By Fax and Mail

4911 Ashby Street, NW
Washington, DC 20007

January 26, 2004

Ms. Jerrily Kress
Director, Office of Zoning
441 4th Street, NW
Suite 210 South
Washington, DC 20001

RE: BZA Order 16852

Dear Ms. Kress:

On Friday evening Katherine Bradley called to inform me St. Patrick's received its Certificate of Occupancy (CO) but a "hold" was placed on the school's use of the basement. Mrs. Bradley also informed me that the school had been in discussions with DCRA to obtain the CO and would be in discussions with the BZA for clarification on how to proceed in this matter. Peter Barrett followed Mrs. Bradley's phone call with an Email to all members of the ANC, a copy of which I enclose as well as my response to Mr. Barrett's Email.

I informed Mrs. Bradley discussions were inadequate given the extensive work done in the basement to create additional habitable space, the addition of a second means of ingress and egress, the reconfiguration and enclosure of the front porch and resulting necessity to add a sprinkler system for the entire building. I further informed Mrs Bradley the school should file an application to return to the BZA for a full hearing as a serious violation of BZA Order 16852 and Title 11 has occurred.

ANC 3D is on record in this case. As the single member district ANC Commissioner for this area, I am formally requesting the school be required to return to the BZA for a full hearing and that use of the basement be prohibited until the Board has reached its decision. All parties in this case remain the same. Should discussions between the school and Board occur, I request the ANC be included.

Sincerely

Alma H. Gates

Alma H. Gates
ANC 3D-05

cc: Katherine Bradley
Advisory Neighborhood Commission 3D
Neighbors United
Michael Lovendusky

Enclosures (2)

BZA
Case No. 16852
Exhibit No. 381

Board of Zoning Adjustment
District of Columbia
CASE NO.16852
EXHIBIT NO.381

Subj: **4925 MacArthur Basement Usage**

Date: 1/23/2004 6:10:50 PM Eastern Standard Time

From: Barrett@stpatsdc.org

To: AHG71139@aol.com, aheuer3344@earthlink.net, springvalleydc@starpower.net, Hugh.Mullane@usdoj.gov, finneyj@worldnet.att.net, tanyakhamilton@yahoo.com

Sent from the Internet (Details)

TO: Alma Gates, ANC 3D Chair, and ANC 3D Commissioners John Finney, Sarah Shapley, Anne Heuer, Tanya Hamilton, Hugh Mullane

FROM: Peter A. Barrett, Head of School, St. Patrick's Episcopal Day School

DATE: January 23, 2004

Dear Mrs. Gates and ANC Commissioners:

I am happy to report that construction at 4925 MacArthur Boulevard is substantially complete. All inspections were completed this week, we have a certificate of occupancy, and the building will be ready for students on Monday.

I wanted to share with you one development from earlier this week - a development we had not expected and that we want to take very seriously. With all inspection approvals in hand, we applied for the certificate of occupancy this week and discovered that, based on a neighbor complaint over our use of the basement, the certificate of occupancy was "on hold." Until that moment, we had heard absolutely no indication that DCRA saw any potential issue with our use of the basement space for students. The zoning inspectors visited the site several times in the course of construction and allowed construction to proceed. All plans and permits to date - which clearly showed the basement being used for students - had been legally approved and permitted.

Background Information
As some of you know, when we presented plans to the BZA in 2002 the basement was intended as usable school space, but for storage and mechanical, only. I have asked our architect, David Konapelsky, to review the evolution of the planned use of the basement. David conveyed the following information: During the construction drawing phase, we selected an elevator whose machine room had to have a 7 ½½-foot clear ceiling (requiring us to lower a portion of the existing floor slab and to add a required remote second stair). The path of travel to the remote exit also required a minimum ceiling height, resulting in a small room that could function as something other than a utility room. In addition, after the hearing concluded, we decided to install a sprinkler system, which had been recommended but not required, in an effort to upgrade existing fire safety in the building. The addition of a sprinkler system also allows safer occupancy of the basement. As a result of these decisions - based on life-safety considerations - we had a small basement space usable for students, as well as for storage. We therefore moved the planned music room to the basement, where any noise from singing and our African standing hand drums

(tubanos) would not carry beyond the enclosed, below-grade location. We were confident that music in the basement was the best solution for the neighborhood, as well as for our students.

Neighbor Questions Over Basement Legality
Last fall, neighbors did challenge the legality of the basement (as an "illegal fourth story"). We submitted substantial material from zoning counsel and from our architect to the ANC 3D Chair and to neighbors in order to establish the complete legality of the space. After considerable study, we do not find any interpretation of the regulations by which the basement space is an "illegal fourth story."

Issue at Hand
As we understand it, more recent neighbor complaints - and, likewise, DCRA's concerns - center on whether basement use by students is consistent with the BZA order. Although there is nothing in the BZA order that dictates how space is to be used inside the building, and DCRA saw no conflict during the original permitting process, we would like to resolve any lack of clarity. Our commitment is to abide by the letter and the spirit of the BZA order. As such we will need to ask the BZA to clarify this issue of basement use. They would likely address the request for clarification at a regularly scheduled public meeting.

Interim Occupancy
Given our desire for clarity and to avoid any "grey" zone in terms of BZA compliance, students will not use the basement until the BZA has clarified their intent. We will move music class back upstairs temporarily - or permanently, should that be the BZA's intent. Our certificate of occupancy is valid for student use for the top three floors, and DCRA has confirmed that while students may not occupy the basement, access to the basement is permitted given the mechanical equipment that is located there.

ANC Direction
I will assume it is in all parties' interest to resolve this matter quickly. Unless the ANC would like to have prior discussion with St. Patrick's, we will file a request for clarification next week. Please let me know if you would like us to handle this in any other way. We feel the ANC and St. Patrick's have made great strides in working together cooperatively, wherever possible. We would like to proceed here, in that same spirit of open communication and cooperation.

Please contact me, Mrs. Gates, if you would like us to proceed any differently. Many thanks for your time on this issue.

With all my best,

Peter A. Barrett
Head of School

Subj: **Email from Peter Barrett**

Date: 1/24/2004 10:37:27 AM Eastern Standard Time

From: AHG71139

To: SpringValleyDC@starpower.net, hugh.mullane@usdoj.gov, tanyakhamilton@yahoo.com, finneyj@worldnet.att.net, AHG71139, AHeuer3344

CC: barrett@stpatsdc.org, kbradley@nationaljournal.com

My fellow commissioners:

I had a call last evening from Board Chair Katherine Bradley regarding the Certificate of Occupancy for St. Patrick's Jr. High School located at 4925 MacArthur Boulevard informing me that an Email would arrive shortly from Peter Barrett. The phone call and Email concern a violation of the BZA Order and construction of a basement, second means of ingress and egress and enclosure of the front porch without BZA knowledge or approval.

Background:

Plans submitted and testimony before the BZA by the school referred to a basement to be used only as storage space. There was to be no student load because the basement ceiling height did not meet code.

In late October 2003, it became obvious that construction beyond what was presented to the BZA was being done. The issue of fourth story construction referred to in Mr. Barrett's Email was raised, but a letter from David Konapelski provided sufficient explanation that there was not a fourth story but rather a lowered basement floor. The school was very aware that there was neighborhood concern because copies of the plans for the basement were distributed and discussed at the school's monthly meeting with the neighbors. The creation of a 120 square foot room in the basement is the matter at hand. Its creation required the basement floor to be excavated and lowered to create a ceiling height of 7'-6", a sprinkler system to be installed and a second means of ingress and egress to be added on the front of the building. Further the front porch of the building had to be reconfigured and enclosed to allow room for the second means of ingress and egress.

Following a review of the building plans with DCRA staff and a comparison with those submitted to the BZA, the Neighbors United Trust, a party to the case, filed a formal complaint with DCRA on December 8, 2003. As no response was received from DCRA, in spite of numerous phone calls and Emails, I requested that the Compliance Officer at the Office of Zoning become involved in the complaint. I attach a portion of an Email from the Director of the Office of Zoning, Jerrily Kress, to me:
"Plans and elevations filed as an exhibit are the only extra thing considered a condition by law. If we find a condition has been violated and we are not able to get the owner to resolve the issue,

then we send a short report of our findings to DCRA and request immediate enforcement. Also all of the BZA and ZC orders are sent to the Zoning Administrator. And again they are available on our website (word searchable) so there is no reason that DCRA is unaware of our orders. Please file the form 300 so that we can begin work immediately and help you. Thank you. Jerrily Kress, Director"

Ms. Kress states that the elevations and plans presented are themselves a condition of the BZA Order. This is based on Sections 3125.7 and 3125.8 of the Municipal Regulations, Title 11, which state:
"Approval of an application shall include approval of the plans submitted with suchb application for the construction of a building or structure [or addition thereto) ...unless the Board orders otherwise...An applicant shall be required to carry out the construction, renovation, or alteration only in accordance with the plans approved by the Board, unless the Board orders otherwise."

Within two days of the filing of form 300 by Neighbors United a "hold" was placed on the use of the basement and that is what prompted Peter Barrett's Email to you tonight and Katherine Bradley's phone call to me.

The time for St. Patrick's to seek clarification on the BZA Order was at the beginning of the project when David Konapelski knew the elevator selected would require additional basement clearance. Therefore, it is my intention, as Commissioner for the Single Member District in which the school resides, to request the BZA require the school to file an application for a hearing on the violation and changes made to the plans outside the BZA Order (16852).

Alma Gates
Chair 3D