GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

June 10, 2003

Micheal Lovendusky
4927 MacArthur Boulevard, N.W.
Washington, D.C. 20007

Re: St. Patrick's Episcopal Day School (4925 MacArthur Boulevard, N.W.) Alleged Non-Compliance With Conditions of BZA Approval

Dear Mr. Lovendusky:

This letter is in response to your complaints relevant to the above matter. Specifically, you filed two separate form 300 complaints, the first dated April 28, 2003 and the second dated May 2, 2003, alleging two separate instances of violation of the same condition of approval to which the St. Patrick's Episcopal Day school is subject, pursuant to Board of Zoning Adjustment Order No. 16852. The Office of Zoning (OZ), after a careful and thorough review of the pertinent records, transcripts and order, finds that the activities which form the basis of your allegation of non-compliance with a condition of approval of the Board of Zoning Adjustment Order, do not constitute a violation of the specific condition of approval. Rather, the stated occurrences may be possible violations of the hours of operation condition of the building permit set forth in §§ 107.2.8 (6), and 107.2.8.1 of the D.C. Building Codes Supplement of 1999, DCMR 12A.

Your complaints center on two occurrences that are not disputed by St. Patrick's and are supported by documents confirming same. The first incident occurred on April 9, 2003, when a contractor on the subject site made delivery of heavy equipment on two diesel trucks at 5:45 a.m. Confirmation of this incident is attached in the form of a letter of apology, on Uniwest Construction Inc. letterhead, dated April 11, 2003 and signed by John Klakamp. The second is the commencement of pre-construction activity on May 5, 2003, and as outlined in a St. Patrick's memorandum, the scheduling of all construction and deliveries to the site to "occur after 7:30 a.m.". Your contention is that these two incidences constitute a violation of condition of approval number three (3) of Order number 16852. In whole, condition number three states as follows:

BZA
Case No. 16852
Exhibit No. 356

Board of Zoning Adjustment
District of Columbia
CASE NO.16852
EXHIBIT NO.356

"The applicant shall schedule all deliveries to the subject property to occur between 9:30 a.m. and 4:00 p.m."

In the absence of a construction management plan, it is the conclusion of the Office of Zoning that the conditions of approval attendant to Order No. 16852, and more specifically condition number three, apply only to the use of the subject premises as a private school, and are not applicable to construction activities that are otherwise controlled by the conditions of a building permit as set forth in the pertinent sections of the building codes referenced above. The origin of condition number three is instructive in this regard. In the decision and order, finding of fact number twenty-four (24), proposed by the applicant, establishes "several limitations on the use of the subject property intended to minimize the potential adverse impacts associated with the proposed private school", one of which is the scheduling of deliveries to the school. § 107.2.8(6) of the 1999 building codes supplement, DCMR 12A, requires a specialty after hours permit to engage in construction activity outside of normal working hours, which for purposes of this section is 7:00 a.m. to 7:00 p.m., Monday through Saturday. § 107.2.8.1 further restricts the issuance of After-Hours permit in residentially zoned areas or in an area within 500 feet of such residential zone, to only when a threat is posed to public safety, health and welfare. One of your complaints appears to confirm activity outside the scope of a building permit or activity for which an after-hours permit was not obtained. Absent a specific condition regulating construction activities, the conditions set forth in Order No. 16852 constitutes conditions to the issuance of the Certificate of Occupancy allowing commencement of the private school operations or use. There is no record of or any condition regulating construction activity outside the dictates of the D.C. building codes.

For the reason stated above and because enforcement of the D.C. Building Code is outside the jurisdiction of the Office of Zoning, no compliance effort will be forthcoming, nor will these two complaints be registered as violations with respect to the three strike clause of condition number twenty (20). You may direct future complaints of violations of the normal working hours condition of a building permit or lack of a proper permit for after hours work to the Building and Land Regulations Administration in the Department of Consumer and Regulatory Affairs at 202-442-9557.

Please call Toye Bello, Compliance Specialist at (202) 727-0349, if you have any questions relevant to the foregoing. Thank you for your civic vigilance.

SINCERELY,

ATTACHMENT:

JERRILY R. KRESS, FAIA
Director

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Attachment

cc: John W. Finney, Chairperson & Commissioner
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