GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

Application No. 17164 of St. Patrick's Protestant Episcopal Church, pursuant to 11 DCMR § 3104.1 for a special exception under Section 206 to allow the use of a portion of the basement for private school classroom purposes in the R-1-B District at premises 4925 MacArthur Blvd., N.W. (Square 1393, Lot 823).

HEARING DATES: May 18, 2004
DECISION DATE: May 25, 2004

DECISION AND ORDER

The Board of Zoning Adjustment approved Application No. 17164 of St. Patrick's Protestant Episcopal Church to allow classroom use of the cellar in an existing private school in the R-1-B District.

PRELIMINARY MATTERS

Applicant. The application was filed on March 10, 2004 on behalf of St. Patrick's Protestant Episcopal Church (the "Applicant" or "School"), the owner of the property that is the subject of this application.

Application. The application requests a special exception under 11 DCMR § 3104.1, to allow classroom use of a portion of the cellar in an existing private school, under 11 DCMR § 206, in an R-1-B zone district at premises 4925 MacArthur Blvd., N.W. (Square 1393, Lot 823) (the "Property"). The private school use of the Property was originally approved in BZA Order No. 16852 (corrected in Order No. 16852-A). The zoning relief requested in this application is self-certified pursuant to 11 DCMR § 3113.2.

Notice of Application and Notice of Hearing. By memoranda dated March 11, 2004, the Office of Zoning gave notice of the application to the D.C. Office of Planning, the Zoning Administrator, the Councilmember for Ward 3, the D. C. Department of Transportation, and Advisory Neighborhood Commission ("ANC") 3D, the ANC for the area within which the Property is located.

The Board scheduled a public hearing on the application for May 18, 2004. Pursuant to 11 DCMR § 3113.13, the Office of Zoning published notice of the hearing on the application in the District of Columbia Register, and on March 16, 2004, mailed notice of the hearing to the Applicant, the owners of all property within 200 feet of the Property, and ANC 3D.

The Applicant's affidavits of posting and maintenance indicate that two zoning posters were placed at the Property's two street frontages – on MacArthur Blvd, N.W., and Ashby Street, N.W. – beginning on April 30, 2004, in plain view of the public.

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17164
EXHIBIT NO. 38

Board of Zoning Adjustment
District of Columbia
CASE NO. 17164
EXHIBIT NO. 38

Requests for Party Status. The Board received four requests for party status. The Board granted party status to the Neighbors United Trust ("NUT"), a group of nearby property owners in opposition to the application. Lawrence Skrivseth and Cathy Wright, residents of the property located adjacent to and immediately south of the Property, and Michael Lovendusky, resident of a property located directly across the street from the Property, were denied opposition party status by the Board. The Board determined that those individuals were adequately represented as members of NUT. The Board denied a request for party status in support of the application by Sharon Houy, a resident of the property abutting the School to the east, who did not attend the hearing.

Applicant's Case. The Applicant presented testimony and evidence from David Konapelsky, an architect with GTM Architects recognized by the Board as an expert in architecture, regarding the renovations to the school building and the creation of the cellar space.

Office of Planning ("OP") Report. OP submitted a report and testified that it had reviewed the application with respect to traffic, parking, noise, number of students, and other potentially objectionable conditions. In its report dated May 11, 2004, OP recommended approval of the application on the condition that the exit from the cellar along Ashby Street be used only in emergencies and for emergency drills.

ANC Report. ANC 3D, at its regularly scheduled meeting held on May 5, 2004, voted 3-2 not to oppose the application, stating that it discerned no objectionable effects and no public purpose in preventing the proposed use of the cellar.

Party and Persons in Opposition to the Application. NUT submitted testimony from Nancy Feldman and Katherine Van Sickle Demallie concerning potential objectionable impacts due to the location of the classroom space in the cellar, and particularly concerning the possibility of increased noise from HVAC units.

The Board received two letters in opposition to the application, one from Howard Fenton and Nora Carbine, residents of 4915 Ashby Street, N.W. and one from Lawrence Skrivseth, resident of 4913 MacArthur Boulevard, N.W. Both letters contended that granting the application would increase the usable classroom space available to the Applicant, thus increasing the likelihood that it would request an enrollment increase in the future.

Party and Persons in Support of the Application. The request for party status submitted by Sharon Houy was treated as a letter in support of the application.

Closing of the Record. The record was closed at the end of the hearing, except for specific documents requested by the Board, including a report from NUT on potential noise impacts of the HVAC equipment for the proposed use of the cellar. NUT filed a report prepared by R. Petrossian & Associates, but the evaluators did not personally visit or observe the operation of the HVAC equipment and the report does not address the level of sound emanating from the equipment.

Decision Meeting. At its public decision meeting on May 25, 2004, the Board approved the application by a vote of 5-0-0.

FINDINGS OF FACT

The Property and the Surrounding Area

1. The Property consists of approximately 21,000 square feet of land area located in an R-1-B zone district at 4925 MacArthur Boulevard, N.W. (Square 1393, Lot 823). The Property has approximately 150 feet of street frontage on MacArthur Boulevard as well as frontage on Ashby Street, N.W.

2. The Property is located in the Palisades neighborhood of Ward 3, at the corner of MacArthur Blvd. and Ashby Street. Ashby Street is a narrow residential street improved with single-family houses.

3. The Property contains a 2-1/2 story building, built in 1905, in its northwest corner. The remainder of the Property is occupied by a parking lot and a large lawn. The building consists of approximately 4,325 square feet of usable space suited to the seminar-style classroom format used by the Applicant.

The Proposed Private School Use

4. In BZA Application No. 16852, the BZA approved the School's special exception request to operate a private middle school, grades seven through nine, for 40 students, and not more than eight full-time and four part-time faculty and staff. Order No. 16852, dated March 25, 2003, (the "Order") contains 20 conditions intended to minimize any adverse impact on neighboring properties.[1]

5. The Order approved the Applicant's plans for a complete rehabilitation and upgrading of the existing building. The Applicant removed fire escapes on the eastern and southern sides of the building, and fully renovated the interior of the building and converted it to seminar-style classrooms. The Order approved changes to the footprint of the building to allow the Applicant to make life safety and handicapped accessibility upgrades, including the provision of code-compliant handicapped restrooms. All of the life-safety and handicapped accessibility upgrades were required by the D.C. Construction codes or the Americans with Disabilities Act, and have been completed as approved in the Order.

6. At the time the original special exception application was filed, the Applicant did not intend to install a sprinkler system and so proposed to use the cellar only for utility and storage space. The Applicant's architect had prepared only conceptual drawings, which did not address all code-related issues.

---

[1]The Order was corrected by Order No. 16852-A, also dated March 25, 2003. The correction was minor and did not change the substance of Order No. 16852.

7. After approval of the original application, the Applicant decided to install a sprinkler system. The Applicant's architect continued with the permit review process and the preparation of working drawings. As a result of the permit review process and the completion of the working drawings, certain changes were made to the design of the building, particularly to the cellar, in order to comply with all building codes and applicable statutes.

8. One of these design changes was the inclusion of a second means of egress from the cellar. A portion of the terrace was enclosed to provide an enclosure for the egress stairway. The enclosure comprises 50 square feet of a 764-square-foot terrace and does not add significant density to the building. The Board credits the testimony of the Applicant's architect that the additional egress stair was required by the building code.

9. A second design change was the lowering of the floor slab in the cellar to accommodate equipment specifications, site conditions, the ceiling height required by the building code, and the addition of new underpinning, floor framing, steel beams, interior steel columns and footings. The Board credits the architect's testimony that the floor slab was lowered as a result of all the above-mentioned factors, the significance of which arose during the preparation of the working drawings and therefore after the original special exception application was filed.

10. The design changes resulted in approximately 320 square feet of cellar space usable for a classroom. The remainder of the cellar will be used as three utility rooms, two stairs, a storage area, an elevator, an elevator machine room, a mechanical room, and a corridor.

11. The School proposes to use the 320 square feet of usable cellar space as a music room. The room would be used only during school hours (*i.e.*, from 7:30 a.m. until 4:00 p.m.). The instruments to be used in the room will not be amplified, as set forth in the conditions in BZA Order No. 16852 (corrected in Order No. 16852-A).

12. The cellar music room, which has one small window, will replace the current music room, which is located on the second floor and has two large windows spanning almost the entire height of the room. The existing stone cellar foundation walls are a minimum of 18 inches thick and the interior walls include steel studs, acoustical batt insulation, and gypsum wallboard. The cellar ceiling also has additional acoustical batt insulation and layers of gypsum board as compared to typical ceiling construction.

13. The Board credits the report of Polysonics Corp. that the HVAC equipment serving the building, including the cellar, operates within the parameters of District of Columbia regulations governing acceptable noise limits.

14. Relocation of the music room from the second floor to the cellar will not alter the

HVAC equipment otherwise in use at the Property and therefore will not cause a change in the amount of noise produced by such equipment.

15. The School building is located on a large lot and is set back 37 feet from the property line, along which is a board-on-board fence six feet high. The fence continues along the southern property line, from which the building is set back 95.5 feet.

16. The Board credits the Applicant's testimony that use of the cellar as a music room will have no effect on traffic, parking, number of students, or number of faculty and staff.

17. The Office of Planning recommended approval of the Application, and ANC 3D stated that it had no objection to the proposed use.

18. The proposed use of a portion of the cellar as a classroom is a result of enhancements to the building that make the School safer for the students. It will have no effect on the height, lot occupancy, or other area requirements of the R-1-B district. Use of the planned music room in the cellar will have little effect on the School's operations or its impact on neighboring properties.

CONCLUSIONS OF LAW AND OPINION

The Board of Zoning Adjustment is authorized under the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.07(g)(2) (2001)), to grant special exceptions as provided in the Zoning Regulations. The Applicant applied under 11 DCMR § 3104.1 for a special exception pursuant to 11 DCMR § 206 to allow the use of a cellar room located in the existing private school building located on the Property for classroom purposes. The notice requirements of 11 DCMR § 3113 for a public hearing on the application have been met.

The Applicant is a private school as that term is used in the Zoning Regulations. To meet its burden of proof under Subsection 3104.1, the Applicant must demonstrate that the proposed private school use of the cellar would meet the special conditions listed in Section 206; that it would be in harmony with the general purpose and intent of the Zoning Regulations and Map; and that it would not be likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or other objectionable conditions. Under Subsection 206.3, ample parking space, but not less than that required in Chapter 21 of this title, must be provided to accommodate the students, teachers, and visitors likely to come to the site by automobile.

The Board previously approved private school use of the Property in its Order No. 16852 (corrected in Order No. 16852-A), in which it determined the School had met its burden under § 206 for use of the building as a private school. The use of a small portion of the cellar as a classroom will have little effect on the neighboring properties. In fact, relocating the music room from a second-story windowed space to the stone-lined cellar will help mitigate potential adverse impacts of the private school use by muffling sounds emanating from the music room.

Opposition party NUT was particularly concerned with the noise produced by the HVAC equipment, but failed to show an objectionable impact on nearby property. In contrast, the Applicant submitted an analysis of the noise from the HVAC equipment in use at the property, which shows it to be well within District of Columbia standards for permitted decibel levels. Exhibit No. 30. The relocation of the music room will not change the equipment in use and therefore will not cause any increase in noise. Further, the property is large and the building well set back from the property lines, thereby reducing any noise that might be heard off the property.

The Board notes that the relocation of the music room to the cellar does not represent an "expansion" of the school use. The School, as originally planned, and as originally considered by this Board, was to have a music room. The only question is where, within the building, it will be located. The Board also notes that no increase in enrollment will be caused by, or has been requested because of, the relocation of the music room. Whether the music room is on the second floor or in the cellar, the Applicant is still subject to the conditions in Order No. 16852 (corrected in Order No. 16852-A) concerning number of faculty and student enrollment. Therefore, permitting the music room to be relocated to the cellar will have no impact on the overall operation of the School, the number of faculty or students, or the amount of parking or traffic attributable to them.

The Board is required, under D.C. Official Code § 1-309.10(3)(A) (2001), to give "great weight" to the issues and concerns of the ANC for the area within which the Property is located. The Board is also required, under D.C. Official Code § 6-623.04 (2001), to give "great weight" to OP's recommendations. The Board has carefully considered the ANC's report and agrees with the ANC that the proposed use will present no objectionable effects. The Board also agrees with OP that the proposed use of a portion of the cellar as a classroom will not alter the compatibility of the School with the neighborhood and that it will not cause objectionable impacts on nearby properties. The Board notes OP's recommendation that the exit from the cellar along Ashby Street be used only in emergencies and for emergency drills.

The private school use is compatible with the neighborhood wherein it is located. The proposed use of a portion of the cellar as a music room will not alter this use in any significant way. Therefore, granting special exception relief to permit relocation of the music room is in harmony with the general purpose and intent of the Zoning Regulations and Map. Further, because the proposed relocation of the music room will have a limited, and potentially beneficial, impact on noise, and no impact on traffic, parking, number of students, or number of faculty, it will have no objectionable impacts on neighboring properties.

For the reasons stated above, the Board concludes that the Applicant has met the burden of proof for a special exception under §§ 3104.1 and 206, and it is hereby **ORDERED** that the application be **GRANTED, SUBJECT** to the **CONDITIONS** set forth in Board of Zoning Adjustment Order No. 16852, as corrected by Board of Zoning Adjustment Order No. 16852-A, both dated March 25, 2003, which conditionally approved the private school use of the Property.

VOTE: **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann, II, and Anthony J. Hood (by absentee vote) to approve)

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

EACH CONCURRING MEMBER HAS APPROVED THE ISSUANCE OF THIS DECISION AND ORDER AND AUTHORIZED THE UNDERSIGNED TO EXECUTE THE DECISION AND ORDER ON HIS OR HER BEHALF.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: AUG 2 5 2004

PURSUANT TO 11 DCMR 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED,

REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. LM/RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 17164

As Director of the Office of Zoning, I hereby certify and attest that on AUG 2 5 2004 a copy of this order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Allison C. Prince, Esq.
Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037-1128

Alma Gates, Chairperson
Advisory Neighborhood Commission 3D
P.O. Box 40846
Washington, D.C. 20016

John Finney, Commissioner 3D04
Advisory Neighborhood Commission 3D
P.O. Box 40846
Washington, D.C. 20016

Neighbors United Trust ("NUT")
4911 Ashby Street, N.W.
Washington, D.C. 20007

Kathleen Patterson, City Councilmember
Ward Three
1350 Pennsylvania Avenue, N.W.
Suite 107
Washington, D.C. 20004

Robert Kelly, Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, D.C. 20002

Ellen McCarthy, Deputy Director
Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, D.C. 20002

Alan Bergstein, Esq.
Office of Corporation Counsel
441 4th Street, N.W., 6th Floor
Washington, D.C. 20001

rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning