Form 140
(Revised 03/15/02)

Case No. 17081

PARTY STATUS APPLICATION

Notice: See other side of party status form for instructions.

NAME: Last	First	Middle I.
LOVENDUSKY	MICHAEL	

ADDRESS: Street	Apt. # (if any)	City	State	Zip Code
4927 MACARTHUR BLVD NW		WASHINGTON	DC	20007

Phone No.	Fax No.	E-Mail
202-624-2390	202-572-4798	michaellovendusky@gcl... com

Signature: M Lovendusky | Date: 24 NOV 2003

Will you appear as a(n) ☐ [illegible] ☑ [illegible] Will you appear through legal counsel ☑ ☐

If yes, please enter the name and address of such legal counsel.

NAME: Last	First	Middle I.
SAME AS PARTY OPPONENT		

ADDRESS: Street	Ste. # (if any)	City	State	Zip Code

Phone No.	Fax No.	E-Mail

Please answer all of the following questions referencing why the above person should be granted party status.
(If you require additional space, please attach an additional sheet.)

1). How will the property owned or occupied by such person, or in which the person has an interest be affected by the action requested of the Board?

SEE ATTACHMENT

2). What legal interest does the person have in the property? (i.e. owner, tenant, trustee, or mortgagee)

SEE ATTACHMENT

3). What is the distance between the person's property and the property that is the subject of the appeal or application before the Board? (Preferably no farther than 200ft.)

LESS THAN 200'

4). What are the environmental, economic or social impacts that are likely to affect the person and/or the person's property if the action requested of the Board is approved or denied?

SEE ATTACHMENT

5). Describe any other relevant matters that demonstrate how the person will likely be affected or aggrieved if the action requested of the Board is approved or denied.

SEE ATTACHMENT

6). Explain how the person's interest will be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than that of other person's in the general public.

SEE ATTACHMENT

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BZA
Case No. 17081
Exhibit No. 30

Board of Zoning Adjustment
District of Columbia
CASE NO. 17081
EXHIBIT NO. 30

MICHAEL LOVENDUSKY
4927 MacArthur Boulevard NW
Washington DC 20007
202.624.2390

24 November 2003

2003 NOV 24 PM 4:56

Board of Zoning Adjustment
Government of the District of Columbia
C/o Jerrily R. Kress, FAIA, Director of the Office of Zoning
441 4th Street NW Suite 210-S
Washington DC 20001

RE: BZA Case No. 17081 – St. Patrick's Day School;
Application for Party Opponent Status

Ladies and Gentlemen:

This Application for Party Opponent Status to the captioned application is attached to Form 140. This Application is structured with the following contents:

(a) Information required by the Form's Instructions for "Appearance and Representation";
(b) Proposed conditions' and
(c) Exposition of reasons and law to support proposed conditions.

Information Required by Form 140 Instructions

Applicant for Party Opponent Status Lovendusky responds in order to the information required by Form 140:

(a) Michael Lovendusky, 4927 MacArthur Boulevard NW, Washington DC 20007
(b) Lovendusky requests to appear and participate in the captioned matter.
(c) Lovendusky will appear as an opponent to the application, and hereafter refers to himself as Opponent.
(d) The Opponent is an attorney and, at the time of this writing, represents himself.
(e) None.
(f) A complete exposition why Opponent should be granted party status is provided below. Initially, Opponent complies with summary requirements of the Instructions by proffering the following responses:

(1) The property owned by the Opponent that will be affected by the action requested of the Board is his family's residence.
(2) The Opponent and his spouse own the family residence.

(3) The distance between the Opponent's residence and one campus of St. Patrick's School (the private school) is less than 200'; the distance between the Opponent's residence and another campus is less than one mile.
(4) The faculty, staff, administrators, employees, contractors and students of the two campuses of the private school are inextricably linked in fact and by the orders of the Board. Hence, the exceptions from zoning regulation sought by the Board have impact on the residents of adjoining and nearby both campuses. In particular, the fiction of the Full Time Equivalent (FTE) has immediate detrimental implications for the operation of the private school campus approved by the Board in its Order # 16852.
(5) Other relevant matters demonstrating the nature of the grievances of the Opponent are discussed below.
(6) The history and plans of the private school have special impact on the residents of all properties adjoining and nearby their campuses, especially when such campuses are concentrated in a single advisory neighborhood commission district, as are the two campuses.

Proposed Conditions of the Opponent

The Applicant shall provide notice of any application for special exception to or variance from the zoning regulations to all residents of property adjoining and nearby to all of the applicant's private school campuses located within the same advisory neighborhood district. The definition of "residents of adjoining and nearby property" is those persons residing within 200' of the property or properties owned or leased by the Applicant.

The determination of approved numbers for or limits upon faculty, staff, administrators, school employees, contractors and students shall be interpreted to mean real, individual persons.

The Applicant private school is found to have violated the staff caps of 60 imposed by BZA Order # 15374 in 1990, and one violation per student in excess of the cap shall be processed by zoning regulators in the amount of $1 per student, such 32 violations to be entered in the Order for reference by future Boards in all proceedings related to the Applicant.

(...continued...)

Exposition of reasons and law to support proposed conditions

The Applicant Should Be Required To Give Notice of Every Application for Special Exception or Variance from the Zoning Regulations to Residents of Properties Adjoining or Nearby To All Of Its Campuses Located Within The Same Advisory Neighborhood District

The activities of the Applicant private school on its two campuses are inextricably intertwined and, consequently, have an aggregated impact upon the community in which both are located. The private school acknowledges that the impetus for its very appearance before the Board in the instant application is a result of fact finding in the proceedings commemorated in Board Order # 16852 (BZA 16852) relating to its middle school. *See* Applicant's Exhibit 5. The Order in BZA 16852 reveals how the students at the middle school campus will meet daily at the elementary school for transportation to the middle school. The elementary and middle schools will share common administrators, staff, and faculty, and possibly contractors and other school employees (hereafter all such individuals other than students shall be referred to as "staff"). The Applications is filed pursuant to 11 DCMR s. 206.2, which provides that:

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

11 DCMR § 206.2 (emphasis added). The transportations between the two campuses will have an impact on traffic and parking at both campuses and upon property adjoining and nearby the two campuses, as well as upon the neighborhood in between the two campuses. Further, any decision by the Board changing the limits on the private school's staff has repercussions on how the private school will enumerate its staff for compliance with the Order in BZA 16852. Consequently, the changes proposed by the private school in BZA 17081 will be of considerable interest to the neighbors affected by BZA 16852.

For these reasons, it is both fair and common sense that the private school be required to provide notice to residents of properties adjoining or nearby both of the private school's campuses located within the same advisory neighborhood district and the same neighborhood of the Palisades. Neither the private school nor the Board provided notice of the instant proceedings to the neighbors of the private school's middle grade campus. Proceedings in BZA 17081 should be stayed pending provision of notice of the Application and its contents to all residents of property adjoining and nearby to all campuses located within the same advisory neighborhood district. The definition of "residents of adjoining and nearby property" is those persons residing within 200' of the property or properties owned or leased by the Applicant.

The Board Should Reject the Fiction of the FTE and Speak of Real Persons

The private school proposes to revolutionize zoning law by obtaining official approval of fictitious "Full Time Equivalents" (FTEs). The Board should reject the invention clearly and certainly. Zoning law does not recognize the FTE. Zoning law is based upon persons – actual, real, individual persons. The Opponent invites the Board to perform a simple research task. The zoning regulations are accessible in searchable format at the Office of Zoning website, i.e.,

http://dcoz.dc.gov

Search of the zoning regulations reveals that FTE or "Full Time Equivalent" does not exist. In contrast, the term "person" appears throughout the zoning regulations. The zoning regulations are concerned with real persons and only with real persons.

There is no certainty as to how many real persons equal a FTE. A FTE might be two persons or three persons, or 24 persons each working one hour of one day. Only the private school will know with certainty how many real persons are reduced to make one FTE. That is part of the design of the FTE: it will allow the private school to evade detection of violation of any cap on staff imposed by the Board. The private school succeeded in avoiding detection of its violations of BZA Order # 15374 in 1990 for twelve years, and then blamed the Board for the violations. *See* Applicant's Exhibit 5. It should not be invited by the Board to insult the Board, the advisory neighborhood commission, and the neighborhood, again.

Approval of the concept of the FTE will destroy the stability of the R-1-B district by defeating the ability to control traffic, parking, and use of neighborhood common space. For example, the private school could elect to hire two staff persons for every FTE allowed. Instantly, a limit of 92 staff translates into 184 persons – doubling the number of transportations throughout the neighborhood potentially every day the two school campuses are being used. But the private school carefully does not propose to fetter itself to merely reducing two persons to one FTE; it might decide to hire staff for, perhaps, two hours per work day. An eight-hour work day might then provide employment opportunity for four persons per day, all calculated to be only one FTE. Yet by such calculation a "cap" of 92 staff is transformed to mean 368 persons. The private school will scoff at such notion, yet it is no more farfetched than its manipulation of the concept of "staff" into the distinctions of "faculty and staff" by which it operated in violation of the Board's orders for twelve years, and which has already been further manipulated in the current application to be "faculty, staff, and administration" (*see* Applicant's Exhibit 5). The private school now goes further and proposes to entirely debase the limitation of staff to FTE fakery. The Board should reject the FTE proposal cleanly, simply, and entirely.

The Applicant Private School Should Be Penalized for Twelve Years of Violations

The Board is aware that hundreds of residents of the Palisades question the credibility of the private school's officials. Their concerns were brought to the Board's attention in the proceedings of BZA 16852, though the Board determined not to address them in the Order for that proceeding. The Board's refusal to confront the incredibility of private school representations is, itself, one of the elements of Michael Lovendusky et al v. Board of Zoning Adjustment, District of Columbia Court of Appeals, No. 03-AA-419 (2003). The history of private school mendacity is summarized in the Brief of the Petitioners in that case at page 30.

Counsel for the private school provides yet another reason to distrust private school officials in the application now before the Board. Applicant's Exhibit 5 reveals how "During the 2002 hearings for the junior high school, the ANC presented compelling evidence – with which the Applicant now agrees – that the governing 'staff only' cap was written in error." Written in error, that is, by the Board itself. But the truth is that the Board did not err in using the term "staff" to relate to both faculty and staff. It was none other than the private school's counsel of record that introduced the use of "staff" to refer to faculty and staff. She introduced it in her application to the Board in 1990 in the proceedings that established the staff cap of 60. Attachment A to this document is the private school's Application to BZA Docket Number # 15374 (6/13/1990). The action sought in 1990 by the very same counsel again representing the private school is for "special exception relief...required in connection with the proposed school expansion which involves an increase of the number of *students and staff* at the school." (emphasis added). In other words, private school counsel first advanced the distinction of "students and staff" to the Board, succeeding in putting her words in the Board's Order 15374. Private school counsel then invented a distinction between "faculty and staff" that comforted the private school in its violations of the 1990 caps for twelve years – until it was caught by the advisory neighborhood commission in BZA 16852. Even then the Board looked away at the clear record of the private school's abuse of regulatory and judicial processes. Now, in its current application, the private school counsel blames the Board for its erroneous simplification of reference to "staff" to justify yet another expansion into the fiction of the FTE.

The Board should not condone such outrageous behavior by looking the other way again. Rather, the Board should accept the private school's admission that it was in violation of the 1990 caps and levy sanctions that will commemorate the twelve years of violation. The Opponent has proposed penalties of $1 per student in excess of cap for the violations, to be recorded in the Order emanating from the instant proceedings. If the Board should consider such penalties too severe, lesser penalties of $1 per year for the twelve years of deception might be a meaningful alternative.

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The Opponent has much more to offer in the way of useful perspective to the proceeding of BZA 17081. For the reasons mentioned above, the Opponent respectfully requests the Board grant him party opponent status in the instant proceedings.

Sincerely,

MICHAEL LOVENDUSKY

Attachment: Application to BZA Docket Number # 15374 (6/13/1990)

BZA Form 2
(Revised 4/20/74)

Docket No. 15372

'90 JUN 13 P3:11

ZONING SECRETARIAT
DISTRICT OF COLUMBIA

BEFORE THE

BOARD OF ZONING ADJUSTMENT

FOR THE

DISTRICT OF COLUMBIA

APPLICATION

NOTE: See reverse side of this form for filing instructions, filing fees, and information required by the Board.

DO NOT MAIL **DO NOT MAIL**

TO THE BOARD OF ZONING ADJUSTMENT:

Pursuant to Section(s) 3108.1 of the Zoning Regulations of the District of Columbia, an application is hereby made for the following action: special exception to increase the number of students and staff at an existing private day school, which is provided for by Section(s) 205.1 of the Zoning Regulations.

Premises affected are located at 4700 Whitehaven Parkway, N.W.
(Street Address)

Lot(s) 817, Square(s) 1372, in the District of Columbia, in Zoning District R-1-B.

Present Use of Property: private day school.

Proposed Use of Property: private day school.

Owner of Property: Vestry of St. Patrick's Church.

Address of Owner: 4700 Whitehaven Parkway, N.W.

State briefly the basis for action sought: special exception relief is required in connection with the proposed school expansion which involves an increase of the number of students and staff at the school.

Date: June 13, 1990 Signature: Allison C. Prince
Applicant*

*The owner of the property for which application is made or his authorized agent may file an application. In the event an authorized agent files an application on behalf of the owner, the notice of application shall be accompanied by a letter signed by the owner authorizing the agent to act on his behalf in this application.

TO BE NOTIFIED OF HEARING AND DECISION:

Name Whayne S. Quin
Allison Carney Prince

Address Wilkes, Artis, Hedrick & Lane
1666 K Street, N.W., Suite 1100, Washington, D.C.

Zip Code 20006 Phone No. 457-7800

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

ATTACHMENT ONE
LOVENDUSKY APPLICATION PARTY OPPONENT
BZA CASE # 17081