IN THE DISTRICT OF COLUMBIA
COURT OF APPEALS

MICHAEL LOVENDUSKY, MELEVA LOVENDUSKY,
& LAWRENCE SKRIVSETH

Petitioners, :

- Versus - : **No. 03-AA-419**

DISTRICT OF COLUMBIA **[BZA 16852]**
BOARD OF ZONING ADJUSTMENT, :

Respondent, and :

ST. PATRICK'S EPISCOPAL CHURCH AND :
DAY SCHOOL,

Intervenor. :

2003 NOV 26 PM 3:37
D.C. [illegible]

NOTICE OF MOTION TO STAY DECISION OF AGENCY ON EXPEDITED BASIS AND SUPPLEMENT THE RECORD

Pursuant to Rule 18 of the Rules of the District of Columbia Court of Appeal, the Petitioners, by counsel, notice to Intervenor and Respondents their intention to move to stay Order Number 16852 (Order) of the District of Columbia Board of Zoning Adjustment (board). Petitioners expect to file the motion 1 December 2003.

Respectfully submitted 26 November 2003

MICHAEL LOVENDUSKY
District of Columbia Bar #364415
Counsel for the Petitioners
Telephone 202-624-2390

BZA
Case No. 16852
Exhibit No. 365

Board of Zoning Adjustment
District of Columbia
CASE NO.16852
EXHIBIT NO.365

Certificate of Service

I hereby certify and attest that on 26 November 2003, a copy of the foregoing Petitioners' Notice of Motion To Take Judicial Notice was personally delivered (indicated by *) or mailed first class, postage prepaid, to each of the following:

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

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

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

Mary Connelly, Esq.*
Deputy 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

The Honorable Kathleen Patterson
City Council, Ward Three
1350 Pennsylvania Ave NW #107
Washington DC 20004

Alma Gates*
4911 Ashby Street NW
Washington DC 20007

Nancy Feldman
4911 W Street NW
Washington DC 20007

Katherine Van Sickle DeMallie
4923 Ashby Street NW
Washington DC 20007

(Michael & Meleva Lovendusky
4927 MacArthur Blvd NW
Washington DC 20007)

ATTESTED BY:

MICHAEL LOVENDUSKY
District of Columbia Bar # 364415

IN THE DISTRICT OF COLUMBIA
COURT OF APPEALS

MICHAEL LOVENDUSKY, MELEVA LOVENDUSKY, & LAWRENCE SKRIVSETH		
Petitioners,	:	
- Versus -	:	**No. 03-AA-419**
DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT,	:	**[BZA 16852]**
Respondent, and	:	
ST. PATRICK'S EPISCOPAL CHURCH AND DAY SCHOOL,	:	
Intervenor.	:	

2003 NOV 26 PM 3:37

MOTION TO STAY DECISION OF AGENCY ON EXPEDITED BASIS AND SUPPLEMENT THE RECORD

Pursuant to Rule 18 of the Rules of the District of Columbia Court of Appeal, the Petitioners, by counsel, move to stay Order Number 16852 (Order) of the District of Columbia Board of Zoning Adjustment (board). The Order is appended as Exhibit Seven for convenience but is in the Record at 2691. Application to the agencies responsible for the enforcement of the conditions of the Order for the relief requested here is impractical for the reasons provided herein. Notice to the Intervenor and Respondent accompany this Motion but the relief of this motion, or any opportunity for oral argument before the Court, is not requested prior to 3 December 2003 to provide reasonable notice to all parties.

Intervenor opposes Supplement of Record. Respondent board counsel Connelly was unavailable by telephone. Rule 27.

The Order granted a special exception to Intervenor St. Patrick's (private school) to establish a campus in the middle of a R-1-B residential neighborhood. Exhibit Seven, Order, R2691. The Order includes twenty conditions on the private school's activity, as well as certain temporal requirements for validity of the Order and other restraints. Exhibit Seven at pp. 15-18, R2705-2708. The Order was entered on 25 March 2003. *Ibid* at page 18, R2708. The Order became effective 5 April 2003. *Id.* The private school commenced violating the Order on or about 9 April 2003. The private school's violations have become legion.

Petitioners and other residents of adjoining and nearby property in the meaning of 11 DCMR § 206.2 have complained numerous times to the District of Columbia Office of Zoning (Zoning), the board and the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) pursuant to the grievance procedures especially invented by Zoning to address the enforcement concerns of the neighbors and advisory neighborhood commission. *See* Brief of Petitioner's, page 40; *see, also*, Addendum to Brief of the Appellants (sic)(i.e., Petitioners), pages 18-19 (Zoning Form 300, "Complaint of Non-Compliance With Condition(s) of a BZA/ZC Order"); *cf.* Exhibits Three, Four, Five and Six. The agencies have refused to enforce the Order as well as the plain meaning of the zoning regulations or ignored the complaints of the Petitioners and neighbors altogether. There is no enforcement of the plain meaning of the Order, its conditions, or the zoning regulations.

The Brief of the Petitioners argues that the Order must be reversed because, among other things, the conditions of the Order are impossible to enforce. Petitioners' Sixth Argument specifically explains the impossibility of enforcement as a matter of *prima facie* evidence. *See* Brief of the Petitioners, pages 36-41. Nevertheless, Petitioners and their neighbors have for seven months struggled with the private school, the board, and the DCRA to obtain compliance with the Order and its conditions relying upon their apologies, expressions of good faith, the express language of the Order, and the plain meaning of the law. The Petitioners and the neighbors have been frustrated at every turn and in every day. There is no compliance with or enforcement of the conditions of the Order or of the plain meaning of the law.

Exhibit One

Exhibit One is the Affidavit of counsel for Petitioners establishing the provenance of the following exhibits.

Exhibit Two

Twelve neighbors including the Petitioners filed with the DCRA on 18 November 2003 the attached "Complaint and Request for Immediate, Emergency Revocation of Building Permits and Stop Work Order at 4925 MacArthur Boulevard NW, Washington DC 20007". Exhibit Two. The Complaint to DCRA describes four bases for immediate revocation of building permits and citation for violations.

Exhibit Three

Two of the Petitioners complained to Zoning on 28 April 2003 of certain violations of the Order on 9 April 2003, using Zoning Form 300.

Exhibit Four

Two of the Petitioners complained to Zoning on 2 May 2003 of certain violations of the Order, using Zoning Form 300. The private school communicated to Petitioners regarding this complaint by letter of 16 May 2003. The board replied to both this complaint as well Petitioners' April 28 complaint by letter of 10 June 2003 of this exhibit. Exhibit Four. The board erred as a matter of law, refusing to enforce the plain meaning of the law. *See* 11 DCMR § 3205.3.

Exhibit Five

Two of the Petitioners complained to Zoning on 3 October 2003 of certain violations of the Order and the zoning regulations, especially the requirements of 11 DCMR § 3205.3, using Zoning Form 300.

Exhibit Six

Two of the Petitioners complained to Zoning on 6 October 2003 of certain violations of the Order and the zoning regulations, especially the requirements of 11 DCMR § 3205.3, using Zoning Form 300. The board replied to this complaint by letter of 5 November 2003. The board erred as a matter of law, refusing to enforce the plain meaning of the law. *See* 11 DCMR § 3205.3.

Exhibit Seven

Exhibit Seven is Board of Zoning Adjustment Order Number 16852 (Order). Record 2691-2710.

Motion to Supplement the Record

Petitioners request the Court to notice Exhibits Two, Three, Four, Five, and Six as matters of public record. The documents are "capable of accurate and ready

determination by resort to sources whose accuracy cannot reasonably be questioned." Federal Rules of Evidence, Rule 201(b). The Court exercises its discretion to extend judicial notice when appropriate. *See*, e.g., White v. Hyman, 647 A.2d 1175, Footnote 4 (DC 1994)(Court assumed, without deciding, that it can take judicial notice of agency documents).

Petitioners further request the Court supplement the Record with the documents of Exhibits Two, Three, Four, Five and Six. The Record on Review currently ends at Record 2737. Petitioners recently moved the Court to supplement the Record with three pages from a relevant proceeding before the board. *See* Petitioners' Motion to Take Judicial Notice and Supplement the Record, Case No. 03-AA-419, 21 November 2003 (decision of Court pending). In the pending motion to supplement the Record, the Petitioners marked three pages from a public record as Record 2738-2740 to facilitate their immediate use by all parties and the Court should the Court grant the motion. In this motion now before the Court, petitioners mark the documents of Exhibits Two, Three, Four, Five and Six as Record (2741)-(2763), again to facilitate their use by all parties and the Court should the Court grant this aspect of the current motion before it. The parentheses used for Record numbers in the current motion are intended to convey the understanding that such marking is tentative pending the decision of the Court regarding Petitioners' motion of November 21 as well as the instant motion.

Relief Requested

Petitioners request the Court, on an expedited basis, to stay the Order and stop all activity at the contested location pending the final adjudication of this matter.

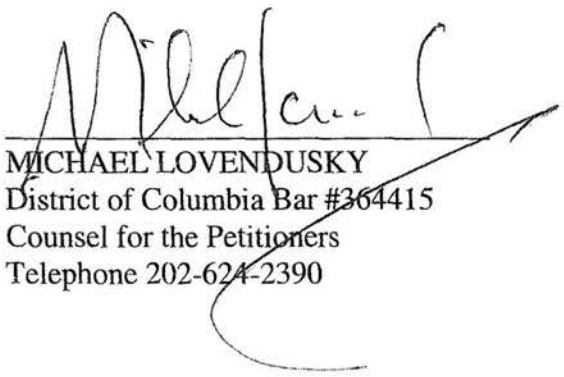
Further, petitioners request the Court to take judicial notice of the documents at Exhibits Two, Three, Four, Five and Six and, further, to supplement the Record with the documents.

Further, should the Court be inclined to deny the motion on the strength of the written pleadings, affidavits, and exhibited documents, Petitioners request an opportunity to present oral argument in support of the motion.

To facilitate an orderly but expedited adjudication of this motion, Petitioners personally serve the Notice and Motions simultaneously upon the Intervenor private school and Respondent board. If the Court provides the opportunity to any party for oral argument on this motion, counsel for Petitioners request the argument be set as early as possible but not on the dates of December 5-10 inclusive, inasmuch as counsel for Petitioners must travel far beyond the District of Columbia to fulfill long-standing business obligations.

Further, should the Court provide the opportunity to any party for argument on this motion with a date beyond December 4, Petitioners respectfully request the Court to temporarily stay the Order pending argument on the motion. The Order, by its express terms, is null and void, the private school having failed to effect the use approved in the Order in timely manner. *See* Exhibit Seven, Order, page 18, Record 2708.

Respectfully submitted 26 November 2003



MICHAEL LOVENDUSKY
District of Columbia Bar #364415
Counsel for the Petitioners
Telephone 202-624-2390

EXHIBIT ONE -- AFFIDAVIT

I, Michael Lovendusky, attest to the following:

1. I am the Petitioners' counsel of record for the Case No. 03-AA-419 before the District of Columbia Court of Appeals. This case relates to District of Columbia Board of Adjustment Order Number 16852. Petitioners are filing a Motion to Stay Decision of Agency on Expedited Basis and Supplement the Record with seven Exhibits.

2. Exhibit Two is the "Complaint and Request for Immediate, Emergency Revocation of Building Permits and Stop Work Order at 4925 MacArthur Boulevard NW, Washington DC 20007" filed with and date stamped by the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) by twelve neighbors including the Petitioners on 18 November 2003. DCRA has taken no action on this Complaint to the knowledge of Petitioners. There has been no response to this Complaint by DCRA, Intervenor private school or Respondent board.

3. Exhibit Three is the complaint of two Petitioners filed on 28 April 2003 with the District of Columbia Office of Zoning (Zoning) regarding certain violations of the Order on 9 April 2003, using Zoning Form 300, and the response of the DCRA (letter of 14 May 2003).

4. Exhibit Four is the complaint of two Petitioners filed on 2 May 2003 regarding certain violations of the Order, using Zoning Form 300 and the responses to the complaint from Intervenor private (letter of 16 May 2003) and Board of Zoning Adjustment (Board) (letter of 10 June 2003)

5. Exhibit Five is the complaint of two Petitioners filed with Zoning on 3 October 2003 regarding certain violations of the Order and the zoning regulations, especially the requirements of 11 DCMR § 3205.3, using Zoning Form 300. There has been no response from any agency or party to this complaint.

6. Exhibit Six is the complaint of two Petitioners filed with Zoning on 6 October 2003 regarding certain violations of the Order and the zoning regulations, especially the requirements of 11 DCMR § 3205.3, using Zoning Form 300, and the response of the Board (letter of 5 November 2003).

7. The Exhibits described above and attached below are true copies of the originals to be found in the public records of the respective agencies.

So sworn this 26 November 2003.

Michael Lovendusky
DC Bar Number 364415
4927 MacArthur Boulevard NW
Washington DC 20007
W: 202-624-23990

Notary Public: Sandra L. Hudson

Sandra L. Hudson
Notary Public District of Columbia
My Commission Expires: 8-31-05

EXHIBIT TWO

Nora Carbine * Thomas Carroll * Campbell DeMallie * Howard Fenton * Harry Gates * Diane Haardt * Meleva Lovendusky * Michael Lovendusky * Ana Ormerod * Douglas Ormerod * Lawrence Skrivseth * Cathy Wright *
C/o Michael Lovendusky, Attorney at Law
4927 MacArthur Boulevard NW
Washington DC 20007



18 November 2003

Denzil Noble, Acting Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street NE Suite 2000
Washington DC 20002

RE: Complaint and Request for Immediate, Emergency Revocation of Building Permits and Stop Work Order at 4925 MacArthur Boulevard NW, Washington DC 20007

Dear Administrator Noble,

The residents of properties adjoining or nearby the location captioned above, by counsel, complain that the construction activities are illegal and request your immediate, emergency action to stop work at the location. The particular illegalities justifying an immediate stop work order are set forth below in numbered paragraphs.

Jurisdiction

1. The Department of Consumer and Regulatory Affairs (DCRA) has jurisdiction of the complaints raised herein pursuant to the express instructions of District of Columbia Office of Zoning Form 300, "Complaint of Non-Compliance With Condition(s) of a BZA/ZC Order" and Titles 11 and 16 DCMR Chapters 32.

Identity of Complainants

2. Nora E. Carbine resides at 4915 Ashby Street NW, Washington DC 20007.

3. Thomas Carroll resides at 4918 Ashby Street NW, Washington DC 20007.

4. Campbell DeMallie resides at 4923 Ashby Street NW, Washington DC 20007.

5. Howard E. Fenton resides at 4915 Ashby Street NW, Washington DC 20007.

6. Harry F. Gates resides at 4911 Ashby Street NW, Washington DC 20007.

R (2741)

7. Diane Haardt resides at 4918 Ashby Street NW, Washington DC 20007.

8. Meleva Lovendusky resides at 4927 MacArthur Boulevard NW, Washington DC 20007.

9. Michael Lovendusky resides at 4927 MacArthur Boulevard NW, Washington DC 20007.

10. Ana Ormerod resides at 4901 Ashby Street NW, Washington DC 20007.

11. Douglas Ormerod resides at 4901 Ashby Street NW, Washington DC 20007.

12. Lawrence Skrivseth resides at 4913 MacArthur Boulevard NW, Washington DC 20007.

13. Cathy Wright resides at 4913 MacArthur Boulevard NW, Washington DC 20007.

14. All complainants are residents of nearby or adjoining property as described in 11 DCMR § 206.2.

First Complaint and Basis of Immediate Revocation of Building Permits and Citation

15. The subject matter of these complaints relate to construction activity at 4925 MacArthur Boulevard NW pursuant to Board of Zoning Adjustment Order No. 16852 (Order), which granted to St. Patrick's Episcopal School (private school) a special exception from the zoning laws to renovate an existing building for use as a private school subject to twenty conditions in the Order. The Order is attached to this Complaint.

16. The Final Date of the Order is 25 March 2003. *Order at page 18.*

17. The Order provides that "PURSUANT TO 11 DCMR. § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL." *Order at page 18.*

18. The Order became effective on 5 April 2003.

19. The Order provides that "PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD." *Order at page 18.*

20. The use approved in the Order was not established by the time the Order expired on 4 October 2003.

21. The use approved in the Order is not established at this time.

22. There is no authority for the building permits granted pursuant to the Order. The building permits are null and void and should be immediately revoked.

23. The private school should be cited for illegal construction at the site from 4 October 2003 and continuing at this time.

Second Complaint and Basis of Immediate Revocation of Building Permits and Citation

24. The Order affirms that 4925 MacArthur Boulevard NW is located in "an R-1-B zone". *Order at Findings of Fact Number 8, page 4.*

25. Building Permit Number B452963 issued by DCRA for use in conjunction with Building Permit Number B474931 for the private school at 4925 MacArthur Boulevard NW is not for use in an R-1-B zone.

26. The private school knew or should have known that the permits applied for and obtained from DCRA were improper for a R-1-B zone.

27. The building permits are null and void and should be revoked.

28. The private school should be cited for illegal construction at the site from the date of issuance of the improper building permits.

29. There is no existing authority for issuance of building permits for construction of a private school at the location.

Third Complaint and Basis of Immediate Revocation of Building Permits and Citation

30. The Order provides that "PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT ... ISSUED PURSUANT TO THIS ORDER." *Order at page 18.*

31. Permits issued pursuant to a BZA grant of special exception are subject to the requirements of 11 DCMR § 3205. *See* 11 DCMR § 3205.1.

32. If a building permit or certificate of occupancy has been issued under the authority of a decision of the Board to approve a special exception or variance, then for purposes of §§ 3205.4 and 3205.6, *each condition to the approval of the special exception or variance shall be treated as a condition to the issuance of the building permit or certificate of occupancy*. 11 DCMR § 3205.3 (emphasis added).

33. The Zoning Regulations expressly provide that a building permit shall not be issued unless it is accompanied by information necessary to determine compliance with the Regulations. 11 DCMR § 3202.2(a)(4).

34. The building permits pursuant to which construction commenced and continues do not include the conditions of the Order.

35. The building permits are materially deficient, improper, and should be revoked.

36. The private school should be cited for illegal construction at the site from the date of issuance of the improper building permits.

37. There is no existing authority for issuance of building permits for construction of a private school at the location.

Fourth Complaint and Basis of Immediate Revocation of Building Permits and Citation

38. The Order provides that "expansion of the building on the subject property shall be limited to the area necessary for access as shown on Applicant's [i.e., private school's] site plan (Exhibit No. 340)." *Order at Condition 19, page17.*

39. The private school has expanded the building beyond "the area necessary for access as shown on [its] site plan (Exhibit No. 340)". In particular and among other things, the private school has enclosed the porch of the building, thereby increasing the interior space beyond the authority of the Order. *Order at Condition 19, page 17.*

40. The private school's modifications to the building do not "comply with height, lot occupancy, and other area requirements of the R-1-B district." *See Order at Findings of Fact Number 9, page 4.*

41. The Order provides that "PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL

BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT ... ISSUED PURSUANT TO THIS ORDER." *Order at page 18.*

42. The building permits do not comply with the Order's Condition 19 or the Order's Finding that the building modifications will comply with the requirements of the R-1-B district. *Order at page 17.*

43. DCRA should conduct on an emergency basis a complete inspection and survey of the construction at 4925 MacArthur Boulevard NW to confirm that the modifications to the building comply with the express guidance of the Order at Condition 19.

44. The building permits should be revoked.

45. The private school should be cited for violating the Order and the zoning regulations.

46. There is no authority for issuance of any new building permits.

Demand for Immediate, Emergency Relief

47. The complainants respectfully pray DCRA provide emergency relief from the violations described above and immediately:

1. revoke the building permits for the building at 4925 MacArthur Boulevard NW; and
2. declare all building permits issued as null and void; and
3. inspect the building for compliance with the Order Condition 19 and the site plan (Exhibit 340); and
4. find the building construction non-compliant with the Order; and
5. Cite the private school for violations of the Order and zoning regulations from the time of commencement of construction; and
6. Stop all construction activity at 4925 MacArthur Boulevard NW; and
7. Provide other remedies to complainants as appropriate.

Communications

48. DCRA is requested to direct all communications to the complainants via

Michael Lovendusky
Attorney at Law
4927 MacArthur Boulevard NW
Washington DC 20007
202-624-2390

R (2745)

Submitted with attached Order this 18 November 2003.

MICHAEL LOVENDUSKY
District of Columbia Bar # 364415

Attachment: Board of Zoning Adjustment Order Number 16852 (3/25/03)

CERTIFICATE OF SERVICE

I hereby certify and attest that on 18 November 2003, a copy of this Letter to Denzil Noble was mailed first class, postage prepaid to each of the following:

St. Patrick's School
C/o Allison C. Prince
Shaw Pittman LLP
2300 N Street NW
Washington DC 20037-1128

The Honorable Kathleen Patterson
City Council, Ward Three
1350 Pennsylvania Ave NW #107
Washington DC 2004

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

Alma Gates, ANC Commissioner
4911 Ashby Street NW
Washington DC 20007

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

ATTESTED BY:

MICHAEL LOVENDUSKY
District of Columbia Bar # 364415

R (2746)

EXHIBIT THREE

Form 300
(Revised 09/09/02)

Case No. 16852
Complaint No. 3

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	1393	0823	16852;3/25/03	n/a	n/a	3

Present use of Property:	Middle School		
Owner of Property:	St Patricks Episcopal School	**Telephone No.:**	202-342-2805
Address of Owner:			
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 three pages

RECEIVED DC OFFICE OF ZONING 2003 APR 28 P 3:27

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:	28 April 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:**	michaellovendusky@acli.com

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

R(2747)

MICHAEL & MELEVA LOVENDUSKY
4927 MacArthur Boulevard NW
Washington DC 20007

28 April 2003

Gregory J. Love, Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street NE
Washington DC 20002

RE: St. Patrick's School @ 4925 MacArthur Blvd NW
Violation of BZA Order # 16852 Condition # 3

Dear Administrator Love,

The Lovendusky family respectfully requests you to cite St. Patrick's Episcopal Day School for violating the BZA Order captioned above. On Wednesday, April 9, at 5:45 AM, St. Patrick's subcontractors arrived in two large diesel trucks to deliver heavy equipment to their new campus at 4925 MacArthur Blvd NW, immediately across Ashby Street from where we live. Mrs. Lovendusky was shocked out bed by the diesel trucks backing up Ashby Street and propelled by the noise out of our house before dawn to demand that the trucks leave. An ugly confrontation ensued and required a complaint to be telephoned to the Metropolitan Police, who arrived to send the trucks away until a civilized hour.

St. Patrick's arranged for its subcontractor, Uniwest Construction, Inc., to mail by letter of April 11 its regrets for the incident. A copy of the Uniwest letter and the St. Patrick's envelope in which it arrived is attached.

Condition # 3 of BZA Order #16852 expressly provides that St. Patrick's "shall schedule all deliveries to [4925 MacArthur] to occur between 9:30 a.m. and 4:00 p.m...". This Condition was clearly violated and requires citation by the Department of Consumer and Regulatory Affairs if the BZA Order is to have any meaning or effect for the residents who are being imposed upon by the special exception granted to St. Patrick's. We respectfully insist that you cite St. Patrick's for its violation. Please advise me of your action in this matter at your earliest opportunity. Thank you.

Sincerely,

Attachments: Letter of John Klakamp/Uniwest (4/11/03) and St. Patrick's Envelope
C: David A. Clark, Director, Department of Consumer & Regulatory Affairs
Toye Bello, DC Office of Zoning Compliance Review Program Specialist

R (2748)



4700 Whitehaven Parkway, NW
Washington, DC 20007





Michael Lovendusky &
Meleva M. Lovendusky
4927 MacArthur Blvd. NW
Washington, DC 20007

R (2749)

20005741051

UNIWEST CONSTRUCTION, INC.
2900 TELESTAR COURT • SUITE 100 • FALLS CHURCH, VA 22042
703-698-4040 • FAX 703-560-3028

April 11, 2003

Re: St. Patrick's Episcopal Day School – MacArthur Campus
4925 MacArthur Blvd., NW
Washington, DC 20007

Dear Neighbors of 4925 MacArthur:

On behalf of Uniwest Construction, Inc., I would like to express our regret to all of the neighbors for a contractor's early arrival at 4925 on Wednesday, April 8. Since this project's inception, regard and respect for St. Patrick's neighbors has been a focus and an equal priority to that of the project itself. The contractor, ECS, was not working for Uniwest, nor did anyone at Uniwest Construction, Inc. have knowledge that this engineering was taking place. I want to reaffirm our commitment not only to this project but particularly to being a partner with St. Patrick's and with the neighborhood as this project takes place.

Obviously, communication is paramount, as discussed in our last meeting with Mrs. Gates. We will provide a narrative of our schedule and forward this to the neighbors on a continuing basis. This process will be an opportunity for everyone to know what to expect, voice their concerns and to be pro-active with implementing solutions.

While this is a setback, I am certain that with communication and effort we will overcome the possibility of this happening again. We will take every possible precaution to ensure a successful project for all.

If I can be of assistance, I will gladly make myself available.

Thank you,
John Klakamp
Vice President, Tenant Division
Uniwest Construction, Inc.
jklakamp@uniwestgroup.com

R(2750)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Building and Land Regulation Administration
Office of the Administrator

RECEIVED
MAY 21 2003

May 14, 2003

Michael Lovendusky
4927 Mac Arthur Boulevard, NW
Washington, D.C. 20007

Dear Mr. Lovendusky:

This letter is in response to your letter dated April 28, 2003 regarding St. Patrick's School at 4925 MacArthur Boulevard, NW.

St. Patrick's School has expressed their regret regarding this incident to all the neighbors for the contractor's early arrival on April 8, 2003. The Zoning Regulations require that violations of the zoning regulations be personally observed by a zoning division staff member in order for the infraction to be upheld in the adjudication process. If a similar incident recurs, please immediately call the Emergency Management Agency at 727-6161.

Thank you for bringing this matter to our attention.

Sincerely,

/s/ for Denzil Noble
Denzil L. Noble
Administrator

cc: Yvonne Rockett
Robert Henry

IQ# 179621

R (2751)

EXHIBIT FOUR

Form 300
(Revised 09/09/02)

Case No. 16852

Complaint No. 4

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

RECEIVED
D.C. OFFICE OF ZONING
2003 MAY -2 PM 2:22

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:**	michaellovendusky@acli.com

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

R (2752)

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

R (2753)

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

R (2754)

ShawPittman LLP

A Limited Liability Partnership Including Professional Corporations

ALLISON C. PRINCE
(202) 663-8853
allison.prince@shawpittman.com

May 16, 2003

Michael Lovendusky, Esq.
4927 MacArthur Blvd., NW
Washington, DC 20007

Re: 4925 MacArthur Boulevard, NW – Deliveries

Dear Mr. Lovendusky:

As counsel for St. Patrick's and at the school's request, I have reviewed your recent correspondence relating to the timing of construction deliveries to 4925 MacArthur Boulevard. The school takes your concerns very seriously, as St. Patrick's is committed to 100% compliance with the BZA order governing the site and intends to be an excellent neighbor on MacArthur Boulevard. St. Patrick's is interested in resolving this matter quickly. Having reviewed the transcript of this zoning case, I am convinced that the Board never intended Condition #3, governing the scheduling of deliveries, to govern construction activity. The school is operating with the understanding that construction is governed by the Building Code, and has proceeded with those guidelines in mind. That code limits all construction activity to the hours of 7 a.m. to 7 p.m., Monday through Saturday. These are the same limits, of course, that govern construction associated with your own or any other home, and it seems unlikely that the Board intended to impose a stricter limit on 4925 MacArthur's renovation for a school than would pertain to the construction of a second home on the open space.

I understand that the Office of Zoning is reviewing this matter carefully and will provide us with an interpretation of the delivery condition in due course. Of course, we will follow the interpretation of the order as determined by the Office of Zoning.

While we await that determination, the school will proceed in full compliance with the Building Code. In addition, I will continue to ensure that you and your other neighbors are apprised of all important construction-related activity. I appreciate your interest in the project, and will continue to make every effort to minimize its impact on you and your family.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Allison C. Prince

Allison C. Prince

Document #: 1325637 v.1

R (2755)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

RECEIVED
JUN 11 2003

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:

R (2756)

"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.

R (2757)

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.

ATTACHMENT:

SINCERELY,

JERRILY R. KRESS, FAIA
Director

tb

R(2758)

EXHIBIT FIVE

Form 300
(Revised 09/09/02)

Case No._____

Complaint No._____

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	1393	0823	16852;3/25/03	n/a	n/a	3

2003 OCT -3 PM 3:05

D.C. OFFICE OF ZONING

Present use of Property:	Middle School		
Owner of Property:	St Patricks Episcopal School	**Telephone No.:**	202-342-2805
Address of Owner:			
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 4 pages

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Date:	3 October 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:**	michaellovendusky@acli.com

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

R (2159)

MICHAEL & MELEVA LOVENDUSKY
4927 MacArthur Boulevard NW
Washington DC 20007
3 October 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,

Please be advised that St. Patrick's School violated BZA Order # 16852 Condition # 3 on Monday, 29 September 2003. A delivery of building materials by diesel truck awakened many adjoining and nearby neighbors at 7:00 AM/ET. I personally confronted the construction site supervisor and the warmth of the exchange resulted in an intervention by DC Metropolitan Police Department Patrolman G. Frost, Badge #32, Second District, 3320 Idaho Avenue NW, Washington DC 20016, telephone 202-727-1010. St. Patrick's representative Judy Barr also appeared at the scene about 7:30 AM. I insist that you (1) cite St. Patrick's for its violation of Condition #3 and (2) require its compliance with the plain meaning of the Condition.

Condition # 3 of BZA Order # 16852 expressly provides that St. Patrick's "schedule all deliveries to [4925 MacArthur Blvd NW] to occur between 9:30 a.m. and 4:00 p.m." Your findings and conclusions of 14 May 2003 regarding an earlier violation of Condition #3 are erroneous and inadequate for several reasons. First, it is impossible that you will be able to "personally observe" most violations of the numerous conditions of the BZA Order in this matter. Second, nothing in the Zoning Regulations "require" you to personally observe such violations, especially in light of the express language of the Order #16852. Third, the Zoning Regulations expressly provide that:

> If a building permit or certificate of occupancy has been issued under the authority of a decision of the Board to approve a special exception or variance, then for purposes of §§ 3205.4 and 3205.6, *each condition to the approval of the special exception or variance shall be treated as a condition to the issuance of the building permit or certificate of occupancy.*

11 DCMR § 3205.3 (emphasis added).

Your expeditious investigation of this incident and reply to this complaint is requested.

Sincerely,

R (2760)

EXHIBIT SIX

Form 300
(Revised 09/09/02)

Case No._____

Complaint No._____

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	1393	0823	16852;3/25/03	n/a	n/a	3

Present use of Property:	Middle School		
Owner of Property:	St Patricks Episcopal School	**Telephone No.:**	202-342-2805
Address of Owner:			
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 4 pages

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Date:	6 October 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:**	michaellovendusky@acl: cor

APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS

R (2701)

MICHAEL & MELEVA LOVENDUSKY
4927 MacArthur Boulevard NW
Washington DC 20007
6 October 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,

Please be advised that St. Patrick's School is in violation of the Zoning Regulations at the captioned work site and has been in violation of the Regulations since the commencement of construction. That is, the building permit pursuant to which construction has commenced and continues is materially deficient as a matter of law. The Zoning Regulations expressly provide that a building permit shall not be issued unless it is accompanied by information necessary to determine compliance with the Regulations. 11 DCMR § 3202.2(a)(4). Permits issued pursuant to a BZA grant of special exception are subject to the requirements of 11 DCMR 3205. See 11 DCMR 3205.1.

> If a building permit or certificate of occupancy has been issued under the authority of a decision of the Board to approve a special exception or variance, then for purposes of §§ 3205.4 and 3205.6, *each condition to the approval of the special exception or variance shall be treated as a condition to the issuance of the building permit or certificate of occupancy.*

11 DCMR § 3205.3 (emphasis added). The permit(s) in question do not reflect the Conditions of BZA Order #16852. The omission of the Conditions has resulted in a lack of their enforcement on several occasions when their relevance was brought to the attention of numerous officials, including the Metropolitan Police. You are aware, for example, of the numerous violations of Condition # 3 of BZA Order # 16852, which provides that St. Patrick's "schedule all deliveries to [4925 MacArthur Blvd NW] to occur between 9:30 a.m. and 4:00 p.m." You may now personally observe the violation of the Order and its Conditions by inspection of the building permit at the site, and by visiting the site any morning between 7:30 and 9:30 AM/ET. I respectfully request you do so immediately. Construction should be halted immediately pending issuance of a valid building permit. Further, the Regulations provide guidance with regard to the *per diem* penalties that should be imposed for construction in the absence of a valid building permit. 11 DCMR § 3201.1. Your immediate enforcement action and reply to this complaint is requested.

Sincerely,

R(2762)

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

R (2763)

EXHIBIT SEVEN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

☆ ☆ ☆

[redacted]

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