ShawPittman LLP

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RECEIVED
BOARD OF ZONING ADJUSTMENT
2004 FEB 3 P 1:38

February 2, 2004

By Hand Delivery

Mr. Geoffrey Griffis, Chair
District of Columbia Board of Zoning Adjustment
441 Fourth Street, N.W., Suite 210-S
Washington, DC 20001

Re: St. Patrick's School ("St. Patrick's") – 4925 MacArthur Blvd., NW
Request for Clarification or, in the Alternative,
Modification of BZA Order No. 16852

Dear Mr. Griffis and Members of the Board:

The purpose of this request is to seek the Board's clarification of BZA Order No. 16852 to confirm St. Patrick's ability to use a 120 square foot portion of the basement in the existing building at 4925 MacArthur Blvd. for a music room. In the alternative, the School seeks a modification of the approved plans to allow such use.

I. SUMMARY OF FACTS

- St. Patrick's has completed the renovation and expansion of the existing building at 4925 MacArthur Blvd. and has secured a certificate of occupancy to occupy floors 1-3. The school opened on January 28, 2004. The certificate of occupancy does not include the fully renovated basement.

- In response to community concerns, DCRA has requested that the Applicant seek clarification from the Board of the school's right to use the renovated basement level for a music room. DCRA has placed the certificate of occupancy for the basement on hold pending the Board's clarification. DCRA did not agree to the community's request for a revocation of the building permit. The permit remained in full force and effect throughout the construction phase.

- The plans filed with the BZA application clearly show the renovated basement and note its proposed use for utility space. In the course of preparing construction drawings, the school included several significant life safety upgrades that were required in connection with the elevator.

BZA
Case No. 16852
Exhibit No. 382

Board of Zoning Adjustment
District of Columbia
CASE NO.16852
EXHIBIT NO.382

These upgrades have rendered a portion of the basement usable by students. The proposed music room was shown in the building permit drawings which DCRA approved without reservation and the basement was renovated in accordance with those drawings.

- The school's decision to use a portion of the existing basement for a music room instead of a storage room does not violate Condition 19 of the BZA order: It does not constitute an expansion of the building because it has no effect on gross floor area or building footprint. Further, the Board's order does not restrict the interior configuration of the building or the exact location of school-related uses within the building.

- The music room is permitted under BZA Order No. 16852.

II. BACKGROUND

In Order No. 16852, the Board of Zoning Adjustment voted 4-0 to approve the application of St. Patrick's to use the building located at 4925 MacArthur Boulevard as a private junior high school for forty students. The application included a request to expand and renovate the existing building, including a complete renovation of the building interior and extensive upgrades to the building's handicapped accessibility and life-safety systems. (BZA Order No 16852 at 4, ¶ 3.) As a result of code-required upgrades to accommodate the elevator, one of the small basement rooms that St. Patrick's had planned on renovating and using as a utility room now complies with the code requirements for student use. Since St. Patrick's plans to use the 120 square foot room as a music room for the students, it secured a building permit in June 2003, based on plans that clearly showed the music room in the basement.

St. Patrick's proceeded with the renovations in accordance with the permit drawings. The renovation and expansion are now complete,[1] and St. Patrick's occupies floors 1-3 of the building pursuant to a Certificate of Occupancy. (Exhibit A). Nonetheless, in response to the community concerns about the proposed music room, DCRA placed a hold on the Certificate of Occupancy for the basement level pending the Board's clarification of this matter. ***St. Patrick's accordingly requests that the BZA clarify whether the Order permits the school to use the basement room as a music***

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[1] Only minor "punch list" items remain.

room. In the alternative, St. Patrick's requests a modification of approved plans under § 3129 of the Zoning Regulations to allow such use.

III. THE MODIFICATIONS AND COMMUNITY CONCERNS

Following the BZA's approval of the application, the architects for St. Patrick's produced working drawings based on the drawings submitted to the BZA. The initial drawings for the basement area submitted by St. Patrick's in connection with the application show the proposed basement plan as including utility rooms, an elevator machine room, a new elevator, and a new stair. At that time, St. Patrick's did not plan to use the basement space for students because (1) the ceiling height did not meet BOCA Code requirements and (2) the basement lacked the required sprinkler system. During the review of the working drawings, however, St. Patrick's was required to make minor, code-related modifications to the basement which were unanticipated at the time of the hearing. Most significantly, the specifications for the elevator appropriate for the building required a 7'6" ceiling height for the elevator machine room In order to achieve the 7'6" height, St. Patrick's was required to lower a portion of the existing floor slab. St. Patrick's also was required by BOCA Code to construct a second egress stair from the basement and a pathway from the elevator to the egress stair. As a result of this change, one of the utility rooms had a ceiling height that met BOCA Code requirements for student use. ***The egress stair and the 7'6" clearance for the elevator and pathway are necessary whether or not the BZA approves the music room use.***

In addition, after the Board's approval, St. Patrick's voluntarily decided to install a fire sprinkler system in the entire building to make the building safer for the students. Although the District did not require the sprinkler system, it "recommended" that one be installed. These changes resulted in a small room that students could occupy rather than the originally proposed utility room. ***None of the modifications constituted an expansion from a zoning standpoint. There was no increase the footprint of the building, no addition of gross floor area and no change to the maximum number of faculty, staff and students permitted in the building.*** Similarly, the egress stair that was added involved the partial enclosure of an existing porch, a 50 square foot area that was already covered and therefore already counted toward gross floor area. St. Patrick's obtained a building permit to renovate the building pursuant to these plans, including the lowered floor slab, sprinkler system, additional egress, and music room space. See Exhibit B, the basement plan that was submitted to the BZA and the basement plan that was submitted in connection with the building permit application. The building permit was issued on June 23, 2003, and St. Patrick's completed construction earlier this month.

Even so, community members complained to DCRA that the basement modification "violated" the Order and requested first that DCRA revoke the building permit and later that DCRA deny a certificate of occupancy for the building. The purported basis for such action, according to the community members, is that the modified basement plan violates Condition 19 of the Order, which restricts the expansion of the building to a footprint delineated on a site plan. They argue that St. Patrick's should be required to return to the BZA for further approvals prior to "expanding" its use of the building. Given DCRA's hold on the certificate of occupancy for the basement, the school finds itself in limbo. The Board's action is required to resolve this issue.

IV. THE BUILDING PERMIT PLANS ARE CONSISTENT WITH CONDITION 19 OF THE ORDER

As St. Patrick's stated in letters to Mr. Denzil Noble, Acting Zoning Administrator, which are attached, the Order limits neither the interior configuration of the building nor the distribution of uses in the building. Condition 19 of the Order provides: "Expansion of the building on the subject property shall be limited to the area necessary for access as shown on the Applicant's site plan (Exhibit No. 340)." (BZA Order. No. 16842 at 17.) The site plan referenced in Condition 19 shows only the footprint of the building. It does not show the configuration of interior spaces in the building. In fact, it would be unusual for a BZA order to restrict the interior configuration of a building. Schools regularly reconfigure and change the use of interior space without Board approval.

The code-related modifications do not constitute an "expansion" of the school and are consistent with Condition 19 of the Order. They have not expanded the footprint of the building; they have merely allowed a room to be used for a different school purpose. The space does not affect the number of faculty, staff or students on site. Because it is located at the cellar level, the room does not increase the gross floor area of the building. (*See* 11 DCMR § 199.1) Similarly, the egress stair has no effect on gross floor area. Thus, the modifications will not affect the intensity or character of the private school use and do not have any zoning implications. In contrast, if the school had roofed over the large open terrace at the front of the building as the neighbors feared, Board approval would have been required due to the addition of gross floor area, a clear expansion. Similarly, a change to the footprint would have violated Condition 19.

The Order demonstrates that the BZA contemplated that St. Patrick's would completely renovate the basement of the building and would use it for school purposes. The Order summarized the School's plans, which included "complete rehabilitation of the existing building," "***renovation of the building interior*** and conversion to seminar-style

classrooms," and "upgrades to the building's handicapped accessibility ***and life-safety systems***." (Order at 4 (emphasis supplied).) In addition, the Board noted that the only changes in the footprint of the building would be made "to accommodate the life-safety and handicapped accessibility upgrades ...." *Id.*

In discussing Condition 19, the BZA explained that it was concerned with maintaining the residential appearance of the property . The BZA also pointed out that the renovations would preserve the residential appearance of the existing building while enhancing its safety and accessibility features. The lowering of the floor slab in the basement increased the safety of the basement without any effect on the footprint or appearance of the building.

V. REQUESTED RELIEF

St. Patrick's intends to operate the school in complete compliance with the Order. The lowered basement floor and use of the basement room as a music room are consistent with the Order as written. In renovating the space, St. Patrick's relied on DCRA's issuance of a permit based on drawings that clearly showed the music room. The school also relied on numerous discussions with, and inspections by, DCRA personnel. Regardless, in response to concerns expressed by the community, St. Patrick's requests that the BZA clarify the Order to satisfy community concerns as to the legality of the basement use.

In the event the Board determines that the use of the basement is not permitted, then St. Patrick's requests a modification of approved plans under § 3129 of the Zoning Regulations. Under § 3129.7, an applicant may request the modification of approved plans when the modification is minor and does not change the material facts the Board relied upon in approving the application. The request to use the basement room as a music room clearly meets this standard. The modification is minor because the space consists of only 120 square feet – less that 2% of the 7400 square foot building. In addition, it is not new space – it is space that was included for school use in the approved plans. Further, the modification does not change the material facts upon which the Board relied in deciding the case. It is hard to imagine that the presence or absence of a music room in the basement would have had any effect on the Board's decision on this application. St. Patrick's always planned to provide a music room at the school. The space has merely been relocated to the basement. This relocation will be a benefit to the neighbors because it will provide increased sound buffering. It will be a benefit to students as well since the classrooms will be more quiet. Finally, the number of faculty, staff, and students will remain the same, and the modification will not increase the gross floor area of the building or its footprint.

Perhaps most compelling is the fact that Sharon and Charlie Houy who own one of the two abutting properties (4922 Ashby Street), have withdrawn from the Neighbors United Trust, a party in opposition, because the Houys support the location of the music room in the basement and question the way in which the School's efforts have been rebuffed. The Houys have resided in their house for twenty years and their house is closer to the 4925 building than any other house. It is not surprising that the natural sound buffering associated with basement space would be appealing to an abutting property owner. (See letter from Sharon and Charlie Houy attached as Exhibit C.)

If a modification is required, St. Patrick's requests a waiver of the time period contained in § 3129.3. That section requires that requests for modification be filed with the BZA within six months after the date of the final order approving the application. Under § 3100.5, the BZA may, for good cause shown, waive the time limit if the waiver will not prejudice the rights of any party and is not otherwise prohibited by law. St. Patrick's obtained a building permit based on the plans that clearly showed the music room in the basement. Thus, St. Patrick's justifiably relied on the determination by DCRA that the plans were consistent with the Order and the Zoning Regulations. Zoning inspectors who visited the site during construction and issued the final approvals did not indicate that the basement violated the Order. There was no reason to request a modification until the hold on the certificate of occupancy was imposed, which was more than six months from the date of the BZA order. Accordingly, St. Patrick's has demonstrated good cause for not filing a request within six months of the date of the Order. No party will be prejudiced by the waiver of the six month requirement because members of the community have been aware of the school's intent to use the basement space for several months.

In accordance with the foregoing, St. Patrick's respectfully requests that the Board clarify whether the Order permits the school to use the basement room as a music room. If the Board determines that such use in not permitted, then St. Patrick's requests that the Board modify the Order to permit such use. St. Patrick's would appreciate the Board's expedited consideration of this request.

Sincerely,

Allison C. Prince

Allison C. Prince

cc: All Parties

ShawPittman LLP

Certificate of Service
16852

I hereby certify that on February 2, 2004, a copy of the foregoing letter and attachments was delivered by hand to the following:

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Washington, D.C. 20016

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Washington, D.C. 20007

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Washington, D.C. 20007

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Document #: 1377595 v.1

Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street N.E. room 2100
Washington D.C. 20002
Tel. (202) 442 - 4470 Fax (202) 442 - 4862

Government of the District of Columbia
BLRA-94A

C of O

CERTIFICATE OF OCCUPANCY

PERMIT NO.
CO 69191

THIS PERMIT IS VALID ONLY FOR THE PREMISES OF THE PROJECT ADDRESS

DATE : 1/22/2004

ADDRESS:	FLOOR(S):	PRCLID : 1393 (square) 0017 (lot)
4925 MACARTHUR BLV NW	1ST,2ND & 3RD FLOORS	WARD : 3 ZONE : R1B

PERMISSION IS HEREBY GRANTED TO:
CORPORATION : ST.PATRICK'S PROTESTANT EPISCOPAL CHURCH
ID No.: 029826

TRADING AS:
ST.PATRICK'S EPISCOPAL DAY SCHOOL

APPROVED USES :
PRIVATE SCHOOL

PREVIOUS USES
PRIVATE SCHOOL

TYPE:	FLAN NO.	OCCUPIED SQ. FOOTAGE:	OCCUP. LOAD:	EXPIRATION DATE:
NEW C/O		7,25	52	NONE

DESCRIPTION OF USE:
PRIVATE SCHOOL FOR GRADES SEVEN THROUGH NINE (40 STUDENTS; 8 FULLTIME & 4 PART TIME FACULTY AND STAFF)

FEE : $85.00

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, VALID ONLY for the premise at the above address or part thereof, and for the purpose(s) indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

David A. Clark
DIRECTOR

PERMIT CLERK:
LEON PAUL

DCRA
Department of Consumer & Regulatory Affairs
District of Columbia Government

30 January 2004

Mr. Peter Barrett, Head
St. Patrick's School
4700 Whitehaven Parkway, N.W.
Washington, D.C. 20007

Chairman Geof Griffis
Board of Zoning Adjustment
441 4th Street, N.W.
Washington, D.C. 20001

Re: St Patrick's School 4925 MacArthur Blvd. BZA Application No 16852 -
Request for Clarification/Modification of Order

Dear Mr. Barrett and Chairman Griffis:

The purpose of this letter is to inform you that we do not oppose St. Patrick's proposed use of a portion of the basement of 4925 for a music room. We have resided at 4922 Ashby Street for the past 20 1/2 years and the full depth of our property directly abuts the 4925 property. There is only one other abutting property and our house is located closer to the 4925 building than any other house. From our standpoint, the basement is the best location for the music room because of the natural sound buffering associated with the space. It is subterranean with only one small window located within the turret. The original music room - and the back-up music room now being used - contained large windows which, if opened, would allow the music to permeate the neighborhood. Sharon recently toured the building and discovered that the new music room is quite small and does not create a regular classroom space. It is a pass-through to an egress that has great acoustics for music.

During the course of the BZA proceedings, we were members of the organization representing several neighbors in opposition, Neighbors United Trust. Because of NUT's opposition to the location of the music room in the basement, we have withdrawn from NUT. We prefer the location of the music room in the basement. NUT no longer represents our interests as one of the most immediately affected property owners.

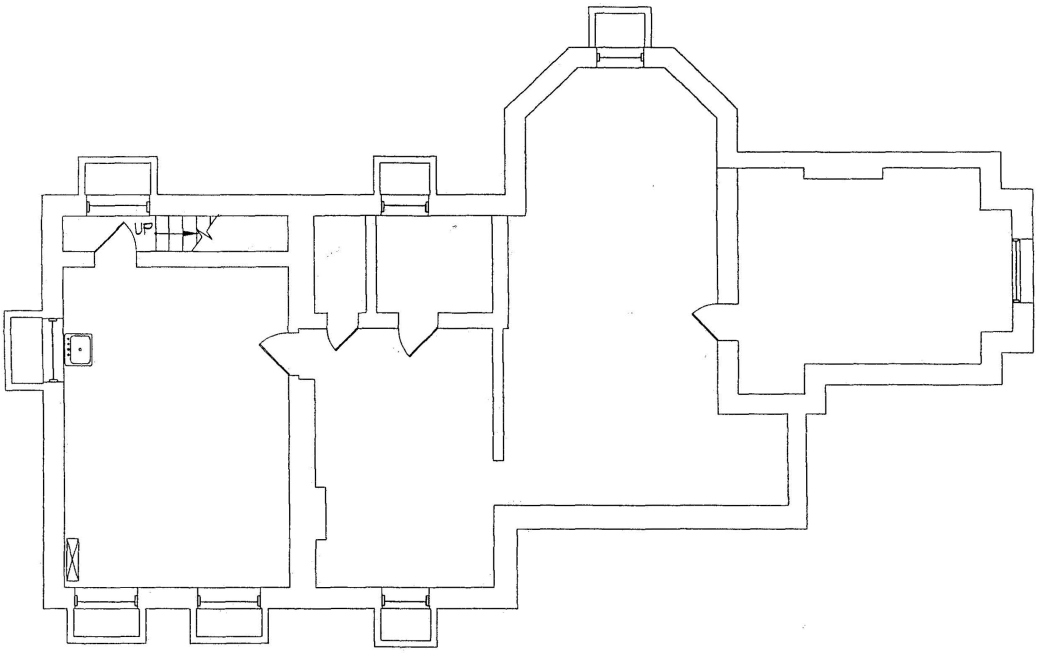
We do not agree with allegations that St. Patrick's School has been deceptive in its plans to locate the music room in the basement. St. Patrick's informed the community about the proposed location of the music room months ago at one of its monthly neighborhood meetings, which Sharon has been attending regularly. Now we hear allegations from neighbors that this space constitutes an illegal fourth story and that it will result in more students in the building. We disagree with this view.

St. Patrick's School has gone to great lengths to communicate with the community about every facet of construction, including the use of this basement space as a music room. It is time to move on and forge a positive working relationship with the school.

Charles J. Houy
4922 Ashby St. N.W.
Washington DC 20007

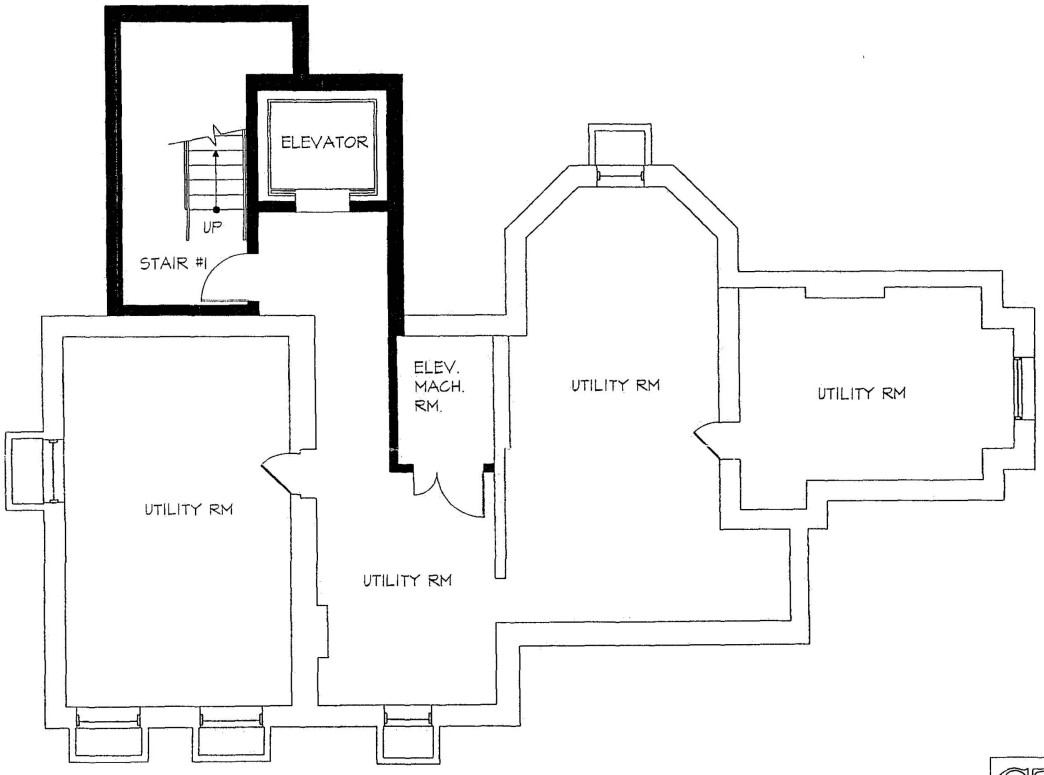
Sharon A. Houy
4922 Ashby St. N.W.
Washington DC 20007

FILE NAME: 01.02...



1 / SD-0 EXISTING BASEMENT PLAN

SCALE: 1/8"=1'-0"



B2.A PLAN

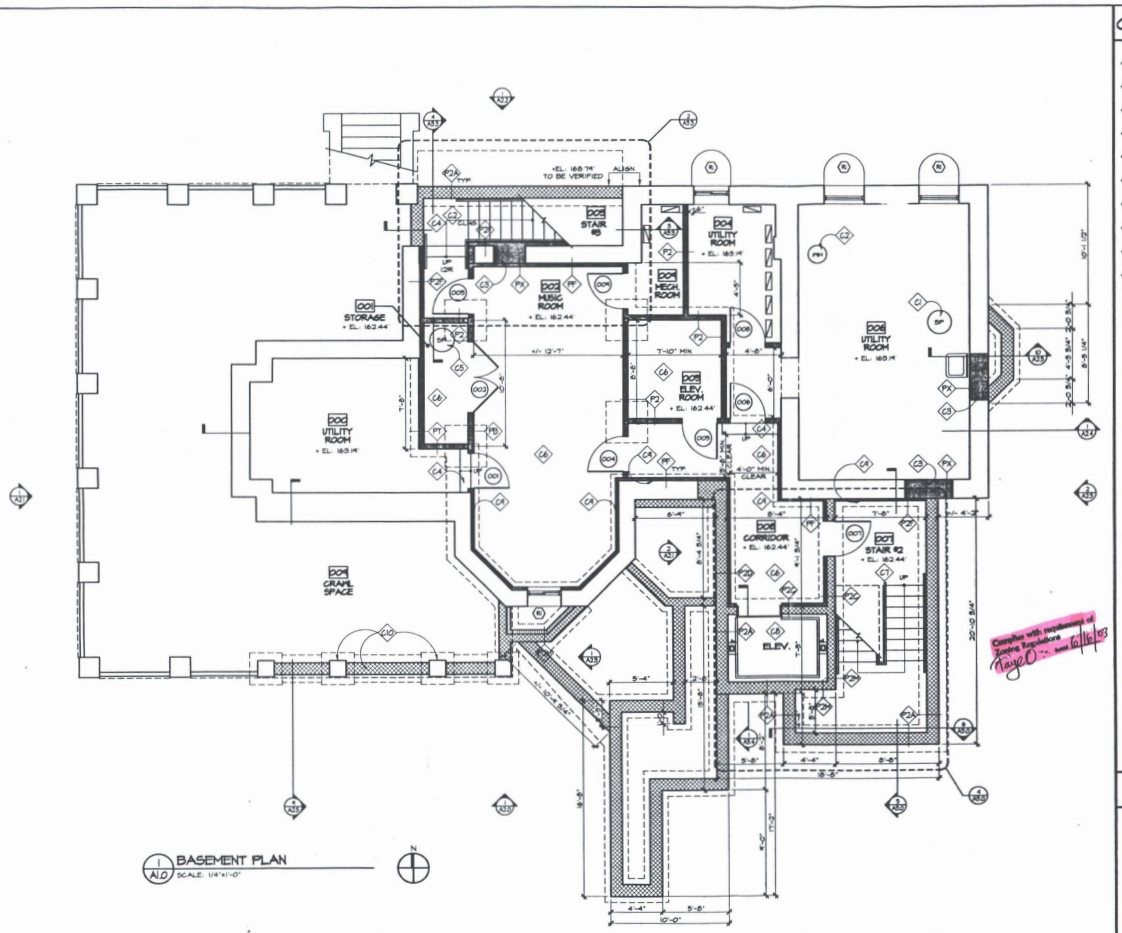
2 / SD-0 PROPOSED BASEMENT PLAN

SCALE: 1/8"=1'-0"

EXISTING SQUARE FOOTAGE - 1316sf
LIFE SAFETY ADDITION - 342 sf
STUDENT OCCUPANT LOAD PER BOCA - 0 STUDENTS

GTM ARCHITECTS
10415 ARMORY AVENUE,
KENSINGTON, MD. 20895
(301)942-4062
(301)942-3421 FAX

04/01/2002



1 A1.0 BASEMENT PLAN
SCALE: 1/4"=1'-0"

Complies with requirements of Zoning Regulations
Maine O'... date 6/16/03

CONSTRUCTION NOTES

C1 REPLACE EXIST. SUMP W/NEW SUMP IN SAME LOCATION (V.I.F.) MEP ENGINEER TO SIZE PUMP, CONNECT TO STORM SYSTEM.

C2 EXIST. WATER HEATER TO BE RE-USED, COORD W/MEP DWGS

C3 PATCH/INFILL W/SOLID CMU; MATCH EXIST'G FINISHES

C4 NEW CONC STEPS

C5 NEW SUMP PUMP - COORD W/MEP DWGS; CONNECT TO STORM SYSTEM

C6 NEW CONC SLAB ON GRADE - SEE STRUCTURAL DWGS

C7 NEW CONC & MTL PAN STAIRS, SEE DWG A3.0

C8 NEW ELEVATOR - SEE DWG A3.4

C9 UNDERPIN EXIST. RBMT WALL TO ACCOMMODATE PROPOSED SLAB ELEVATION, COORD W/STRUCTURAL DWGS

C10 NEW FOUNDATION WALL STMN EXIST. PIERS, COORD W/STRUCT DWGS

KEY

EXISTING WALL

NEW WALL AS NOTED PER PARTITION TYPE

DISTRICT OF COLUMBIA
PERMIT NO. [illegible]
ISSUED: [illegible]
AMENDMENT NO. [illegible]
PURPOSE: [illegible]
By: [illegible]
Date: MAY 2 - 2003

BUILDING PERMIT PLAN

GTM ARCHITECTS
1043 ARMORY AVENUE,
KENSINGTON, MD. 20895
(301)942-9393
(301)942-9929 FAX

4925 MACARTHUR BLVD., NW
WASHINGTON, D.C. 20007

BASEMENT PLAN

ST. PATRICK'S EPISCOPAL DAY SCHOOL GRADES 7 & 8

REVISIONS:
PERMIT SET

SEAL:
DISTRICT OF COLUMBIA REGISTERED ARCHITECT

DRAWN BY: MSH/SH
CHECKED BY: DPK
SCALE: AS NOTED
DATE: 04.01.03
PROJECT NO.: 01.0644
DRAWING NO.: A1.0