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Form 140
(Revised 03/15/02)

Case No. 17164

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	202.5724798	michaellovendusky@aol.com

I hereby request to appear and participate as a party. | Signature | Date

Will you appear as a(n) ☐ Proponent ☑ Opponent | Will you appear through legal counsel ☐ Yes ☑ No

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

NAME: Last	First	Middle I.

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 ATTACHED STATEMENT

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

SEE ATTACHED STATEMENT

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.) ABOUT 30'

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 ATTACHED STATEMENT

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 ATTACHED STATEMENT

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BZA
Case No. 17164
Exhibit No. 22

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 ATTACHED STATEMENT

5/3/04

Board of Zoning Adjustment
District of Columbia
CASE NO. 17164
EXHIBIT NO. 22

MICHAEL & MELEVA LOVENDUSKY
4927 MacArthur Boulevard NW
Washington DC 20007

3 May 2004

Mr. Geoffrey Griffis, Chairman
District of Columbia Board of Zoning Adjustment
441 4th Street NW Suite 210-S
Washington DC 20001

RE: BZA Application No. 17164, St. Patrick's Episcopal Day School; Application for Party Opponent Status

Dear Chairman Griffis and Members of the Board:

We respectfully apply for party status in the captioned proceeding. We provide the following information pursuant to 11 DCMR § 3106.2:

b. Michael and Meleva Lovendusky (Lovendusky)
4927 MacArthur Boulevard NW
Washington DC 20007
c. We request to appear and participate as a party in the captioned proceeding.
d. Michael Lovendusky will oppose the application for special exception.
e. Michael Lovendusky will appear on behalf of himself and his wife, Meleva.
f. Lovendusky should be granted party status because:
   1. The property at 4927 MacArthur Boulevard (Lovendusky Home) will be affected should the Board grant the relief requested.
   2. The Lovendusky Home is owner occupied.
   3. The Lovendusky Home is less than 100' (one hundred feet) from the property that is the subject of the captioned case.
   4. The application admits St. Patrick's Episcopal Day School (the private school) violated BZA Order 16852 Condition 19 and BZA Order 16852-A Condition 19 and constitutes an attempted frustration of the enforcement of those Orders. Complaints to enforce the Orders were brought by complaint to zoning compliance officials and the Department of Consumer and Regulatory Affairs by Lovendusky, together with other residents of adjoining and nearby property.
   5. Grant of the application for special exception will have deleterious impact upon the Lovendusky Home by increasing the functional space within the private school, thereby allowing more intensive use than approved by the Orders. Further details of the deleterious impact on the Lovendusky Home are provided in the Lovendusky Opposition Response accompanying this application.
   6. Lovendusky is likely to be more significantly, distinctively, and uniquely affected in character and kind than those in the general public because the

Lovendusky Home is an adjoining or immediately nearby residential property providing the physical buffer sparing the general public from the impositions of the private school use of 4925 MacArthur Boulevard NW (i.e., the Lovendusky Home is immediately across Ashby Street from the private school suffering direct views at ground level of the private school and its activities).

7. Lovendusky was granted party opponent status by the Board in the proceedings that resulted in BZA Order 16852 establishing the private school in the middle of a residential neighborhood by special exception.
8. Lovendusky, together with another resident of property immediately adjoining the private school, have petitioned the District of Columbia Court of Appeals with regard to BZA Orders 16852 and 16852-A. See *Michael Lovendusky et al v. District of Columbia Board of Zoning Adjustment*, No. 03-AA-419 (2003). The petitioners in this case demonstrate how enforcement of the Orders is impossible both as a matter of law and as a matter of fact. The instant application constitutes an abuse of zoning procedures and demonstrates the validity of the petitioners' argument to the Court of Appeals. Lovendusky participation as party opponent will assist the Board elucidate the impropriety of the private school application.

This submission, with the accompanying details of the Lovendusky Opposition Response, should satisfy zoning regulation requirements for granting party status. Please alert me immediately if there is anything more we must accomplish to achieve party status, or if the case schedule has changed.

Sincerely,

MICHAEL LOVENDUSKY
Telephone: 202.624.2390

Attachment: Lovendusky Opposition

MICHAEL & MELEVA LOVENDUSKY
4927 MacArthur Boulevard NW
Washington DC 20007

3 May 2004

Geoffrey Griffis, Chairman
District of Columbia Board of Zoning Adjustment
441 4th Street NW Suite 210-S
Washington DC 20001

RE: BZA Application No. 17164, St. Patrick's Episcopal Day School; Opposition to Application

Dear Chairman Griffis and Members of the Board:

We object to the captioned application. The Board should reject the application because:

- The application confirms a violation of BZA Order 16852 (Order) Condition 19;
- The application abuses zoning regulation and procedure;
- Grant of the special exception increases the functional space of the private school and the intensity of its use contrary to the school's promises and in violation of the Order;
- Grant of the special exception will demonstrate the failure of Order Condition 20 and prove the impossibility of enforcement of the Order and its Conditions;
- Grant of the special exception will reward the private school for its violation of the Order and hence be arbitrary, irrational, and demonstrative of the special influence of the private school and its counsel over the Board;
- The applicant should be sanctioned by the Board for its violation of the Order rather than rewarded with a special exception; and
- It would be improper for the Board to expand the private school by grant of the requested special exception pending final Court of Appeals adjudication of BZA Orders 16852 and 16852-A[1], which is imminent.

Each of these grounds for objection to the application is discussed below.

[1] The Board issued BZA Order 16852-A upon request of the private school but without notice to residents of adjoining and nearby property in a proceeding on 6 January 2004. The purpose of BZA Order 16852-A was to revitalize BZA Order 16852, which had expired by its express terms. Both Orders are on appeal before the District of Columbia Court of Appeals in *Michael Lovendusky et al v. District of Columbia Board of Zoning Adjustment*, No. 03-AA-419 (2003). For convenience, all references in this document to BZA Order 16852 include by reference BZA 16852-A unless otherwise noted.

The application confirms a violation of BZA Order 16852 Condition 19

BZA Application 17164 = Violation of Order Condition 19, which provides:

> Expansion of the building on the subject property shall be limited to the area necessary for access as shown on the Applicant's site plan (Exhibit No. 340).

Order Condition 19. The expansion of the basement space in the private school and the additional access constructed for the expanded basement space are not shown on the Applicant's site plan in Exhibit No. 340. Rather, they prove the private school's bad faith representations to the Board and the community.

The genesis of the application is the effort by neighbors to enforce the plain meaning of the Order in the face of numerous violations by the private school during its construction. The Board is aware of these efforts, having received copies of all complaints filed with all District of Columbia authorities by various neighbors at various times.[2]

The private school first admitted its violation of the Order Condition 19 in its *Request for Clarification, or, in the Alternative, Modification of BZA Order No. 16852*, filed on 2 February 2004. The Board discussed this private school request at its meeting on March 2, when it indicated there to be no ambiguity in the Order warranting a "clarification" and, hence, future consideration of the request would be for a modification of the Order. The private school withdrew its request on March 12.[3] The instant application resumes the private school's effort to transform its violation of the Order into expansion of the Order. The application confirms a violation of the Order, pure and simple.

The application abuses zoning regulation and procedure

It is outrageous that the private school should blatantly violate the Order within weeks of its issue and then, when caught, attempt to expand the Order with its very violation. The neighbors, however, have learned to expect the outrageous from the private school and its counsel, who shamelessly deceive and trick government officials and neighbors alike whenever it advances their interests. *See* Appendix, *St. Patrick's Episcopal School: Expansion by Trickery and Deceit.*

The Board should not tolerate such private school misconduct. The R-1 residential districts are designed to protect quiet residential areas and the zoning regulations pertaining to them are intended to stabilize the areas. *11 DCMR §§ 200.1 and 200.2*. The private school is destroying the quiet of the residential areas and abusing the zoning

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[2] The Board recently supplemented the Record before the Court of Appeals for its review of BZA Order 16852 and the supplemental record establishes that the Board received notice of the complaints of neighbors regarding the private school's violation of BZA Order 16852 Condition 19. Lovendusky will cite to the supplemental record provided to the Court by the Board in this Opposition. See, e.g., Supplemental Record at 179-180.

[3] Prince/Shaw Pittman Letter to Griffis/BZA, 12 March 2004.

regulations to destabilize them. The instant application is the fifth request for expansion in the Palisades filed in two years.[4] This aggressive expansion has spawned:

- eight days of Board proceedings;[5]
- five advisory neighborhood commission hearings;[6]
- two Palisades Citizens' Association hearings;[7]
- a Court of Appeals adjudication;
- several letters to the Episcopalian bishopric;
- quarterly community meetings with the private school[8]; and
- numerous meetings of neighbors to discuss how to defend the peace and quiet of our community from private school offenses.

These events have disrupted rather than contributed to neighborhood stability. Believing itself entitled to special deference, the private school does not care if it disrupts residential neighborhoods to its own benefit. By disrupting the residential neighborhood with impunity the private school discourages resistance and eventually drives resisting neighbors away, permitting the school to acquire additional residential property at lesser prices than property properly zoned for private schools. Hence the private school plays Monopoly with residentially zoned property free of legal constraint or moral inhibition.

By misusing the zoning regulations to destabilize the residential district, the private school assault in the Palisades is effectuating a change in zoning policy at the cheap price of a few Board proceedings. The Board does not say No to the private school, though sometimes it pretends to say No by communicating "Come back later, when the neighbors aren't here." It was pursuant to this malpractice that the Board approved its Order 16852-A in January 2003 without notice to the ANC or the residents of adjoining and nearby property. Indeed, the Board, in articulating the decision to issue the Order, fabricated at private school request a "ground rule" "precluding" it from denying private school applications for special exceptions, so long as there are conditions. No such ground rule exists in law.[9] Now the private school proposes that the Board transform its violation of conditions into an expansion of the private school. The Board should deny the application as an abuse of zoning regulation and process.

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[4] BZA 16852 (2002); BZA 17081 (2003); BZA 16852-A (2004); Request to Clarify or Modify BZA 16852 (2004); BZA 17164 (2004).

[5] Four days for the proceedings resulting in the Order; one day for BZA Application 17081 (expanding primary school staff); one day for BZA irregular "Application" 16852-A; one day for the irregular request to clarify or modify the Order for basement expansion (clarification denied; modification deliberation continued); and at least May 18 for the instant, irregular application.

[6] Three days for the proceedings resulting in the Order; one day for BZA Application 17081; and one scheduled for May 4 for the instant application.

[7] Prior to the proceedings resulting in the Order.

[8] Pursuant to Order Condition 18, imposed by the BZA upon the community contrary to its expressed desire but now necessary to check the private school's misrepresentation of its activities.

[9] See *Michael Lovendusky et al v. District of Columbia Board of Zoning Adjustment*, *supra*, Fourth Argument.

Grant of the special exception increases the functional space of the private school and the intensity of its use contrary to the school's promises and in violation of the Order.

The instant request is typical of a pattern and practice of misconduct by St. Patrick's School. The school asks permission for A. Once permission is granted, it proceeds to do A + B. If the expansion to B goes unchallenged or unnoticed, the expansion gets grandfathered with time. Eventually, the school attempts wrongful expansion beyond B. But if the private school's expansion to B is noticed and objected to, it will remedy the challenge with promises (e.g., the agreement to provide covenants to protect neighbors from future school misbehavior), buyoffs (e.g., the agreement to build driveways for neighbors), applications for "clarifications" (e.g., its request preceding the current application) and, now, for the first time, by application to the Board to transform a violation of a BZA order constraining school size into a new special exception expanding school size.

Here the school originally requested a special exception based on exhibits that were approved as Condition 19 of BZA 16852. Within weeks of obtaining the special exception, the private school intentionally began illegal excavation of the basement to expand its space. The neighbors noticed and complained to the Board and the DCRA. The DCRA advised the private school it would need BZA approval to use the space. The private school then requested the BZA "clarify" or "modify" the Order to allow it to use of the space as a "music room". The BZA did not see the Order needed to be "clarified" but agreed to consider a modification. The private school withdrew its request for a modification and applied for a special exception to further expand its use of the space beyond a music room and as a "classroom".

The use of the illegally expanded basement space as a classroom would effectuate a substantial change in the footprint of the building – it makes the footprint deeper and heavier, and prepares the private school's expansion of the student population. Permitting use of the illegally excavated basement would permit the private school to intensify the use of the building and argue for an increase in the student cap. The current application is another clear example of the private school's *modus operandi* of expansion by misconduct and misrepresentation. The Board should not permit it.

Grant of the special exception will demonstrate the failure of the Order Condition 20 and prove the impossibility of enforcement of the Order and its Conditions

The Order provides that:

> The special exception shall be valid except that this Order shall terminate and require modification upon a finding by the Board that the Applicant has either admitted violating, paid a fine for violating, or has been found by the Department of Consumer and Regulatory Affairs, after hearing, to have violated the same condition on three or more occasions within five years.

Order Condition 20. The application clearly establishes the private school's violation of Order Condition 19. The Board, pursuant to its clear intent in Condition 20, should find that the application is an admission of violation by the applicant private school and establish its finding in the record. Any other action by the Board demonstrates the ineffectuality of Condition 20 and the impossibility of enforcement of the Order.

> COMMISSIONER MITTEN: "[W]e can't subject this community to a situation where despite everyone's best efforts, the conditions don't work. So I think we have to have a condition that protects the community in that way and perhaps that will be the incentive necessary to make certain conditions are fully and effectively implemented..."
>
> CHAIRMAN GRIFFIS: "...With that, I would also emphasize the fact and I think this Board on every case we do now is looking at how conditions are well articulated as you have said, and that articulation goes to how they are, in fact, measurable and therefore enforceable. And so I would also ask that we focus very, very clearly on any conditions that we propose so that they meet that test that we have put before us..."
>
> BOARD MEMBER RENSAW: "...The school here has got to earn a place in the residential community. We are here to uphold the zoning that's in place now and that is the R-1 zoning that speaks to protecting the quiet residential areas now developed. The provisions of Chapter 200 are intended to stabilize the residential areas and we have to think of who comes first here and who comes first, because of the zoning are the residents and we cannot let an exception overwhelm the residential neighborhoods..."[10]

The grant of the application in light of its pattern and practice of bad faith misrepresentations and trickery represents the demise of Order Condition 20, making impossible enforcement of the Order and its conditions.

Grant of the special exception will reward the private school for its violation of the Order and hence be arbitrary, irrational, and demonstrative of the special influence of the private school and its counsel over the Board.

A grant of the special exception transforming a violation into an expansion of the Order would permit the use of zoning procedure to destroy the rational intent of zoning regulation. Such misuse of government procedure to destroy fairness and is hence irrational and capricious. Worse, it signals the influence the private school and its counsel have over government officials and members of the Board itself. While the guidance of the Court of Appeals grants wide deference to the Board in its decision-making, such

[10] All quotes from the Transcript of Board proceedings 3 December 2002 regarding BZA Application 16852, pp. 15-21.

decision-making must be fundamentally fair and rational. Grant of the special exception will not be approved upon judicial review.

The applicant should be sanctioned by the Board for its violation of the Order rather than rewarded with a special exception.

Since the application confirms the violation of Order Condition 19, it should behoove the Board should officially record the private school's admission of violation and reject the application. The rejection of the application would result in a stay upon the private school misusing the basement expansion for one year. At the expiration of a year, the private school may again apply for modification of the Order to use the space. Perhaps the private school will have behaved honorably toward its neighbors for an entire twelve months. At that time, perhaps, the neighbors will not object to the private school using the expanded basement. But now is not the time to reward private school misconduct. Now is the time to enforce the plain meaning of the Order.

It would be improper for the Board to expand the private school by grant of the requested special exception pending final Court of Appeals adjudication of the Order, which is imminent.

The validity of the Order is upon appeal to the District of Columbia Court of Appeals. The case is fully briefed; the Record is complete; and argument before the Court is set for May 13. It would be unseemly for the Board to misuse zoning procedure to transform a private school violation into a private school expansion by special exception when judgment of the underlying validity of the Order is at hand.

~*~

For each and all of the reasons discussed above, Michael and Meleva Lovendusky respectfully request the Board deny the private school's application number 17164.

Sincerely,

MICHAEL LOVENDUSKY

Appendix: *St. Patrick's Episcopal School: Expansion by Trickery and Deceit.*

Appendix

ST. PATRICK'S EPISCOPAL SCHOOL: EXPANSION BY TRICKERY AND DECEIT

The residents of property adjoining and nearby the contested location of St. Patrick's middle school at 4925 MacArthur Blvd NW declaimed the lack of credibility of private school officials from the very beginning of the proceedings before the Board that resulted in the Order granting the special exception to locate in the heart of residential Palisades. R53-57, 100, 109.[1] That the private school's officials cannot be trusted is well established in official records.

- In 1999 private school officials testified under oath to the board that it had a "Master Plan" and that it would not expand beyond elementary grades. "No additional grade levels, no additional students, no additional teachers, no additional cars" promised the official. Despite affirmation as late as the autumn of 2000 of its "decision to remain a school ending at grade six", the private school in December 2000 voted to expand to grades 7 and 8 and study the possibility of expanding further to grades 9 through 12. R751, R89.

- The private school announced in April 2002 its intention to expand to grade 9 "as a one year possibility to accommodate the current grade seven students" in its application for special exception that resulted in the Order.

- In 1999 the private school promised to mitigate traffic congestion at its Whitehaven primary school with carpooling. The carpooling failed. R773. Private school officials confided to commission officials "carpooling doesn't seem to work." R1536. Nevertheless the school premised its middle school application on a carpooling and bussing plan vastly more complicated that the one of its failed experience. Amazingly, "the numbers show" that the proposed new, more complicated carpooling and bussing plan "will have very little, if any, impact on neighbors." R772. The Board rewarded the failure of the private school's simple plan by approving a more complicated plan. R2705-2706.

- In December 1999 the private school announced completion of the "first phase" of its Whitehaven primary school Campus Master Plan, including "the re-grading and seeding of the former playground and Church Lawn on the east end of the building, which will remain green space." The school then took the green space and paved it for a parking lot. The land did not belong to the private school; it was the property of the United States. A school official confirmed that if the private school wants something belonging to another it will take it. R1001-1005; R1065.

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[1] Much of the following argument is from the Brief of the Petitioners in *Michael Lovendusky et al v. District of Columbia Board of Zoning Adjustment, No. 03-AA-419 (2003)(decision pending),* the appeal of the Order pending before the District of Columbia Court of Appeals. All citations marked "R" are to the Record certified to the Court by the Board in this case.

The same official promised maintenance of the "green space and ample terraces" at the contested location. R761.

- The Board in 1983 limited the private school's total "faculty and staff" to 48. Board of Zoning Adjustment Order 14009, Condition 3 (1983). The private school expanded "faculty and staff" to 60 without permission, obtaining approval after the fact of the limit violation. Board of Zoning Adjustment Order 15374, Condition 2 (1990). The private school then claimed that cap of 60 applied only to "staff" and not "faculty". Testimony of private school counsel in re Board of Zoning Adjustment Order 16517 (1999). Faculty and staff in 2002 exceeded 100, violating Board of Zoning Adjustment Orders and Conditions. R39-41; R1539.

- In December, 2003, in its BZA Application # 17081 regarding limits on its faculty and staff on its Whitehaven primary school campus, Applicant asserted that "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 BZA itself. But the truth is that the BZA 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 in her application to the Board in 1990 in the proceedings that established the staff cap of 60. (Application to BZA # 15374 (6/13/1990)). The action sought in 1990 by the very same counsel still representing the private school was 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, the private school's counsel first advanced the distinction of "students and staff", succeeding in putting her words in BZA 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. Further, in BZA Application # 17081, the private school counsel first blamed the Board for its erroneous simplification of reference to "staff" to justify yet another expansion into the fiction of the "Full Time Equivalent" (FTE). The FTE is a fiction by which the private school would reduce real persons to fractional numbers for the purpose of expanding the number of school employees beyond any enforceable limit. Only when the private school counsels' deceit was objected to by neighbors did she confess to the Board.

- Board of Zoning Adjustment Order (1990) conditioned approval of the private school's expansion partially on provision of a landscaping plan and plantings to buffer adjoining and nearby residents to school. The private school failed to comply until 1996, only when pressed by neighbors. R962-963.

- The private school mischaracterized to the Board its proposed use of the contested location as so similar to preceding exceptional use that it really need not even ask

for board approval for special exception, a characterization fantastic to the adjoining and nearby neighbors as well as the advisory neighborhood commission. R1077; R337; R1538.

- The private school's expert testified to the board there was no law protecting neighbors from school noise. R805-806. The expert's error was revealed to the Board. The expert's assertion was either an error of law uncorrected by the school's counsel or an error of fact raising credibility issues regarding the expert. R1424-1427. The private school suffered no consequences.

- Private school officials admitted that its governing board of directors could not be trusted and devised a special protection to "bind" its own board of directors to protect the neighbors. R774-776. The officials offered "an assurance in the form of a covenant agreement with neighbors, recorded among the land records and binding" on the private school. The proposed covenants were viewed with suspicion by the neighbors, who were not reassured to learn that "the covenant was not to make the BZA order enforceable in some way." R820-828. Two trusting neighbors bought this "assurance in the form of a covenant" for the price of standing down from their opposition to the grant of special exception. R633, R322. Counsel for the private school professed to represent these unfortunate neighbors in noting for the record that they: "...would like the BZA order, in the event that the case is approved, to include conditions that address the agreement to pay costs associated with the construction of the driveway and a condition that specifically mandates the provision of a covenant..." R713. The conditions were not included in Order # 16852. R2705-2707.

- The private school promised "to preserve the existing open green space on the subject property including existing trees, and to maintain the lawn and plantings as a park-like setting." *BZA Order 16852, Finding of Fact # 4.* Among the first actions the private school took upon the effectuation of the Order in April 2003 was the "rejuvenation" of 110 yews bordering the property. The yews in their healthy maturity measured four feet high and four feet wide, and the hedge they formed insulated the neighborhood from activity on the grounds of the property. The school destroyed the yews. Even should the hedge be replanted, it will be a decade before it will provide the protection afforded by the one the school destroyed. A few weeks later the school destroyed the largest tree on the property, a healthy white ash taller than the school itself. Excavations for a stairwell from MacArthur Boulevard to the front door exposed and damaged the roots of the tree on its south side. The school failed to protect the roots during excavation, brace the tree while it was vulnerable, prune the canopy to reduce windage, or re-fill the excavation diligently. Consequently, the unsupported tree cantilevered its roots against the stone wall bordering the property. The wall cracked, justifying the tree's destruction to school officials. Their own negligence and incompetence cracked the wall and doomed the tree.

- The private school originally requested a special exception based on exhibits approved as Condition 19 of BZA 16852, promising not to change the "footprint" of the residential building. Upon obtaining the special exception, the school in 2003 intentionally and illegally excavated the basement to expand its space. The DCRA advised the private school it would need BZA approval to use the space. The private school requested the BZA "clarify" or "modify" the Order to use of the space as a "music room". The BZA demurred with regard to a clarification but agreed to consider a modification. The private school withdrew its request for a modification and applied for a special exception to intensify its use of the space beyond a music room as a "classroom". The use of the illegally expanded basement space as a classroom would effectuate a substantial change in the footprint of the building, making the footprint deeper and heavier, in preparation for the private school's expansion of the student population. Approval of the school's use of the expanded basement would require the BZA to transform a violation of a condition into an expansion of the Order containing the condition. The application is pending.