DISTRICT OF COLUMBIA COURT OF APPEALS

RECEIVED
D.C. BOARD OF ZONING
2003 SEP 24 PM 1:39

MICHAEL LOVENDUSKY, MELEVA LOVENDUSKY, & LAWRENCE SKRIVSETH,	)	
Petitioners,	)	
vs.	)	
DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT	)	Case No. 03-AA-491
Respondent,	)	
ST. PATRICK'S EPISCOPAL CHURCH AND DAY SCHOOL	)	
Intervenor.	)	

INTERVENOR'S MOTION TO CORRECT ORDER OR, IN THE ALTERNATIVE, FOR ENLARGEMENT OF TIME TO FILE ITS BRIEF

Pursuant to Rule 27 of the Rules of the District of Columbia Court of Appeals, Intervenor St. Patrick's Episcopal Church and Day School ("St. Patrick's"),[1] by and through its counsel, respectfully requests this Court to correct its Order of September 23, 2003 indicating that "the briefs of respondent and intervenor, or a statement that the party will not be filing a brief, remain due on or before September 29, 2003" and to order instead that such briefs or statements are not due until a suitable period of time after the Court has decided the Intervenor's Motion for Summary Affirmance, which will be timely filed with this Court on or before October 6, 2003. If the Court is unwilling to issue such a corrective order, St. Patrick's requests that, pursuant to Rule 26(b), the Court enlarge the period of time within which the Intervenor must file its brief

[1] Pursuant to Rule 27(a), St. Patrick's hereby states through undersigned counsel that it was unable to reach counsel for either Petitioners or Respondent and is thus unable to inform the Court as to whether this motion is consented to or will be opposed.

BZA
Case No. 16852
Exhibit No. 359

Board of Zoning Adjustment
District of Columbia
CASE NO.16852
EXHIBIT NO.359

until a suitable deadline (for instance 30 days) after the Court has decided the Intervenor's Motion for Summary Affirmance. As support for this motion, St. Patrick's states as follows.

Petitioners filed their opening brief in this matter on September 25, 2003. Fifteen days later, on September 9, 2003, St. Patrick's filed a timely Notice of its intention to file a Motion for Summary Affirmance pursuant to Rule 27(g).[2] In accordance with that Rule, St. Patrick's has been preparing and will file such a motion within 25 days of the date of its Notice, *i.e.*, on or before October 6, 2003. Although the briefs or statements of Respondent and Intervenor would ordinarily have been due on September 29, 2003, the briefing schedule was deemed to have been stayed automatically "unless otherwise ordered by the court" under Rule 27(g). The Court's September 23, 2003 Order therefore stands in direct conflict with such automatic stay, although it is not clear that the Court deliberately intended to do so.[3]

Having just received the Court's September 23rd Order through delivery of today's mail to its undersigned counsel, St. Patrick's is now placed in the difficult position of not knowing whether its main brief is due in five calendar days (including this coming weekend) while also continuing to prepare its Motion for Summary Affirmance, required to be filed exactly one week later. Insofar as the Court's unexpected Order that Intervenor file a full brief in so short a time period significantly prejudices St. Patrick's ability to present its position and arguments to the Court, it is therefore requested that the Court either correct its September 23rd Order or, in the alternative, enlarge the time within which St. Patrick's must file its brief as Intervenor.

---

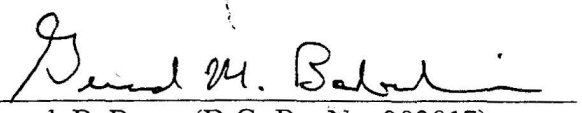
[2] St. Patrick's had earlier filed a timely Notice of Intention to Intervene, on May 7, 2003.

[3] It appears that at the time of issuing its Order on September 23, 2003, the Court was unaware of or at least inadvertent to the fact that St. Patrick's had filed notice of its intention to file a Motion for Summary Affirmance.

Dated: September 25, 2003

Respectfully submitted,

SHAW PITTMAN LLP

By: 

Deborah B. Baum (D.C. Bar No. 393017)
Allison Prince (D.C. Bar No. 399248)
Gerard M. Babendreier (D.C. Bar No. 476507)
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8000
Attorneys for the Intervenor

CERTIFICATE OF SERVICE

I hereby certify that on this the 25th day of September 2003 I caused a copy of the foregoing, Intervenor's Motion to Correct Order or, in the Alternative, for Enlargement of Time to File Its Brief, to be sent by first class U.S. mail, postage prepaid, to the following:

Michael and Maleva Lovendusky
4927 MacArthur Blvd., N.W.
Washington, D.C. 20007

Alma Gates
4911 Ashby Street, N.W.
Washington, D.C. 20007

Robert Kelly, Zoning Administrator
Building and Land Regulation Administration
Dept. of Consumer and Regulatory Affairs
941 N. Capital Street, N.E.
Washington, D.C. 20002

Lawrence Skrivseth and Cathy Wright
4913 MacArthur Blvd., N.W.
Washington, D.C. 20007

Ellen McCarthy, Deputy Director
Office of Planning
801 North Capital Street, N.E., 4th Floor
Washington, D.C. 20002

Nancy Feldman
4911 W Street, N.W.
Washington, D.C. 20007

Kathleen Patterson, City Councilmember
Ward Three
1350 Pennsylvania Avenue, N.W., Suite 107
Washington, D.C. 20004

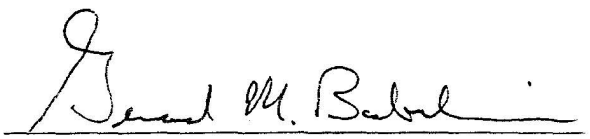
Katherine Van Sickle DeMallie
4923 Ashby Street, N.W.
Washington, D.C. 20007

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

Alan H. Bergstein, Esq.
Office of the Corporation Counsel
441 4th Street, NW, 6th Floor
Washington, D.C. 20001

Jerrily R. Kress, FAIA
Director, Office of Zoning
Board of Zoning Adjustment
441 4th Street, N.W. Suite 210-S
Washington, D.C. 20001

Mary Connelly, Esq.
Deputy Corporation Counsel
Appellate Division
441 4th Street, NW
Washington, D.C. 20001



Gerard M. Babendreier

Doc. # 1351848 v1