GTM Architects, an expert in architecture, particularly regarding accessibility for the disabled and life-safety systems; and Scott Harvey, an engineer with Polysonics, Inc., Sound Consultants, an expert in noise evaluation and mitigation.

Office of Planning ("**OP**") Report. OP submitted reports and testified that it reviewed the application with respect to traffic and parking, noise, number of students and other potentially objectionable conditions. In a series of reports dated April 9, 2002, April 15, 2002, and November 8, 2002, OP recommended approval of the application subject to several conditions derived from community concerns, the Applicant's proposed operational plans, and the Division

of Transportation's review and report. The Board adopted all the conditions proposed by OP.

District Division of Transportation ("**DDOT**") Report. Through reports dated April 9, 2002, and May 10, 2002, and the testimony of Ken Laden, Administrator for Intermodal Planning, DDOT, and Rachel MacCleery, Bureau of Traffic Services, DDOT determined that the application would not have adverse traffic or parking impact, provided certain conditions are met by the Applicant. The Board has adopted DDOT's conditions in this Order.

ANC Report. ANC 3D, at its regularly scheduled meeting held on April 3, 2002, voted 5-0 against recommending approval of the application.

The Palisades Citizens Association. The Palisades Citizens Association ("**PCA**") is the neighborhood association covering the area in which the Property is located. The PCA has approximately 1,000 members and has been in existence since 1916. At its general membership meeting on April 2, 2002, the PCA passed a resolution supporting approval of the application. The vote in favor of the resolution was 124 to 41. In addition, Erik S. Gaull, President of the PCA, submitted written testimony that "[t]he PCA took about three months to review and consider the St. Patrick's proposal from the time the school first approached the Association with its plans"; and that "[t]he outcome was a function of the democratic process, pure and simple."

Parties in Opposition to the Application. NUT submitted testimony prepared by Jawahar Mehra, P.E., who was qualified by the Board as an expert in traffic operations. Nancy Feldman, Alma Gates, Catherine Van Sickle Demallie also presented testimony on behalf of NUT.

Michael Lovendusky, a party to this proceeding, and a resident of 4927 MacArthur Blvd., across the street from the Property, testified in opposition to the application.

Lawrence Skrivseth and Cathy Wright, parties to this proceeding, and residents of 4913 MacArthur Blvd., adjacent to the Property, testified in opposition to the application. Mr. Skrivseth also submitted traffic data that he had compiled.

Persons in Support of the Application. Approximately 175 neighbors, citizens of the Palisades neighborhood of the District, other residents of the District, and District resident parents of students of the Applicant, filed letters to the Board in support of approval of the application. In addition, 17 persons testified in support of approval of the application. In the testimony and filings, these District residents, including immediate neighbors, testified that they supported approval of the application for the following reasons: (1) the proposed use would not adversely affect neighboring properties; (2) the Applicant had carefully and overwhelmingly addressed any cited potentially objectionable impacts; (3) the District has a critical need for independent and church-based middle schools; (4) the proposed use was similar to the use on the Property for the last forty years; (5) the proposal would preserve green space on the Property; (6) the Applicant's proposed use would have fewer impacts than some uses permitted as a matter-of-right such as the development of three large single family homes; (7) the Property is located on a highly-traveled major thoroughfare; and (8) schools enhance property value.

Persons in Opposition to the Application. Several persons filed letters in opposition to the application. Ann Gibbons, of 4905 W Street, N.W. was the only person in opposition who testified at the hearing.

Closing of the Record. The record was closed at the end of the hearing, except for specific documents requested by the Board. The Applicant filed proposed findings of fact and conclusions of law.

Decision Meeting. On December 3, 2002, the Board approved the application and adopted the conditions that are included in this Order.

SUMMARY OF EVIDENCE

Applicant's Testimony

1. Head of School of the Applicant. Mr. Peter Barrett, Head of School of St. Patrick's Episcopal Say School, testified that it became clear to St. Patrick's leadership, with the class of 2000, that students completing grade 6 in the District of Columbia public and private schools were engaging in fierce competition for the available seats at independent and church-based middle schools in the District of Columbia. He testified that it was against that backdrop that St. Patrick's decided to create a small program for students in grades seven and eight. Mr. Barrett testified that St. Patrick's leases space in a commercial zone at 4880A MacArthur Blvd., where it currently operates its middle school program. That lease terminates in 2003 and a permanent home is needed for the current seventh and eight graders. The Applicant testified that the Property provides a wonderful setting for a middle school education because of its light-filled interior spaces, intimate size of the classrooms, the green space surrounding the building, and proximity to the Whitehaven campus. The middle school program will operate in seminar-style

classes of no more than 12 students.

On cross-examination, Mr. Barrett testified that the successful carpooling measures at Whitehaven Parkway would completely offset any additional traffic resulting from the pick-up and drop-off of middle school students. He explained that he is extremely familiar with all facets of drop-off and pick-up at Whitehaven because he directly oversees both activities every day. Mr. Barrett testified that St. Patrick's now has a clause in its enrollment contract that requires that parents of students comply with all traffic and parking guidelines both at the Whitehaven site and the MacArthur Blvd. site.

2. Board Chair of the Applicant. Ms. Katherine Bradley, a resident of 2211 30th Street, N.W., has served as St. Patrick's Board Chair for the past two years. Ms. Bradley explained that she consulted with neighborhood leaders about the proposed use extremely early in the process and prior to the purchase of the building by St. Patrick's. Ms. Bradley testified that after these initial conversations with neighborhood leaders, she had received indications that this proposal would be acceptable and that any articulated concerns, particularly traffic, could be addressed to all parties' satisfaction.

Ms. Bradley testified that as St. Patrick's attempted to refine the proposed conditions of any eventual BZA Order, it was effectively shut out from any meaningful collaboration with the immediate neighbors. In the end, however, the relevant issues surfaced and St. Patrick's has addressed these concerns with clear and enforceable conditions. St. Patrick's, beginning very early in the process, engaged in very extensive community outreach, including the following: (1) shortly after St. Patrick's made its first offer on the Property, and a month before the contract to purchase the Property was signed, St. Patrick's hand-delivered letters to the 33 neighbors within

200 feet of the Property, explaining its offer to purchase the Property; (2) St. Patrick's presented information or answered questions at seven meetings of the Palisades Citizens Association ("**PCA**"), the first of which took place a full month before St. Patrick's signed the contract to purchase the Property; (3) St. Patrick's hand-delivered 130 packets of information throughout the community, including a 15-page Q&A on its proposal; (4) St. Patrick's attended three ANC meetings; (4) St. Patrick's hosted two open neighborhood traffic meetings in February, 2002; (5) St. Patrick's attended two meetings, on consecutive nights in March, 2002, regarding its offer to provide a covenant limiting enrollment to sixty students to the surrounding neighbors and discussing its architectural plans for the Property – 33 letters were delivered to invite neighbors to these meetings; and (6) St. Patrick's made telephone calls and wrote letters, several times throughout the process, offering to meet with surrounding neighbors.

Ms. Bradley testified that St. Patrick's has demonstrated clearly, with objective tests and enforceable conditions, that the impact caused by the school at this site would not be objectionable and would actually improve upon existing conditions of the current use.

3. Traffic Expert. The Board qualified Marty Wells, of Wells & Associates, as an expert in traffic operations in the District of Columbia. Mr. Wells testified that the proposed use on the Property would not be likely to have an objectionable impact on adjoining and nearby properties because of traffic or parking issues.

Mr. Wells testified that the proposed drop-off and pick-up arrangement for students would not significantly affect traffic on Whitehaven Parkway or MacArthur Blvd. and that any delays resulting from traffic stopping for school buses on MacArthur Blvd. would be similar to those delays currently experienced on that street at the existing signalized intersections.

Mr. Wells testified, in regard to the additional number of students being transported to Whitehaven in order to pick up the shuttle bus to the MacArthur site, that a traffic management plan was being implemented that would actually improve the traffic conditions on Whitehaven Parkway, even with the additional middle school students.

On cross-examination, Marty Wells testified that the goal of the carpool program was to increase the average person per vehicle occupancy to 1.6 students per car and if that were achieved, there would be no net increase in traffic on Whitehaven as a result of the additional middle school children.

Mr. Wells testified on cross-examination, in direct contrast to NUT's traffic expert, that his traffic analysis included the GWU Mt. Vernon campus traffic (based on that university's traffic impact study) and also the new Field School. Mr. Wells testified that traffic measurement for the Field School was very conservative. In fact, it was based on a report prepared by the opposition to the Field School. Mr. Wells testified that, in his opinion, the new traffic management plan for Whitehaven Parkway will work well and will be an improvement over existing conditions.

In rebuttal, Mr. Wells testified that the methodology he used on Whitehaven to measure peak traffic flows was very conservative and that numbers used for his study were higher than the actual numbers. According to Mr. Wells, these numbers were increased significantly to represent accurately the queuing behavior on Whitehaven Parkway.

Also on rebuttal, Mr. Wells testified that he used the "synchro" methodology of traffic measurement, rather than the highway capacity manual used by the opponent's expert Mr. Mehra. Mr. Wells testified that Mr. Mehra's method was not appropriate to use in such a study as this and that DDOT had also used the "synchro" methodology in its Palisades Traffic Study. Mr.

Mehra's traffic data were drastically different from the data of Wells and DDOT.

Finally, on rebuttal, Mr. Wells testified regarding the success of the carpool program at Whitehaven Parkway. Mr. Wells testified that before the carpool program began, the average vehicle student occupancy arriving at St. Patrick's on Whitehaven in the morning was 1.39 students per vehicle. The average vehicle student occupancy after implementation of the carpool program was 1.8 students per vehicle. In the afternoon, the average went from 1.34 to 1.7. Carpooling has increased 34% in the morning and 27% in the afternoon. Because both morning and evening numbers exceed the target of 1.6, all additional traffic related to the MacArthur Blvd. site will be offset by the success of the carpool program - even before consideration of the other traffic management upgrades suggested by DDOT.

4. Sound Expert. The Board qualified Scott Harvey, of Polysonics, as an expert in sound evaluation and mitigation. Mr. Harvey testified that the noise level that will be created by the children on the Property will not be higher than the noise level that exists there today from cars and trucks traveling on MacArthur Blvd. and from overhead airplanes arriving at and departing from National Airport. He testified that Polysonics Corp. performed an actual outdoor sound test at the Property with the current seventh graders present, and, in his opinion, only the properties immediately adjacent to the Property would be able to hear the children from inside their houses and only for the limited time that the children would be outside. Mr. Harvey further testified that the noise levels from the proposed school will not increase over the existing noise level on the surrounding properties. Mr. Harvey concluded that the proposed use was compatible with the residential neighborhood and was not likely to cause objectionable impact because of noise.

5. Expert in Architecture. The Board qualified architect David Konapelsky, of GTM Architects, as an expert in architecture. Mr. Konapelsky testified regarding the life safety and handicap upgrades and other renovations. He also testified regarding the proposed storm water management system, the parking lot, and the size of the Property and the building in relation to the proposed number of students. Mr. Konapelsky testified that the purpose of the reconfiguration of the parking lot was (1) to create a more efficient parking lot to maximize available parking lot space; (2) to provide the required handicapped parking; and (3) to allow for a buffer between the parking lot and the adjacent neighbors. Mr. Konapelsky testified that in his opinion the proposed site provides ample space to accommodate the needs of St. Patrick's middle school. He concluded that the proposed use would not be likely to create objectionable impacts due to the number of students. The proposed architectural plans show only a minimal increase in the paved area. The proposed buffering for the Skrivseth-Wright property places a wooden fence several feet inside the Applicant's property line, creating for them a greatly improved side yard. The existing Skrivseth-Wright side yard is non-conforming – measuring only three feet.

6. Office of Planning. OP, in its reports and at the hearing, testified that the Applicant had met its burden of proof and complied with Section 206 of the Zoning Regulations. OP first recommended approval for a maximum of sixty students, with up to forty students in the first year and an automatic increase to sixty after one year of successful operation. In a report filed on November 8, 2002, OP changed that recommendation to forty students for a ten year period only.

Regarding the specific potential impacts of the proposed use, OP testified that the Applicant had taken a number of steps regarding noise impact including prohibiting most recreational activities, limiting students' outdoor time and removing the existing trash dumpsters.

Regarding traffic, OP testified that DDOT had addressed and made recommendations to alleviate any traffic impact and OP supported such recommendations.

OP testified that an adjacent neighbor had requested relief from a surface water run-off problem emanating from the Property, and that the Applicant was coordinating with the National Park Service in developing and implementing a storm water management system to correct the problem.

OP testified that the proposed plans provided enough parking to accommodate the faculty, staff and visitors. OP testified that all concerns of the neighbors were addressed through OP's proposed conditions. OP concluded that the Applicant's proposal meets the requirements of Section 206 of the Zoning Regulations and recommended that the Board approve the application with certain conditions, as provided in the OP reports dated April 9, April 15, and November 8, 2002.

7. District Division of Transportation.

DDOT, in its agency reports and at the hearing, testified that it had undertaken an extensive review of the application and had met several times and had numerous telephone conversations with representatives from St. Patrick's and ANC 3D. DDOT also visited St. Patrick's Whitehaven Parkway campus to observe the morning pick-up routine and traffic conditions. DDOT testified that it had no traffic or parking related concerns, provided the Applicant implements the proposed traffic plan and DDOT conditions. DDOT, in a supplemental report dated May 10, 2002, recommended that a Compliance Report worksheet and a community liaison function be used by the Applicant for annual compliance reporting. DDOT testified that these additional reporting requirements made DDOT confident that the Applicant

would comply, and be able to measure compliance, in the short-term and the long-term. DDOT concluded that the requirements of the traffic plan would not be difficult to enforce nor would parents find compliance difficult.

DDOT has plans to initiate several traffic calming measures, over and above the Applicant's successful carpooling program, that will further improve traffic on Whitehaven. These measures include: (1) removal of parking on the north side of Whitehaven Parkway; (2) removal of parking on the south side of Whitehaven in front of St. Patrick's; (3) re-striping of the angled parking on the south side of Whitehaven Parkway; (4) striping Whitehaven Parkway as a three-lane road, with two lanes westbound and one eastbound; and (5) exploring additional safety and traffic calming measures in the future.

DDOT testified that full implementation of the St. Patrick's traffic plan, including DDOT's suggested conditions, will mitigate nearly all of the negative traffic impacts that the proposed use might otherwise generate.

Regarding the Whitehaven campus, DDOT testified that the proposed changes will substantially reduce queues on Whitehaven Parkway related to St. Patrick's, even with 60 additional middle school students, and will virtually eliminate back-ups of school traffic on Foxhall Road.

DDOT testified that it has given the views of the ANC the requisite great weight and that for each issue identified by the community, DDOT has reviewed such concerns and identified mitigation strategies. Finally, DDOT testified that the shuttle buses, in both the morning and afternoon, would have only a minor impact on MacArthur Blvd. traffic.

On cross-examination, DDOT testified that the relatively short periods that a bus would be stopped on MacArthur Blvd. to drop off or pick up children would likely be no longer than an

average stop light cycle.

Opponent's Testimony

8. ANC 3D

John Finney, Chair of ANC 3D, testified that the noise and bustle of teenage children in their most vocal phase of pubescence would erode the calm and tranquility of the neighborhood. He further testified that the shouts and shrieks and croaks of changing voices of the students will undoubtedly carry to nearby houses disturbing the tranquility of the neighborhood.

Mr. Finney offered no evidence to rebut the Applicant's sound or traffic expert, but simply stated that the sixty student limit was objectionable based on a 1962 BZA case denying the expansion of a kindergarten to 75 students on the same site. On cross-examination, Mr. Finney admitted that the 1962 BZA case involved significant new construction within 11 feet of the Skrivseth-Wright house, as well as a bad faith element due to that Applicant's substantial violation of its Board-authorized enrollment cap.

Mr. Finney testified that it was his intuitive gut feeling that the proposed use would lower the value of surrounding houses. The Board asked Mr. Finney at the October 8, 2002, hearing whether he had any evidence that schools lower neighboring property values. In response, Mr. Finney filed a letter, dated October 26, 2002, claiming that because the tax assessment amount of homes near Sibley Hospital had decreased, then it followed that properties surrounding this proposed use would also decrease in value. This evidence submitted by Mr. Finney addressed *assessed* values of houses on Loughboro Road across from Sibley, which recently added 104 independent living apartments. He submitted no evidence of decreased market values or sales prices.

The Applicant rebutted Mr. Finney's evidence in its final filing, showing that the status of

assessed values near Sibley Hospital is not even vaguely probative in determining the effect of the Applicant's proposed use on neighboring property values.

Mr. Finney also testified that he certainly hoped that the ANC and St. Patrick's could work together if this application were approved.

9. Neighbors United Trust

Nancy Feldman testified first on behalf of NUT. Her main points of testimony in opposition were that (1) there were other sites available to the Applicant; (2) the proposed location was not appropriate; and (3) the Applicant is not credible;

NUT's traffic expert, Mr. Mehra, testified that his ultimate conclusion was that the Whitehaven carpooling plan would be difficult to implement and that the traffic management plan would not be enforced. The Applicant's traffic expert, Marty Wells, testified in rebuttal that (1) the Wells & Associates traffic study was consistent with the DDOT Palisades Traffic Study, while Mr. Mehra's was not, and (2) the carpooling program at the Whitehaven campus was already in effect and had already exceeded its target.

Alma Gates also testified on behalf of NUT, primarily regarding the traffic at the Whitehaven location. Ms. Gates presented, and moderated, a videotape of Whitehaven Parkway during the morning drop-off. The integrity of this videotape was called into serious question upon cross-examination and rebuttal and was not consistent DDOT's conclusion from its observations of Whitehaven Parkway during drop-off and pick-up.

On cross-examination, Ms. Feldman stated that her group would not discuss or consider any mitigation measures or conditions. She stated that, because of NUT's position, the group refused to meet with St. Patrick's. Cathy Wright and Lawrence Skrivseth wrote a letter, dated

May 1, 2002, to Applicant's counsel (with a copy to the record) which stated: "It does not seem that there are grounds for discussion or mediation at this time. There is nothing that St. Patrick's might propose that could alter our resolute opposition." In a letter from NUT representative Nancy Feldman to Applicant's counsel (with a copy to the record), Ms. Feldman reiterated the opponent's position that they were opposed to any school for children, writing: "we re-affirm the purport of the Wright-Skrivseth letter of May 1, 2002, indicating that at present there is nothing to discuss or mediate." This letter stated that NUT's idea of a compromise would be if St. Patrick's used the Property as a residence for visiting scholars or teachers, a site for the chess club or a space for tutorials.

10. Michael Lovendusky testified that the application should not be approved because it was in a residential zone.

11. Cathy Wright testified that the Applicant had a poor history of compliance with BZA Orders, but did not cite any probative evidence of such.

Persons in Support

12. Casey Jason, Jr., a resident of 4884 MacArthur Blvd., N.W., testified in favor of the application. Mr. Casey stated that he lives next door to the current site of St. Patrick's Middle School at 4880A MacArthur Blvd.. He testified that, in his personal experience, he hardly noticed the school. He stated further that he had not witnessed any objectionable impacts with traffic or noise from the current middle school site.

13. Steven Rupp, of 1527 35th Street, N.W., testified in support of the application, stating that he lives across the street from Georgetown Visitation School, with a student population of 400, and

it never occurred to him that living across the street from a school was a negative because he has rarely been disturbed by noise from that school. He stated that any potential noise factor has been greatly exaggerated by the opponents and that the proposed use would not disturb the serenity of the neighborhood. He also assured Mr. Finney that his home across the street from Georgetown Visitation School had not lost value and his tax assessment had increased 66% in the past year.

14. Fifteen additional community members spoke in support of the application. Some of the reasons they cited were: (1) home property values actually increase for houses that are close to schools; (2) the Applicant will preserve and maintain trees and green space; (3) the Applicant will preserve and maintain the architectural integrity of the building; (4) no additional residential development will occur on the expansive lawn; (5) the Applicant will maintain the sidewalks after snowfalls; and (6) the Applicant has addressed and mitigated every legitimate concern raised by the opponents.

15. Michael Italiano and Reva Hamilton, of 4919 Ashby Street, N.W., originally opposed the application and requested party status. The Italiano-Hamilton property is the only house on Ashby Street that has no driveway. The owners were concerned that they would be severely impacted if parking on Ashby were removed due to a requirement for a fire lane. The Applicant agreed to pay to construct a driveway at the Italiano-Hamilton house if the city ever removes on-street parking on Ashby Street as a result of, or in any way related to, the school's presence at 4925 MacArthur Blvd. Michael Italiano and Reva Hamilton then withdrew their request for party status and asked that the Board recognize the school's commitment in this regard.

Persons in Opposition

16. Ann Gibbons, of 4905 W Street, N.W. testified in opposition to the application. She stated

that she thought there was inadequate land for the school and that a school in some other residential area would be safer for the students and faculty.

FINDINGS OF FACT

The Property and the Surrounding Area

1. The Property consists of approximately 21,000 square feet of land area located in an R-1-B Zone District at premises 4925 MacArthur Blvd., N.W. (Square 1393, Lot 823). The Property has approximately 150 feet of frontage on MacArthur Blvd. It also has frontage on Ashby Street, N.W.

2. The Property is located in the Palisades neighborhood of Ward 3, at the corner of MacArthur Blvd. and Ashby Street. Ashby Street is a narrow residential street improved with ten single-family houses.

3. The Property contains a 2-1/2 story building, built in 1905, in the northwest corner of the Property. The remainder of the Property is occupied by a parking lot and a large lawn. The building consists of approximately 4,325 square feet of usable space suited to the seminar-style classroom format.

4. The Property has been continuously and exclusively in use as an educational facility since 1961. In 1961, the Board approved its use as an elementary school for children of German Embassy employees. Since 1964, the Property has been used as a school for adults operated by the Washington Psychoanalytic Society pursuant to the approval of the Board in Order No. 7360.

5. The Applicant's proposal includes the complete rehabilitation and upgrading of the existing building. The Applicant will preserve and enhance the residential appearance of the building through the removal of the fire escapes on the eastern and southern sides of the building. The Applicant will preserve and maintain the existing open space. The Applicant will fully

renovate the interior of the building and convert it to seminar-style classrooms. The only change in the footprint of the building will be made to accommodate the need for life safety and handicapped accessibility upgrades, including the provision of code-compliant handicapped restrooms.

6. The existing parking lot will be reconfigured to accommodate more parking spaces than currently exist, although the paved area will be increased only slightly. As part of the reconstruction of the parking lot, the Applicant will install a new storm water management system that will protect the integrity of the existing retaining wall and reduce storm water run-off from the Property. The Applicant has coordinated with the National Park Service in the design of the storm water management system.

7. An existing trash dumpster will be removed. Trash will be stored in "supercan" containers that will be placed in a wood-fenced enclosure away from the adjacent property line, close to the school building.

The Proposed Private School Use

8. St. Patrick's Episcopal Day School was founded in 1956. It first operated as a nursery school in the old St. Patrick's church located at the southeastern corner of Foxhall and Reservoir Roads. The addition of elementary grades began in 1967. In 1977, the school moved to its present location at 4700 Whitehaven Parkway and currently operates there as a co-educational school for nursery through Grade 6.

9. St. Patrick's is an independent school founded on the belief that every child has infinite value and can benefit from a varied and challenging academic program. The student body and faculty reflect a diverse range of racial, ethnic, cultural and socio-economic backgrounds. The

school currently provides financial aid for tuition and related expenses to 73 students. Total financial aid for the current school year is approximately $1,000,000.

10. The Applicant currently operates a middle school for sixteen seventh graders in rented property at 4880A MacArthur Blvd., N.W., in the C-2-A zone district, in which school use is permitted as a matter-of-right. The Applicant's lease for that space expires in 2003.

11. The Applicant proposes to locate its middle school on the Property. The school will consist of a seventh and eighth grade with an initial maximum enrollment of forty students, automatically increased to a maximum enrollment of sixty students after the first year, provided the Applicant is in compliance with this Order.

12. The following comparison of the WPS use with the Applicant's proposed use demonstrates that the proposed us does not involve a significant increase in intensity:

Parking Comparison

	St. Patrick's (at an enrollment of 60)	**WPS**
Parking Comparison		
Every weekday	8 FT faculty/staff cars (40 parkers/week)	4-6 office worker cars (20-30 parkers/week)
Two days/per week	4 PT faculty/staff cars (8 parkers/ per week)	
Occasional use	Parent Visitors/ Sick Child Pick-ups (estimate 1-2/week)	
Evening/Weekend Approx. 2 times per week	NA	4-6 Society Staff (8-12 parkers/week) Average 20 (range 10 – 40) Society Students (average 40 parkers/week)
Total Weekly Parkers:	***49 – 50 parkers***	***68 – 82 parkers***

Hours of Use Comparison

	St. Patrick's (at an enrollment of 60)	WPS
Building Use, hours		
Every Weekday	9 hours (school day: 7:00 a.m. – 4:00 p.m.)	9 hours (office workers: 9:00 a.m. – 5:00 p.m.)
Evening/Weekend		3-4 hours, two times per week (Society seminars)
Total Hours, Weekly:	***45 hours***	***51-53 hours***

13. St. Patrick's parking will be wholly contained in the Property's existing parking lot. WPS parking demands, heavy during weekend and evening meetings, could not be contained in the Property's parking lot. During WPS meetings, students parked on Ashby Street.

14. Virtually all of St. Patrick's weekly student population will arrive and depart in two small groups, traveling between the building's front door and MacArthur Boulevard. The Board agrees with the Applicant that a total of sixty children entering and exiting a school, in two or three groups of twenty, is not likely to be objectionable. Indeed, to deem such an activity as objectionable would threaten the ability of any private school to be located in a residential zone, since schools involve students and faculty who must enter and exit their school building. Likewise, all schools involve student outdoor time during the school day.

15. The Applicant's proposal consists of the following elements:

a. The Applicant will renovate and upgrade the existing building, preserving its residential appearance, and upgrading its handicap and life-safety systems.

b. The Applicant will renovate the interior of the building to include seminar-style classrooms.

c. The Applicant will preserve the open green space on the Property, including existing

trees.

d. The Applicant will reconfigure and reconstruct the existing parking lot, installing a storm water management system, in coordination with the National Park Service, in order to reduce storm water run-off. The new parking lot will contain a minimum of fifteen parking spaces.

e. The Applicant will remove the existing trash dumpster, replacing it with a "supercan," within a wood fenced enclosure located on the west side of the parking lot, away from the property line. Trash pick-up will be handled on a daily basis by the Applicant's cleaning crew in a passenger type vehicle or van.

f. The Applicant will renovate and add a second story addition to an existing porch.

g. The Applicant will construct steps in the retaining wall at the front of the building, on the MacArthur Blvd. side. Students will enter and leave the building by way of these front steps.

h. Enrollment will be capped at forty students in grades seven and eight for the first year, and will be capped at sixty after the first year, provided the Applicant complies with the required conditions.

i. The maximum number of faculty and staff will be eight full-time and four part-time.

j. The building will be open for school use from 7:30 a.m. to 4:00 p.m. Staff and faculty may arrive earlier or stay later, but will not be on the Property later than 6:00 p.m., except in the case of an emergency.

k. No more than two evening school events will be held after 4:00 during the entire school year. There will be no other night use and absolutely no weekend use. There will be no summer use of the Property, other than necessary grounds maintenance.

l. No organized sports will take place on the Property.

m. The school will not use bells or loudspeakers.

n. Students that do not walk to school will be transported to and from the Property in shuttle busses to and from the Whitehaven Parkway campus, or will be driven to school in carpools of no fewer than three students.

o. Students' outdoor time will be limited.

p. The limited amount of deliveries to the school will take place between 9:30 a.m. and 4:00 p.m. Monday through Friday.

q. A carpool program has been instituted and will continue at the Whitehaven location, under the monitoring of DDOT, in order to completely absorb the additional traffic produced as a result of the proposed middle school.

r. The Applicant will provide buffering as desired by the adjacent property owner to the east.

s. The Applicant will establish a community liaison program to monitor enforcement of the conditions herein, address community concerns and build a strong community relationship.

Noise Impacts

16. The students will enter the school from shuttle buses or cars and proceed up the proposed new steps on the MacArthur Blvd. side of the Property. The students will immediately enter the school after departing their shuttle bus or carpool and will be outside for a limited time only in preparation for the shuttle bus or carpool at the end of the school day.

17. The eight full-time and four part-time faculty will park in the parking lot and enter the

rear entrance of the building. The use of this parking lot will be limited almost entirely to these faculty and staff, and the occasional parent picking up a student for a doctor's or other appointment. The parking lot will be completely emptied before 6:00 p.m. on weekdays. This is in contrast to the meetings of the WPS that produce nighttime and weekend noise both in the parking lot and on Ashby Street. Further, the Applicant has agreed to install buffering on the east side of the Property, between the existing parking lot and the adjacent neighbor's property. The buffer involves the installation of a fence several feet within the school's southern property line greatly improving the side yard condition of the Skrivseth-Wright property.

18. The students will have limited outside play time, in small groups, during the school day, as proposed in the general guidelines submitted by Peter Barrett, Head of School. Hours of operation of the school will be limited. The building will not be used after 6:00 p.m. on weekdays and will not be used at all on weekends or during the summer. This is in contrast to the existing school use, which takes place evenings and weekends.

19. The Property and the immediately surrounding area are currently subject to a certain level of noise disturbance from cars and trucks traveling MacArthur Blvd., a major thoroughfare, and from regular airplane traffic. Based on the report and expert testimony of Scott Harvey, the Applicant's expert sound control engineer: (1) during the limited amount of time the students are outside the school building, even before proposed mitigation measures, the noise from the students will not increase the overall level of noise that currently exists in this neighborhood, and (2) when the students are inside the building, they will not be heard at all by adjacent neighbors.

20. Based on the above, the Board finds that the proposed use in not likely to become objectionable to adjoining and nearby property owners because of noise.

Traffic Impacts

21. The Board finds that analysis of the traffic impacts pursuant to the application involves two main issues: (1) the overall traffic implications at the MacArthur Blvd. location and (2) limited aspects of the traffic situation at the Applicant's Whitehaven Parkway campus.

22. MacArthur Blvd. at Ashby Street is a four-lane, divided road, with curbed parking on both sides. The nearest traffic signals on MacArthur Blvd. are located at V Street to the south and Dana Place to the north. A Metrobus stop is located in front of 4925 MacArthur Blvd. The posted speed limit is twenty-five miles per hour.

23. Ashby Street is a twenty-five foot wide, local neighborhood street, bordered on both sides by single-family homes. Ashby Street is controlled by a stop sign at MacArthur Blvd.

24. Traffic at the MacArthur Blvd./Ashby Street intersection operates at an acceptable level of service (LOS) "A" during both the school a.m. and p.m. peak hours. Motorists turning into and out of 4925 MacArthur Blvd. experience no delay at Ashby Street.

25. Four alternative plans were identified and evaluated by the Applicant for accommodating the morning drop-off and afternoon pick-up of students. The Applicant decided that a transportation management plan including shuttle bus delivery of students from the Whitehaven campus and parent drop-off in carpools of three or more students would have the least effect on the traffic situation at the intersection of Ashby and MacArthur.

26. Under this plan, students would be picked up and dropped off at the Whitehaven campus. The lobby of the new gym building will serve as a waiting area in inclement weather. Two to three shuttle trips are likely to be required to transport sixty students.

27. The Applicants traffic expert testified that if St. Patrick's increased its average student per vehicle occupancy to 1.6 students per car, that would be enough to absorb all additional traffic

produced by the shuttle bus procedures for the MacArthur school site.

28. During the fall of 2002, the Applicant has successfully instituted its carpool program on Whitehaven Parkway and has its increased its person per vehicle occupancy average to approximately 1.8 for the morning drop-off and 1.7 for the evening pick-up, well over the amount necessary to offset any traffic impacts due to the proposed school on MacArthur Blvd.

29. The Applicant has shown that it can comply with, and has already exceeded, its carpool targets.

30. DDOT extensively reviewed this application and met with representatives from St. Patrick's and ANC 3D. DDOT also visited the Whitehaven campus of St. Patrick's to observe the morning drop-off routine and other traffic conditions.

31. DDOT concluded that full implementation of the St. Patrick's traffic plan, including all of DDOT's recommended conditions, will mitigate nearly all of the negative traffic impacts that the proposed middle school might otherwise generate. The Applicant's proposal to reverse the direction of the school's pick-up/drop-off lane at Whitehaven Parkway will be an improvement over current conditions because (1) it will increase the amount of space that cars have to queue as they wait to drop-off and pick-up children, and (2) the reverse direction will eliminate the need for children to pass in front of cars in order to enter the Whitehaven school.

32. Four to six bus trips and carpools of three or more students in front of the MacArthur Blvd. building is not likely to cause an objectionable impact because of traffic.

33. The Board agrees with DDOT that the proposed shuttle bus route will have only minimal impacts on the neighborhood due to the small number of round trips.

34. The Office of Planning reviewed DDOT reports and evaluated the traffic situation for the application. OP has recommended approval with implementation of DDOT's proposed

conditions.

35. The Board finds that the amount of traffic for pick-up and drop-off students is minimal and will not have a negative impact on surrounding properties or on traffic on MacArthur Blvd.

36. Based on all of the above and all of the information submitted into the record, the Board finds that the proposed use is not likely to become objectionable to adjoining or nearby property owners because of traffic.

Parking

37. The Applicant will have a maximum of eight full-time and four part-time faculty. The school will receive occasional visitors, such as a parent picking up a student for an appointment. The on-site parking lot will contain fifteen parking spaces. The existing spaces adequately accommodate the current typical daytime use of the building by the WPS, but the parking lot is filled to capacity and visitors park along Ashby Street when large meetings and events are held by the WPS.

38. The Zoning Regulations require a total of eight parking spaces for the proposed use, based on twelve faculty/staff.

39. DDOT concluded that the teachers and occasional visitors should be served adequately by the 15 spaces available on the Property, unlike the current use by WPS.

40. OP concluded that the proposal provides ample parking for the proposed use.

41. Based on the Applicant's testimony, expert testimony from Marty Wells, and the conclusions of DDOT and OP, the Board finds that the Property, as proposed, includes ample parking spaces to accommodate the faculty and occasional visitors.

Number of Students

42. St. Patrick's middle school will be marked by small class sizes of 8 to 12 students in seminar-type classrooms. The Property will house a maximum of sixty students. Students will arrive and depart the school using only two or three shuttle buses and a few carpools of three or more students.

43. The building, with the proposed life safety and handicapped accessibility upgrades, will occupy only 14.4% of the Property. The Zoning Regulations permit a maximum lot occupancy of 40% in the R-1-B Zone District. The substantial open space, and the parking lot, will provide a buffer between the building and neighboring properties to the south and east.

44. Other potential impacts based on the number of students would be impacts associated with traffic or noise, and are accordingly addressed by the Board elsewhere in this Order.

45. The Board finds that the Property and the building are large enough to accommodate the needs and demands of the proposed middle school and is not likely to become objectionable to adjoining and nearby property owners because of the number of students.

Other Objectionable Conditions

46. The Applicant has coordinated with the National Park Service in designing a stormwater management system to be installed beneath the existing parking lot. The stormwater management system will significantly reduce or eliminate stormwater run-off from the parking lot onto neighboring properties. Based on the Applicant's proposal to install this system, the Board finds that the proposed use is not likely to become objectionable to adjoining or nearby neighbors because of storm water run-off from the Property.

47. The Board heard arguments from opponents of the application, as well as from the Applicant and supporters of the application, regarding the impact of schools on surrounding

property values. The Board heard no probative evidence that the location of a school nearby results in a decrease in residential property values and therefore finds that the proposed use is not likely to become objectionable to adjoining or nearby property owners based on diminution of property values.

Harmony with the Zoning Regulations and Map

48. The building on the Property is well within the height, lot occupancy, and other area requirements of the R-1-B District.

49. Contrary to the views of the opponents, private school use is permitted by right in the R-1-B Zone District if the proposed use is in accordance with the requirements of Section 206.

50. The Property has been used continuously and exclusively for educational purposes for the last forty plus years.

51. For the reasons above, the Board finds that the application is in harmony with the Zoning Regulations and Map.

CONCLUSIONS OF LAW AND OPINION

The Board of Zoning Adjustment is authorized under the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Code § 5-524(g)(2)), 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 Property as a private school. The notice requirements of 11 DCMR § 3113 for a public hearing on the application have been met.

The Applicant is a private school as that term is used in the Zoning Regulations. To meet its burden of proof under Subsection 3104.1, the Applicant must demonstrate that the proposed private school use would meet the special conditions listed in Section 206; that it would be in harmony with the general purpose and intent of the Zoning Regulations and Map; and that it would not be likely to become objectionable to adjoining and nearby property because of noise, traffic, number of student, or otherwise objectionable conditions. Under Section 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 automobile.

Uses that are allowed by special exception are deemed compatible with other uses permitted in that particular zoning and classification provided certain requirements are met. Schools are recognized as reasonable and appropriate uses in the residential zone -- "In general, uses of land for educational purposes are 'highly favored,'" Glenbrook Road Ass'n v. D.C. Board of Zoning Adjustment, 605 A.2d 22 (D.C. 1992). Also, in reviewing applications for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites of the requirements are satisfied, the Board ordinarily must grant the application. See, e.g., Nat'l Cathedral Neighborhood Ass'n v. D.C. Board of Zoning Adjustment, 753 A.2d 984, 986 n.1 (D.C. 2000). Granting special exception relief in this case is in harmony with the general purpose and intent of the Zoning Regulations and map, and will not adversely affect the use of neighboring properties.

The Board is required, under D.C. Code § 6-623.04, to give "great weight" to OP recommendations. The Board is also required, under D.C. Code § 1-309.10, to give great weight to the recommendations of the ANC for the area within which the Property is located. Under

Section 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-135, 47 DCR 5519 (2000)), the Board must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice under the circumstances, articulating specific findings and conclusions with respect to each of the ANC's issues and concerns.

The Board has carefully considered the ANC's report and testimony; however, for the reasons stated below, the Board does not find the ANC's recommendation persuasive. First, the ANC stated that the application would not be in harmony with the general purpose and intent of the Zoning Regulations and the Zoning Map. The ANC Report describes the proposed use as a "new school building in a strictly residential area." This is a blatant misrepresentation of the fact that not only does the building already exist, but in addition it has been used as a school for the last forty plus years. Contrary to many assertions throughout this hearing, private school use is in fact a favored use in a residential zone. The ANC Report goes on to impugn the credibility of the Palisades Citizens Association and the vote that its President, Erik Gaull, labeled as an outcome of "the democratic process, pure and simple." The ANC Report has placed great weight on the "views of the nearby neighbors and their petition". The Board recognizes that it is the likelihood of objectionable impacts to nearby neighbors, not simply those neighbors' views, that the ANC is charged to consider. The Board finds further that the petition on which the ANC placed great weight was inflammatory and misleading.

Also, the Board does not find credible the ANC's assertion that approving the application would be a bad precedent because the school is in the "middle" of a residential zone. Nearly all private schools are in a residential zone and the Property itself has been a school for over forty years.

The Board finds that the Applicant meets the conditions necessary to protect adjoining and nearby property owners and to protect the residential character of the immediate neighborhood as well as the residential appearance of the building. Further, the Property, pursuant to BZA approval, has been used continuously and exclusively for educational purposes for the last forty plus years. This proposed use is a continuation of the previous category of use.

Also, the ANC claims that the proposal does not meet the requirements of Section 206. The Board also does not find this claim persuasive, for the following reasons:

Noise. The Board finds herein that the sound of children's voices is not inherently objectionable. The students will be present at the site only 170 days per year (less than half the year). Outside time will be limited and there will be no congregating outside before the start of classes. There will be no loudspeakers or bells. Based on these factors and on the expert opinion of the Applicant's sound expert, the Board finds that the ANC's argument regarding noise, laden with negative references relating to changing voices and puberty, is not persuasive. The Board finds that the matter-of-right use of this property for three large single-family houses could generate far more noise over a wider range of hours on a daily basis.

Traffic. The ANC based its report on a fear that the traffic management plan being proposed would not be enforced or followed by parents. Based on the efforts of the school and the school's continuing obligation to work with DDOT, the Board is satisfied that the proposed conditions will be complied with, monitored and enforced.

Number of Students. The ANC based its resolution partly on the fear that St. Patrick's would later seek an expansion beyond sixty students. The Board is satisfied that this is not an issue, as the Board itself has jurisdiction over any such increase. Further, the Applicant expressed a willingness to enter into a binding covenant limiting enrollment to sixty students. The ANC

cited a 1962 BZA case for the Property denying an increase in enrollment for a kindergarten from its previously approved twenty-five students to seventy-five students. The 1962 case involved significant new construction only eight feet from the southern property line. That case also involved an element of bad faith, as the school already had an enrollment of forty-seven at the time it sought the increase. The 1962 case, therefore, is not relevant to the Board's decision in this case.

Parking. The ANC bases its argument on the possibility that the school will remove parking spaces, and will then have fewer than 15 spaces. The proposed use includes, and is required to maintain as a result of the conditions of this Order, a minimum of 15 parking spaces. The Board finds that 15 parking spaces will easily accommodate the maximum of twelve faculty (four part-time) and the occasional visitor. The Zoning Regulations require a minimum of eight parking spaces for the proposed use. The Board therefore does not find the ANC's argument regarding parking persuasive.

Diminution of Property Values. Mr. Finney of the ANC argued that it was his gut feeling that the existence of a school would lower neighboring property values. The Board finds that the evidence regarding property values near Sibley Hospital is not relevant and finds also that no evidence was presented by the ANC that would tend to indicate that property values are likely to decrease as a result of the presence of a private school.

Comparison with Previous Use. It is proper for the Board to assess a proposed use in light of whether that proposed use would significantly increase objectionable qualities over their prior levels in the area. *Draude v. D.C. Board of Zoning Adjustment*, 582 A.2d 949, 959-60 (D.C. 1990) The Board finds that the proposed use by the Applicant, while producing different impacts at different times from the previous use, nevertheless is not likely to have any greater

objectionable qualities than the WPS use. The Board finds that the Applicant has shown that objectionable impacts may in fact be significantly decreased as a result of its proposal.

Reasonable Accommodation. The Board, in assessing potential impacts, has determined that the school has made a reasonable accommodation that does not interfere with the legitimate interests of the neighbors. The Board finds that the Applicant has produced creative solutions to any legitimate issues presented by the neighbors. The Board believes that the Applicant has acted in good faith throughout its planning and hearing process and has amended its proposal to satisfy the recommendations of the Office of Planning, the District Division of Transportation, and the community.

For the reasons stated above, the Board concludes that the Applicant has met the burden, it is hereby **ORDERED** that the application be **GRANTED**, subject to the following conditions:

1. The initial enrollment will be for up to 40 students. After the first year, enrollment may be increased to not more than 60 students. Prior to any increase in enrollment over 40 students, the applicant will submit a report to the Compliance Specialist in the Office of Zoning and the representatives of the community liaison program demonstrating compliance with all conditions of approval. After consultation with the Office of Planning, DDOT, ANC-3D, and representatives of the community liaison program, the Compliance Specialist will permit the increase in enrollment if he or she concludes that the applicant has complied with the conditions of the BZA Order.

2. Combined, the number of faculty and staff will not exceed 8 full-time and 4 part-time persons.

3. The building shall be open for school use from 7:30 a.m. to 4:00 p.m. Staff/faculty may arrive earlier or stay later, but in no event shall they be permitted on the premises after 6:00 p.m., ***except in the event of an emergency***.

4. No more than two major evening school events, such as back-to-school night, shall be held after 4:00 p.m. during the school year.

5. There shall be no summer school program at the Property.

6. The school may not allow any outside groups or persons to rent any portion of the Property at any time.

7. Students who do not walk to school, arrive by public transportation or arrive in a carpool with a minimum of three middle school students shall be dropped off at the gym on Whitehaven Parkway between the hours of 7:30 a.m. and 7:55 a.m. The students will then be shuttled to the Property. The shuttle vehicle will arrive at the site by traveling on MacArthur Blvd. The vehicle will stop and discharge students at the existing bus stop in front of the building. The shuttle will return to Whitehaven via the approved shuttle route. The pick-up of students in the afternoon shall be from the gym on Whitehaven Parkway. Parents will not be permitted to drop off or pick up children at the Property at arrival and dismissal times, ***except carpooling parents with at least three middle school students in the car may drop off the students at the bus stop in front of the Subject Property in the morning.***

8. The Applicant shall install and operate any lighting of the parking facilities so that it is directionally downlit with minimum light candle power. ***The ANC and the abutting property owners will be provided an opportunity to comment on any proposed lighting, fencing and signage.***

9. There will be no organized sports conducted on the Property. Outdoor activity on the Property shall be limited to casual recreational use.

10. The Property shall contain a minimum of 15 parking spaces. ***Tandem parking shall be permitted.***

11. There are only limited deliveries anticipated for the school. The Applicant shall schedule all deliveries to take place from 9:30 a.m. to 4:00 p.m. Monday through Friday.

12. A carpool program will be established, instituted, and monitored by the school and should be approved by DDOT. The Applicant shall submit an evaluation and progress report to DDOT for its evaluation of the program on a yearly basis.

13. Fencing along the southern property line will be provided at the Applicant's expense if requested by the property owner.

14. Expansion of the building will be limited to the area necessary for access as shown in the plans as shown in the Site Plan, Ex. __.

15. Large commercial trash dumpsters are prohibited.

16. The Applicant shall coordinate with the National Park Service in developing and implementing storm water management controls.

17. The Applicant shall establish and maintain a community liaison program to address community concerns. The committee shall include representatives of ANC-3D and the Palisades Citizens Association. The Applicant shall conduct meetings of the community liaison committee at least quarterly. Notice of the meetings shall be given to the liaison committee members and the owners of all property within 200 feet of the site.

18. The special exception will be valid for a period of 10 years.

19. Every year from the date of this Order, the Applicant shall provide to the Compliance Specialist in the Office of Zoning a completed Compliance Report, as attached to DDOT's report of May 20, 2002, as well as evidence that documents the veracity of the claims made in the Compliance Report. In addition, minutes from meetings of the Community Liaison Group will be submitted. This information must also be provided to members of the St. Patrick's Community Liaison Group, as well as directly to the Advisory Neighborhood Commission 3D and the Palisades Citizens Association, and to any other requesting parties. If the Compliance Specialist finds that the Applicant is in violation of the conditions of this Order, it shall direct the District Department of Consumer and Regulatory Affairs to begin appropriate enforcement procedures in accordance with the laws of the District of Columbia.

Chapter 32 of the Zoning Regulations sets forth provisions with respect to enforcement and penalties for violations of the regulations. Section 3205 requires compliance with conditions in orders of the Board and provides that if a building permit or certificate of occupancy has been issued pursuant to a decision of the Board to approve a special exception, then each condition to the approval of that special exception shall be treated as a condition to the issuance of the building permit or certificate of occupancy as well. 11 DCMR § 3205.3. The failure to abide by the conditions, in whole or part, shall be grounds for the revocation of any building permit or certificates of occupancy issued pursuant to this order.

VOTE:

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____

SHERI M. PRUITT-WILLIAMS

SECRETARY TO THE BOARD

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November 22, 2002

By Hand Delivery

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

Re: BZA No. 16852: Response to Assertion that Institutional Presence Causes Property Devaluation

Dear Mr. Griffis:

The purpose of this letter is to refute the assertion of certain opposition parties that schools in the residential communities adversely affect property value. The facts simply do not support such an assertion:

1. Evidence from nearby Georgetown Day School and Lab School neighbors shows skyrocketing sales prices right next to schools.

2. Any purported "institutional devaluation" for 4925 MacArthur neighbors would have occurred 40 years ago, when the property first converted to educational use.

3. The reduction secured by the Lovenduskys was the result of their opportunistic request to lower an assessment and thus pay less tax revenue to the D.C. Government based on the mere possibility of the approval of St. Patrick's as a neighbor. An assessment reduction based on an unapproved school proves the reduction is little more than palliation for homeowner concerns and was not based on any actual changes in the neighborhood or changes in sales patterns.

4. The reduction in the assessments for certain houses on Loughboro Road relates to several factors. Some Loughboro neighbors experienced sewer flooding. Further, these neighbors have been unsuccessful in securing a change to the bus route that burdens their street with regular and noisy traffic and pollution. Assessment relief is more likely the result of these factors than any change in institutional presence.

BZA
Case No. 16852
Exhibit No. 345-A

The Finney Letter

Mr. John Finney, Chair of ANC 3D, submitted a letter dated October 26, 2002, supporting his contention that the location of an institution such as a school or hospital in a residential neighborhood has an adverse effect on property values. He contends that a comparison of changes in the assessed values of homes in the 5200 block of Loughboro Road to the assessed values of homes on Watson Street, N.W., establishes such a negative effect. In addition, Michael and Meleva Lovendusky submitted a letter dated November 8, 2002, stating that their recent success in the appeal of the 2003 assessed value of their residence establishes the devaluation of properties near and adjacent to 4925 MacArthur Blvd. This "evidence," however, is inapposite because St. Patrick's is not comparable to Sibley Hospital/Grand Oaks and the evidence submitted by ANC 3D and the Lovenduskys is entirely speculative and biased. Indeed, proximity to schools is widely considered a positive attribute that increases property values.

St. Patrick's Is Not Comparable To Sibley Hospital/Grand Oaks

John Finney, on behalf of ANC 3D, proffers the relative assessment values of the properties located on the 5200 block of Loughboro Road and the 5200 block of Watson Street as an example of the deleterious effect of the proximity of an institution such as a hospital or school on nearby property values. For the purposes of this response, we will assume that neighborhood residents are asserting that it is market value, not assessment value, that is harmed by the proximity of schools and hospitals.

Even if one accepts the proposition that assessment values are a reliable indicator of sales prices and market values, Sibley Hospital/Grand Oaks and the proposed St. Patrick's School program are not even remotely analogous. Grand Oaks is a 104 room assisted living facility adjacent to Sibley Hospital, a 328 bed medical facility that includes a twenty-four hour emergency room and the associated emergency vehicle traffic. Grand Oaks is significantly larger than the proposed St Patrick's program – and is more intensely used.

In contrast, 4925 MacArthur Blvd. is a single family home that has been dedicated to institutional use for over forty years – with no adverse effect on property values. It is buffered by a parking lot and large lawn. The maximum number of students who will be on the property is sixty. The vistas from neighboring properties will remain the same. The use of the property will occur during school hours. The lighting of the property will not be intense, and parking at the school will remain limited.

St. Patrick's will be limited to sixty students and will have only twelve faculty and staff. It cannot reasonably be argued that Sibley/Grand Oaks and the proposed St. Patrick's School are similar uses. Therefore, even assuming the properties located on Loughboro Road have a significantly lower market value than properties located on Watson Street, the situation is not comparable to that which is presented by St. Patrick's application.

The Evidence Submitted by ANC 3D Is Not Probative

The "Summary of Comparison of Assessments for Loughboro and Watson" ("Summary") submitted by Mr. Finney is outdated, generalized, insignificant, and not based on reliable statistical methods. In the Summary, Ms. Shaughness, who is not a statistician, asserts that thirteen homes on Loughboro lost value between 1998 and 2000, in comparison to the three homes located on Watson that lost value. She then takes the purported percentage increase in assessment value for Watson between 1998 and 2000 (3.8%) and applies that percentage to what the increase in value on Loughboro would have been had it increased at the same rate. She then subtracts the actual 2000 assessed value of the properties located on Loughboro ($10,461,058) from the "projected" 2000 assessed value on Loughboro and concludes that it establishes a $1,038,060 market value deficiency. She does not list the properties that were included in her calculations. She likewise does not let us know whether the properties she included are assessed at lower values than other properties located on Loughboro Road that are located further from Grand Oaks and Sibley Hospital.

In addition, Mr. Finney failed to establish that assessment values are a reliable predictor of market value. The District of Columbia Office of Tax and Revenue prepares an annual report that measures the quality of real property assessments within the District of Columbia. (See Exhibit A) The FY 2003 Assessment Ratio Survey Report states that the goal of the real property assessment process is to estimate the market value of the property, measured by sales price. (Exhibit A at 2.) However, a margin of error is built into the process. (Exhibit A at 6.) The International Association of Assessing Officers ("IAAO") has established standards for determining the accuracy of assessment values. (Exhibit A at 5.) In FY 2003, the assessments for the Kent neighborhood did not meet the IAAO standard for accuracy – because the sales prices were much higher than the assessed values. (Exhibit A at 14.) The reports for fiscal years 2000, 2002, and 2003 demonstrate that the assessed values have consistently fallen short of the sales prices in the Kent neighborhood in which Loughboro and Watson are located. In 2000, the median ratio of assessed value to sales price was 83.1. In 2002, it was 90.0. In 2003, it was 82.1. (Exhibit A at 10.) For 2003, the weighted mean, which is the result of dividing the total

of the assessments by the total of the sales prices, was only 83.4. Thus, in 2003, the average property was assessed at a rate 16.6% lower than the average market value. (Exhibit A at 10.) These reports are available on the District of Columbia website and could have been utilized by Mr. Finney, had he chosen to do so.

Even working with the methodology in the Summary and assuming that assessed value is a reliable predictor of market value, the figures contained in the Summary are outdated and irrelevant. Exhibit B lists the assessed values of properties located on Loughboro Road and Watson Street in Square 1448 by house number, lot number, old value, and proposed value. These figures were taken from the District of Columbia real property tax database. For Loughboro Road, Exhibit B shows the old value for properties as $10,229,298 and the proposed new value as $12,313,340 – a difference of $2,084,042 or 20.37%. For Watson Street, it shows the old value as $7,667,538 and the new value as $9,362,070 – a difference of $1,694,532 or an increase of 22.10%. Thus, the average property located on Watson Street demonstrated only a 1.73% increase above the average property located on Loughboro Road. This small percentage could be attributed to a variety of factors, including the fact that Loughboro is a major thoroughfare while Watson is a tributary street. This small difference actually disproves Mr. Finney's hypothesis because there was only a very small difference in assessed value between those properties directly fronting a large hospital compound on a major thoroughfare and those fronting a quiet residential street.

The figures in the Summary were prepared by an amateur statistician and cannot be accorded the weight to which statistics prepared by an expert would be entitled. Further, they are based on the false premise that assessment value equals market value. The fact that Ms. Shaughness did not consider the difference between the two is borne out by the fact that she subtracted an assessed value from another assessed value and came up with a "market value deficiency." More recent figures demonstrate that the difference in assessed values between properties located on Loughboro and Watson is insignificant – a little less than 2%. This difference could be caused by a number of undeterminable factors, including the fact that Loughboro is a major thoroughfare while Watson is a tributary street. Accordingly, the "evidence" submitted by ANC 3D cannot be considered probative.

Finally, the letter fails to mention that, during tax years 1999 through 2003, four of the home owners on Loughboro sought reductions of their assessment values, citing many reasons, including a large broken sewer pipe that resulted in the flooding of several houses. The fact that the Assessor's Office accommodated some of the residents in no way indicates an actual drop in market value, and certainly does not indicate a drop

related to Sibley/Grand Oaks. It is interesting to note that one homeowner who sought a decrease in tax year 2003 received no reduction – further undermining Finney's thesis.

The Evidence Submitted By Mr. And Mrs. Lovendusky is Not Probative

The evidence advanced by Mr. and Mrs. Lovendusky, of 4927 MacArthur Boulevard, also is entirely speculative. The Lovenduskys assert that they recently appealed the assessment of their property. In their appeal they claimed: "St. Patrick's Episcopal Day School ... proposes to educate 60 students of the Seventh and Eighth Grades with 12 faculty and staff, permanently varying the residential designation of the property for commercial (sic) purposes." They assert that for this reason they received a 10% reduction in the increase of their assessment rate. The only thing this "evidence" proves is that the District of Columbia Office of Tax and Revenue is willing to make adjustments to accommodate residents of the District of Columbia. First, as established above, assessment values generally do not approximate sales prices. Second, the proposed School is just that – proposed. It is entirely speculative at this point because it has not yet been established. Third, the Lovenduskys failed to include the criteria that was used in devaluing their assessment. They have not included a chart or table or formula established and used by the District of Columbia government that routinely reduces property assessment values based on proximity to a private school. For all we know, the 10% figure could have been founded on an entirely different basis.

Moreover, homeowners such as the Lovenduskys have an incentive to perpetuate the differential between assessed value and market value. This allows homeowners to reduce their tax burden and invest their money in other ways. When they sell the house, they reap the benefit of the additional value while having retained the use of their money.

Proximity to a School Does Not Diminish Market Value

Proximity to schools often is a selling point for real estate brokers. An example that proximity to schools does not diminish sales price is Laverock Place, a development of single family homes that is located immediately adjacent to Georgetown Day School off of MacArthur Blvd. All of the homes on Laverock Place were built during the same time period. They all feature four bedrooms and 3 ½ baths, with a total of 10 rooms. Some of the houses are constructed of brick and some are constructed of wood siding. All of them are located adjacent to Georgetown Day School's soccer field. Two brick houses (4620 and 4622 Laverock Pl.) had a former assessed value of $600,400. 4620 Laverock Place sold for $840,000 on January 30, 2002, and its 2003 proposed assessed value is $840,000. That is a 40% increase in assessed value. On March 28, 2003, 4622

Laverock Place sold for $900,000 – $60,000 more in two months. Its proposed 2003 assessed value is $894,000. That is a 49% increase in assessed value. 4600 Laverock Place, which has wood siding, has an old assessed value of $468,000. The proposed 2003 assessed value is $698,060, a 49% increase in assessed value.

In the Palisades neighborhood, the residential properties located on 47th Street near the Lab School and St. Patrick's have not experienced diminished property values because of their proximity to those institutions. For example, properties located on assessment lots 819, 820, 821, and 822 in Square 1372, which are immediately adjacent to the Lab School, all received proposed 2003 assessment values that are 39% higher than the old values. The properties located on lots 823 and 827, which are separated from the school by 47th Street, also received proposed 2003 assessment values that are 39% higher than the old values. The properties located on lots 10 and 13 on Reservoir Road, and very near the Lab School, have recently sold for much higher than their assessed values. The old assessment value for Lot 13 at 4749 Reservoir Road was $290,418. The proposed 2003 assessment value is $403,680. However, the property sold for $600,000 on June 1, 2001 – 49% above its assessed value. The old assessment value for Lot 10 at 4737 Reservoir Road was $386,820. The proposed 2003 assessed value is $537,680. That property sold for $747,000 on June 20, 2002 – 39% above its proposed 2003 assessed value. Lot 13 is much closer to the Lab School than Lot 10, but its sales price was 49% over its assessed value, while Lot 10's sales price was only 39% over its assessed value.

The neighbors of the proposed St. Patrick's School should not expect a decrease in property values. The façade of the 4925 MacArthur Blvd. will remain the same. The School will maintain the open space surrounding the building. The open space will enhance the values of surrounding properties, particularly the immediately abutting properties. Furthermore, any change in the value of properties adjacent to 4925 MacArthur Blvd. which are attributable to its institutional use would already have occurred because the site has been devoted to institutional and school use for over forty years.

In conclusion, the "evidence" submitted by ANC 3D and the Lovenduskys does not prove that St. Patrick's School will have a deleterious effect on property values in the area surrounding 4925 MacArthur Blvd. Even assuming that hospital/assisted living and private school programs are analogous and that assessment values are a reliable indicator of market values, the assessment values for 2003 demonstrate that the Loughboro Road properties were not significantly harmed by the construction of Grand Oaks. Moreover, the Lovenduskys recent assessment appeal is entirely speculative and biased given the

fact that it was in their interest to ensure that their property was assessed for lower than its market value. Even the District of Columbia Office of Tax and Revenue admits that assessment value is not a reliable indicator of market value. Finally, the real estate community generally considers proximity to good schools to be a positive factor, which is evidenced by the skyrocketing values of properties in Laverock Place and on 47th Street in Palisades.

Sincerely,

Allison C. Prince

Allison C. Prince

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