Form 300
(Revised 09/09/02)

Case No. 16852

Complaint No. 4 (FOUR)

DISTRICT OF COLUMBIA OFFICE OF ZONING

COMPLAINT OF NON-COMPLIANCE WITH CONDITION(S) OF A BZA/ZC ORDER

Notice: See other side of complaint of non-compliance with condition(s) of a BZA/ZC Order for instructions

IMPORTANT NOTE: This process is not intended as a substitute for the enforcement responsibility of the Department of Consumer and Regulatory Affairs (DCRA). Any person that believes immediate enforcement action is required should contact DCRA.

A complaint is hereby filed with the Office of Zoning for review and assessment of compliance; and if in non-compliance, assistance in working with the non-complying party to achieve compliance and/or referral for mediation; and/or if not resolved, referral to Department of Consumer and Regulatory Affairs (DCRA) for appropriate action pursuant to Titles 11 and 16 DCMR Chapters 32, such as revocation of building permits/Certificate(s) of Occupancy, or citation action - the details of which are as follows:

Address(s) of Affected Premises	Square (s)	Lot (s)	BZA Order No. and Date	ZC Order No. and Date	BZA/ZC Order Expiration Date	Condition No.
4925 MacArthur NW	1393	0823	16852;3/25/03	n/a	n/a	3

Present use of Property:	Middle School
Owner of Property:	St.Patricks School
Telephone No.:	202.342.2804
Address of Owner:	4700 Whitehaven Pkwy Washington DC 20007
Name, address and telephone number of lessee (if applicable):	

List specifically by condition number each and every alleged violation(s) of non-compliance with condition(s) of a BZA/ZC Order and the relevant sections of the Zoning Regulations (see reverse for more detailed explanation). BZA 16852 Con 3

Please use a separate piece of 8 ½" x 11" to respond and attach it to the Form 300 (if needed).

See attached two pages

The making of a false statement on this form, or any attachment thereto, or in response to any questions or request for information made by the Director or by Office of Zoning Staff, is punishable by the criminal penalties set forth in section 404(b) of the District of Columbia White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Code 22-2514(b)).

Date:	2 May 2003	**Signature:**	Complainant

Contact Information of Complainant

Name:	Michael Lovendusky				
Address:	4927 MacArthur Blvd NW Washington DC 20007				
Phone No.:	W202-624-2390	**Fax No.:**	202-572-4798	**E-Mail:**	mlovendusky@acli.com

Exhibit No. 16852 352

Board of Zoning Adjustment
District of Columbia
CASE NO.16852
EXHIBIT NO.352

ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

☆ ☆ ☆

RECEIVED
MAR 30 2003

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, grades seven through nine, 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).

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

This application was submitted January 22, 2002 by the owners of the property that is the subject of the application. At the time of filing, the subject property was owned by Washington Psychoanalytic Society, which submitted the application on behalf of St. Patrick's Protestant Episcopal Church, then the contract purchaser of the subject property. St. Patrick's Protestant Episcopal Church ("Applicant") became the fee simple owner of the subject property as of March 22, 2002 and was represented in this proceeding by Shaw Pittman LLP.

Following a public hearing, the Board voted 4-0-1 on December 3, 2002 to approve the application subject to conditions.

PRELIMINARY MATTERS

Application. The application requests a special exception under 11 DCMR § 3104.4 to establish a private school use under section 206 in an R-1-B zone at 4925 MacArthur Blvd., N.W. (Square 1393, Lot 823). The zoning relief requested in this application was 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 sent notice of the application to the Office of Planning, the Zoning Administrator, the Department of Public Works, the Department of Health, the Councilmember for Ward 3, Advisory Neighborhood Commission ("ANC") 3D, and the commissioner for single member district ANC3D05.

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, ANC 3D, and the owners of all property within 200 feet of the subject property. 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 subject property's two street frontages, MacArthur Blvd. and Ashby Street, N.W., beginning on March 29, 2002, in plain view of the public.

Requests for Party Status. ANC 3D was automatically a party in this proceeding. The Board granted party status to (a) Lawrence Skrivseth and Cathy Wright, residents of a dwelling on MacArthur Boulevard adjacent to and immediately south of the subject property; (b) Michael and Meleva Lovendusky, residents of a dwelling on MacArthur Boulevard directly across the street from the subject property; and (c) the Neighbors United Trust, a group of nearby property owners, including some who originally requested party status individually, in opposition to the application. Michael Italiano and Reva Hamilton, residents of the 4900 block of Ashby Street, N.W., requested party status on March 29, 2002, but on April 15, 2002 withdrew their request for party status and their opposition to the application.

Applicant's Case. The Applicant requested a special exception to allow a private school for a maximum of 60 students and 12 faculty and staff in an R-1-B zone at 4925 MacArthur Blvd., N.W. 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 sound evaluation and mitigation.

Government Reports. The Office of Planning ("OP") reviewed the application with respect to traffic, parking, noise, number of students, and other potentially objectionable conditions. In 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 recommendations of the District Division of Transportation ("DDOT").

DDOT provided testimony based on its review of the application, meetings and telephone conversations with representatives of the Applicant and ANC 3D, and visits to the Applicant's Whitehaven Parkway campus to observe the morning pick-up routine and traffic conditions. DDOT submitted reports dated April 9, 2002 and May 10, 2002, and provided the testimony of Ken Laden, Administrator for Intermodal Planning, and Rachel MacCleery, Bureau of Traffic Services. DDOT determined that the application would not have adverse traffic or parking impact, provided certain conditions were met by the Applicant.

ANC Report. ANC 3D, at its regularly scheduled meeting held April 3, 2002 with a quorum present, voted 5-0-0 to recommend denial of the requested special exception. The ANC raised concerns with respect to noise, traffic, number of students, and parking, and concluded that the proposed private school use would be inconsistent with the character of the neighborhood and would not be in harmony with the general purpose and intent of the neighborhood's residential zoning. John Finney, Chair of ANC 3D, testified at the public hearing that noise created by middle school students would erode the calm and tranquility of the neighborhood; that the proposed 60-student limit was objectionable, given that in 1962 the Board refused to permit a

One of the purposes of the R-1 district is "to promote a suitable environment for family life." *See* 11 DCMR §§ 200.2. The Board credits the testimony of OP in concluding that the proposed private school for students in grades 7 through 9 on the subject property is a compatible use consistent with the promotion of a suitable environment for family life in a residential neighborhood. The Generalized Land Use Map identifies the subject property as being in the "low density residential" land use category, where single-family attached and detached houses are the predominant use. With the addition of the proposed private school, the area surrounding the subject property will remain predominantly residential.

The building on the subject property, although originally constructed as a single-family residence, has been used for educational purposes for more than 40 years. The subject property has a lot area considerably larger than other properties in the vicinity, and the building will continue to comply with all area requirements applicable in the R-1-B zone during its use as a private school. The renovations planned by the Applicant will preserve the residential appearance of the existing building while enhancing its safety and accessibility features. This requirement is adopted in Condition No. 19.

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. No organized sports shall be conducted on the subject property. All outdoor activity involving students shall be conducted on-site and shall be recreational in nature. The Applicant shall provide adult supervision for all outdoor activity involving students at the subject property.

2. The Applicant shall not employ loudspeakers, amplified music, or bells at the subject property.

3. The Applicant shall schedule all deliveries to the subject property to occur between 9:30 a.m. and 4:00 p.m., Monday through Friday.

4. The school building shall be open for occupancy by students from 7:30 a.m. until 4:00 p.m., Monday through Friday.

5. The subject property shall not be occupied by students for a minimum of two months during the summer season.

6. The Applicant shall not use large commercial dumpsters on the subject property.

7. The Applicant shall provide a shuttle bus system to minimize the number of vehicles coming to the subject property to drop off or pick up students.
   (a) Students who do not walk to school or arrive at the subject property by public transportation will be required to arrive at the gymnasium at the Applicant's Whitehaven campus between 7:30 a.m. and 7:55 a.m. on school days for

transportation to the subject property by shuttle bus. In the afternoon, the students will be required to return to the Whitehaven campus via shuttle bus for pick-up.

(b) The shuttle buses shall employ a round-trip route between the Whitehaven campus and the subject property utilizing Whitehaven Parkway, MacArthur Blvd., Arizona Avenue, Loughboro Road, and Foxhall Road back to Whitehaven Parkway.

(c) The shuttle buses shall stop to on- and off-load students on MacArthur Blvd. in front of the school building. The Applicant shall ensure that the shuttle buses do not idle at the subject property but are released from the Whitehaven campus as necessary to make scheduled morning drop-offs and afternoon pick-ups.

(d) The Applicant shall monitor compliance with the shuttle bus system daily and shall make such compliance a condition of student enrollment. The Applicant shall not permit students to be dropped off or picked up at the subject property at arrival and dismissal times except in prearranged special circumstances, such as when a child will arrive late due to a doctor's appointment. Student drop-offs in special circumstances shall be at the Ashby parking lot.

8. The Applicant shall establish a carpool program to and from the Whitehaven campus serving students at the subject property.

(a) The Applicant shall require carpools to drop off and pick up students at the Whitehaven campus in coordination with the shuttle bus system for transportation to and from the subject property.

(b) Before seeking a certificate of occupancy for the subject property, the Applicant shall submit the carpool program for review and approval by the District Department of Transportation (DDOT). The Applicant shall submit a progress report evaluating the carpool program to DDOT once per year; copies of the annual progress report and DDOT's response shall be given to the community liaison committee established by the Applicant pursuant to this order.

9. The total number of faculty and staff at the subject property shall not exceed 8 full-time and 4 part-time.

10. The Applicant shall provide at least 15 parking spaces on the subject property, as shown on the Applicant's site plan SP1 (Exhibit No. 340).

11. The Applicant shall use the subject property for special evening events after 4:00 p.m. no more than two times during the school year. Evening events shall finish no later than 10:00 p.m.

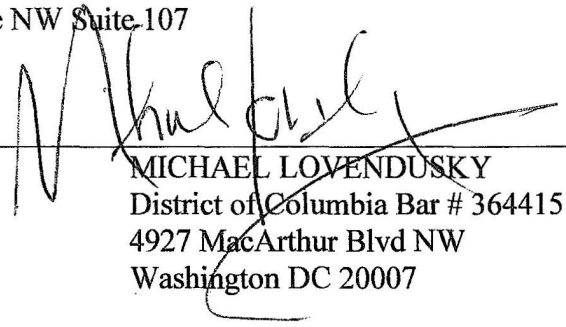
12. The Applicant shall hold no more than two daytime special events, when the school is open to parents and other non-students, at the subject property during the school year. Daytime special events shall be scheduled to occur between 10:00 a.m. and 4:00 p.m.

Alan Bergstein, Esq.
Office of Corporation Counsel
441 Fourth Street NW Sixth Floor
Washington DC 20001

Jerrily R. Kress, FAIA
Director, Office of Zoning
Board of Zoning Adjustment
441 Fourth Street NW Suite 210-S
Washington DC 20001

Kathleen Patterson, City Councilmember
Ward Three
1350 Pennsylvania Avenue NW Suite 107
Washington DC 20004

ATTESTED BY:



MICHAEL LOVENDUSKY
District of Columbia Bar # 364415
4927 MacArthur Blvd NW
Washington DC 20007

Certificate of Service

I hereby certify and attest that on 2 May 2003, a copy of the foregoing was sent by personal delivery or mailed first class, postage prepaid to each of the following:

John Finney, Chairperson and Commissioner
Advisory Neighborhood Commission 3D04
P.O. Box 40846
Washington DC 20016

Alma Gates
4911 Ashby Street NW
Washington DC 20007

Lawrence Skrivseth and Cathy Wright
4913 MacArthur Blvd NW
Washington DC 20007

Nancy Feldman
4911 W Street NW
Washington DC 20007

Katherine VanSickle DeMallie
4923 Ashby Street NW
Washington DC 20007

Ellen McCarthy, Deputy Director
Office of Planning
801 N. Capitol Street NE Fourth Floor
Washington DC 20002

Allison C. Prince
Shaw Pittman LLP
2300 N Street NW
Washington DC 20037-1128

Charles and Sharon Houy
4922 Ashby Street NW
Washington DC 20007

Robert Kelly, Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street NE
Washington DC 20002

St. Patrick's
EPISCOPAL DAY SCHOOL

MEMO

TO: Neighbors of 4925 MacArthur Boulevard

FROM: Judy Barr, MacArthur Campus Office Manager

RE: Pre-Construction Activity

DATE: May 1, 2003

Pre-construction activity will begin on Monday, May 5, on the 4925 MacArthur property.

Here's what you can expect to see:

- Uniwest Construction, the general contractor, will begin to install a temporary, six-foot-high chain link fence with privacy slats around the perimeter of the property. At the back of the property, they will be installing a 12-foot-high chain link fence to separate the construction from the Houys' house.
- Across the driveway, Uniwest will install a locked, chain link gate.
- Upon completion of the fence, later in the week, Uniwest will deliver a dumpster, which will be placed in the back corner of the property on the pavement. All non-construction trash (food and the like) will be removed daily from the construction site.
- Some interior demolition work, for which the necessary permits have been secured, will begin later in the week.

Uniwest will strictly adhere to certain guidelines, including:

- All construction and deliveries to the site will occur after 7:30 am.
- Work vehicles will be parked on the 4925 MacArthur property.
- Each subcontractor, before starting a particular phase, will meet with Uniwest Foreman Charlie O'Neill to be informed of the rules and regulations associated with this project. Uniwest will not tolerate any subcontractor's failure to comply with established regulations.

St. Patrick's is eager to keep you informed of developments concerning 4925 MacArthur and of the progress of construction. Many neighbors have provided us with their e-mails at neighbors@stpatsdc.org in order to receive updates electronically. If you have not done so, please send us your e-mail address.

If you have any questions or concerns, please feel free to contact me at 202.342.7010 or at that e-mail address. I look forward to hearing from you.

Judy Barr
MacArthur Campus Office Manager
202.342.7010

Dan Lutsky
Facilities Manager
202.342.2835

Peter Barrett
Head of School
202.342.2804

MICHAEL & MELEVA LOVENDUSKY
4927 MacArthur Boulevard NW
Washington DC 20007

2 May 2003

Toye Bello (202.727.0349)
Compliance Review Program Specialist
DC Office of Zoning
441 Fourth Street NW, Suite 210 South
Washington DC 20001

RE: BZA Order # 16852, St. Patrick's School @ 4925 MacArthur Blvd NW

Dear Mr. Bello,

St. Patrick's School has announced its intention to violate the captioned Order. Attached is a copy of a St. Patrick's memorandum announcing that, beginning May 5, "all construction and deliveries to [4925 MacArthur Blvd NW] will occur after 7:30 am."

Condition # 3 of BZA Order # 16852 expressly provides that St. Patrick's "shall schedule all deliveries to [4925 MacArthur Blvd NW] to occur between 9:30 a.m. and 4:00 p.m..." We respectfully request that you cite St. Patrick's for its expressed intention to violate Condition # 3 and that you demand their compliance. Surely every reasonable person will agree that the delivery of backhoes and building materials before 9:30 a.m. is no less disruptive to the peace and quiet of the residential neighborhood than the delivery of bottled water or bulletin boards.

Sincerely,

Attachment: St. Patrick's Memorandum to Neighbors of 4925 MacArthur Blvd re Pre-Construction Activity (5/1/03).

C: Gregory J. Love, Administrator, Building & Land Regulation Administration
David A. Clark, Director, Department of Consumer & Regulatory Affairs