ORIGINAL

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of St. Patrick's Episcopal Day School

BZA Application No. 17081
Public Hearing: December 2, 2003
ANC 3D

STATEMENT OF THE APPLICANT

I.
NATURE OF RELIEF SOUGHT

This is a special exception application under Sections 205 and 206 to update the cap on the faculty and staff associated with St. Patrick's Episcopal Day School ("SPS" or "Applicant"). The school is located in the R-1-B District at 4700 Whitehaven Parkway, NW (Square 1372, Lot 817, Square 1374, Lot 5). BZA Order No. 15374 dated October 30, 1990, states that "the number of staff shall not exceed 60." The Applicant seeks an updated condition that will supersede the earlier staff cap and establish a new cap of 93 full time equivalent ("FTE") faculty and staff.

II.
HISTORY OF ST. PATRICK'S SCHOOL

St. Patrick's Episcopal Day School was founded in 1956. It first operated as a nursery school in the old St. Patrick's Church located at the southeastern corner of Foxhall and Reservoir roads, a site that is now improved with townhouses. The addition of elementary grades began in 1967. The first Grade 6 graduated in 1974. In 1977, the school moved to its present location at 4700 Whitehaven Parkway. A co-educational institution, SPS was founded on the belief that every child has infinite value and can benefit from a varied and challenging academic program. Admission decisions are made without regard to race, sex, religious affiliation or national origin of the applicant, although children of members of St. Patrick's Episcopal Church are given

BZA
Case No. 17081
Exhibit No. 26

Board of Zoning Adjustment
District of Columbia
CASE NO. 17081
EXHIBIT NO. 26A1

priority consideration for admission. The student body and faculty reflect a diverse range of racial, ethnic, cultural and socio-economic backgrounds.

The school currently provides financial aid for tuition and related expenses to students who constitute 19.4% of the Nursery through Grade 6 student body and 21.7% of the Nursery through Grade 8 student body. There has been a 16% increase in Nursery through Grade 6 financial aid recipients in the past year alone, while Grades 7 and 8 participation more than doubled. This year, the total financial aid has been more than $1.4 million. The sizable average grant of approximately $13,500 demonstrates that SPS students include a broad range of socio-economic groups. (Grades 7 and 8 are located on a separate campus, provided for under BZA Order 16852 , and are not included in this application.)

The cap that the school now seeks to modify was established in 1990 in BZA Order No. 15374. The cap has not changed since that time. There has been only one BZA application relating to the elementary school since 1990. Application No. 16517 was completed in 1999 and involved: (1) renovation and expansion of the existing building at 4700 Whitehaven Parkway, NW on the south side of Whitehaven Parkway, and (2) construction of a new gymnasium and parking facility on the school's property on the north side of Whitehaven Parkway.

In connection with that application, SPS filed a statement indicating that it employed 64 faculty and 29 staff. Since that amount exceeded the cap contained in the 1990 order, SPS should have sought an amendment to the cap in addition to the other relief it was seeking at the time. Unfortunately, SPS incorrectly determined and stated to the BZA that the limit of 60 staff did not pertain to faculty. A detailed review of the file from the 1990 application, however, makes clear that the original cap *was* intended to include all employees. The school now seeks a

new cap that allows 93 total full-time equivalent faculty and staff. The school acknowledges that it should have revised the cap as soon as the School's faculty and staff exceeded 60.

III.
JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the requested relief as a special exception pursuant to Sections 205 and 206 of the Zoning Regulations.

IV.
EXHIBITS IN SUPPORT OF THE APPLICATION

Before proceeding with a discussion of the merits of this application, the following exhibits are submitted:

Exhibit A	Copy of portion of the Sanborn Atlas showing the subject property outlined in red.
Exhibit B	Copy of portion of the Zoning Map indicating that the zoning of the subject site, which is outlined in red, is R-1-B.
Exhibit C	Photographs of the existing site and building.
Exhibit D	Copies of previous BZA orders affecting the property.
Exhibit E	Proposed Conditions.

V.
COMPLIANCE WITH SECTIONS 205 AND 206 OF THE ZONING REGULATIONS

Schools are permitted to operate in the residential zone with special exception approval. Uses that are permitted by special exception in certain zone districts have been deemed compatible with those zone districts. As a result, an applicant for a special exception is not required to demonstrate that the use is compatible with the underlying zone. Rather, the applicant must show that the impacts associated with the use are not likely to become objectionable to neighboring property owners. *First Baptist Church of Washington v. Board of Zoning Adjustment,* 432 A.2d 695 (D.C. 1981). In obtaining approval of a special exception pursuant to Sections 205 and 206, the applicant has the burden of showing that the school will

not become objectionable to adjoining and nearby property because of noise, number of students, other objectionable conditions, and that ample parking shall be provided.

Compliance with the requirements of Sections 205 and 206 is set forth as follows:

A. 205. 3, 206.2: The Proposed Change In The Employee Cap Will Not Be Objectionable Because Of Noise, Traffic, Number Of Students Or Otherwise.

The school is requesting a cap that represents a "status quo" situation as to faculty and staff. As a result, there will not be any change in existing conditions associated with the increase.

Over the past 14 years, the faculty and staff at St. Patrick's has grown gradually. As in independent schools throughout the U.S., St. Patrick's faculty now includes more "specialty" teachers who teach foreign language, reading, art, music, physical education and other individual subjects. On the staff side, the operation of an independent school, including the administration of its Admission/Financial Aid, Business and Development offices, has become increasingly complicated. As a result, the school now has a Chief Financial Officer, a position that did not exist ten or even five years ago. Significant additional growth in faculty and staff is neither necessary nor economically feasible. The cap will continue an employee level that is appropriate for the school's enrollment and adequate to address the program needs of the school.

The school proposes the inclusion of a condition in the BZA order requiring that the school file an annual report with the BZA and the ANC indicating the total number of faculty and staff. The report will include a breakdown of the number of full time and part time employees. In addition the School has agreed to hold quarterly meetings with the community.

B. 205.4, 206.3: Ample Parking Space Will Be Made Available.

Section 206.2 requires that ample parking space be made available. Although the section does not specifically quantify the term "ample parking space," it states that there shall not be

fewer spaces than are required by Chapter 21 of the Zoning Regulations. Currently, the school has 62 parking spaces on its property, all of which are located in the gymnasium located on the north side of Whitehaven Parkway. Section 2101.1 of Chapter 21 requires the provision of two parking spaces for every three teachers and other employees for private school use. With the proposed cap of 93 FTEs, a total of 62 spaces will be required.

In addition to the 62 spaces that are located on the school property, the school provides 23 parking spaces on property adjacent to its campus that it leases from the Army Corps of Engineers. In addition, the school provides 42 angled parking spaces in public space along the Whitehaven Parkway. The school leases this space from the District of Columbia and made a substantial investment in the creation of the spaces and the installation of a sidewalk along that portion of Whitehaven Parkway. The campus therefore provides a total of 127 parking spaces, a number that is more than adequate to accommodate regular, day-to-day, faculty, staff and visitors.

The school has devoted considerable time and resources to the traffic impacts associated with its operation. Last year, the school worked with a traffic engineer and the District Division of Transportation to make adjustments to the operation of its carpool on Whitehaven Parkway. In addition, the school has implemented a carpool program that has successfully reduced the number of cars on Whitehaven Parkway each day. These traffic improvements, combined with the ample parking supply, have improved traffic conditions on Whitehaven Parkway and demonstrate the school's commitment to minimize any traffic impacts.

VI.
THE GRANTING OF THE SPECIAL EXCEPTION WILL BE IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE ZONING REGULATIONS AND WILL NOT TEND TO AFFECT ADVERSELY THE USE OF NEIGHBORING PROPERTY

St. Patrick's School has served the children of its own neighborhood and the larger Washington, D.C. community for almost 50 years. The parking spaces provided on the site and adjacent public property will ensure that the traffic and parking impacts associated with the school are minimal. The parking is adequate to accommodate the needs generated by the use. There is a parking space for literally every employee and a good number of visitors. Through a continuing commitment to its carpool program, the number of cars traveling to the site each day will be closely monitored. In summary, the proposed cap will closely reflect the existing conditions at the school and will not result in any adverse impacts on the neighborhood.

VII.
WITNESSES

A. Peter Barrett, Head of School of St. Patrick's School

B. Katherine Bradley, Chairman of the Board of St. Patrick's School

VIII.
CONCLUSION

For the foregoing reasons, the applicant respectfully requests that the special exception be granted to allow the new cap of 93 FTE faculty and staff.

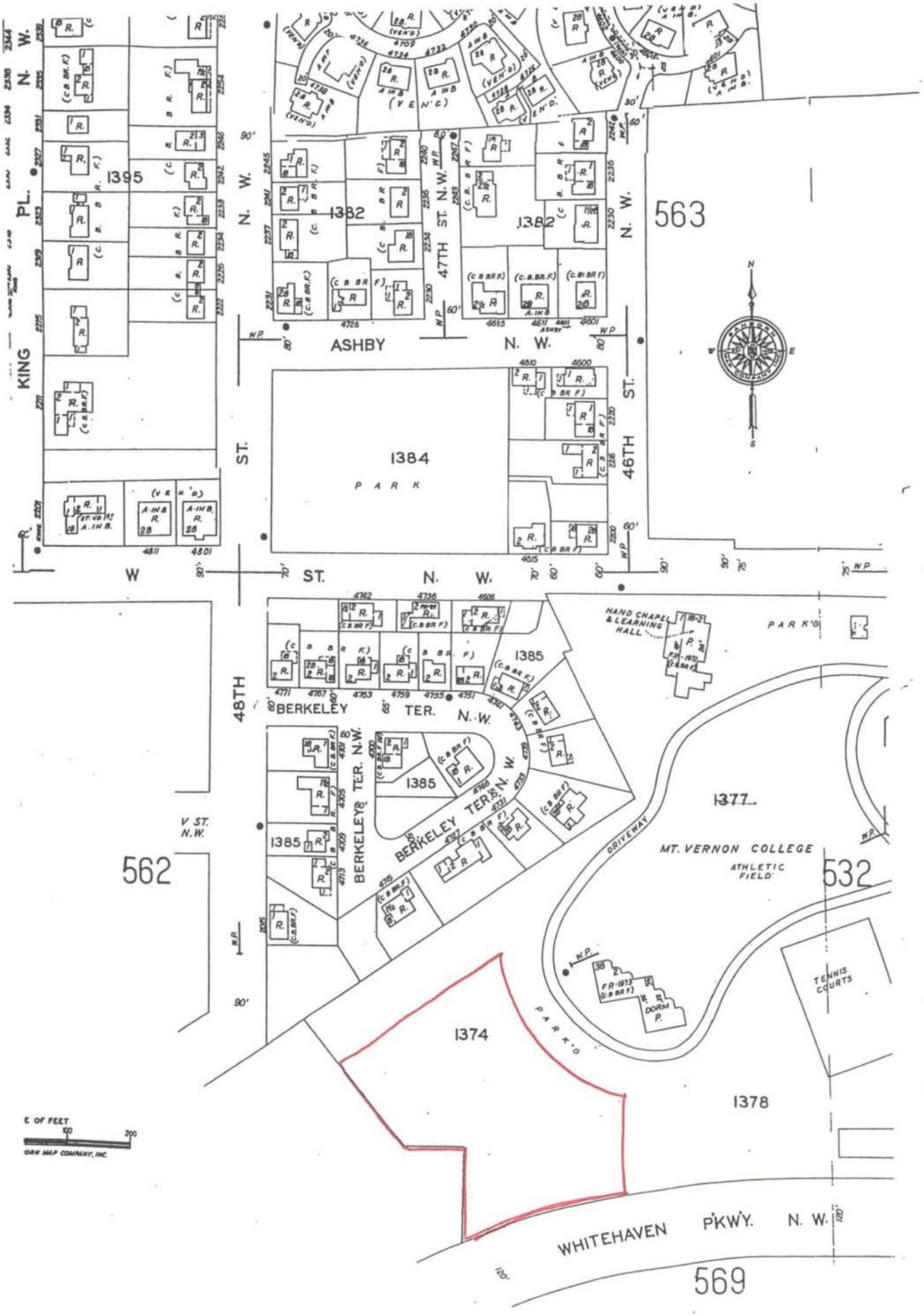
Respectfully submitted,

Shaw Pittman LLP

By: Allison C. Prince
Allison C. Prince

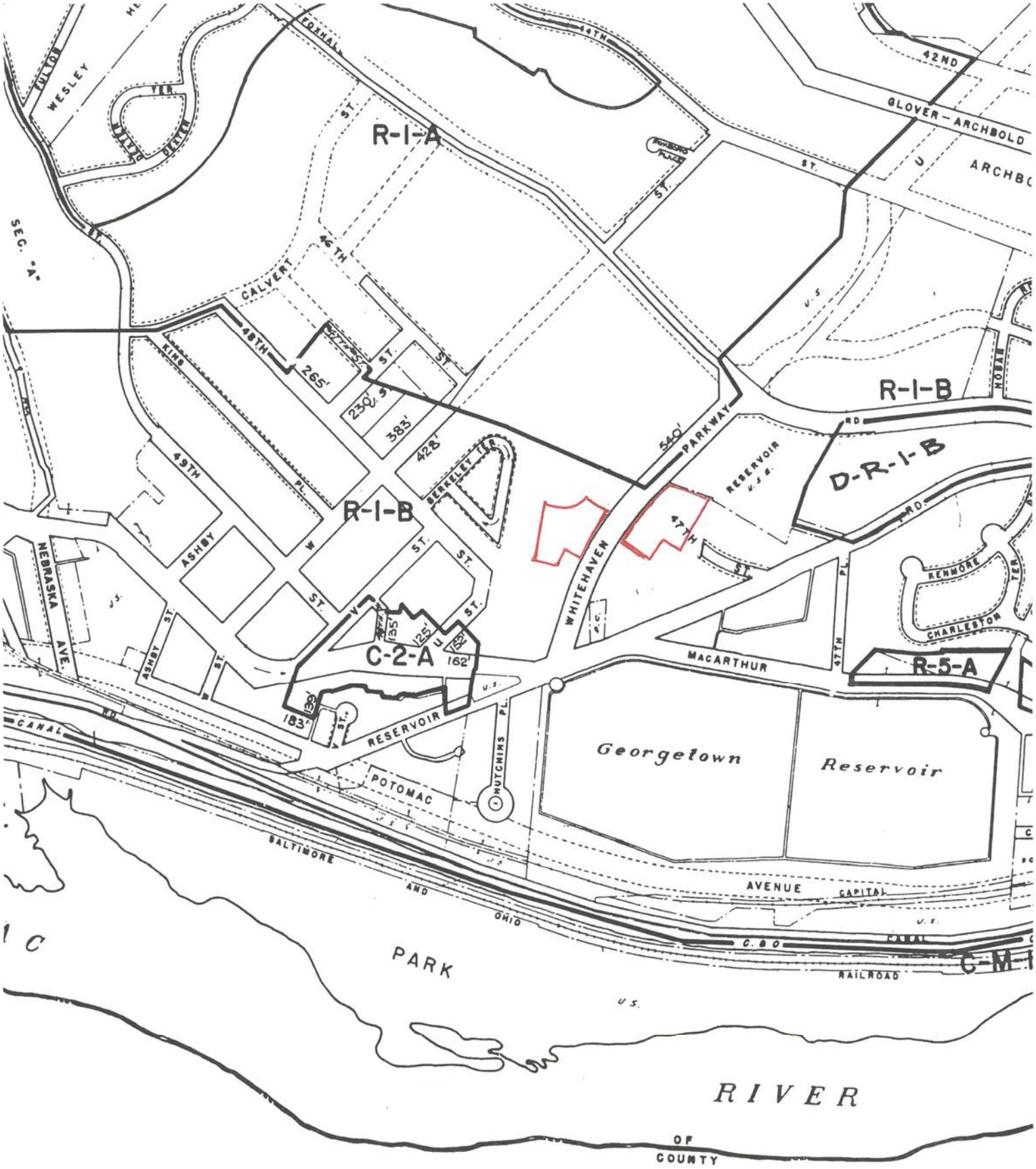
11/18/03

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KING PL. N. W.
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47TH ST. N. W.
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ASHBY N. W.
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PARK
46TH ST.
W ST. N. W.
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BERKELEY TER. N.W.
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HAND CHAPEL & LEARNING HALL
PARK'G
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MT. VERNON COLLEGE ATHLETIC FIELD
DRIVEWAY
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532
V ST. N.W.
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ST. PATRICK'S EPISC. SCHOOL
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ADMINISTRATION BLDG.
DORMITORY & DINING HALL
N.C. - 1952
THE LAB SCHOOL OF WASHINGTON
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ST. N.W.
PRIVATE DR.
POOL
RESERVOIR
NEW FIRST HIGH RESERVOIR
CAP.- 15 MILLION GALS ELEVATED 320'
RESERVOIR COVERED WITH EARTH
MAC ARTHUR BLVD. N.W.
PL. N.W.
KENMORE DR. N.W.
GARAGE
UNDERGRD STRUCT.
R/P LEVEL W/GA.
F.P.-1963
(CONC.)
DRIVEWAY
FEDERAL REPUBLIC OF GERMANY
EMBASSY
FOXHALL
CHARLES
Distributing
Reservoirs

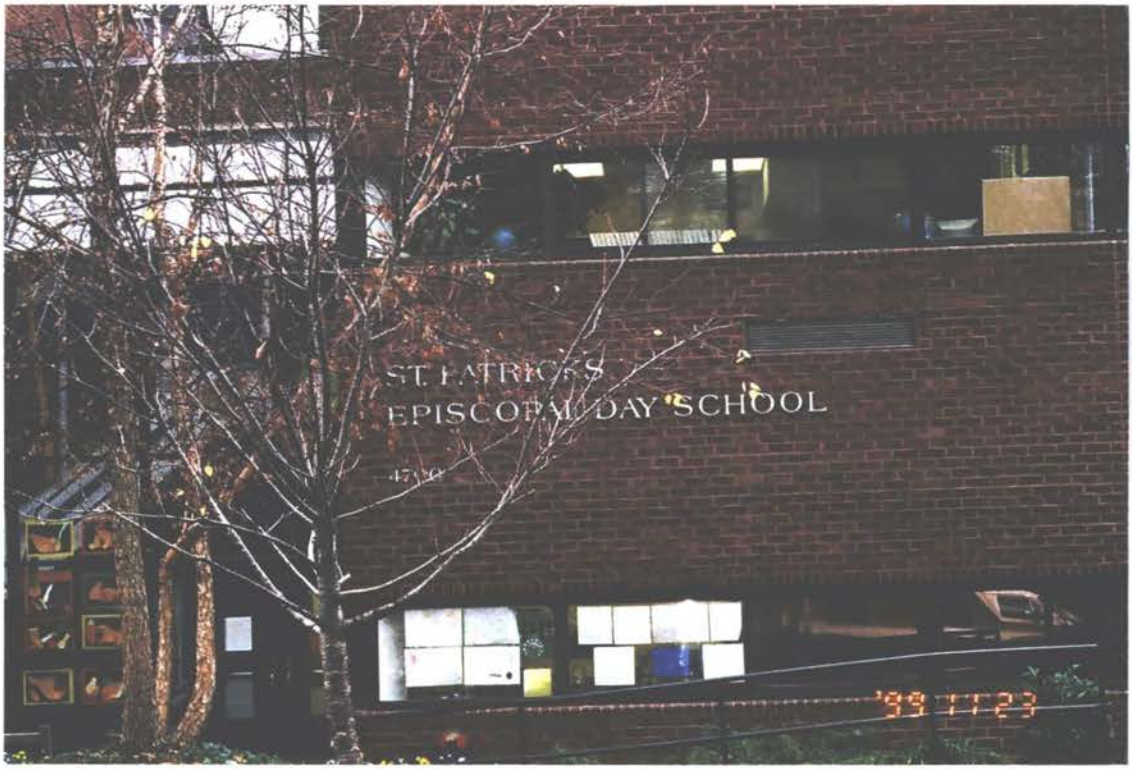
B



TRICT OF COLUMBIA

NING MAP

C


ST. PATRICK'S
EPISCOPAL DAY SCHOOL





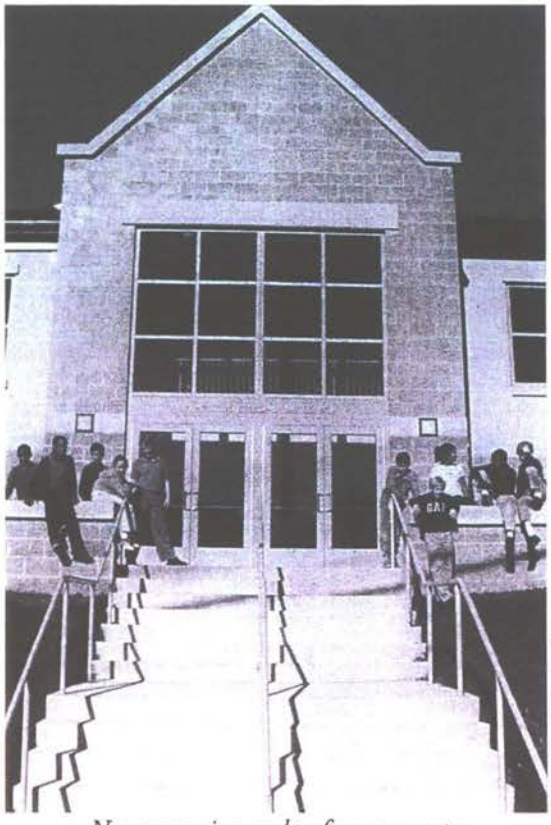


Photo by Andy Locke

New gymnasium and performance center

D

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16517 of Vestry – St. Patrick's Church, pursuant to 11 DCMR 3108.1 (new section 3104.1), for a special exception under Section 206 to allow the construction of a one-story athletic building with gymnasium and an addition to and renovation of a classroom of an existing private school in the R-1-B District at premises 4700 Whitehaven Parkway, N.W. (Square 1372, Lot 817 and Square 1374, Lot 5).

HEARING DATE: December 8, 1999
DECISION DATE: December 8, 1999 (Bench Decision)

SUMMARY ORDER

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, by mail to Advisory Neighborhood Commission (ANC) 2E and to owners of property within 200 feet of the site.

The site of the application is located within the jurisdiction of ANC 2E. ANC 2E, which is automatically a party to this application, submitted a written statement in support of the application.

As directed by 11 DCMR 3324.2 (new 3119.2), the Board required the applicant to satisfy the burden of proving the elements, which are necessary to establish the case for a special exception pursuant to 11 DCMR Section 206. No person or entity appearing as a party to this case testified in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3108.1 (new 3104.1), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. It is therefore **ORDERED** that the application be **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. The gymnasium will not be more than 12 feet in height above the level of the playing field.

2. The distance between the western wall of the parking lot on the north side of Whitehaven Parkway and the property line that the school shares with the Hornblowers at 4800 U Street, NW, will be at least 8 feet.

3. The evergreen buffer required in BZA Order No. 14009, as amended, will be maintained to mitigate the visual and aural effects of the project.

4. There will be no exterior lighting of the gymnasium except that required for security and identification purposes.

5. No light fixture attached to the gymnasium or installed in the adjacent parking lot shall be visible from an occupied level of a Berkeley Terrace residence.

6. There will be no lighting of the playing field. Any lighting of the parking lot will be installed such that the rays are directed toward the surface of the lot to avoid an impact on adjacent properties.

7. There will be no sound systems installed outside. Portable sound systems may be used only in connection with school and church events and only during daytime hours, subject to reasonable limitations (or instruction to the coaches or masters of ceremony).

8. The gymnasium roof shall remain free of any fixtures or attachments, such as lights, HVAC equipment, antennas and satellite dishes.

9. St. Patrick's shall install and maintain evergreen trees along the southern edge of the playing field.

10. The school facilities shall be used for school and church purposes only except that non-profit 501 (c)(3) organizations, such as scout troops and community groups, may use school facilities subject to a maximum of three times a month. On Saturdays, Sundays, and holidays, the playing field may be used for school or church purposes. Use by non-school, non-church organizations during this time shall be limited to once per month.

11. There shall be a 6:00 p.m. curfew on the use of the playing field.

12. No stadium seating or bleachers shall be constructed either of a temporary or a permanent nature or shall be installed on the playing field level.

Pursuant to 11 DCMR 3301.1 (new 3101.6), the Board has determined to waive the requirement of 11 DCMR 3331.3 (new 3125.3) that findings of fact and conclusions of law accompany the order of the Board. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 4 to 0 (Sheila Cross Reid, Kwasi Holman, Jerry Gilreath and Robert Sockwell to approve.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: DEC 28 1999

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3125.6, "A DECISION OR ORDER OF THE BOARD SHALL BE AND BECOME FINAL UPON FILING IN THE RECORD AND SERVICE UPON THE PARTIES."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

BAB/12.15.99

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16517

As Director of the Office of Zoning, I hereby certify and attest that on DEC 28 1999 a copy of the order entered on that date in this matter was mailed first class, postage prepaid, to each party who appeared and participated in the public hearing concerning the matter, and who is listed below:

Allison Prince, Esquire
Wilkes, Artis, Hedrick and Lane
1666 K Street, NW, Suite 1100
Washington, DC 20006

Peter Barrett, Headmaster
Saint Patrick's Episcopal Day School
4700 Whitehaven Parkway, NW
Washington, DC 20007

Jonda McFarlane, Chairperson
Advisory Neighborhood Commission 2E
St. John's Episcopal Church
3265 S Street, NW
Washington, DC 20007

ATTESTED BY:
JERRILY R. KRESS, FAIA
Director

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15374 of the Vestry of St. Patrick's Church, as amended, pursuant to 11 DCMR 3108.1, for a special exception under Section 207 to increase an existing private school from 390 to 440 students and from 51 to 60 staff for the alteration and repair of an existing church and private school in an R-1-B District at premises 4700 Whitehaven Parkway, N.W., (Square 1372, Lot 817).

HEARING DATE: October 17, 1990
DECISION DATE: October 17, 1990 (Bench Decision)

SUMMARY ORDER

At the public hearing, the applicant amended the application for a maximum number of students of 440 and 60 staff.

The Board duly provided timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to ANC 3B and to owners of property within 200 feet of the site.

The site of the application is located in Advisory Neighborhood Commission ("ANC") 3B. ANC 3B, which is automatically a party to the application, did not submit written issues and concerns relative to application.

As directed by 11 DCMR 3324.2, the Board has required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for a special exception pursuant to 11 DCMR 207. No person or entity appeared at the public hearing in opposition to the application or otherwise requested to participate as a party in opposition to this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3108, and that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and map and will not tend to affect adversely the use of neighboring property in accordance with said Zoning Regulations and maps. It is therefore ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS:

1. Construction shall be in accordance with the plans marked as Exhibit No. 9 and as amended by Exhibit No. 25-A of the record.

2. The number of students shall not exceed 440. The number of staff shall not exceed sixty.

3. The applicant shall utilize stacked parking to maximize the capacity of the proposed eight space parking area on site.

4. The applicant shall submit a landscaping plan for the project for review and approval by the Board prior to the issuance of a Certificate of Occupancy for the proposed use.

Pursuant to 11 DCMR 3301.1, the Board has determined to waive the requirement of 11 DCMR 3331.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is not prohibited by law.

VOTE: 3-0 (Paula L. Jewell, John G. Parsons and Carrie L. Thornhill to grant; Charles R. Norris not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____
EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: OCT 30 1990

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL

PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15374order/BHS27

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPLICATION NO. 15374

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a copy of the Order in this case, dated 8/30 has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Allison Prince
Wilkes, Artis, Hendrick & Lane
1666 K Street, N.W.
Suite 1100
Washington, D.C. 20006

Marshall Hornblower
4800 U Street, N.W.
Washington, D.C. 20007

Vestry of St. Patrick's Church
4700 Whitehaven Parkway, N.W.
Washington, D.C. 20007

Barbara Hamer, Chairperson
Advisory Neighborhood Commission 3-B
P.O. Box 32312, Calvert Station
Washington, D. C. 20007

EDWARD L. CURRY
Executive Director

DATE: _____

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15374 of the Vestry of St. Patrick's Church, as amended, pursuant to 11 DCMR 3108.1, for a special exception under Section 207 to increase an existing private school from 390 to 440 students and from 51 to 60 staff for the alteration and repair of an existing church and private school in an R-1-B District at premises 4700 Whitehaven Parkway, N.W., (Square 1372, Lot 817).

HEARING DATE; October 17, 1990
DECISION DATE: October 17, 1990 (Bench Decision)

DISPOSITION: The Board CONDITIONALLY GRANTED the application by a vote of 3-0 (Paula L. Jewell, John G. Parsons and Carrie L. Thornhill to grant; Charles R. Norris not present, not voting).

FINAL DATE OF ORDER: October 30, 1990

ORDER

The Board granted the application by its Order dated October 30, 1990, subject to four conditions. Condition No. 4 of the Order required that the applicant submit a landscaping plan for the project for review and approval by the Board prior to the issuance of a Certificate of Occupancy for the proposed use.

On December 21, 1990, counsel for the applicant submitted a landscape plan for the project for consideration by the Board. At its public meeting of January 9, 1991, the Board reviewed the landscape plan as submitted by the applicant. The Board concludes that the proposed plan provides appropriate screening between the project and adjacent residential uses and adequately addresses the concerns of the Board.

Upon consideration of the foregoing facts it is hereby ORDERED that the revised landscaping plan marked as Exhibit No. 31A of the record satisfies Condition No. 4 of the Board's Order and is therefore APPROVED.

DECISION DATE: January 9, 1991

VOTE: 3-0 (Paula L. Jewell and Carrie L. Thornhill to approve; John G. Parsons approve by proxy; Sheri M. Pruitt and Charles R. Norris not voting, not having heard the case).

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____
EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: FEB 11 1991

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHT ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ODER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

O15374/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPLICATION/APPEAL NO. 15374

As Executive Director of the Board of Zoning Adjustment Adjustment, I hereby certify and attest to the fact that a copy of the Order in this application/appeal dated FEB 11 1991 has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Allison Prince, Esquire
Wilkes, Artis, Hedrick & Lane
1666 K St., N.W., Ste. 1100
Wash, D.C. 20006

Marshall Hornblower
4800 U Street, N.W.
Wash, D.C. 20007

Vestry of St. Patrick's Church
4700 Whitehaven Parkway, N.W.
Wash, D.C. 20007

Barbara Hamer, Chairperson
Advisory Neighborhood Commission 3B
P.O. Box 32312, Calvert Station
Wash, D.C. 20007

EDWARD L. CURRY
Executive Director

DATE: FEB 11 1991

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14009, of St. Patrick's Episcopal Church, pursuant to Sub-section 8207.2 of the Zoning Regulations for special exceptions under Paragraphs 3101.41 and 3101.42 for a proposed addition to an existing child development center and private elementary school in an R-1-B District at premises 4700 Whitehaven Parkway, N.W., (Square 1372, Lot 819) and under Sub-section 7205.3 to permit required parking spaces serving the structure to be located in an R-1-A District on the north side of Whitehaven Parkway, N.W. (Square 1374, part of Lot 847) elsewhere than on the site where the structure is located.

HEARING DATE: August 10, 1983
DECISION DATE: September 7, 1983
DISPOSITION: The Board GRANTED the application SUBJECT to five CONDITIONS by a vote of 4-0 (Lindsley Williams, William F. McIntosh and Charles R. Norris to grant; Douglas J. Patton not voting, not having heard the case).

FINAL DATE OF ORDER: December 23, 1983

ORDER

The Board granted the subject application by order dated December 23, 1983, subject to five conditions. Condition No. 2 of the Board's Order required that the landscaping and parking layout of the site be in accordance with the plans marked as Exhibit Nos. 36 and 37 of the record.

By letter dated June 22, 1984, counsel for the applicant filed a timely request for a modification of the landscaping plan marked as Exhibit No. 36 of the record. The proposed modification seeks Board permission to substitute fifty-two four to five foot tall deodar cedar trees for the forty seven foot tall Canadian hemlocks shown on Exhibit No. 36 and to reduce the number of white pines from forty-eight to thirty-six. The total number of trees to be planted and the location of the trees would not be changed.

The applicant stated that it has been offered a donation of fifty-two deodar cedars at no cost. The use of the donated trees for landscaping purposes would reduce the applicant's projected expenditures by approximately $5,200.

In addition, the applicant has been informed that the Canadian hemlocks originally proposed have a poor chance of survival on the subject site.

A party in opposition to the application, by letter dated June 25, 1984, objected to the proposed modification. The objection was based on the loss of visual and aural screening which would result if the seven foot Canadian hemlock and eight foot white pines were replaced with four to five foot deodar cedars. The opposition recommended that if the Canadian hemlocks were to be replaced, white pines or deodar cedars of a height of seven to eight feet be substituted.

The Board concludes that the proposed modification of the landscaping plan, as hereinafter conditioned, is minor in nature. The material facts relied upon by the Board relative to the original application are unaffected by the proposed modified landscaping plan. No additional variance relief is required.

It is therefore ORDERED that the MODIFICATION of PLAN is APPROVED and that the plan marked as No. 52 of the record is hereby substituted for the previously approved plan marked as Exhibit No. 36, SUBJECT to the following CONDITIONS:

1. All deodar cedars located adjacent to the western property line which separates lot 847 from lot 848 shall be a minimum of seven feet in height.

2. All landscaping shall be maintained in a healthy growing condition.

VOTE: 4-0 (Lindsley Williams, Charles R. Norris, William F. McIntosh and Carrie L. Thornhill to approve modification; Douglas J. Patton not voting, having recused himself).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: AUG 10 1984

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."
14009order/LJP9

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14009, of St. Patrick's Episcopal Church, pursuant to Sub-section 8207.2 of the Zoning Regulations for special exceptions under Paragraph 3101.41 and 3101.42 for a proposed addition to an existing child development center and private elementary school in an R-1-B District at premises 4700 Whitehaven Parkway, N.W., (Square 1372, Lot 817) and under Sub-section 7205.3 to permit required parking spaces serving the structure to be located in an R-1-A District on the north side of Whitehaven Parkway, N.W., (Square 1374, part of Lot 847) elsewhere than on the site where the structure is located.

HEARING DATE: August 10, 1983
DECISION DATE: September 7, 1983

FINDINGS OF FACT:

1. The subject site is located on Whitehaven Parkway, N.W. between Foxhall Road and Reservoir Road. It consists of two parcels, one on the north side of Whitehaven Parkway and one on the south. The south parcel is in an R-1-B District and is known as premises 4700 Whitehaven Parkway, N.W. The north parcel is in an R-1-A District.

2. The subject parcels are both irregular in shape. The north parcel has nine sides and an area of 90,173 square feet. The south parcel has eight sides and an area of 74,998 square feet.

3. The south parcel is improved with a two story plus basement elementary school building which was built by St. Patrick's Episcopal Church in 1976. The north parcel is open space with a playing field located in its southwest corner.

4. The subject square on the south of Whitehaven Parkway is triangular in shape and is developed with institutional uses on the north facing Whitehaven Parkway, on the east facing Foxhall Road, and on a portion of the western side facing Reservoir Road. A cluster of seventeen single family homes occupies the central portion of the Reservoir Road side on the west. On the Whitehaven Parkway side are the U.S. Army Corps of Engineers Reservoir site immediately east of the subject site, and the property formerly used as the Florence Crittenden Home now occupied by the Lab School immediately west of the subject site. Further west and north of the subject site are two sites

used by the D.C. Fire Department and a Pepco power station. Immediately south of the Corps of Engineers site is the German Chancery.

5. The subject square on the north of Whitehaven Parkway is irregular in shape with Mount Vernon College facing Whitehaven Parkway and occupying the entire Foxhall Road side on the east and two-thirds of the W Street side on the north. The western one-third of the square is developed with single-family dwellings facing 48th Street, U Street and Reservoir Road on the west and Berkeley Terrace on an interior loop. The uses fronting on Whitehaven Parkway to the west of the subject site include Our Lady of Victory Church and School, and the Lab School of Washington.

6. There are six single family dwellings that front on Whitehaven Parkway to the west of the subject site. Three of the dwellings are located on the north side of Whitehaven Parkway and three are located on the south side. Two residential properties abut St. Patrick's land. One is immediately to the south of the existing school site. The other is immediately west of the north parcel.

7. The neighborhood surrounding the subject squares is zoned R-1-B on the northwest, south and southeast, with R-1-A on the northeast. A C-2-A strip is located to the west-northwest. Georgetown Reservoir is located on the western edge of the neighborhood area. Immediately west of the reservoir is Potomac Avenue and the Palisades of the Potomac River. At the eastern edge of the neighborhood is Glover-Archibald Parkway with Glover Park to the east-northeast of the subject neighborhood.

8. There is access to the subject site from Whitehaven Parkway which separates the two parcels and provides a frontage for both parcels. Whitehaven Parkway is a 120 foot right-of-way which is partially paved.

9. St. Patrick's Episcopal Day School is a nursery and elementary school operated under the auspices of St. Patrick's Episcopal Church. The school was founded in 1956 as a nursery school and expanded to the elementary school level approximately ten years later. Continued growth led the Church to purchase the subject site from the Florence Crittenden Home on Whitehaven Parkway for construction of an elementary school building. The Board approved the subject site as a school on March 6, 1975, in BZA Order No. 11307. On February 19, 1976 the Board approved modifications to the site plan in BZA Order No. 11933. The nursery school has remained at the church location on Foxhall Road to the south of the subject site.

10. The school is a member of the National Association of Episcopal Schools and the Association of Independent

Schools of Greater Washington. It has been certified by the District of Columbia Board of Education. The school includes children of all races and religious beliefs. There is a very active financial aid scholarship program. The school does not turn away a child who needs financial aid. The school has $115,000 a year budgeted for scholarship money.

11. The enrollment of the school is comprised of children who are living in the District of Columbia, Maryland, and Virginia, with seventy-four percent residing in the District of Columbia. Approximately 100 children reside within a ten-block radius of the school. Many of the children living in the area are able to either walk to school or take the Metrobus. The remainder of the children are transported to and from school by automobiles or vans. The majority of the riders use car pools, with about 100 vehicles participating including the vans.

12. St. Patrick's Episcopal Church has been located in the Foxhall Road area for sixty years and is now located at the southeast corner of the intersection of Foxhall Road and Reservoir Road. The present structure has had numerous additions to accommodate the growth of the congregation and church programs, which include a senior citizens' center, a nutrition center, and Alcoholics Anonymous.

13. In 1980 a planning study of the Church and its activities revealed that the Church is not barrier-free because it has seven different levels created by numerous additions. This creates a problem for the senior citizens program and other Church programs. Other problems included inadequate space for the Church and school and inadequate parking. Finally it was important to reunite the elementary school and the Church on the same site so that they could share facilities and enable the senior citizens and the nursery school to interact.

14. It became known to St. Patrick's that Mount Vernon College was willing to sell a portion of its land located directly across the street from the present elementary school. Approximately two acres of wooded land was available. St. Patrick's purchased the land and it became the north parcel of the subject site. This purchase enabled the Church to consolidate its operations on two adjoining parcels separated only by a low-volume local traffic street.

15. St. Patrick's Episcopal Church intends to sell the church building at 1655 Foxhall Road, N.W. and construct the proposed addition to serve as both a church and a school. The existing child development center that is located in the present Church would be moved to the new addition. The proposed addition will allow the applicant to increase its outreach activities and provide modern facilities that are

accessible to the handicapped. The Church has approximately 600 members. A maximum of 150 attend any one service.

16. The architect has designed the new Church/school addition to be in harmony with the character of the surrounding neighborhood. The building will have a residential scale and its design will blend in with similar institutional uses in the area. Improvement to both parcels were designed to avoid adverse impact on the neighbors. Plans were discussed with all adjacent property owners and their suggestions were incorporated as revisions to the landscape plans. Further, the playing field will be restricted to day-time activities since no lights will be provided for night-time recreation.

17. The present use of the elementary facility at 4700 Whitehaven Parkway will not change nor will the present enrollment of 280 children be increased. The nursery school presently has enrolled 110 children, which number will not change upon the relocation of the school. The present enrollment of the school will remain at a total of 390 children. The total of forty-eight faculty and staff members will not increase. The church building itself is permitted as a matter-of-right. Approximately one-third of the entire church building would be used by the school, with two-thirds used by the Church.

18. The applicant's traffic expert testified that the traffic generated by the combined presence of the Lab School and St. Patrick's School would not have an adverse impact on the neighborhood due to traffic, noise, operations or other similar factors, because the combined traffic from St. Patrick's and the Lab School will not adversely affect present traffic conditions on MacArthur Boulevard/Reservoir Road and Foxhall Road. There would be no change from the current levels of service during the morning and evening peak hours. There will not be any traffic added to the evening peak hours since the school lets out before that time. The parking area on the north site, which would have thirty-two spaces, is needed. Both the traffic expert and the architect testified that it is not practicable to locate all the spaces on the south side of Whitehaven Parkway. There is no problem with parking vehicles on both sides of Whitehaven Parkway because the street is a very low volume street. The sight distance is excellent, there is no problem with seeing cars from either direction, and as far as safety and convenience, there are no problems in terms of traffic engineering, traffic operations and safety.

19. The proposed development of the north site includes a parking area for thirty-two cars to be located immediately adjacent to Whitehaven Parkway and a playing field to be located at the north end of the site. The site will be screened from adjacent properties on the east and west by tree lines and fences. The playing field will be enclosed

by a chain link fence and will be entered only by a path from the south portion of the parcel. This location will be further away from the nearest adjoining residence than the playing field that is located there now. The children will be supervised on the play area and while crossing the street, with a ratio of two teachers for every class of fourteen to twenty students. The parking area will be located on the southern edge of the parcel and will be chained and locked at night to prevent unauthorized use.

20. The proposed development of the south site includes the continuance of the existing 12,587.58 square foot school structure at the northwest edge of the parcel and the construction of an addition on the eastern side of the school that will add approximately 15,634.8 square feet to the structure. A play area immediately south of the existing school will be removed and a wooded area between the addition and the properties to the south will be preserved. A wooden stockade fence will be located along the southern border of the property with a tree screen adjacent to the property line. A parking area at the northwest corner of the parcel will provide seventeen spaces.

21. The proposed private school and child development center in an R-1-B zone requires a special exception under Paragraphs 3101.41 and 3101.42 of the D.C. Zoning Regulations. The proposed parking area in the R-1-A District across the street requires a special exception under Sub-section 7205.3. The Board has authority to grant special exceptions under Sub-section 8207.2 of the Zoning Regulations.

22. The proposed building addition complies with all the physical requirements of the District of Columbia's Zoning Regulations. The height of the school portion of the addition will only be thirty-four feet, whereas forty feet is allowed. The height of the Church addition will be fifty-nine feet, whereas sixty feet is permitted. Parking will be provided in excess of the zoning requirements, since a parking lot will be built across the street. A total of forty-nine off-street spaces will be provided, whereas thirty-two spaces are required by the Zoning Regulations.

23. In order to preserve the wooded area located behind the proposed addition, the applicant has sited the building as far north and as close to Whitehaven Parkway as possible, while still allowing a corridor connection from the existing building to the new addition. The applicant intends to seek permission to use public space and Federally-owned property adjacent to the proposed addition along Whitehaven Parkway as a pre-school play area. The wooded area not only enhances the beauty of the site but serves as a visual and sound buffer. Further, additional plantings are proposed for the play area across Whitehaven Parkway from the School to

enhance the screening provided by existing mature trees and vegetation.

24. Access to the site on Whitehaven Parkway is from either the Foxhall Road intersection or the MacArthur Boulevard/Reservoir Road intersection. All picking up and dropping off of children will be made either at the southern or northern end of the circular drive as it fronts on the entrance to the child development center and private school. The circular drive is located off of Whitehaven Parkway, which is a low-volume street. The Board finds that the combined effect of both the proposed addition and the Washington Lab School would not affect current levels of service at either of the two major intersections.

25. By virtue of the large site, the topography, and the careful design and location of the existing building and planned addition, the proposed use will not be objectionable because of noise, activity, visual or other objectionable conditions. The applicant has consulted with adjacent property owners to revise landscape plans in order to increase the noise and visual buffer to provide sufficient protection for the neighbors.

26. The Board finds that the proposed child development center meets the requirements of Paragraphs 3101.41 as follows:

A. The proposed center meets all applicable code and licensing requirements, as reported by the D.C. Department of Consumer and Regulatory Affairs by memorandum dated August 4, 1983.

B. The proposed center will be so located and designed as to create no objectionable traffic condition and no unsafe condition for picking-up and dropping-off children. All cars will enter the site by way of a circular driveway, and all embarking and disembarking will occur within the site.

C. The proposed center with its proposed accessory parking will provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees and visitors. The required number is thirty-two spaces, while forty-nine will be provided.

D. The proposed center, including its outdoor play space, is so located and designed that there will be no objectionable impacts on adjacent or nearby properties due to noise, activity, visual or other objectionable conditions. The Board in this order

will require special treatment in the way of screening of the buildings, play areas and parking areas through the use of plantings and location of facilities away from the perimeter of lots, to protect adjacent and nearby properties.

E. The proposed off-site play area will be located so as not to result in endangerment to the individuals in attendance at the center in traveling between such play area and the center itself. The only street to be crossed in reaching the play area is a low volume local traffic street.

F. The cumulative effect of the proposed center and the two other child development centers located within 1,000 feet will not be sufficient to have an adverse impact on the neighborhood due to traffic, noise of operations or other similar factors.

G. The Board has submitted the application to the D.C. Department of Human Services, D.C. Department of Transportation and the D.C. Office of Planning for review and written reports.

27. The Board finds that the private elementary school meets the requirements of Paragraph 3101.42 as follows:

A. The school structure is so located that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions.

B. Ample parking space will be provided for students, teachers and visitors likely to come to the site by automobile. The parking provided will exceed that required in Article 72.

28. The Board finds that the proposed accessory parking meets the requirements of Sub-section 7205.3 as follows:

A. It is not practicable to locate the required parking spaces in accordance with Sub-section 7205.1 because the size of the lot on which the school structure will be located is not sufficient to accommodate more than seventeen spaces. Thirty-two spaces are required and forty-nine are provided, with thirty-two across the street on a separate lot and seventeen on-site.

B. The accessory parking spaces are to be located across the street from the school on a lot diagonally across from the lot where the structure

is located. The street separating the parking lot from the structure it is intended to serve is a local traffic street with minimal automobile traffic.

C. The accessory parking lot is reasonably convenient for the occupants and guests of the private school and child development center. The accessory parking spaces are located within 800 feet of the lot line of the structure the parking lot is designed to serve.

D. The Board in this order will impose conditions as to who shall use the school, landscaping and parking layout, number of students and staff, location of outdoor recreation activities, and limitation on non-school-related use of the facilities. The applicant discussed the proposed school and parking lot with the two residential neighbors adjacent to the property and agreed to conditions as to screening and fencing which have been incorporated herein.

29. The Office of Planning, by report dated August 1, 1983, recommended that this application be approved. The Office of Planning was of the opinion that the subject premises with its spacious facility for on-site parking, site access, setbacks, and landscaping, is capable of meeting the criteria for approval for the special exceptions sought. The Office of Planning did not believe that the use of the site as proposed will be objectionable to neighboring properties due to noise, traffic, or number of students or the location of the Lab School and as such believed that the school would be consistent with the objectives of Sub-sections 8207.2 and 7205.3 of the Zoning Regulations. The Office of Planning recommended approval as the specific criteria of Paragraphs 3101.41 and 3101.42 designed for the protection of neighboring properties from objectionable impacts have been met. The Board concurs with the reasoning and recommendations of the Office of Planning.

30. One neighbor testified in qualified opposition to the application. His concerns included denser landscaping to buffer the play area from his property and restriction of the use of Lot 847 to daytime activities. He testified that he had been assured by the applicant that certain improvements will be made to landscape plan for the two acre site to mitigate the effect on adjacent property. Specifically, evergreen trees would be planted in a staggered manner along his property line to provide a sound and sight buffer. Six foot fencing would be constructed around the entire play area with one locked gate so as to limit access to authorized persons and deter trespassers and the area will not be lighted so that only daytime activities will be permitted.

Further, the landscape architect has agreed to contact the neighbor when removal of the trees and grading of the site are ready to begin so that damage to his property during construction can be prevented or, at least, kept to a minimum.

31. The applicant responded to the concerned neighbor by testifying that with regard to the conditions, the applicant has no objection to the restriction to daytime use. However, with regard to noise amplification, a loud speaker may be appropriate from time to time for community events at the church. Secondly, with regard to school use, it is proposed that this be school related activities. However, there are also going to be some church related activities.

32. The applicant appeared before the two Advisory Neighborhood Commissions and the Palisades Citizens Association, all three of which have voted to support the application. The applicant met with virtually all of the Church's neighbors in an effort to let them know what will be incorporated in the plan and to learn the concerns that they might have.

33. The revised landscape drawings show forty-eight white pine and forty hemlocks for the north site tree screen. The applicant has added additional trees after meeting with the adjacent property owner so as to effect screening between his property and this play area.

34. The D.C. Department of Transportation, by memorandum dated June 30, 1983, reported that the proposed expansion can be expected to generate approximately thirty additional school-related trips during morning peak hours. This trip generated level will have a negligible effect on the surrounding street system. The applicant proposes to provide a total of forty-nine spaces to service the school, seventeen on-site and thirty-two across Whitehaven Parkway, almost directly across the street from the existing parking area entrance. This parking supply should accommodate school-generated demand, as well as mitigating the effect of church-related traffic, whose peak hours will seldom overlap with school operation, on neighborhood streets. The Board concurs with the DOT report.

35. Advisory Neighborhood Commission 3B, by letter dated June 29, 1983, advised that it had voted unanimously to support the special exception application. However, the Commissioners requested that special precautions be taken by St. Patrick's School to insure the safety of school children crossing Whitehaven Parkway to the playground area during recess periods. The representative from St. Patrick's

estimated that approximately ten crossings would be made per day by class groups under adult supervision. The Commissioners suggested that even though the children would be supervised, some provision should be made to possibly close off Whitehaven Parkway during the times when the crossings would be made. The Board concurs with the recommendations of ANC 3B, but notes that the control of traffic on Whitehaven Parkway is not within the jurisdiction of the Board.

36. Advisory Neighborhood Commission 3D, by letter dated June 21, 1983, advised that it had voted unanimously not to take objection to the application, based on acceptance of an agreed-upon landscaping plan worked out with adjoining neighbors, particularly Mr. Marshall Hornblower, whose property would be the most affected by the development, upon the condition that prohibition be imposed upon night-time lighting, except for security purposes of the playing field. The Board concurs with the recommendations of ANC 3D. No plans for lighting the playing field are included in this application. Any future proposal for such lighting would require the review and approval of this Board.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking special exceptions to allow an addition to an existing child development center and private elementary school and to allow the required parking for the center and school to be located across the street. The granting of such special exceptions requires that the proposed uses meet the requirements of Paragraphs 3101.41 and 3101.42 and the requirements of Sub-section 7205.3. The Board further must determine that the relief requested can be granted as in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property.

The Board concludes that the applicant has met the requirements for the special exceptions to implement its proposal. The proposed center and school will comply with Paragraphs 3101.41 and 3101.42 and will meet all applicable code and licensing requirements. There will be no objectionable traffic or noise conditions. There will be ample parking space. Screening has been provided to protect surrounding residential areas. There will be safe travel between the center and the off-site play area. The cumulative effect of more than one child development center within 1,000 feet will be negligeable. The accessory parking spaces comply with Sub-section 7205.3.

The Board concludes that it has accorded "great weight" to the issues and concerns of both Advisory Neighborhood

Commissions. Accordingly, it is hereby ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS:

1. Operation of the school shall be limited to St. Patrick's Episcopal Day School.

2. Landscaping and parking layout of the sites shall be in accordance with the plans marked as Exhibit Nos. 36 and 37 of the record.

3. The number of students in the elementary school shall not exceed 280, and in the child development center shall not exceed 110. The total number of facility and staff for both facilities shall not exceed forty-eight.

4. There shall be no outdoor recreation activities on lot 817 south of the existing paved patio.

5. All non-school-related use of the school facilities shall be limited to no more than three per month.

VOTE: 4-0 (Lindsley Williams, William F. McIntosh, Carrie L. Thornhill and Charles R. Norris to grant; Douglas J. Patton not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: DEC 23 1993

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

14009order/LJP1

Before the Board of Zoning Adjustment, D. C.

Application No. 11933 of the Florence Crittenton Home on behalf of St. Patrick's Episcopal Day School, pursuant to Section 8207.2 of the Zoning Regulations for a special exception to permit a private school for pre-school and elementary school aged children as provided by Section 3101.41 and Section 3101.42 of the regulations, in the R-1-B Zone at the premises 4759 Reservoir Road, N.W., known as part of Lot 809, Square 1372.

HEARING DATE: December 3, 1975
DECISION DATE: January 14, 1976

FINDINGS OF FACT:

1. In BZA Application No. 11307, this Board on March 6, 1975 entered an Order granting the same applicants permission to establish a school for kindergarten through sixth grade on the same property. After an appeal to the District of Columbia Court of Appeals, the Court by Opinion and Order dated August 26, 1975, affirmed the Order of the Board. Rose Lees Hardy Home & School Ass'n, et al. v. District of Columbia Board of Zoning Adjustment, 343 A. 2d 564 (D.C. App. 1975).

2. In this application, applicants seek a modification or site adjustment of the site plan approved by the Board in BZA Application No. 11307 in two essential respects; (1) location of the building; and (2) shape and configuration of building. Applicants seek these changes in an effort to make the construction more efficient and economical to off-set the increased costs of construction resulting from two years of litigation. In all other respects, there is no substantial change from Application No. 11307.

3. The property is located in an R-1-B District and contains approximately 75,000 square feet fronting on Whitehaven Parkway approximately 500 feet from Foxhall Road and approximately 500 feet from MacArthur Boulevard, N.W.

4. The property is located in an area in which there are several institutional uses. Immediately to the west is the Florence Crittenton Home; immediately to the north is Mount Vernon College; and immediately to the east is a United States Reservoir. Also, in the area are Our Lady of Victory Elementary School and the Georgetown Day School previously approved by the Board.

5. The applicant proposes to establish a school for kindergarten through the sixth grade on the site in a single building for the St. Patrick's Church Episcopal Day School. There will be a maximum of 230 students enrolled in grades one through sixth, and a total maximum future enrollment on the site of 280 children. There will be approximately 29 teachers and administrative personnel.

6. The subject site has a varied topography with a high point at the southeastern corner at an elevation of approximately 232 feet and a low elevation at the northwestern corner of the property of 167 feet. The site is steep in its topography at the southern portion and relatively level at the northern portion.

7. Applicants seek approval of a site plan which was submitted to the Board and is contained in the record. The site plan calls for a building to be located approximately 160 to 170 feet removed from the southern property line and fronting on Whitehaven Parkway. In BZA Application No. 11307, the building was to be located approximately 45 feet from the southern property line. The proposed building in this application will permit the retention of a great number of large, mature trees which would have been eliminated under the previous application. With regard to the configuration of the proposed building in this application, the building will be basically rectangular in shape but designed so that it can be more easily constructed in two phases from the standpoint of function and ease of construction.

The building will have a side yard on the southwest side, 12 feet at its narrowest point; and thus, the building will be located approximately 100 feet from the Crittenton Home driveway. The other side yard to the northwest is approximately 160 feet in width. The rear yard at its minimum depth is 35 feet ranging to approximately 160 feet.

The height of the building will be approximately 38 feet and the lot occupancy will be under approximately 20 per cent. The play space will be provided in three areas; (1) a grassy playing field 120 feet by 160 feet to the northwest of the building to continue the open space on the Whitehaven side of the Reservoir; (2) a nearly level area of 90 feet by 100 feet on the hill nearest the lot line; and (3) the wooded hillside. The play area will contain approximately 20,000 square feet.

8. Pedestrian access to the site will be by way of Whitehaven Parkway directly to the building and for motor vehicles by way of a driveway abutting Whitehaven Parkway to the building with parking under the building for 19 cars and four additional spaces to the side apron of the driveway.

9. As indicated at public hearing, the applicants will provide as required by the Department of Transportation a circular driveway with an arrival and departure facility meeting the criteria of the department.

10. The site plan provides a greater rear yard, greater side yards, less lot occupancy and approximately the same height as would be required for a single-family dwelling in the R-1-B District.

11. St. Patrick's School has existed at 1655 Foxhall Road, N. W. since 1956 with Board approval for approximately 130 nursery school students.

The School has provided kindergarten and elementary educational facilities (grades 1-6) at 9440 Logan Drive, Potomac, Maryland for 206 students, of which, for grades one through sixth approximately 77 per cent of the students are from the District of Columbia and for kindergarten approximately 60 per cent of the students are from the District of Columbia. The school seeks to locate these students plus added capacity up to a maximum of 280 students at the proposed location. The new site is approximately 2,500 feet from the St. Patrick's Episcopal Church and Day School and will be more accessible to the clergy and staff of St. Patrick's Episcopal Church and nursery school.

12. At the public hearing, the applicants presented and the Board credits the detailed testimony in support of the application consisting of the statement of the Rector of St.Patrick' Episcopal Church, who testified on the school's philosophy and relationship to the Church, the need for the school and search for an appropriate site; the Director of the School, who testified as to the existing and proposed operation of the school, its present location, the difficulty in providing transportation to the present Maryland location with the vast majority of students presently coming from the District of Columbia, the carpooling arrangements promoted by the school, the number of cars that would handle student transportation daily when the school reaches

maximum enrollment (35-40 cars) and the location of the homes from which the student body is drawn; the architect, who testified as to the location, siting of the school, circulation, proposed facilities on public space for arrivals and departures and other requirements of the Zoning Regulations; a land planner and traffic consultant, who testified as to the compatibility of the proposed school with surrounding uses and zoning in the area as well as the traffic flows indicating that the amount of traffic generated by the proposed school would be minimal, that from his own personal observation and investigation traffic on MacArthur Boulevard in recent years had decreased and that the highway capacity and traffic controls in the area can easily absorb the slight additional traffic generated by the school; and an appraiser and realtor who testified as to the lack of adverse affect of a private school on neighboring properties.

13. The Municipal Planning Office submitted and the Board credits a report on the application which concluded that the proposed use is consistent with the general purpose of the Zoning Regulations and Map and recommended approval. That report dealt with the facts surrounding and supporting the application, including the requirements of Section 3101.41 and Section 3101.42 and specifically covered traffic, concluding that no adverse traffic impact will occur at this location.

14. The District of Columbia Department of Transportation submitted a report and testified at the public hearing through its representative. Based upon personal observation of the traffic in the area, the representative concluded that the level of service on MacArthur Boulevard and Foxhall Road would be Level of Service B and that during a 30-minute period of observation no more than a dozen automobiles passed the proposed site on Whitehaven parkway. The report concluded that the relatively small number of vehicles generated by the proposed school would not have a measurable impact on the street system and would not cause an adverse impact. The Board credits this report and testimony. The representative of the Department of Transportation further testified at the public hearing and the Board finds that the arrival and departure facilities can be provided in public space pursuant to the criteria of the Department of Transportation.

15. The applicants comply with the specific requirements of Section 3101.41 as follows:

a. The school will have no articles of commerce for sale as indicated by the Director of the school.

b. The use and activities to be conducted at the school are so located that they will not be objectionable to adjoining and neighboring properties because of noise, traffic, number of students or other objectionable conditions as established by the findings hereinabove made and the following:

i. The proposed school building is setback substantially from all lot lines and will be removed from the southern property line a distance of approximately 160-170 feet which adjoins the only property developed for single-family use. Such a setback enables the retention of numerous large trees and other natural screening.

ii. The remainder of the uses to the east and west being a reservoir and an institutional use will not be adversely affected by reason of noise or number of students.

iii. With respect to traffic, Whitehaven Parkway will adequately serve the property as direct access and there is no indication that there will be any congestion on Whitehaven Parkway. An arrival and departure circular driveway will be established as required by the Department of Transportation.

iv. The Department of Transportation, upon study and examination of the site, recommended favorably on this application.

v. The site has good access to major arterial roadways in the District of Columbia by way of Foxhall Road, MacArthur Boulevard and Reservoir Road. These roads and their intersections with Whitehaven Parkway operate at a high level of service which will not be significantly affected by traffic generated by the school.

vi. Interior circulation to the school provides for a separate pedestrian accessway from a vehicular roadway entering the underground parking area. Nineteen spaces are provided below the building and four spaces are provided to the side of the building.

vii. The relocation of the school will permit the large majority of students who live in the District of Columbia to use public transportation or instead of automobile carpools, to walk to the school and will eliminate some traffic that presently utilizes streets in the area going out to Potomac, Maryland. The school has a sound policy for promoting school carpools and it is expected that the use of the automobile will substantially decrease by virtue of the relocation to the intown site.

viii.The number of students will not have any adverse affect upon surrounding properties because they will be substantially removed from the lot lines.

ix. Approximately 50 students will be the maximum number of students in the kindergarten and there is more than 100 square feet of play space available for each pre-school child.

x. The hours of operation will be from 8:30 a.m. to 3:00 p.m. for regular classes with occasional special activities outside these hours.

xi. The pre-school use will be reasonably necessary or convenient to the neighborhood which it will serve since it has excellent access to the 10-block radius area. The testimony of and chart prepared by the Director of the school established that approximately 55% of the kindergarten children presently are from a 10-block radius of the proposed site. The Director expects this percentage to increase by virtue of the move of the school to the new site from the Maryland location.

16. The applicant complies with the provisions of Section 3101.42 as follows:

a. The use is not likely to become objectionable to adjoining and nearby property by virtue of the careful site layout and building design as previously described herein.

b. The Board finds that ample parking spaces will be provided by the 23 spaces available on the site to accomodate students, teachers and visitors likely to come to the site by automobile. Article 72 of the Zoning Regulations requires 19 parking spaces. The school makes use of a well organized and efficient car-pool system for the children and many of the teachers (TR pg. 77). Parents are not required to participate in the school program thereby eliminating visits to the site during the school day and there are no continuing night programs only an occasional parents' meeting. The school conducts no programs with any agency or group that would bring a lot of people to the school during the day (TR pg. 87,88).

c. The Department of Transportation and the Municipal Planning Office support the application as requested.

17. This Board in previous cases has granted similar requests for the establishment of pre-schools and elementary schools for similar locations. This site, however, is uniquely and favorably situated by virtue of the surrounding uses and topography, which permits separation of a school building from surrounding uses. The Board finds that the construction of this school building and the establishment of the school will not have an adverse affect on property values in the neighborhood.

18. There are letters in the file both in support and in opposition to the school. The only opposition to the application appearing at the public hearing were Mr. & Mrs. Edward Cohen (property owners of land adjoining the southern property line of the site) and the Six-School Complex. The Cohens offered no probative evidence or facts for the record which significantly rebutted the testimony and evidence submitted by the applicants, the Department of Transportation or the Municipal Planning Office. The Six-School Complex, while appearing initially at the hearing through a representative, did not submit any evidence in opposition. The Cohens' opposition appears to have been based on a general concern that there should be no more institutional use in the neighborhood.

OPINION AND CONCLUSIONS OF LAW:

The Board is of the opinion that the proposed school use for kindergarten through grade six meets the requirements of Sections 3101.41, 3101.42 and 8207.2 of the Zoning Regulations. The school at the proposed location, with one exception, is virtually surrounded by institutional uses. The open space requirements of zoning which are applicable to single-family development are more than met by the careful site layout of the school. The school use as a special exception is predeemed compatible and we find no evidence of any type to indicate that the establishment of the school is not in complete harmony with the intent and purposes of the Zoning Regulations and the R-1-B Zoning Regulations. In fact, the location of the school in the District of Columbia serves far better the neighborhood in which it is located than having the school located in Potomac, Maryland. The 75,000 square foot lot offers ample room for use for school purposes without any adverse affect on the neighborhood.

At the public hearing on December 3, 1975, the opposition, through its representative, filed three motions: (1) objection to Mr. Harps involvement with Application No. 11933, (2) motion to include consideration of impact on area public schools at the public hearing and (3) motion to clarify status of Application No. 11307. At the public hearing, the Board resolved the first two requests and reserved ruling on the third.

1. With regard to the objection to Mr. Harps' involvement with Application No. 11933, Board Member Harps, in light of the pendency of proceedings before the Board of Elections and Ethics, voluntarily determined not to actively participate in BZA Application No. 11933 until such time as the matter was resolved before the Board of Elections and Ethics. However, Mr. Harps remained present throughout the hearing to observe the proceedings in order that he could participate at a later date.

2. With regard to the opposition's motion to include consideration of impact on area public schools at the hearing, the Board denied the motion on the basis that the Board itself in BZA Application No. 11307 had ruled that such consideration was not within the scope of its authority under the Zoning Regulations and because the District of Columbia Court of Appeals in its Opinion of August 26, 1975 affirmed that determination of the Board.

3. With regard to the opposition's motion to clarify status of Application No. 11307, the Board reserved ruling until the parties could file memoranda on the question raised. Essentially, this motion seeks to have this Board rule that an application for a building permit pursuant to the Board's Order in Case No. 11307, which has not yet been filed with the Zoning Administrator, is barred under the six-month limitation set forth in Section 8205 of the Zoning Regulations. We deny the motion and state as reasons for the denial the following:

> First, the matters raised by the motion are irrelevent and prohibited from consideration by the Zoning Regulations. The sole question before the Board in Application No. 11933 is a request to establish a parochial school under Sections 3101.41 and 3101.42 of the Zoning Regulations. There is no question before the Board of the right under the Order of the Board to apply for a building permit. Section 8202.7 of the Zoning Regulations prohibits the Board from considering requests for advice or moot questions. Since no application has been filed for a permit under Case No. 11307, a conclusion by the Board would be purely advisory and would be on a moot question.
>
> Secondly, the Cohens and Six-School Complex are estopped from asserting the applicants were required to apply for a building permit within the six-month period by virtue of the fact that the Cohens and two members of the Six-School Complex within time limitations of the District of Columbia Court of Appeals filed an appeal from the Board's Order of March 6, 1975 challenging its validity. Thus, their motion is directly contrary to their previous Court Action in that it assumes that the Order of March 6, 1975 was valid and binding. St. Patrick's as intervenor defended the law suit. As was concluded in Krekeler v. St. Louis County Board of Zoning Adjustment, 422 S.W.2d 265 (Sup.Ct.Mo. 1967), a party whose litigation has brought about the delay in seeking a permit is estopped from relying on the delay for which it is responsible.

Thirdly, the District of Columbia Court of appeals mandate was not issued until September 17, 1975; and, in our view, the applicant has a right to file for a building permit until March 17, 1976, six months later. The applicant did not lose the right under the grant of the special exception since, in our opinion, the appeal from our decision tolled the running of the six-month time period of Section 8205. Otherwise, a successful applicant before the Board would be required to proceed in the face of litigation challenging the Board's Order prior to a resolution of the litigation. Such a situation would force an applicant, even when it is willing to await the outcome of a court decision, to undergo substantial expenses in preparation of its application for a building permit as required under Section 8103 of the Zoning Regulations. Moreover, case law in other jurisdictions supports our conclusion as does a Corporation Counsel opinion dated November 18, 1974. See Krekeler, supra; Belfer v. Building Commissioner of Boston, 294 N.E.2d 857 (Mass. Sup.Jud.Ct. 1973).

ORDERED:

That the above application be and the same is hereby GRANTED subject to the following condition:

a. Applicants shall meet the requirements of the Department of Transportation with regard to providing an arrival and departure facility within public space.

VOTE:

3-0 (William S. Harps recusing himself and Lilla Burt Cummings, Esq. not present to vote)

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED By: Steven E. Sher

STEVEN E. SHER
Acting Secretary to the Board

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

FINAL DATE OF ORDER: FEB 19 1976