Testimony of Advisory Neighborhood Commission 3D
Board of Zoning Adjustment
441 4th Street, NW
Washington, DC
December 2, 2003

BZA Application #17081

Good afternoon Members of the Board, I am Alma Gates, representing Advisory Neighborhood Commission 3D.

Following deliberations on BZA Application #17081, ANC 3D voted on November 5 to recommend the following conditions and strongly recommends their inclusion in the final BZA Order.

1. St. Patrick's Elementary School will hold quarterly meetings with ANC 3D and the community;

2. St. Patrick's Elementary School will not return to the ANC or the BZA for any further expansion of faculty, staff or students for a period of five (5) years from the final date of BZA Order #17081; and

3. St. Patrick's Elementary School will provide the ANC and the BZA with a yearly report on staffing and faculty levels with a break down of full-time and part-time employees.

The *Statement of Applicant* and its proposed conditions, filed with the BZA following St. Patrick's November meeting with the ANC, does not include ANC Condition #2. The ANC urges the Board of Zoning Adjustment to include this condition. St. Patrick's only now admits its error in spite of compelling evidence presented during the 2002 BZA hearings regarding the "staff only" cap. Clearly, the school has not been honest with the BZA, the ANC, or the community it claims to serve. This condition would prevent any further expansion for a five year period and would provide an opportunity for the school to prove to the BZA Compliance Officer and the community that when forced to do so, St. Patrick's can abide by BZA orders and conditions. Considering the current 103 school employees and the absolute maximum cap of 60 set in 1990, there are 42 more employees than allowed by BZA Order #15374. In the thirteen year period between the issuance of that order and 2003, the school has had two BZA hearings and ample opportunity to request an increase in its employee cap from the BZA. Instead St. Patrick's has steadfastly denied being over its cap and out of compliance with the BZA order. Now that its 2002 hearing is over, construction on the junior high school is nearing completion and its staff is hired, the school admits its guilt. It has nothing to lose.

The origins of this case date back to 1990 when Allison Prince submitted a special exception application on behalf of St. Patrick's Episcopal Day School requesting an increase in students from 390 to 427 and staff from 51 to 60. (Exhibit A). The subsequent BZA Order reflected what

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Exhibit 34

Board of Zoning Adjustment
District of Columbia
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EXHIBIT NO. 34

was written on the application, but Ms. Prince made it clear to the BZA in her Statement of the Applicant that "the school is seeking a modest increase in the enrollment and the total number of faculty and staff." She also provided a detailed breakdown of the requested number of students, faculty and staff within the body of the application. In testimony Ms. Prince stated "St. Patrick's is also seeking an increase to an absolute maximum staff and faculty of 60." (1990 Oral Testimony, page 53, Exhibit B). Even the Department of Public Works, Policy and Planning's memorandum to the BZA indicated it understood St. Patrick's was requesting an increase in faculty and staff. (Exhibit C).

In 1999, the school again came before the ANC and to the Palisades Citizens Association citing a new campus master plan, with a request for additional classroom space and a gymnasium to meet the needs of their current student body and a pledge that there would be "no additional grade levels, no additional students, no additional teachers, no additional cars." (Exhibit D).

In 2002, the school knew it did not have clean hands when it came to the BZA with Application #16852 for the junior high school and, although it had been informed it was over its cap by a member of the community a denial was issued by Ms. Prince and the school's application moved forward to the BZA. (Exhibit E). In fact, when the issue was raised during the hearings Ms. Prince vehemently denied the school was over its cap and reiterated the school only had a staff cap. Even when documentation was presented to the contrary the denial continued. Another letter was issued by ANC 3D Chair, John Finney, but the school continued to deny any wrong doing. (Exhibit F). Yet, the current Statement of Applicant states, "A detailed review of the file from the 1990 application, however, makes clear that the original cap *was* intended to include all employees." As the school's attorney and the initiator of its filings, Ms. Prince was aware all along that the school was not in compliance with BZA order #15374.

In 2003, St. Patrick's first came to ANC 3D to test the waters for today's BZA hearing in September and to admit it had been out of compliance with its staff cap. At that same meeting the school disclosed it is over its student cap and shared a letter dated September 22, 2003, from St. Patrick's to Denzil Noble, acting zoning administrator, confessing that an error in the number of scholarships given this year pushed the school over its student cap by eight students. (Exhibit G). Filled with true altruistic spirit, Advisory Neighborhood Commission 3D did not question the school's promise to return to its approved student cap during the next admissions cycle.

Finally, when St. Patrick's came to the ANC meeting in an official capacity, two themes based on the issue of faculty/staff caps dominated discussions. The first discussion involved the school's admission that it is over its employee cap by 43. While some commissioners regarded this as an attempt by the school to make a fresh start, a majority felt the school, while seriously out of compliance has been deceptive, and its admission does not "wipe the slate clean." The school also informed the Commission that it has three part-time teachers and a chaplain who are teaching at the jr. high school but whose hours are only charged to the elementary school. This notion raised serious concern for the ANC. This arrangement would permit the school to hire additional part-time teachers but claim only three are actually teaching in the jr. high school.

ANC 3D supports the school's need to rehire good teachers in a part-time capacity because family situations have changed. This led the Commission to a second discussion on the concept of full-time equivalents (FTEs). Some commissioners likened the notion to the FTE practice employed by the Federal Government. But, the comparison ended there. The same concept of slots that apply to the government FTE employee cannot be applied in the St. Patrick's case because the school must abide by the Zoning Regulations and provide two parking spaces for every three employees. As the school has a limited number of parking spaces available on school-owned property and each school employee represents a "full" person when at school and their cars represent "whole" vehicles, the FTE concept became more difficult to justify. Obviously, the school has resorted to using FTEs in an effort to hide its actual number of employees and to make their numbers fit the requirements of the Zoning Regulations.

The *Statement of Applicant* fails to acknowledge that it currently employees 103 employees and it does not mention the number of church employees who share parking facilities with the school. Given the school's parking garage holds 62 spaces that are shared with the church, and there are 42 angled spaces rented from the District, for a total of 104 spaces, the school's supply of campus parking is at capacity. The ANC noted that Page 5 of the *Statement of the Applicant* sites an additional 23 spaces in a lot leased from the Army Corps of Engineers and reminded the school that in 2002 the headmaster testified under oath that this "would become a visitor's lot." (Exhibit H). The Commission also commented that cars are often parallel parked along Whitehaven Parkway doubled-up against the 42 leased diagonal spaces. The headmaster stated this occurs when there are visitors and special occasions at school and this admission provides further evidence that parking at St. Patrick's is at capacity.

ANC 3D voted to allow the school to maintain the status quo 103 employees or 93 FTEs, as they have been hired; would strongly urge the BZA to include a condition that prohibits expansion of faculty, staff or students for a period of five years; and trusts the BZA will accord the Commission's views the "great weight" to which it is entitled by law.

List of Exhibits

A. 1990 Application of St. Patrick's for a "special exception to increase the number of students and staff at an existing private day school."

B. October 17, 1990 BZA oral testimony of Allison Prince, pages 53 and 79, in case #15374.

C. Memorandum, dated October 11, 1990, from the Department of Public Works, Policy and Planning, Sherri Y. Alston, Administrator.

D. December 8, 1999, Remarks of Peter A. Barrett, St Patrick's School to Board of Zoning Adjustment.

E. February 19, 2002 Letter of Katherine Van Sickle DeMallie to Peter Barrett; and March 6, 2002 response from Allison Prince.

F. December 3, 2002 letter to Jerrily Kress from John Finney; and May 30, 2002 letter from John Finney to Karen Edwards.

G. September 23, 2003 letter from Peter A. Barrett to Denzil Noble.

H. May 21, 2002 BZA oral testimony of Peter A. Barrett, page 283, in case #16852.

Exhibit A

BZA Form 2
(Revised 4/20/74)

Docket No. 15374

'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
Wilkes, Artis, Hedrick & Lane

Address 1666 K Street, N.W., Suite 1100, Washington, D.C.

Zip Code 20006 Phone No. 457-7800

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BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of St. Patrick's Church — BZA Application No. 15374
Public Hearing:
ANC 3B, 3D

STATEMENT OF THE APPLICANT

I.
Nature of Relief Sought

This is an application pursuant to Subsection 3108.1 of the Zoning Regulations for a special exception under Paragraph 207.1 to permit the renovation of a private school located in the R-1-B zoning district at 4700 Whitehaven Parkway, N.W. (Square 1372, Lot 817). In connection with the renovation, the school is seeking a modest increase in the enrollment and the total number of faculty and staff.

ZONING SECRETARIAT
DISTRICT OF COLUMBIA
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II.
Background Of The Case

St. Patrick's Church is the owner of the site at 4700 Whitehaven Parkway, N.W., where it operates a church and a private pre-school and elementary school (St. Patrick's School). The existing building on the site is a combined church and school building. Through the facility, the church and school offer a wide range of sectarian and non-sectarian community services.

Established on the present site in 1976, the school currently provides instruction for approximately 390 students at levels ranging from pre-school through grade 6. Admission decisions are made without regard to race, sex, religious affiliation or national origin of the Applicant. The school currently provides scholarships to 39 students, ten percent of the student body.

	CURRENT	PROPOSED
Student enrollment	390	Average over six year peri 427
Teachers	36	44
Employees	15	17

'90 JUN 13 P3:14
ZONING SECRETARIAT
DISTRICT OF COLUMBIA

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15374

#5

10/17/1990
#15374

Exhibit B

32-space parking area. At the same time, the school sought an increase in enrollment from 280 students to 390, and 390 remains the maximum enrollment today.

Today's case involves an increase in the square footage of the existing school building. Currently, there is a grade-level open parking deck area that they are seeking to enclose in order to create 5,400 additional square feet of classroom space.

In addition, St. Patrick's is seeking an increase in enrollment from 390 students to an absolute cap of 440 students. I should note that the hearing notice reflects a cap of 427 students. That is the average enrollment over the next six-year period, and I had put that in the Form 2 when I filed it and that's why it was advertised that way. I should have also added the absolute cap that we're seeking of 440. That represents a 12-percent increase in enrollment. St. Patrick's is also seeking an increase to an absolute maximum staff and faculty of 60. The hearing notice reflects 61, but 60 is actually all that's needed.

Through our witnesses today, we will establish that the proposed changes will not create any adverse impacts because of traffic, noise, number of students, or other

much, sir.

All right. Any closing remarks?

MS. PRINCE: Very briefly, I just wanted to mention one thing. The antenna case that Mr. Hornblower referred to was withdrawn by the applicant after it was granted in an effort to avoid further conflict with the community. So that has been entirely abandoned.

CHAIRPERSON THORNHILL: Right. I thought that was so.

MS. PRINCE: Right.

MS. JEWELL: That was also in Mr. Murphy's report.

MS. PRINCE: Right. And I would just like to summarize that the school is only seeking a 12-percent increase in enrollment, a very modest increase in staff and faculty, and I think that given the nature of these increases when weighed against all the positive things that St. Patrick's does for the community that there will be no substantial adverse impacts on the community.

CHAIRPERSON THORNHILL: All right.

MR. LYONS: I understand there was reference made to the Cellular One application the Board previously heard and decided. The order is not issued, but I think the

D.C.-44
APRIL 1980

Exhibit C

Memorandum

Government of the District of Columbia

'90 OCT 11 P12:14

ZONING SECRETARIAT
DISTRICT OF COLUMBIA

TO: Edward L. Curry, Executive Director
Zoning Secretariat

Department, Agency, Office: Public Works Policy & Planning

FROM: Sherri Y. Alston
Administrator

Date: OCT 11 1990

SUBJECT: BZA Application No. 15374 - Special exception to increase the number of students and staff at an existing private day school at 4700 Whitehaven Parkway, N.W.

We have reviewed the application and other material submitted by the applicant on October 3, 1990. This report addresses the transportation elements of the proposal.

This application is for a special exception to permit the renovation and addition to a private school located in an R-1-B Zoning district at 4700 Whitehaven Parkway. The proposed addition would add approximately 5,400 square feet of class room space to the existing building through the enclosure of the ground level of the building. In connection with the renovation, the school is seeking a modest increase in the enrollment and the total number of faculty and staff. The number of students will increase to approximately 440 from the current 390 students. The number of faculty and staff will likewise increase to 60 from the 51 persons on the staff now.

To determine the effect of the proposed expansion of the school on the parking, circulation and traffic conditions in the vicinity of the site, we have examined and assessed the existing road network serving the area and the parking supply to accommodate the proposal.

With respect to the road network, we note that the property fronts on Whitehaven Parkway a minor arterial street connecting the site to Foxhall Road to the east and to MacArthur Boulevard and Reservoir Road to the west. In this regard, the applicant has furnished a detailed description of these streets in his transportation assessment of the proposal. This description includes the number of lanes, turning movement volume and functional classification of the streets surrounding the site. In addition, the applicant's transportation assessment includes a capacity analysis of the key intersections leading to and from the site. The analysis indicates that the proposed expansion will have a negligible traffic impact on the surrounding intersections.

Ex. No. 26

(12)

10/10/11

Note: Bd. waived 7 day filing requirement at ph 10/17/90.



Exhibit D

Rec'd.
DEC - 8

PETER A. BARRETT
Head of School

REMARKS TO BOARD OF ZONING ADJUSTMENT

BZA
Case No. 16517
Exhibit No. 27

8 December 1999

St. Patrick's Episcopal Day School, which was founded in 1956, has been located at 4700 Whitehaven Parkway, NW, for almost a quarter of a century. Across that time, St. Patrick's educational program for children in the three-year-old Nursery School through Grade 6 has changed along with changes in thinking about the kinds of instructional spaces children need, how to group them most effectively for instruction within those spaces, and the kinds of technologies that are available to enhance that instruction. The attractiveness of its program has also grown, so that St. Patrick's is now the school-home to more children than ever before and one of the premier independent elementary schools in the Washington area.

The constraints of our 25-year-old physical plant increasingly assert themselves, to the point now that we have had to re-think our configuration and use of space. In response, our community has developed a new Campus Master Plan centered around core facilities, shared across grade levels—such as school libraries, additional art spaces, and a gymnasium—that will enable us to meet the needs of our current student body more effectively. Please remember that the Campus Master Plan seeks no increase in the number of students who attend St. Patrick's and no change in the grade levels we offer. There are no additional academic classrooms planned; any new classrooms will replace existing instructional spaces that will be converted to other uses. No additional grade levels, no additional students, no additional teachers, no additional cars. Just a school that, with a creative mix of new construction and renovation of existing space, is better able to meet the needs of its current students; is architecturally

more attractive and more consistent with the design of St. Patrick's Church; and can offer faculty, staff, and visitors more than double the parking spaces that have been available to lessen its impact on Whitehaven Parkway.

St. Patrick's is committed to the education of young people in the District of Columbia and its immediate suburbs. Sixty-four per cent of St. Patrick's students—283 children—are residents of the District of Columbia. This elementary school has an impressive financial aid budget of more than $650,000 in the 1999-2000 school year to make it more accessible to families who would otherwise be unable to rely on it. Fifty-two per cent of the students who participate in the financial aid program are District residents.

The first phase of St. Patrick's Campus Master Plan is complete. This summer, St. Patrick's relocated its Nursery School playground to the area behind the Church and Day School building and, in the process, created a wonderful new space for the physical activity and play of our youngest students. The more public face of that first phase comprised the creation of 48 diagonal parking spaces for the St. Patrick's community in rented public space on the south side of Whitehaven Parkway, the installation of a sidewalk along that new parking area from near Foxhall Road to the Church and Day School property, and the re-grading and seeding of the former playground and Church Lawn on the east end of the building, which will remain green space. Completion of that first phase has taken people heading to the building on foot—faculty, parents, children, and visitors—out of the travel space on Whitehaven, a significant safety improvement. It has also enabled us to provide members of our community with considerably more parking during school and church hours that is similarly out of the Whitehaven travel space. The first-phase work has also reduced congestion along upper Whitehaven Parkway during our arrival and dismissal carpools, especially in the afternoon, when cars can move more safely around our waiting carpool line in either an east- or west-bound direction. We have transformed the ragged, cluttered southern edge of upper Whitehaven Parkway into a tidier, more attractive, and safer boundary for the street.

The second phase of our Campus Master Plan, for which we seek your approval today, will have a similarly ameliorative impact on Whitehaven Parkway and its immediate environs. In the conception, sizing, and design of the proposed 12,000-square-foot building expansion on the west end of the building and the proposed 12,000-square-foot gymnasium across Whitehaven Parkway adjacent to our playing field, we offer improvements that are fully consistent in scale with the existing building and its surroundings and, for those of you who find the existing school building all too boxy next to the beautiful church, even more attractive.

This second phase includes new Nursery School and Elementary School libraries to replace woefully undersized spaces, two new science labs to replace current labs that will be displaced when we move administrative offices closer to the school's redesigned front entrance, a new early childhood physical development space for Nursery and Kindergarten children in part of the space vacated by our current gymnasium, and a dining area so that children need not eat their lunches at their desks. A good example of the impact of the Master Plan are the redesigned art facilities. The school schedule currently moves approximately 300 children through a single art room twice a week, creating a significant bottleneck that affects instructional time in all subject areas at virtually all grade levels. The Master Plan calls for two separate art classrooms, a separate kiln room, and an adjacent gallery space to display our children's work. This is what I mean by meeting the needs of our current student body more effectively, as new core, shared facilities such as the art rooms enable us to adjust the time, space, and child relationships that currently exist.

We respectfully request that the Board of Zoning Adjustment grant our request for a special exception for our Campus Master Plan. Thank you.



Peter A. Barrett

4700 Whitehaven Parkway, NW ✣ Washington, DC 20007 ✣ 202-342-2804 ✣ 202-342-7001 (fax)

Exhibit E

Katherine Van Sickle DeMallie
4923 Ashby Street, NW
Washington, DC 20007

February 19, 2002

Mr. Peter Barrett
Head of School
St. Patrick's Episcopal Day School
4700 Whitehaven Parkway, N.W.
Washington, DC 20007-1586

Dear Mr. Barrett:

Thank you for holding the meeting February 11, 2002 to discuss the plans of St. Patrick's to establish a school for 7th, 8th and 9th grades at 4925 MacArthur Blvd.

The conversation covered a number of issues including the current and future use of St. Patrick's school on Whitehaven Parkway. These issues had also been raised at the ANC meeting on February 6, 2002. I am seeking clarification of these issues to better identify the impacts of the proposed school at 4925 MacArthur—especially since the activities of the proposed school will be linked to St. Patrick's Whitehaven campus in a number of ways.

ISSUE 1 WHAT IS A STUDENT CAP? DO MORE THAN 440 ST. PATRICK'S STUDENTS VISIT OR ATTEND ST. PATRICKS'S WHITEHAVEN CAMPUS EACH DAY? WHAT IS THE CURRENT TOTAL PRE 3PM STUDENT POPULATION? WHAT IS THE CURRENT TOTAL POST 3PM STUDENT POPULATION? ARE THESE DIFFERENT SETS OF STUDENTS? IS ST. PATRICK'S DOUBLE SHIFTING THE SCHOOL?

ISSUE 2 WHAT IS A GRADE CAP? WHAT GRADES ARE CURRENTLY USING ST. PATRICK'S WHITEHAVEN CAMPUS EACH DAY? DO 7TH GRADERS FROM ST.PATRICKS'S 4880A MACARTHUR SITE USE ANY OF ST. PATRICK'S WHITEHAVEN SCHOOL BUILDINGS AND FACILITIES? IS THIS USE IN KEEPING WITH BZA ORDERS?

From presentations that St. Patrick's has made before neighborhood groups where school representative have noted some pre 3 pm and post 3 pm activities at St. Patrick's Whitehaven campus, I am not quite clear on the concept of student cap that is being used by St. Patrick's. In a recent conversation I had with Mr. Toye Bello, Acting Zoning Administrator, Mr. Bello made the distinction between "total maximum student population" and "total number of students present at any time." Mr. Bello noted that the distinction was a critical because the actual number of students allowed on a school property could be higher depending on the definition that was followed. He noted that "rotation" of students under the concept of "total number of students present at any time" could actually increase the number of students using a location and pose additional adverse impacts from increased traffic etc. One analogy that comes to mind is the seating capacity of a restaurant. The restaurant could say it had a maximum seating cap of 440 patrons but actually serve 880 in two shifts.

<u>1999 BZA Order Regarding St. Patrick's Whitehaven School and Issue of Caps</u>

I have read through several of the previous BZA case files and transcripts related to special exceptions granted to St. Patrick's. BZA Order 16517 dated December 8, 1999 granted a special exception to St. Patrick's school for construction of a new gym and other improvements of St. Patrick's school on Whitehaven Parkway. Testimony both by Ms. Prince (St. Patrick's counsel) and Mr. Peter Barrett regarding conditions and operation of St. Patrick's Whitehaven school were included in oral and written testimony. Ms. Prince noted that "The school was established on the site in 1976. It provides education for approximately 440 students in grade levels ranging from child development center through grade 6." (page 439 of the oral transcript) Later, Ms. Prince said that "currently there's an enrollment cap of 440." (page 441) A little later in the same hearing (page 443), Mr. Barrett noted "no additional grade levels, no additional students, no additional teachers, no additional cars. Just a school that with a

creative mix of new construction and renovation of existing space is better able to meet the needs of its current students." Additionally, in discussing the new gymnasium Mr. Barrett noted it would be "a gymnasium that will enable us to meet the needs of our current student body more effectively." (page 442) Presumably this is the so called current student body of 440 students and grades up through grade 6 that would have been in existence at the time of the BZA Order in 1999.

1990 BZA Order Regarding St. Patrick's Whitehaven School and Issue of Caps

An earlier order specifically addressed the cap of 440 students. BZA Order No 15374 dated October 17, 1990 granted a special exception to the Vestry of St. Patrick's to increase the size and population of its existing school on Whitehaven Parkway. The Order noted that "at the public hearing, the applicant (St. Patrick's) amended the application for a maximum number of students of 440 and 60 staff." Condition 2 of the BZA Order granting the special exception noted "the number of students shall not exceed 440."

In oral testimony recorded in the transcript for the hearing October 17 1990, Ms. Prince (legal counsel for St. Patrick's) said "St. Patrick's is seeking an increase in enrollment from 390 students to an absolute cap of 440 students." Later, Ms Prince added, "St. Patrick's is also seeking an increase to an absolute maximum staff and faculty of 60." (BZA Hearing Transcript, October 17, 1990, page 53) Toward the end of the oral arguments at the BZA hearing October 17,1990 Board member Parsons noted "the need to have some conditions, such as a maximum of 440 students, and a maximum staff of 60." (BZA Hearing Transcript, October 17, 1990, page 81) As noted above these conditions were incorporated into BZA Order 15374.

The written application for the October 1990 BZA hearing submitted by Mr. Whayne S. Quin and Ms. Allison C. Prince of Wilkes, Artis, Hedrick and Lane, on behalf of St. Patrick' noted that the school included levels from pre school through grade 6. (page 1) On page 4 of this written application, it noted the "the expansion of the facility is not related to an attempt to substantially increase enrollment at the school." This written testimony also cited a maximum of 440 students.

From a review of these documents, I have several questions about the enrollment cap and conditions of use of St.Patrick's Whitehaven campus.

The first question is whether St. Patrick's enrollment cap was based on "total maximum student population" or "total number of students present at any time." This clarification would be helpful in assessing current and future impacts from school operation. Was this distinction made in your campus master plan or other documents related to the 1999 BZA Order? Is St. Patrick's double shifting the school? Are the students who use the Whitehaven campus after 3pm the same set of students that used it before 3pm?

The second question is the degree to which the 1999 BZA Order contemplated the use of St. Patrick's gymnasium on Whitehaven Parkway for grades beyond grade 6. Will St. Patrick's need to get a modification of the BZA Order issued in 1999 to provide for any current use of St. Patrick's gymnasium by 7th graders at St. Patrick's school at 4880A MacArthur Blvd that was established in September of 2001?

ISSUE 3 WHAT IS A FACULTY AND STAFF CAP? HOW DOES IT RELATE TO NUMBER OF EMPLOYEES?

The number of faculty are also unclear. BZA Order 15374 of 1990 identified that the number of *staff* should not exceed 60. However, on page 5 of the written application to BZA submitted by W. Quin and A. Prince it notes "the *faculty and staff* will not exceed 60." Likewise, in oral testimony at the BZA hearing October 17, 1990 that resulted in the bench decision on the same day, Ms. Prince said "St. Patrick's is also seeking an increase to an absolute maximum *staff and faculty* of 60." (Page 53 of the Oral transcript, BZA Order 15374) It would seem that given the bench decision right after oral statements in this case and the specifics of the oral testimony by Ms. Prince, that the BZA would have thought they were granting a *staff and faculty* cap of 60.

The faculty and staff cap again came up in BZA Order 16517 on December 8,1999. Mr. Barrett provided written and oral testimony that indicated there would be "no additional teachers, no additional cars." (page 443 of the Oral Transcript, BZA Order 16517) However, Ms. Prince in oral testimony at the same December 8 1999 hearing noted

"There is a maximum permitted *staff* number of 60 and because the specifics of the earlier orders governing the property, *there is no faculty cap. We only have a staff cap.*" (page 441 of the Oral Transcript, BZA Order 16517). Were there other BZA Orders beyond that of 1990 that provided the interpretation of faculty staff caps? How do you resolve the apparent inconsistency in what the cap actually refers to?

At a February 9, 2002 meeting with the neighbors, St. Patrick's representatives noted that they had about 80 full time employees and 20 part time employees. Does this include faculty and staff? How does this fit with your caps? This suggests that there may be as many as 100 employee cars per day going to the Whitehaven Campus. This appears to be more than 40 more than were contemplated in 1990 if the cap of 60 was applied to faculty and staff. Of additional interest is how you count part time employees. Do these part time employees count toward any cap? The question of the faculty and staff cap is important, because St. Patrick's has indicated there may be additional hires including 2 traffic police and a facility engineer under the plans to expand St. Patrick's to 4925 MacArthur Blvd. Will these new employees count against the current cap?

ISSUE 4 TRAFFIC IN 1990, 2002, AND IN THE FUTURE AT ST. PATRICK'S AT WHITEHAVEN—HOW 120 VEHICLES USED TO BRING STUDENTS TO SCHOOL IN 1990 TURNED INTO 340 VEHICLES IN 2002, AND WILL INCREASE TO ALMOST 400 IF THE PROPOSED SCHOOL AT 4925 MACARTHUR BLVD IS APPROVED. ADDING IN FACULTY AND STAFF VEHICLES WILL INCREASE THE TOTAL TO ABOUT 500 VEHICLES A DAY

Traffic in 1990

One of the benefits of reading old files is that one is able to gain perspective on the basis for which decisions were made. The 1990 file for BZA Order 15374 is a case in point. Robert Morris Inc. of Maryland performed a traffic study as part of the application by St. Patrick's to increase its student enrollment from 390 to 440 students in 1990. In this report there is a very complete identification of student modes of travel, statistics on the student vehicle ratio and general traffic patterns on Whitehaven Parkway. The main findings of the traffic study noted that of the 390 students at the campus in 1990, 1 percent of students came by metro, 15 percent used vanpooling (at 12 students per van) and 84 percent came by auto. There was a fairly high ratio of students per vehicle (3.2 students per vehicle).

To identify the total number of vehicles needed for all 440 students in 1990 (see attached) one can use the same data on mode of travel and student per vehicle ratios and apply it to the 440 students. As can be seen from the table the number is about 122 vehicles. The Department of Public Works cited the 1990 traffic study provided by St. Patrick's in its recommendation for approval to the Board of Zoning Adjustment to grant the increase in students in 1990.

Traffic in 2002

As of 2002, St. Patrick's Whitehaven school had about the same number of students (440), but the increase in traffic over the 1990 period is staggering. St. Patrick's written material to the community in December notes that most children arrive by car or carpool. On February 11, 2002, St. Patrick's representatives noted at a meeting on their traffic plan, that the student vehicle ratio was now about 1.3 students per car. Van pooling which had represented 15 percent of students in 1990 does not appear to be active at this time. Accordingly, using the 440 student base in 2002 and applying the student to vehicle ratio of 1.3 indicates there are about 340 cars being used to bring the current student body of 440 students to school.

Clearly, there can be fluctuations in the estimates, but the magnitude of change between 1990 and 2002 is significant. The apparent cause of the large change is the significant decrease in the student per vehicle ratio. It is hoped that the study by Marty Wells will be as complete and detailed as the study done in 1990.

When one adds in the apparent growth in vehicles from faculty and staff which was about 60 in 1990 and as many as 100 today, the estimated number of vehicles associated with students, faculty and staff at the school goes from an 180 in 1990 to 440 in 2002. This was about 2.4 times the amount of traffic the BZA thought was going to be on Whitehaven in 1990.

Traffic in the Future-Impact From Shuttle Service from St. Patrick's Whitehaven Campus to 4925 MacArthur and Ashby Streets

The proposed use of St. Patrick's campus on Whitehaven will add another large number of cars to the already overburdened Whitehaven Parkway. Using the same 1.3 student ratio, the addition of 60 students in grades 7, 8 and 9 will increase the traffic by 46 more vehicles. Adding in other extra traffic police, facility engineer and other staff will likely bring the level to an additional 50 vehicles per day or a total of nearly 500 vehicles a day.

Given the apparent inability of the BZA to control the amount of traffic on Whitehaven Parkway through a student cap, it may be appropriate to investigate initiating a cap on vehicles. This would force the school to take much more seriously, their responsibility to the community and their stewardship of a public thoroughfare.

The written statement of St. Patrick's school in its application to the BZA in 1990 seems ludicrous in hindsight. In 1990 (page 7) they asserted "Through continued efforts to encourage carpooling and the use of the van service, the number of cars travelling to the site each day will be further reduced." In fact the number of cars was never was reduced, the number only increased. This historical experience does not bode well for any confidence that traffic will be mitigated in the future or that shuttle bus service will hold up in the long term.

ISSUE 5 IMPACT OF ST.PATRICK'S PROPOSED SCHOOL FOR GRADES 7, 8 AND 9 AT 4925 MACARTHUR BLVD AND ITS RELATED USES OF ST.PATRICK'S WHITEHAVEN CAMPUS. WILL BZA ORDERS REGARDING THE CURRENT CAPS AND CONDITIONS AT ST.PATRICK'S SCHOOL AT WHITEHAVEN NEED TO BE MODIFIED? WHAT OUTREACH IS BEING DONE WITH ST. PATRICK'S WHITEHAVEN NEIGHBORSS TO INFORM THEM OF THESE PENDING CHANGES?

As noted above, the proposed traffic plan that uses St. Patrick's Whitehaven Campus for arrival and departure of the 60 students in grade 7, 8 and 9 will add a number of students, vehicles and shuttle buses to the Whitehaven campus. Likewise, St. Patrick's gymnasium and playing field on Whitehaven Parkway also figure in St.Patrick's expansion plans and are proposed to be part of the athletic program for grades 7, 8 and 9. There is also the future use of St. Patrick's Whitehaven school for other activities such as drama and music once the 4880A MacArthur site is vacated.

Will St. Patrick's need to obtain a modification of the 1999 BZA Order to provide for any future uses of St. Patrick's Whitehaven facilities? Will St. Patrick's notify the surrounding neighbors of the change in use or additional uses of the Whitehaven campus before it applies to the BZA for any modifications, or submits a new application regarding St. Patrick's Whitehaven campus?

I look forward to hearing from you on this matter and thank you in advance for your clarification.

Sincerely,

Katherine Van Sickle DeMallie

CC: Rt. Rev. Jane Holmes Dixon,
Rev. Elizabeth S. McWhorter
ANC 3 D Commissioners
Erik Gaull, Palisades Citizens Association

ShawPittman LLP

A Limited Liability Partnership Including Professional Corporations

ALLISON C. PRINCE
202.663.8853
allison.prince@shawpittman.com

March 6, 2002

Mrs. Katherine Van Sickle DeMallie
4923 Ashby Street, N.W.
Washington, DC 20007

Dear Mrs. DeMallie:

Peter Barrett sent me your letter dated February 19, 2002. Given the technical nature of many of the issues that you have raised, he requested that I respond. I would also be pleased to meet with you to review your questions if that would be helpful.

Issue One

What is a student cap? Do more than 440 St. Patrick's students visit or attend St. Patrick's Whitehaven campus each day? What is the current total pre-3 p.m. student population? What is the current total post-3 p.m. student population? Are these different sets of students? Is St. Patrick's double shifting the school?

St. Patrick's has a cap of 440 students in pre-school through grade six on the Whitehaven campus. The BZA orders governing the school do not regulate the total number of students present at any time. They regulate the total number of students who can be enrolled. St. Patrick's operates in full compliance with the cap. There is no double-shifting at the school.

Regarding activities before 3 p.m., students are in nursery through grade six. Grade seven students have attended chapel on the Whitehaven campus and special events such as lectures by visiting authors.

Regarding afternoon activities, St. Patrick's has extended day, after-school activities and after-school sports daily on the Whitehaven campus, after most students have departed. Almost all of the post-3 p.m. students are in nursery through grade six. Thirteen grade seven students came to play soccer on the Whitehaven campus in the fall and eleven grade seven students come to play basketball in the winter.

Issue Two

What is a grade cap? What grades are currently using St. Patrick's Whitehaven campus each day? Do seventh graders from St. Patrick's 4880A MacArthur site use any of St. Patrick's Whitehaven school buildings and facilities? Is this in keeping with BZA orders?

This question is largely answered in the previous response. The Whitehaven campus accommodates grades pre-school through six consistent with the BZA approvals. The highly limited use of the Whitehaven campus by a small number of seventh graders does not constitute a violation of the BZA order. The order clearly contemplates the use of the gym for school and church purposes and by non-profit 501(c)(3) organizations. Current seventh graders and future seventh and eighth graders will attend classes and the vast majority of their activities at their own campus. The limited current and proposed use of the Whitehaven campus by these students does not constitute a violation of the BZA order.

Issue Three

What is a faculty and staff cap? How does it relate to the number of employees?

St. Patrick's approval for the Whitehaven campus contains a cap on only staff and not faculty. Staff includes non-teacher employees. As you noted from your review of the transcript in BZA Application No. 16517, we clearly reminded the Board in 1999 that there is no faculty cap but rather only a staff cap. At that time, the Board did not opt to include a faculty cap. St. Patrick's is in full compliance with the staff cap of 60.

Any new hires related to 4925 MacArthur Boulevard will be subject to whatever conditions are placed in that BZA order. The school expects and will comply with a reasonable cap on faculty and staff for that campus.

Issue Four

Traffic in 1990, 2002 and in the future at St. Patrick's at Whitehaven - How 120 vehicles used to bring students to school in 1990 turned into 300 vehicles in 2002 and will increase to almost 400 if the proposed school at 4925 MacArthur Boulevard is approved. Adding in faculty and staff vehicles will increase the total to about 500 vehicles a day.

At the time of the approval of the gym in 1999, only three years ago, the Board of Zoning Adjustment had an opportunity to review traffic issues associated with the existing use and the proposed gym. That case provided an opportunity to review any changes in traffic patterns since 1990. At that time, the Board determined that there were no adverse traffic impacts associated with the use and included no conditions governing traffic in the BZA order. Based on our current traffic report, which relies on counts conducted at the carpool lane driveway, there is a student-to-vehicle ratio of 1.39. Further, the report notes that there are approximately 220 cars being used to bring children to the school in the sixty minute period between 7:45 a.m. and 8:45 a.m.. Most of the nursery school students arrive later because of their 9:00 a.m. start time. There has been no significant change in the student-to-vehicle ratio since 1999.

The addition of approximately 43 vehicles daily to Whitehaven will not have a significant impact on the existing condition, particularly given the proposed improvements to the operation of the carpool.

Issue Five

Impact of St. Patrick's proposed school for grades seven, eight and nine at 4925 MacArthur Boulevard and its related uses of St. Patrick's Whitehaven campus. Will BZA orders regarding the current caps and conditions at St. Patrick's school at Whitehaven need to be modified? What outreach is being done with St. Patrick's Whitehaven neighbors to inform them of these pending changes?

St. Patrick's has applied for school use of the existing building at 4925 MacArthur Avenue. This building will be the campus for the St. Patrick's grades seven and eight and will be regulated separate and apart from the main campus. In the interest of minimizing traffic impacts on the Ashby Street neighbors, St. Patrick's concluded that the shuttle operation between Whitehaven Parkway and MacArthur would be desirable. The plan greatly reduces the number of vehicles that will arrive at the MacArthur site daily. St. Patrick's has also taken the opportunity to overhaul its existing drop-off and pick-up procedures on Whitehaven to minimize any traffic impacts. We are confident that this proposal represents the opportunity for a "win-win" situation.

We have no question that a modification of the 1999 BZA order would be required if St. Patrick's sought to locate its seventh and eighth graders on the Whitehaven campus. The addition of two grades to that campus would exceed the scope of that order. St. Patrick's has opted to instead create a separate campus for grades seven and eight that will be separately regulated by the BZA. The proposed highly limited use of Whitehaven

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Parkway as a drop-off and pick-up location combined with the use of the gym for a small fraction of the week and during after school hours does not constitute a violation of that order. While we agree that the seventh and eighth grade students cannot spend their entire days on the Whitehaven campus absent a modification of the BZA order, we also believe that the order cannot be reasonably interpreted to ban such students from the campus at all times.

Further, if for any reason these students are unable to use the gym for drop-off and pick-up and for the limited athletic use that is proposed, the school will use another neighborhood location for drop-off and pick-up and alternative and scattered locations for its athletic program, as it does currently. I hope you agree that there are significant traffic benefits associated with the proposed consolidated approach.

Since you are an Ashby Street neighbor, I would expect your concerns to center on the impact of the proposed use on your home. We have designed the shuttle arrangement to address the numerous articulated concerns about traffic impacts on Ashby Street. While we appreciate your input on the main campus, we would hope that you appreciate that we have devised this arrangement for the benefit of you and your neighbors on Ashby Street. We welcome any suggestions about alternative arrangements that you may find preferable.

Very truly yours,

Allison C. Prince

Allison Prince

Exhibit F

Government of the District of Columbia
ADVISORY NEIGHBORHOOD COMMISSION 3-D
P.O. Box 40846
Palisades Station
Washington, D.C. 20016

RECEIVED
D.C. OFFICE OF ZONING
2002 DEC -3 AM 9:34

Jerrily Kress. FAIA
Director, Office of Zoning
441 4th St. NW
Suite 210 South
Washington, DC 2001

Dear Ms. Kress:

I enclose a copy of a letter that I sent last spring, at your suggestion, to Karen Edwards, General Counsel of the Department of Consumer and Regulatory Affairs, inquiring as to whether St. Patrick's School was complying with a BZA cap on the size of faculty and staff.

I have never received a definitive reply from Ms. Edwards. Since the original letter, of course, your office has established a new post of compliance with BZA orders. I thought you might be interested in the letter as an example of the past difficulty in getting DCRA to enforce BZA conditions and also as perhaps a task for your new office of compliance.

Sincerely yours,

John W. Finney

Chair, ANC3D

BZA
Case No. 16852
Exhibit No. 348

May 30, 2002

Karen Edwards
General Counsel
The Department of Consumer and Regulatory Affairs
941 N. Capitol St. NE—Suite 9400
Washington, DC 20002

Dear Ms. Edwards:

At the suggestion of the Office of Zoning, ANC3D writes to you to register a formal complaint that St. Patrick's School on Whitehaven Parkway is exceeding the cap on size of faculty and staff imposed on the school by the Board of Zoning Adjustment.

In an order issued by the BZA, dated October 17, 1990, a cap of 60 was placed on the size of faculty and staff of the school. That cap still prevails, never changed or altered in subsequent years by the BZA.

In testimony in recent weeks by school officials and representatives of District agencies before the BZA, it has become apparent that the size of faculty and staff at St. Patrick's currently exceeds 80 and may be as high as 100.

For example, under cross-examination at a BZA hearing on May 21, Peter Barrett, headmaster of St. Patrick's, stated, according to my notes, that the school had 50 full time faculty members, 15 part-time faculty members, 21 administrative staff members including full and part-time and four maintenance staff members. From those numbers, Mr. Barrett extrapolated that St. Patrick's had a "full time equivalent" of 84 persons on its faculty and staff. By his own calculations, therefore, St. Patrick's is exceeding the cap of 60 for faculty and staff imposed by the BZA.

Other testimony submitted to the BZA in recent weeks suggests the number of faculty and staff totals 100. For example, in a traffic analysis prepared for the school and submitted to BZA, Wells & Associates, in a report dated April 2, 2002, states on page 6, "There are presently 80 full-time and 20 part-time faculty and staff." That report undoubtedly drew upon figures supplied by the school. Similarly, in a report to the BZA dated April 13, 2002, Kenneth Laden, Associate Director for Planning of the D.C. Department of Transportation, stated, "St. Patrick's currently employs a total of 100 full and part-time teachers at the Whitehaven Parkway School."

In attempting to avoid the obvious conclusion that it has violated the cap on faculty and staff, St. Patrick's has resorted to what we believe is legal legerdemain. In the BZA hearing on May 21, Allison Prince, the lawyer representing St. Patrick's, argued rather vociferously that there was no longer a BZA cap on the size of the faculty at the school, just on the size of the staff. Her argument was that in its 1990 Order #15374, the BZA talked only about a cap on "Staff," thereby excluding the faculty from any cap except that imposed by availability of parking spaces. The argument is a specious one, avoiding the regulatory history of "caps" imposed on St. Patrick's in the past 19 years. As elaborated upon in the attached memo, starting in 1983, BZA has used the term "faculty and staff" in establishing caps for the school. In 1983, BZA Order # 14009 stated, "The total number of 'faculty and staff' ... shall not exceed 48." In 1990, when the school was seeking another expansion, the school application stated that, "The number of 'faculty and staff' will not exceed 60." That statement was reinforced in oral testimony by Ms. Prince who said, "St. Patrick's is also seeking an increase to an absolute maximum 'staff and faculty' of 60."

In its order of Oct. 17, 1990 granting a special exception to the school, there are several references to "faculty and staff" and "staff" in a way that suggests BZA was using the two terms interchangeably. So it is understandable that in the final conditions of its order, the BZA should state that the number of the 'staff' shall not exceed 60, while it is clear from the record that its intent was that number should include both faculty and staff.

To argue otherwise, as does Ms. Prince on behalf of the school, is to ignore the intent of the applications and the oral testimony of the school that the cap should apply to both faculty and staff. We believe that the BZA was using the term "staff" in its broad context to include faculty, and therefore that St. Patrick's currently is exceeding the cap of 60 on faculty and staff imposed in the 1990 order.

We request that you examine whether St. Patrick's is violating a condition laid down by the BZA in establishing the maximum permissible size of its faculty and staff and report back to ANC3D on your findings.

Sincerely yours,

John W. Finney
Chair, ANC3D

Cc:
Jerrily Kress, FAIA
Director, Office of Zoning
441 4th St. NW
Suite 210 South
Washington, DC 20001

Exhibit G

St. Patrick's
EPISCOPAL DAY SCHOOL

PETER A. BARRETT
Head of School

September 22, 2003

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

Re: St. Patrick's Episcopal Day School
4700 Whitehaven Parkway

Dear Mr. Noble:

The main campus of St. Patrick's Episcopal Day School ("St. Patrick's" or "the School") is located at 4700 Whitehaven Parkway in the R-1-A zone. The School has operated on the site since 1977. The most recent BZA Order issued for the school use is BZA Order No. 16517, dated December 28, 1999. In that order, the Board approved an expansion of the School and the construction of a gymnasium. Condition 2 of an earlier order, Order No. 15374, dated October 30, 1990 sets forth the student cap of 440 that governs the School.

The purpose of this letter is to provide you with written notice that our enrollment for the 2003-2004 school year exceeds the cap by eight students.

We understand the importance of the cap and the other conditions that govern the School's operation. Over the years, the School has made every effort to refine its admission process so that the yield from acceptances does not exceed 440. Unfortunately, this process is not an exact science, as demonstrated by the School's experience last spring.

The overage notwithstanding, our 2003-2004 enrollment profile has remained largely the same as in previous years, with one exception. Participation in our Financial Aid Program has increased from an expected 75 to 87 students this year. In a year that saw a higher-than-normal tuition increase, we worked hard to retain all of those students but anticipated a certain level of attrition in the months preceding the opening of school — attrition that never occurred in this area, or across our enrollment profile. Hence the overage in our enrollment, a fact amply demonstrated by the narrow difference between

our anticipated tuition receipts at 440 students and our projected actual receipts at 448 students.

We have every expectation that, with the typical level of attrition, the enrollment will decline across the school year. Already, in the second full week of school, we have received word of one student's expected departure at mid-year because of a family move. We will make every effort to refine the admissions process for 2004-2005 to ensure that the School will not exceed the limit of 440.

We are not seeking an increase in our student cap because this is a temporary condition. At a meeting on September 3, 2003, we alerted the members of ANC 3D to the overage and pledged to rectify it in the next school year. The School decided that it was important to alert you to the current enrollment and our commitment to address this issue in our admissions process during the spring of 2004.

We would be pleased to answer any questions you may have.

Very truly yours,

Peter A. Barrett
Head of School

cc: Toye Bello
Jerrily Kress
John Finney, Chairperson and Commissioner 3D04
ANC 3D:
Hugh Mullane
Sarah Shapley
Tanya Hamilton
Alma Gates
Ann Heuer
Scott Polk

Document #: 1350770 v.1

#16852, May 2, 2002 BZA

Exhibit H

Corps of Engineers landpaved over?

MR. BARRETT: Construction began November of 2000 and it was then paved in either October or November of 2000.

MR. LOVENDUSKY: Were you aware that that land belonged to the Army Corps of Engineers at the time that it was paved over?

MR. BARRETT: Yes.

MR. LOVENDUSKY: You intentionally paved over the Army Corps of Engineers land?

MR. BARRETT: I think we have established this already. Perhaps in the interests of time we can proceed with something else.

MR. LOVENDUSKY: I didn't understand whether it was by mistake or by intent.

MR. BARRETT: It was not in error.

MR. LOVENDUSKY: With regard to the 30 spaces that are on that parking lot, will those be the spaces designated for the faculty?

MR. BARRETT: No, that would become a visitors slot.

MR. LOVENDUSKY: Who are the operators of the rental shuttle buses that the school currently uses?

MR. BARRETT: We have none.