GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

November 5, 2003

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

Re: BZA Application No. 16852 (4925 MacArthur Boulevard, N.W.) St. Patrick's Episcopal School

Dear Mr. Lovendusky:

Thank you for your letter dated October 6, 2003, concerning your complaint of an alleged violation of a condition of Board of Zoning Adjustment Order No. 16852 (attached). Please be advised that after further review of the issues raised in your complaint, the Office of Zoning has determined that the incident involving early 7:00 AM delivery to the construction site did not violate the conditions contained in the Board's Order. Order Condition No. 3 is not applicable to construction activities. Construction activities are governed by the Building Code, and enforced by the Building and Land Regulation Administration within the Department of Consumer and Regulatory Affairs. In regard to the foregoing, the OZ position in this matter remains the same as that expressed in our letter (attached) to you dated June 10, 2003.

Please call Toye Bello, Compliance Review Specialist, on (202) 727-6311, if we can be of further assistance in this matter.

SINCERELY,

JERRILY R. KRESS, FAIA
Director, Office of Zoning

rsn
Attachments
cc: Allison C. Prince

BZA
Case No. 16852
Exhibit No. 362

Board of Zoning Adjustment
District of Columbia
CASE NO.16852
EXHIBIT NO.362

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:

"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

tb

Attachment

cc: John W. Finney, Chairperson & Commissioner
Advisory Neighborhood Commission 3D04
Palisades Station
Washington, DC 20016

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

Lawrence Skrivseth & Cathy Wright
4913 MacArthur Boulevard, N.W.
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Nancy Feldman
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Allison C. Prince, Esquire
Shaw Pittman
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Washington, D.C. 20037-1128

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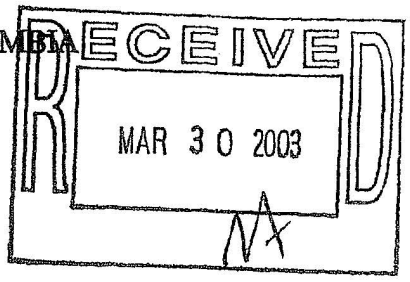
Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Washington, D.C. 20002

Alan Bergstein, Esquire
Office of Corporation Counsel
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Kathleen Patterson, City Councilmember
Ward Three, Suite 107
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

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, 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

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