

Before the Board of Zoning Adjustment, D. C.

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

HEARING DATE: December 3, 1975

DECISION DATE: January 14, 1976

FINDINGS OF FACT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OPINION AND CONCLUSIONS OF LAW:

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

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

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

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

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

First, the matters raised by the motion are irrelevant and prohibited from consideration by the Zoning Regulations. The sole question before the Board in Application No. 11933 is a request to establish a parochial school under Sections 3101.41 and 3101.42 of the Zoning Regulations. There is no question before the Board of the right under the Order of the Board to apply for a building permit. Section 8202.7 of the Zoning Regulations prohibits the Board from considering requests for advice or moot questions. Since no application has been filed for a permit under Case No. 11307, a conclusion by the Board would be purely advisory and would be on a moot question.

Secondly, the Cohens and Six-School Complex are estopped from asserting the applicants were required to apply for a building permit within the six-month period by virtue of the fact that the Cohens and two members of the Six-School Complex within time limitations of the District of Columbia Court of Appeals filed an appeal from the Board's Order of March 6, 1975 challenging its validity. Thus, their motion is directly contrary to their previous Court Action in that it assumes that the Order of March 6, 1975 was valid and binding. St. Patrick's as intervenor defended the law suit. As was concluded in Krekeler v. St. Louis County Board of Zoning Adjustment, 422 S.W.2d 265 (Sup.Ct.Mo. 1967), a party whose litigation has brought about the delay in seeking a permit is estopped from relying on the delay for which it is responsible.

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

ORDERED:

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

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

VOTE:

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

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

ATTESTED By:



STEVEN E. SHER

Acting Secretary to the Board

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

FINAL DATE OF ORDER: FEB 19 1976

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



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

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

FINDINGS OF FACT:

1. The subject site is located on Whitehaven Parkway, N.W. between Foxhall Road and Reservoir Road. It consists of two parcels, one on the north side of Whitehaven Parkway and one on the south. The south parcel is in an R-1-B District and is known as premises 4700 Whitehaven Parkway, N.W. The north parcel is in an R-1-A District.
2. The subject parcels are both irregular in shape. The north parcel has nine sides and an area of 90,173 square feet. The south parcel has eight sides and an area of 74,998 square feet.
3. The south parcel is improved with a two story plus basement elementary school building which was built by St. Patrick's Episcopal Church in 1976. The north parcel is open space with a playing field located in its southwest corner.
4. The subject square on the south of Whitehaven Parkway is triangular in shape and is developed with institutional uses on the north facing Whitehaven Parkway, on the east facing Foxhall Road, and on a portion of the western side facing Reservoir Road. A cluster of seventeen single family homes occupies the central portion of the Reservoir Road side on the west. On the Whitehaven Parkway side are the U.S. Army Corps of Engineers Reservoir site immediately east of the subject site, and the property formerly used as the Florence Crittenden Home now occupied by the Lab School immediately west of the subject site. Further west and north of the subject site are two sites

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

enhance the screening provided by existing mature trees and vegetation.

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

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

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

- A. The proposed center meets all applicable code and licensing requirements, as reported by the D.C. Department of Consumer and Regulatory Affairs by memorandum dated August 4, 1983.
- B. The proposed center will be so located and designed as to create no objectionable traffic condition and no unsafe condition for picking-up and dropping-off children. All cars will enter the site by way of a circular driveway, and all embarking and disembarking will occur within the site.
- C. The proposed center with its proposed accessory parking will provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees and visitors. The required number is thirty-two spaces, while forty-nine will be provided.
- D. The proposed center, including its outdoor play space, is so located and designed that there will be no objectionable impacts on adjacent or nearby properties due to noise, activity, visual or other objectionable conditions. The Board in this order

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

- E. The proposed off-site play area will be located so as not to result in endangerment to the individual in attendance at the center in traveling between such play area and the center itself. The only street to be crossed in reaching the play area is a low volume local traffic street.
- F. The cumulative effect of the proposed center and the two other child development centers located within 1,000 feet will not be sufficient to have an adverse impact on the neighborhood due to traffic, noise of operations or other similar factors.
- G. The Board has submitted the application to the D.C. Department of Human Services, D.C. Department of Transportation and the D.C. Office of Planning for review and written reports.

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

- A. The school structure is so located that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions.
- B. Ample parking space will be provided for students, teachers and visitors likely to come to the site by automobile. The parking provided will exceed that required in Article 72.

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

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

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

- C. The accessory parking lot is reasonably convenient for the occupants and guests of the private school and child development center. The accessory parking spaces are located within 800 feet of the lot line of the structure the parking lot is designed to serve.
- D. The Board in this order will impose conditions as to who shall use the school, landscaping and parking layout, number of students and staff, location of outdoor recreation activities, and limitation on non-school-related use of the facilities. The applicant discussed the proposed school and parking lot with the two residential neighbors adjacent to the property and agreed to conditions as to screening and fencing which have been incorporated herein.

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW AND OPINION:

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

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

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

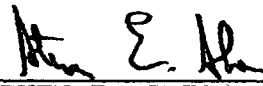
Commissions. Accordingly, it is hereby ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS:

1. Operation of the school shall be limited to St. Patrick's Episcopal Day School.
2. Landscaping and parking layout of the sites shall be in accordance with the plans marked as Exhibit Nos. 36 and 37 of the record.
3. The number of students in the elementary school shall not exceed 280, and in the child development center shall not exceed 110. The total number of facility and staff for both facilities shall not exceed forty-eight.
4. There shall be no outdoor recreation activities on lot 817 south of the existing paved patio.
5. All non-school-related use of the school facilities shall be limited to no more than three per month.

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

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

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER:

DEC 23 1983

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

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

14009order/LJP1

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



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

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

FINAL DATE OF ORDER: December 23, 1983

ORDER

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

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

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

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

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

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

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

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

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

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

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: AUG 10 1984

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

14009order/LJP9

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



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

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

SUMMARY ORDER

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

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

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

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

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

1. Construction shall be in accordance with the plans marked as Exhibit No. 9 and as amended by Exhibit No. 25-A of the record.
2. The number of students shall not exceed 440. The number of staff shall not exceed sixty.
3. The applicant shall utilize stacked parking to maximize the capacity of the proposed eight space parking area on site.
4. The applicant shall submit a landscaping plan for the project for review and approval by the Board prior to the issuance of a Certificate of Occupancy for the proposed use.

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

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

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

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: OCT 30 1990

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

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

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

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

15374order/BHS27

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION NO. 15374

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a copy of the Order in this case, dated 09 10 has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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

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

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

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



EDWARD L. CURRY
Executive Director

DATE: _____

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



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

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

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

FINAL DATE OF ORDER: October 30, 1990

ORDER

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

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

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

DECISION DATE: January 9, 1991

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

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT

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ATTESTED BY: 

EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: FEB 11 1991

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

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

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

015374/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION/APPEAL NO. 15374

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

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

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

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

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

A handwritten signature in dark ink, appearing to read "E. L. Curry", written over a horizontal line.

EDWARD L. CURRY
Executive Director

DATE: FEB 11 1991

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



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

HEARING DATE: December 8, 1999

DECISION DATE: December 8, 1999 (Bench Decision)

SUMMARY ORDER

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

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

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

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

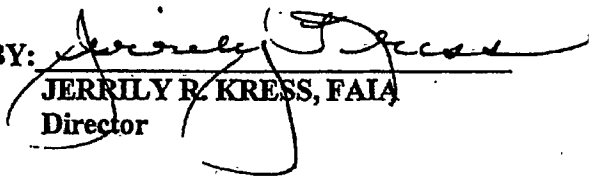
1. The gymnasium will not be more than 12 feet in height above the level of the playing field.
2. The distance between the western wall of the parking lot on the north side of Whitehaven Parkway and the property line that the school shares with the Hornblowers at 4800 U Street, NW, will be at least 8 feet.
3. The evergreen buffer required in BZA Order No. 14009, as amended, will be maintained to mitigate the visual and aural effects of the project.
4. There will be no exterior lighting of the gymnasium except that required for security and identification purposes.
5. No light fixture attached to the gymnasium or installed in the adjacent parking lot shall be visible from an occupied level of a Berkeley Terrace residence.
6. There will be no lighting of the playing field. Any lighting of the parking lot will be installed such that the rays are directed toward the surface of the lot to avoid an impact on adjacent properties.
7. There will be no sound systems installed outside. Portable sound systems may be used only in connection with school and church events and only during daytime hours, subject to reasonable limitations (or instruction to the coaches or masters of ceremony).
8. The gymnasium roof shall remain free of any fixtures or attachments, such as lights, HVAC equipment, antennas and satellite dishes.
9. St. Patrick's shall install and maintain evergreen trees along the southern edge of the playing field.
10. The school facilities shall be used for school and church purposes only except that non-profit 501 (c)(3) organizations, such as scout troops and community groups, may use school facilities subject to a maximum of three times a month. On Saturdays, Sundays, and holidays, the playing field may be used for school or church purposes. Use by non-school, non-church organizations during this time shall be limited to once per month.

11. There shall be a 6:00 p.m. curfew on the use of the playing field.
12. No stadium seating or bleachers shall be constructed either of a temporary or a permanent nature or shall be installed on the playing field level.

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

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

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

ATTESTED BY: 

JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: DEC 28 1999

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

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

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

BAB/12.15.99

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16517

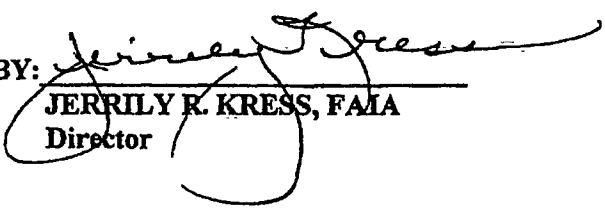
As Director of the Office of Zoning, I hereby certify and attest that on DEC 28 1999 a copy of the order entered on that date in this matter was mailed first class, postage prepaid, to each party who appeared and participated in the public hearing concerning the matter, and who is listed below:

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

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

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

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 17081 of St. Patrick's Episcopal Day School, pursuant to 11 DCMR § 3104.1, for modification of a condition to a special exception approval for a child development center and private school under sections 205 and 206, to permit an increase in faculty and staff from 60 to 93 in the R-1-B District at premises 4700 Whitehaven Parkway, N.W. (Square 1372, Lot 817, and Square 1374, Lot 5).

HEARING DATE: December 2, 2003
DECISION DATE: January 13, 2004

DECISION AND ORDER

St. Patrick's Episcopal Day School ("Applicant" or "School") was founded as a nursery school in 1956 and elementary grades were added in 1967. In 1973, Board Order No. 11307 granted the Applicant a special exception for a child development center and private elementary school. The School moved to the subject property in 1977. The special exception use has no term limit and continues to include a child development center and elementary school.

The School has grown since 1973 and has been the subject of several Board Orders, some of which have addressed the maximum number of faculty and staff, which is the issue in question in this proceeding. In 1983, a faculty and staff cap of 48 was imposed by Board Order 14009. In 1990, Board Order 15347 increased the cap on "staff" to 60. On September 10, 2003, the Applicant filed an application with the Board of Zoning Adjustment ("Board") for permission to modify the staff cap of 60 set in Board Order number 15374.¹ The Applicant requests permission for a new cap of 93 full time equivalent ("FTE") faculty and staff or, if the Board chooses not to use the FTE counting method, for a new staff and faculty cap of 105 actual persons.

Following a public hearing on December 2, 2003, and a public decision meeting on January 13, 2004, the Board voted 4-0-1 to grant the application to permit a total person count of faculty and staff employed by the School not to exceed 105.

PRELIMINARY MATTERS:

Notice of Application and Notice of Hearing On September 11, 2003, the Office of Zoning ("OZ") sent notice of the filing of the application to the District of Columbia Office of Planning ("OP"), the District of Columbia Departments of Health ("DOH") and Transportation ("DDOT"), Advisory Neighborhood Commission ("ANC") 3D, the ANC in which the subject

¹The latest Board Order concerning the School is number 16517, but that Order has only to do with the construction of a gymnasium and an addition and renovation of a classroom. It does not mention, let alone condition, the maximum number of faculty and/or staff. Therefore, although Order No. 16517 is last in time, this Order amends the maximum faculty/staff condition (Condition no. 2) in the 1990 Order, number 15374.

property is located, the 3D06 Single Member District Member, and the Council Member for Ward 3. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the District of Columbia Register and mailed notices of the hearing, dated September 25, 2003, to the Applicant, ANC 3D, and all owners of property within 200 feet of the subject property. Further, the Applicant's Affidavit of Posting shows that the property was properly posted pursuant to 11 DCMR § 3113.

Request for Party Status. Mr. Michael Lovendusky applied for party status. At the hearing, Mr. Lovendusky indicated that he also represented his wife, and two other couples – Mr. and Mrs. D. Ormerod and Douglas Fenton and Nora Carbine – all of whom reside in close proximity to the separate campus of St. Patrick's Middle School, located on MacArthur Boulevard ("middle school"). Mr. Lovendusky argued that the middle school and elementary school campuses should be treated as one cohesive unit for purposes of determining party status.

The Board, by consensus, denied Mr. Lovendusky's request for party status. The Board ascertained that the request was untimely filed and that, although Mr. Lovendusky lives within 200 feet of the middle school campus, he does not live within 200 feet of the campus in question here, which is on Whitehaven Parkway. The Board determined that the two campuses should be treated separately and that the middle school campus is controlled by a separate Order, not in question here. Mr. Lovendusky lives at some distance from the subject property and would not be affected by the outcome of this case any more so than any other member of the general public. The Board therefore concluded that Mr. Lovendusky and the others he claimed to represent would be treated as persons in opposition to the application.

Applicant's Case. The Applicant seeks to update a condition of an earlier BZA order to increase the staff and faculty cap to accurately reflect the current number of employees at the school. The Applicant stated that the number of employees exceeded the cap imposed by the previous order as a result of the school's misinterpretation of that order. Ms. Katherine Bradley, Chairman of the Board of the Applicant and Mr. Peter Barrett, the School's headmaster, testified in its behalf. They indicated that the application to increase the faculty and staff cap to 93 was intended to mean 93 FTE's – full-time equivalents -- as opposed to 93 persons. They explained that the Applicant preferred use of the FTE counting method because the part-time positions allowed greater flexibility to their teachers and other employees. Ms Bradley testified that the breakdown of part-time and full-time employees at the School would not change significantly in the future, but that the School would annually share this breakdown with the ANC. She also represented that the School would accept a condition which capped its part-time employees at a certain percentage of its work force.

Government Reports. On November 24, 2003, OP filed a report recommending that the Board grant the application to increase the staff and faculty cap. OP generally supported the ANC's proposed conditions, but recommended that only one condition actually be adopted by the Board. OP's recommended condition would continue the current student cap of 440 and would permit a maximum number of staff and faculty of 93 FTE.

During the hearing, OP stated that it had mentioned the use of the FTE counting method to DDOT, which had no particular concerns with it. Neither OP nor DDOT, however, performed any independent analysis of its use or the potential consequences thereof.

DDOT submitted to the Board a memorandum in support of the application dated November 18, 2003. DDOT opined that granting this application would have no negative effect on the existing Traffic Management Plan employed by the School.

DOH submitted to the Board a memorandum, dated November 3, 2003, supporting the continuation of the operation of the Applicant's child development center.

ANC Report. The ANC submitted a report dated November 14, 2003, which reflected that, at a duly noticed meeting with a quorum present, the ANC voted 7-0-0 to approve, with conditions, the application to increase the cap to realistically reflect the current size of the faculty and staff at the school. The ANC proposed the following three conditions: (1) that the School hold quarterly meetings with the ANC and the community, (2) that the School not return to the Board for any increase of faculty, staff, or students, for five years, and (3) that the School provide the ANC and the Board with an annual report on faculty and staff with a break-down of full- and part-time employees. The ANC, both in its report and in its testimony, expressed serious concern over the inappropriateness of using the FTE counting method. The ANC stated in its written testimony that the FTE method cannot be applied to the St. Patrick's case because the cap is tied to zoning regulations governing parking requirements. The school has a limited number of parking spaces available and each school employee represents a "full" person when he or she parks at the school. The employee's car represents a "whole" vehicle, regardless of the employee's part-time or full-time status.

FINDINGS OF FACT

1. The subject property is located in an R-1-B zoning district at address 4700 Whitehaven Parkway, N.W. in the Palisades neighborhood of Ward 3. Whitehaven Parkway bisects the site, dividing it into two parcels (Square 1372, Lot 817 and Square 1374, Lot 5).
2. The south parcel is improved with a two-story, plus basement, elementary and nursery school building that was built in 1976. The School's gymnasium and parking facility are located on the north parcel.
3. The School was founded in 1956 as a nursery school and elementary grades were added in 1967.
4. In 1973, Board Order No. 11307 granted the Applicant a special exception for the pre-school and elementary school on property in the vicinity of the subject property. Order No. 11307 does not condition the special exception with a term of years and does not condition, or set a maximum number for, faculty and/or staff on the site.

The Order merely states that there will be approximately 29 teachers and administrative personnel. Exhibit No. 26, Tab D.

5. In 1977, the School moved to the subject property and the special exception use continued thereon.
6. In 1983, Board Order No. 14009 granted the Applicant permission to expand the school and set the total number of faculty and staff for both facilities (*i.e.*, the child development center and the elementary school) at 48. Exhibit No. 26, Tab D.
7. In 1990,² the Applicant applied to the Board for permission to alter and repair its physical facility and to increase its student enrollment and staff. The Board, in Order No. 15374, dated October 30, 1990, granted the application and conditioned the use, in pertinent part, as follows: “[t]he number of staff shall not exceed sixty.” Exhibit No. 26, Tab D.
8. There has been only one Board Order concerning the School since 1990. In 1999, Board Order No. 16517 granted the Applicant permission to construct a gymnasium and to renovate and expand an existing building. The Order says nothing about a faculty/staff number or cap, therefore there has been no new faculty/staff cap established since Order No. 15374 in 1990.
9. Between 1990 and 2003, the School concluded erroneously that the cap of 60 “staff” established in 1990 pertained only to “staff” and not “faculty,” and that therefore there was no cap on “faculty.” Therefore, by 2003, the School employed 64 faculty and 29 staff.
10. The Board finds that the cap of 60 staff established in 1990 by Order No. 15374 applied to both “faculty” and “staff.”
11. The Applicant, acknowledging its erroneous interpretation of the 1990 cap, on September 10, 2003, applied for permission to have a 93 FTE faculty and staff cap in order to update the cap to reflect its real-life faculty and staff numbers.
12. The School currently employs a total of 103 persons, 77 of whom work full-time and 26 part-time. This translates into a total FTE count of 92.7 FTEs.
13. There are currently 20 employees of the child development center and 83 employees of the elementary school.
14. The School is proposing a cap of 93 FTEs with a maximum head count of 105 persons. This proposal reflects the School’s current faculty and staff levels (with a 2

²There is one other pre-1990 Board Order, No. 11933, dealing with this School. It was issued in 1976, but addressed only changes to the site plan approved in Order No. 11307, and is not relevant here.

–person flexibility) and so, will not cause any change in existing conditions associated with the numbers of faculty and staff.

15. The School is not proposing any increase in the cap on student enrollment.
16. Pursuant to the Zoning Regulations, a private school must provide two off-street parking spaces for every three teachers and other employees. 11 DCMR §§ 206.3 and 2101.1.
17. Pursuant to the Zoning Regulations, a child development center must provide one off-street parking space for each 4 teachers and other employees. 11 DCMR §§ 205.4 and 2101.1.
18. For 105 employees, 62 spaces are required. Five spaces would be required for the 20 employees of the child development center and 57 spaces would be required for the 85 staff and faculty members of the elementary school. 11 DCMR §§ 205.4, 206.3 and 2101.1.
19. The School provides the required 62 parking spaces on the subject property. The School also provides 23 spaces on leased property adjacent to the subject property and 42 angled parking spaces in the public space along Whitehaven Parkway, which are leased from the District of Columbia. Therefore, the School provides a total of 127 off-street parking spaces.
20. One hundred and twenty-seven parking spaces are ample for this special exception use and are sufficient to accommodate the regular, day-to-day use of the subject property, even with a maximum faculty and staff head count of 105 persons.
21. The maximum number of faculty and staff on the subject property at any one time is 100 persons. This “peak” parking use occurs usually at approximately 11:00 a.m. on Tuesdays.
22. The School uses a Traffic Management Plan, instituted as part of an earlier special exception proceeding, including a carpool, which mitigates traffic impacts associated with the operation of the School.
23. The existing numbers of faculty and staff employed by the School operate within the framework of the School’s Traffic Management Plan, therefore the proposed cap increase to reflect these numbers will cause no further negative traffic impacts.

CONCLUSIONS OF LAW

The Board is authorized to grant a special exception where, in its judgment, the special exception will be “in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property.” 11 DCMR § 3104.1. Certain special exceptions must also meet the conditions enumerated in the particular sections pertaining to them. In this case, the Applicant had to meet both the requirements of §

3104.1 and those subsections of §§ 205 and 206 implicated by this modification to the already-existing special exception. Because this is a request to increase the staff and faculty cap, the requirements of subsections 205.4 and 206.3, regarding off-street parking, and §§ 205.3 and 206.2, regarding objectionable conditions, must be met. Once the necessary showings are made, the Board ordinarily must grant the special exception, or modification thereof. *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 432 A.2d 695, 698 (D.C. 1981).

Section 205.4 of the Zoning Regulations requires that a child development center provide "sufficient" parking to meet the reasonable needs of the center. Section 206.3 requires that a private school provide "ample" parking, but not less than that required by § 2101.1. Section 2101.1 requires one off-street parking space for each 4 teachers and other employees of a child development center and two spaces for every three teachers and other employees of a private school. 11 DCMR § 2101.1.

The School has 62 off-street parking spaces on the subject property. This number of spaces allows the School to have a staff and faculty maximum of 105 individuals using the head count method. Using this method, the 20 employees of the child development center require 5 spaces. After subtracting these 5 spaces, the school is left with 57 spaces, which is sufficient, under §§ 206.3 and 2101.1, for the current 83 employees of the elementary school and would be sufficient for a maximum of 85 employees. Therefore, the School, with a current staff and faculty of 103, has sufficient parking space, and if the head count cap of 105 were granted, the School would still have sufficient parking space under the Zoning Regulations.

The School is proposing use of an FTE counting method. An FTE is a "full-time equivalent," meaning that if three persons each work one-third time, together they are counted as one FTE. The School proposes that § 2101.1's more restrictive standard applicable to private schools (2 spaces for every 3 employees) be applied to both the child development center and the elementary school and that if this is done, its 62 spaces would allow for 93 FTEs. The School currently has an FTE count of 92.7, therefore it has sufficient parking space under the Zoning Regulations and if the FTE cap of 93 were granted, it would still have sufficient parking space under the Regulations.

The School also provides 23 off-street parking spaces on leased property adjacent to the subject property and 42 angled spaces in the public space along Whitehaven Parkway, which are leased from the District of Columbia. The School therefore provides a total of 127 parking spaces, which are available to meet the reasonable needs of faculty, staff, and visitors. This is ample parking space for the School's operations and is sufficient to mitigate any adverse effects on neighboring properties. The School also has a Traffic Management Plan ("TMP"), which was implemented recently and reflects a recognition of 103 employees. The provisions of the TMP also help mitigate traffic and parking impacts on neighboring properties.

At present, the number of faculty and staff may not exceed 60. The school currently employs 103. The discrepancy results from the Applicant's mistaken belief that the cap applied only to staff. Thus, the increase requested here will not result in an actual increase, but rather will modify the Board's condition to comport with reality. The fact that the Applicant is in non-

compliance should not bar the Board's consideration of the request. It would be counterproductive for the Board to dissuade efforts to come into compliance. The Applicant has admitted its error, is not seeking to add more faculty or staff, and has demonstrated that the increase, although unauthorized, did not result in adverse impacts. In addition, a faculty and staff cap of 60 is clearly out-dated and a new cap is necessary to bring the paper cap in line with reality. There are now 103 persons employed by the School and permitting a cap of 105 will not cause any significant change in existing conditions nor cause any objectionable conditions due to noise, traffic or the like. Therefore, based on the ample parking provided and the lack of any real change of conditions if the cap is increased, the Board concludes that a staff and faculty cap increase is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and can be granted without causing any adverse effects to neighboring properties.

The Board further concludes, however, that such an increase must be based on a head count of faculty and staff. The Zoning Regulations speak about individual persons; they do not use, define, or interpret the concept of FTEs in any context. Section 2118.3 of the Zoning Regulations is pertinent here. It is a rule of interpretation of the Zoning Regulations dealing with parking and states:

[t]he number of teachers or employees shall be computed on the basis of the greatest number of persons to be employed at any one period during the day or night, including persons having both full-time and part-time employment.

Section 2118.3 treats both part-time and full-time employees as whole "persons." It does not sanction the creating of one full-time position by amalgamating two or three part-time positions, as would occur if a FTE counting method were used.

Use of FTEs is particularly inappropriate where parking is in issue as even a part-time employee drives a whole vehicle and needs a whole parking space. Three part-time people may equal one FTE, but they would still be driving three vehicles. In fact, § 2101.1's requirement of 2 parking spaces for each 3 employees would trigger the need for 2 parking spaces for 3 part-time employees if they are treated as individual persons, but would trigger no parking requirement if the 3 part-timers were considered one FTE, *i.e.*, one person. This is counter to the intent of the Zoning Regulations to prevent or mitigate adverse impacts created by parking congestion.

The Board also notes that, although the Applicant preferred an FTE count, it was willing to accept an increase in staff and faculty cap based on head count. *See*, December 2, 2003 hearing transcript at 261, lines 15-17. Further, the person who testified in opposition to the application urged the Board to adopt "a real person count of 103 and 105." *Id.* at 310, lines 17-19.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. The ANC voted to approve the special exception to increase the staff and faculty cap to reflect the status quo - 93-FTEs or 103 employees, with three conditions. The ANC, however, expressed

serious reservations concerning the use of the FTE calculation method. As set forth above, the Board concurs with the views of the ANC with respect to the inappropriateness of employing the FTE calculation method in this regulatory context which ties the number of parking spaces to the number of employees. The Board agrees with two of the ANC's three proposed conditions, which are included below. The third condition, to which the Board cannot agree, is that the School not return to the ANC or this Board to request any further expansion of faculty, staff, or students for 5 years. This proposed condition is beyond the jurisdiction of the Board to impose because neither the Zoning Act nor the Zoning Regulations place limitations on the ability to seek additional zoning relief. In addition such a condition would not mitigate the potential adverse impacts of this or any other use. OP also recommended approval of the 93-FTE cap, but beyond soliciting DDOT's opinion of the use of FTEs, did not prepare any independent analysis of their use. The Board agrees with OP that the cap should be increased, but not that an FTE counting method is appropriate.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a modification of an existing special exception for a faculty and staff cap increase from 60 to 105, pursuant to §§ 3104.1, 205 and 206. Accordingly, it is therefore **ORDERED** that the application is **GRANTED, subject to the following CONDITIONS:**

1. Condition number 2 of Order No. 15374 is amended to read as follows: "The number of students in the elementary school and the child development center shall not exceed four hundred and forty (440). The total number of staff and faculty shall not exceed one hundred and five (105) persons."
2. The Applicant shall file an annual report with this Board and ANC 3D indicating the total number of faculty and staff, with a breakdown showing how the number of employees is under 105.
3. The Applicant will hold quarterly meetings with ANC 3D and the community.

VOTE: 4-0-1 (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, and David Zaidain to grant. Zoning Commissioner member not participating, not voting.)

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

Each concurring Board member approved issuance of this Order.

ATTESTED BY:


JERRILY K. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: OCT - 7 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.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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.SG/RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPEAL NO. 17081

As Director of the Office of Zoning, I hereby certify and attest that on **OCT - 7 2004** a copy of the 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

Chairperson
Advisory Neighborhood Commission 3D
P.O. Box 40846
Washington, DC 20016

Single Member District Commissioner 3D01
Advisory Neighborhood Commission 3D
P.O. Box 40846
Washington, DC 20016

Acting Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, DC 20009

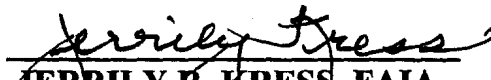
Councilmember Kathleen Patterson
Ward 3
1350 Pennsylvania Avenue, N.W.
Suite 107
Washington, DC 20004

BZA APPEAL NO. 17081
PAGE NO. 2

Ellen McCarthy
Office of Planning
801 North Capitol Street, N.E.
Washington, D.C. 20002

Alan Bergstein
Office of the Attorney General
441 4th Street, N.W., 7th Floor
Washington, DC 20001

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17883 of The Vestry of Saint Patrick's Parish, pursuant to 11 DCMR § 3104.1, for a special exception to expand the existing St. Patrick's Episcopal Day School campus by incorporating Lots 854 and 855, in Square 1374, and to use the property as outdoor physical education and science program space (with no new structures) under section 206, in the R-1-B District at premises 4800 U Street, N.W. (Square 1374, Lots 854 and 855).

HEARING DATE: March 3, 2009

DECISION DATE: March 3, 2009 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 3D and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3D, which is automatically a party to this application. ANC 3D submitted a report in support of the application. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 206. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, and 206, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to

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affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

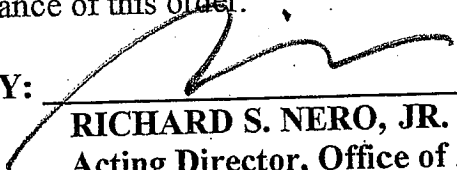
Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit No. 9 Plans) be **GRANTED**.

VOTE: 4-0-1 (Ruthanne G. Miller, Shane L. Dettman, Mary Oates Walker and Gregory N. Jeffries to Approve. Marc D. Loud not present, not voting.)

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

Each concurring member approved the issuance of this order.

ATTESTED BY:


RICHARD S. NERO, JR.

Acting Director, Office of Zoning

FINAL DATE OF ORDER: March 4, 2009

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 17883

As Director of the Office of Zoning, I hereby certify and attest that on March 4, 2009, a copy of the 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
Christine A. Roddy
Pillsbury Winthrop Shaw Pittman, LLC
2300 N Street, N.W.
Washington, D.C. 20037-1128

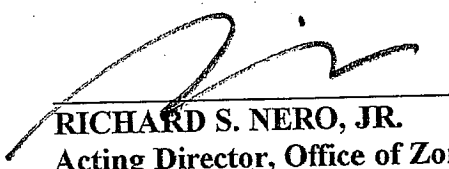
Chairperson
Advisory Neighborhood Commission 3D
5255 Loughboro Road, N.W.
Washington, D.C. 20016

Single Member District Commissioner 3D06
Advisory Neighborhood Commission 3D
5255 Loughboro Road, N.W.
Washington, D.C. 20016

Mary Cheh, City Councilmember
Ward Three
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Bennett Rushkoff, General Counsel
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, D.C. 20002

ATTESTED BY:


RICHARD S. NERO, JR.
Acting Director, Office of Zoning

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18465 of St. Patrick's Episcopal Day School, pursuant to 11 DCMR § 3104.1, for a special exception to allow an increase in the number of private school and child development center students from 440 to 485 students under §§ 205 and 206, in the R-1-B and D/R-1-B Districts at premises 4700 Whitehaven Parkway, N.W. (Square 1372, Lot 817 and Square 1374, Lots 838, 839, and 857).

HEARING DATE: December 11, 2012
DECISION DATE: December 11, 2012

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

The Board of Zoning Adjustment ("Board" or "BZA") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 3D and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3D, which is automatically a party to this application. ANC 3D filed a letter report, dated December 7, 2012, which indicated that at a properly noticed, regularly scheduled public meeting held on November 7, 2012, with a quorum present, the ANC voted unanimously to support the application by a vote of 9:0:0. (Exhibit 38.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application, subject to conditions. (Exhibit 36.) By its letter, dated October 11, 2012, the Office of State Superintendent of Education recommended that the application be approved. (Exhibit 33.) The District Department of Transportation ("DDOT") submitted a letter dated December 5, 2012 of no objection subject to five conditions. (Exhibit 37.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special

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PAGE NO. 2

exception under §§ 205 and 206. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board closed the record at the conclusion of the hearing. Based upon the record before the Board and having given great weight to the ANC and OP reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 205, and 206 that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application be **GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The number of students shall not exceed 485. This enrollment cap shall apply to Nursery through Grade 8 located on the Whitehaven Campus. The total number of staff and faculty shall not exceed 105 persons.
2. The Applicant shall file an annual report with the Advisory Neighborhood Commission indicating the total number of faculty and staff, with a breakdown showing how the number of employees is no greater than 105 persons.
3. The Applicant shall hold quarterly meetings with the Advisory Neighborhood Commission and the community.
4. The evergreen buffer required by Order No. 14009, as amended, will be maintained to mitigate the visual and aural effects of the gymnasium approved in Order No. 16517.
5. There will be no exterior lighting of the gymnasium except that required for security and identification purposes.
6. No light fixture attached to the gymnasium or installed in the adjacent parking lot shall be visible from an occupied level of a Berkeley Terrace residence.
7. There will be no lighting of the playing field. Any lighting of the parking lot will be installed such that the rays are directed toward the surface of the lot to avoid an impact on adjacent properties.

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8. There will be no sound systems installed outside. Portable sound systems may be used only in connection with school and church events and only during daytime hours, subject to reasonable limitations (or instruction to the coaches or masters of ceremony).
9. The gymnasium roof shall remain free of any fixtures or attachments, such as lights, HVAC equipment, antennas and satellite dishes.
10. St. Patrick's shall install and maintain evergreen trees along the southern edge of the playing field.
11. The school facilities shall be used for school and church purposes only except that non-profit 501(c)(3) organizations, such as community groups, may use school facilities subject to a maximum of three times a month. On Saturdays, Sundays, and holidays, the playing field may be used for school or church purposes. Use by non-school, non-church organizations during this time shall be limited to once per month.
12. There shall be a 6:00 p.m. curfew on the use of the playing field.
13. No stadium seating or bleachers shall be constructed either of a temporary or a permanent nature or shall be installed on the playing field level.
14. The Applicant shall close the pedestrian curb cut on the Whitehaven Parkway lay-by within two years of the issuance of a certificate of occupancy reflecting the increase in the student enrollment cap.
15. The Applicant shall install at least one inverted bicycle U-rack at the main building entrance.
16. The Applicant shall install at least five inverted bicycle U-racks in the parking garage.
17. The Applicant shall provide a sidewalk on the south side of Whitehaven Parkway for the portion of property immediately abutting the School. The sidewalk shall be provided within two years of issuance of a certificate of occupancy reflecting the increase in student enrollment.

VOTE: **4-0-1** (Lloyd J. Jordan, Jeffrey L. Hinkle, Nicole C. Sorg, and Michael G. Turnbull to APPROVE; the third Mayoral member vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: December 17, 2012

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THEREOF, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. 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.

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, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19678 of St. Patrick's Episcopal Day School, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the use regulations of Subtitle U § 203.1(l) and under Subtitle C § 1504 from the penthouse requirements of Subtitle C § 1502.1, to construct a new play area/sports deck on the campus of an existing private school in the R-1-B Zone at premises 4701 Whitehaven Parkway N.W. (Square 1374, Lot 857).

HEARING DATE: January 31, 2018
DECISION DATE: January 31, 2018

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 3D and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3D, which is automatically a party to this application. The ANC submitted a written report indicating that at a regularly scheduled, properly noticed public meeting on January 10, 2018, at which a quorum was present, the ANC voted 8-0-0 to support the application. (Exhibit 32.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application, subject to the conditions of the most recent Order issued for the Subject Property, Order No. 18465, and four additional conditions. (Exhibit 29.) The Applicant accepted the additional conditions proposed by OP, and accordingly, those conditions were incorporated into the Applicant's revised plans (Exhibits 34 and 35) or adopted as part of this Order.

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The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the application. (Exhibit 30.)

One letter in support was submitted to the record from The Lab School of Washington. (Exhibit 31.)

As directed by 11 DCMR Subtitle X § 901.3, the Board required the Applicant to satisfy the burden of proof pursuant to Subtitle X § 901.2, for special exceptions under the use regulations of Subtitle U § 203.1(l) and under Subtitle C § 1504 from the penthouse requirements of Subtitle C § 1502.1.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, Subtitle U § 203.1(l), and Subtitle C §§ 1502.1 & 1504, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party. Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 35 AND WITH THE FOLLOWING CONDITIONS:**

1. The number of students shall not exceed 485. This enrollment cap shall apply to Nursery through Grade 8 located on the Whitehaven Campus. The total number of staff and faculty shall not exceed 105 persons.
2. The Applicant shall file an annual report with the Advisory Neighborhood Commission indicating the total number of faculty and staff, with a breakdown showing how the number of employees is no greater than 105 persons.
3. The Applicant shall hold quarterly meetings with the Advisory Neighborhood Commission and the community.
4. The evergreen buffer required by Order No. 14009, as amended, will be maintained to mitigate the visual and aural effects of the gymnasium approved in Order No. 16517.

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5. There will be no exterior lighting of the gymnasium except that required for security and identification purposes.
6. No light fixture attached to the gymnasium or installed in the adjacent parking lot shall be visible from an occupied level of a Berkeley Terrace residence.
7. There will be no lighting of the playing field. Any lighting of the parking lot will be installed such that the rays are directed toward the surface of the lot to avoid an impact on adjacent properties.
8. There will be no sound systems installed outside. Portable sound systems may be used only in connection with school and church events and only during daytime hours, subject to reasonable limitations (or instruction to the coaches or masters of ceremony).
9. The gymnasium roof shall remain free of any fixtures or attachments, such as lights, HVAC equipment, antennas and satellite dishes.
10. St. Patrick's shall install and maintain evergreen trees along the southern edge of the playing field.
11. The school facilities shall be used for school and church purposes only except that non-profit 501(c)(3) organizations, such as community groups, may use school facilities subject to a maximum of three times a month. On Saturdays, Sundays, and holidays, the playing field may be used for school or church purposes. Use by non-school, non-church organizations during this time shall be limited to once per month.
12. There shall be a 6:00 p.m. curfew on the use of the playing field.
13. No stadium seating or bleachers shall be constructed either of a temporary or a permanent nature or shall be installed on the playing field level.
14. The Applicant shall close the pedestrian curb cut on the Whitehaven Parkway lay-by within two years of the issuance of a certificate of occupancy reflecting the increase in the student enrollment cap.
15. The Applicant shall install at least one inverted bicycle U-rack at the main building entrance.
16. The Applicant shall install at least five inverted bicycle U-racks in the parking garage.
17. The Applicant shall provide a sidewalk on the south side of Whitehaven Parkway for the portion of property immediately abutting the School. The sidewalk shall be provided

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within two years of issuance of a certificate of occupancy reflecting the increase in student enrollment.

18. The screen shall be covered with a material or vegetation to visually lessen the starkness of the metal as viewed from Whitehaven Parkway.
19. Lighting for the parking and the play area/sports deck shall be downward focused and limited to that required for security purposes.
20. No light fixture attached to the play area/sports deck shall be visible from any occupied level of a Berkeley Terrace residence.

VOTE: 4-0-1 (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White and Peter G. May, to APPROVE; one Board seat vacant.)

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

A majority of the Board members approved the issuance of this order.

ATTESTED BY:


SARA A. VARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: February 1, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. 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.

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, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**



**BZA Application No. 18465-A
St. Patrick's Episcopal Church and Day School
4751 and 4753 Whitehaven Parkway, NW (Square 1374, Lots 838 & 839)**

HEARING DATE (18465):	December 11, 2012
DECISION DATE (18465):	December 11, 2012
ORDER ISSUANCE DATE (18465):	December 17, 2012
HEARING DATE (18465-A):	April 5, 2023 ¹
DECISION DATE (18465-A):	April 5, 2023

**SUMMARY ORDER ON REQUEST FOR
MODIFICATION OF SIGNIFICANCE**

Pursuant to notice, at its April 5, 2023, public hearing, the Board of Zoning Adjustment (“**Board**” or “**BZA**”) deliberated on a request for modification of significance to BZA Order No. 18465 to amend the campus boundaries with the addition of two existing detached structures to an existing private school in the R-1-B zone. The Board considered the request for modification of significance under Subtitle Y § 704 of Title 11 of the DCMR (Zoning Regulations of 2016, the “**Zoning Regulations**” to which all references are made unless otherwise specified). For the reasons stated below, the Board **APPROVES** the request for modification.

ORIGINAL APPLICATION. In Application No. 18465, the Board approved the request by St. Patrick's Episcopal Church and Day School (the “**Applicant**”) for a special exception to allow an increase in the number of private school and child development center students from 440 to 485 students. The Board issued Order No. 18465 on December 17, 2012. (Exhibit 5 of the record for Case No. 18465-A.) The approval was subject to 17 conditions. The Board’s approval of this application included all the conditions previously adopted in Order No. 18465 and are listed below.

PROPOSED MODIFICATION. On August 9, 2021, the Applicant submitted a request for modification of significance to Order No. 18465. (Exhibits 1-9.) The Applicant submitted an updated surveyor’s plat and plan reflecting the expansion of the existing campus boundaries, as part of the modification request. (Exhibits 8 and 39.) Based on the existing use and proposed

¹ The Public Hearing was postponed several times from the originally noticed hearing date of December 8, 2021, per the Applicant’s requests as well as due to administrative rescheduling.

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modification to include two existing single-family homes to be used for school purposes, the Applicant operates subject to the private school use requirements of Subtitle U § 203.1(m) and Subtitle X § 104, pursuant to Subtitle X § 901.2.

NOTICE OF THE REQUEST FOR MODIFICATION. Pursuant to Subtitle Y § 704.5, the Applicant served the request for modification of significance on the parties to the original application. (Exhibit 9.) The Board referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

PARTIES. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 3D.

ANC REPORT. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on April 4, 2023, at which a quorum was present, the ANC voted to support the modification. (Exhibit 40.) The ANC report raised no issues or concerns.

OFFICE OF PLANNING ("OP") REPORT. OP submitted a report recommending approval of the modification. (Exhibit 37.) OP included a condition that the additional buildings will be used for administrative purposes and as a school residence, as proposed by the Applicant. The Board did not adopt this as a condition of the order.

DISTRICT DEPARTMENT OF TRANSPORTATION ("DDOT") REPORT. DDOT submitted a report indicating that it had no objection to the modification. (Exhibit 25.) DDOT requested that Condition Nos. 1, and 14 through 17 from Order No. 18465 remain in effect for this application and requested the Applicant provide a status update on compliance with these conditions. The Applicant provided a compliance update in Exhibit 35.

CONCLUSIONS

Pursuant to Subtitle Y § 704.1, any request for a modification that does not meet the criteria for a minor modification or modification of consequence² requires a public hearing and is a modification of significance. The Applicant's request complies with Subtitle Y § 704, which provides the Board's procedures for considering requests for modifications of significance.

As directed by Subtitle X § 901.2 and Subtitle Y § 704, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a modification of significance.

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form where granting an application when there was no party in opposition. As a summary order, it does not constitute binding legal precedent on the Board and shall not be considered by the Board in evaluating future applications.

² See, Subtitle Y §§ 703.3 and 703.4.

DECISION

It is therefore **ORDERED** that this application for a modification of significance of BZA Order No. 18465 is hereby **APPROVED** to amend the campus boundaries with the addition of two existing detached structures to an existing private school in the R-1-B zone, as shown in Exhibits 8 and 39. Subject to the following **CONDITIONS**, which are the same as those previously adopted in BZA Order No. 18465:

1. The number of students shall not exceed 485. This enrollment cap shall apply to Nursery through Grade 8 located on the Whitehaven Campus. The total number of staff and faculty shall not exceed 105 persons.
2. The Applicant shall file an annual report with the Advisory Neighborhood Commission indicating the total number of faculty and staff, with a breakdown showing how the number of employees is no greater than 105 persons.
3. The Applicant shall hold quarterly meetings with the Advisory Neighborhood Commission and the community.
4. The evergreen buffer required by Order No. 14009, as amended, will be maintained to mitigate the visual and aural effects of the gymnasium approved in Order No. 16517.
5. There will be no exterior lighting of the gymnasium except that required for security and identification purposes.
6. No light fixture attached to the gymnasium or installed in the adjacent parking lot shall be visible from an occupied level of a Berkeley Terrace residence.
7. There will be no lighting of the playing field. Any lighting of the parking lot will be installed such that the rays are directed toward the surface of the lot to avoid an impact on adjacent properties.
8. There will be no sound systems installed outside. Portable sound systems may be used only in connection with school and church events and only during daytime hours, subject to reasonable limitations (or instruction to the coaches or masters of ceremony).
9. The gymnasium roof shall remain free of any fixtures or attachments, such as lights, HVAC equipment, antennas and satellite dishes.
10. St. Patrick's shall install and maintain evergreen trees along the southern edge of the playing field.

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11. The school facilities shall be used for school and church purposes only except that non-profit 501(c)(3) organizations, such as community groups, may use school facilities subject to a maximum of three times a month. On Saturdays, Sundays, and holidays, the playing field may be used for school or church purposes. Use by non-school, non-church organizations during this time shall be limited to once per month.
12. There shall be a 6:00 p.m. curfew on the use of the playing field.
13. No stadium seating or bleachers shall be constructed either of a temporary or a permanent nature or shall be installed on the playing field level.
14. The Applicant shall close the pedestrian curb cut on the Whitehaven Parkway lay-by within two years of the issuance of a certificate of occupancy reflecting the increase in the student enrollment cap.
15. The Applicant shall install at least one inverted bicycle U-rack at the main building entrance.
16. The Applicant shall install at least five inverted bicycle U-racks in the parking garage.
17. The Applicant shall provide a sidewalk on the south side of Whitehaven Parkway for the portion of property immediately abutting the School. The sidewalk shall be provided within two years of issuance of a certificate of occupancy reflecting the increase in student enrollment.

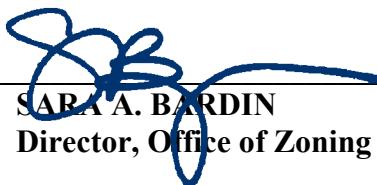
In all other respects, Order No. 18465 remains unchanged.

VOTE: 4-0-1 (Frederick L. Hill, Lorna L. John, Chrishaun S. Smith, and Anthony J. Hood to APPROVE; one Board seat vacant)

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

A majority of the Board members approved the issuance of this order.

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: April 11, 2023

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PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

★ ★ ★



Application No. 17429 of Friends of St. Patrick's Episcopal Day School, LLC ("FOSP") and the Vestry of St. Patrick's Parish, on behalf of the St. Patrick's Episcopal Church and Day School ("School"), collectively ("FOSP/St. Patrick's" or "Applicant"), pursuant to 11 DCMR § 3104.1 for a special exception to construct a middle and high school campus for 440 students and 100 faculty/staff, under Section 206, and a theoretical lot-subdivision for 18 homes under Section 2516 in the R-1-B Zone District on the Property at 1801 Foxhall Road, N.W. (Lots 825, 826, and 827, Square 1346).

HEARING DATES: February 28, 2006; June 13, 2006
DECISION DATE: July 11, 2006

RECEIVED
D.C. OFFICE OF ZONING
JUL 11 2006 3:34 PM

DECISION AND ORDER

The applicants in this case are the Friends of St. Patrick's Episcopal Day School, LLC ("FOSP") and the Vestry of St. Patrick's Parish, on behalf of the St. Patrick's Episcopal Church and Day School ("School"), collectively ("FOSP/St. Patrick's" or "Applicant"). The FOSP/St. Patrick's filed an application with the Board of Zoning Adjustment ("Board") on September 9, 2005, for a special exception under 11 DCMR § 3104.1 to construct a middle and high school campus for 440 students and 100 faculty/staff, under Section 206, and a theoretical lot-subdivision for 19 single family detached houses under Section 2516, in the R-1-B Zone District, on the Property at 1801 Foxhall Road, N.W. (Lots 825, 826, and 827, Square 1346). The Property abuts National Park Service ("NPS") property on both the eastern boundary (Glover Archbold Park) and the northern boundary (Whitehaven Park).

The Board held a public hearing which began on February 28, 2006, and was continued to, and completed on, June 13, 2006. Following the hearing, at its decision meeting on July 11, 2006, the Board voted 4-0-1 to grant the application for the school special exception, subject to conditions, and separately voted 4-0-1 to grant the application for the Residential Development, subject to conditions.

PRELIMINARY MATTERS

Applicant. The Application was filed jointly by the FOSP and the School. The FOSP, a not-for-profit limited liability corporation, contributed monies and secured debt-capital in order to purchase the Property in 2004 from the Casey Mansion Foundation. FOSP has donated Lot 827 to the School for construction of a middle school and high school. An

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additional gift to the School of Lot 826 is pending, awaiting the formal approval of the Vestry of St. Patrick's Parish and the Diocese.

The School is a co-educational Episcopal day school that was founded in 1956. In 1977, the School moved to its present location at 4700 Whitehaven Parkway, N.W., a campus that is now home to students in nursery school through grade six. Pursuant to BZA Order 16852, the School opened the grades seven and eight program, whose students now attend classes on the MacArthur Campus at 4925 MacArthur Boulevard, N.W.

Application. The original application requested a special exception under 11 DCMR § 3104.1 to construct a middle and high school campus for 440 students and 100 faculty/staff ("School"), under 11 DCMR § 206, on Lot 827 and Lot 826, and a theoretical lot-subdivision for 19 single-family detached dwellings ("Residential Development") under 11 DCMR § 2516, on Lot 825, for Property at 1801 Foxhall Road, N.W. (Lots 825, 826, and 827, Square 1346). The zoning relief requested in this application was self-certified pursuant to 11 DCMR § 3113.2.

Amended Application. Before the presentation of the Applicant's case at the June 3, 2006 hearing, the Applicant explained that it had amended its application in response to ANC, neighborhood, and government agency concerns, and the Board accepted these amendments. The amendments include changes to the design of both the School and the Residential Development, as well as one design change which affects the whole site – the relocation of all the retaining walls 18 inches into the Property, away from its boundaries with the surrounding parkland.

The major amendments to the application with regard to the School are as follows: (a) redesign of the Foxhall Road northbound right-of-way; to permit two lanes of unimpeded northbound traffic passage at all times, and the addition of a right turn lane northbound at the School entrance, and (b) as a part of the agreements with the parties and other concerned citizens, a revised Operations Plan for the St. Patrick's Middle and High School ("Operations Plan") marked as Exhibit 86 of the record.

The major amendments to the application with regard to the Residential Development are as follows: (a) a decrease in the number of lots for the theoretical lot subdivision from 19 to 18, thus removing a lot in the northeast section of the Property abutting the Glover-Archbold Park to accommodate concerns of the National Park Service, (b) removal of a staircase leading down into Glover-Archbold Park, and (c) revised architectural restrictions for the proposed theoretical lot houses and the matter-of-right houses on Hoban Road ("Architectural Agreements"), marked as Exhibit 87 of the record.

Notice of Application and Notice of Public Hearing. By memoranda dated September 12, 2005, the Office of Zoning ("OZ") advised the D.C. Office of Planning ("OP"), the Zoning Administrator, the District of Columbia Department of Transportation

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("DDOT"), the Councilmember for Ward 3, Advisory Neighborhood Commission ("ANC") 3D, the ANC within which the Property is situated, and the Single Member District Commissioner, ANC 3D09, of the application.

Pursuant to 11 DCMR § 3113.13, the Office of Zoning mailed the Applicant, the owners of all property within 200 feet of the Property, and ANC 3D, notice of the February 28, 2006 hearing. Notice was also published in the D.C. Register. The School's affidavits of posting and maintenance indicate that three zoning posters were posted beginning on February 8, 2005, in plain view of the public.

Requests for Party Status. ANC 3D was automatically a party in this proceeding. The Board granted party status to: (i) the Colony Hill Neighborhood Association ("CHNA"), which represented the residents of the 41-home adjacent neighborhood located directly south of the Property; (ii) John Forrer, an individual property owner who lives at 1714 Hoban Road N.W., directly south of the proposed Residential Development; and (iii) Camille Comeau and Jay Hebert, individual property owners who live at 1717 Foxhall Road, N.W. Subsequent to the February 28, 2006 hearing, all three parties entered into agreements with the Applicant. Therefore, at the commencement of the June 13, 2006 hearing session, all three parties withdrew as Parties in Opposition and requested to be recognized as Parties in Support of the Application.

Applicant's Case. The Applicant presented testimony and evidence from John Delaney, managing member of the FOSP and former chairman of the School's Board of Trustees; Peter Barrett, Head-of-School; Alan Ward, recognized by the Board as an expert in architecture and land planning, and a principal of Sasaki Associates, the land planners for the Project; Anthony Barnes, recognized by the Board as an expert in architecture, and a principal at Barnes Vanze Architects; Martin Wells of Wells & Associates, recognized by the Board as an expert in transportation and traffic engineering; and Terry Armstrong, the Chief Financial Officer of the St. Patrick's Episcopal Church and the Day School. Their relevant testimony will be reflected in the Findings of Fact that follow.

The Applicant indicated the intent to begin construction of the Residential Development as soon as possible, but stated that the full build-out of the School would likely take longer. Consequently, it asked the BZA to allow the School campus to be built-out in phases over several years.

Government Reports. Office of Planning: By a report dated February 21, 2006, and in testimony at the public hearing, OP recommended approval of both special exceptions requested in the application, subject to a series of conditions derived from community concerns, the Applicant's proposed mitigation measures, and recommendations of the District Department of Transportation. OP proposed a separate list of conditions for the School and for the Residential Development, but testified at the public hearing that the

Applicant's School Operations Plan (Exhibit No. 86), the School's TMP (Exhibit No. 35), and the Architectural Agreements (Exhibit No. 87) effectively incorporate, and in most cases are more stringent than, OP's proposed conditions, thus accomplishing the goals of those conditions.

OP concluded that the proposed School meets the requirements of §§ 206 and 3104. In analyzing the elements of these two sections, OP opined that (1) the number of students and staff, 440 students and 100 faculty/staff, would not be objectionable; (2) noise from the school was not likely to become objectionable to neighboring properties because the buildings will be recessed into the topography, and the School has agreed to limit the nighttime use of the field; (3) the School's TMP would successfully limit its traffic impact on Foxhall Road and the surrounding neighborhood roads; and (4) the 217 on-site parking spaces, 105 more than is required by the Zoning Regulations, will accommodate students, teachers, and visitors to the site.

OP also stated that the Residential Development satisfied the requirements of §§ 2516 and 3104. In particular, OP found that the Residential Development will be in harmony with the general purpose and intent of the Zoning Regulations and Map and will only have a "minimal impact on neighboring properties." OP also opined that the Residential Development will not likely have an adverse effect on the present character and future development of the Colony Hill neighborhood because the Applicant has proffered a set of Architectural Guidelines that are to be included in the Homeowners' Association ("HOA") Guidelines; and is planting additional trees and performing landscaping that will help to create a buffer around the houses in the new Residential Development. OP also addressed the specific requirements of § 2516 and found them to be satisfied.

District Department of Transportation: DDOT, by written reports and testimony at the hearing, determined that the application would not have an adverse traffic or parking impact, provided certain conditions were met by the Applicant. DDOT agreed that the Applicant's traffic analysis was accurate and that the School's campus circulation is adequate, but recommended that the Applicant construct a 6-foot sidewalk adjacent to the eastern side of Foxhall Road. DDOT supported the Applicant's Travel Management Plan and requested that the School implement a carpooling plan and van shuttle service to reduce vehicle trips to the school. DDOT, by its written reports and in testimony, approved the Applicant's proposed changes to Foxhall Road ("Revised Foxhall Road Plan," marked as Exhibit No. 84 of the record). With regard to the Residential Development, DDOT stated that its traffic impact would not be objectionable.

District Department of Health: The Department of Health's Environmental Health Administration, by a memorandum dated February 27, 2006, stated that the Water Quality Division had decided to take jurisdiction over an isolated wetland in the "Southern Swale" of the Property and indicated that the Applicant will be required to

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submit an application for mitigation of this area. Two representatives of the DOH testified at the hearing that: (1) the Applicant had submitted the requested application for mitigation pursuant to its February 27th memorandum and DOH will review and make its decision on this application following a review and recommendation by the United States Army Corps of Engineers ("ACOE"); and (2) that DOH has no concerns about the Applicant's storm water management system, which meets the District of Columbia standards.

National Park Service: David Murphy of NPS testified during the June 13, 2006 hearing that the NPS has no objection to the Applicant's proposed design, but that the NPS: (1) wants to make certain that the parkland downstream from the Property is protected; (2) is interested in the outcome of the wetlands mitigation application; and (3) would like the "Northern Dell" to be preserved as open space. Mr. Murphy indicated that NPS was pleased with the Applicant's decisions to eliminate a lot in the northeast corner of the Property, move all retaining walls 18 inches away from the parks, set back all the houses 30 feet from the parkland, set back the School buildings 50 feet from the parkland, and eliminate a stairway from the Residential Development into the parkland.

U.S. Army Corps of Engineers: On July 8, 2005, the Army Corps of Engineers confirmed that the Property contained no jurisdictional wetlands, although the ACOE did take jurisdiction over an ephemeral stream in the southern portion of the Property, which it found to be a "Waters of the United States." Specifically, the Army Corps of Engineers' Jurisdictional Determination Number 05-02418-11 dated July 8, 2005 stated that the ACOE performed a field inspection with representatives of the District Department of Health Water Quality Division on June 3, 2005 and concluded that, other than the ephemeral stream, "these isolated areas are not subject to Corps' jurisdiction pursuant to Section 404 of the Clean Water Act and Department of the Army authorization is not required for any work in these areas" (see Exhibit No. 21, Tab D).

ANC 3D: On February 16, 2006, the ANC voted 6-1-0, at a regularly scheduled meeting with a quorum present, to recommend approval of the special exception for the School, subject to conditions, and, by a vote of 7-0-0, to recommend approval of the special exception for the Residential Development, also subject to conditions. Later, during a special meeting on May 28, 2006, the ANC voted to request that certain additional conditions be included in any BZA Order. Following the May 28, 2006 ANC vote, the School agreed to include most of the "Additional Conditions" in the St. Patrick's Operations Plan, which is marked in the record as Exhibit No. 86. All of the ANC's proposed conditions have been addressed throughout the course of the proceedings before the Board, and they have all been substantially met.

Parties and Persons in Support of Application. At the hearing, the individuals and organizations granted party status (in opposition) by the Board, (CHNA, John Forrer, and

Camille Comeau and Jay Hebert) testified that they had executed agreements with the Applicant and were now Parties in Support of the Application. CHNA and John Forrer testified that their transition to parties in support was based on the Applicant's and the BZA's adoption of the St. Patrick's Operations Plan and the Architectural Agreements, which are marked as Exhibits Nos. 86 and 87 of the record, and urged their adoption into the BZA Order. Camille Comeau and Jay Hebert also testified that the Applicant's redesign of, and DDOT's support for, the Revised Foxhall Road Plan (Exhibit No. 84) was critical to them.

In addition, the Foxhall Community Citizens' Association ("FCCA") testified as an association in support and stated that it too had executed an agreement with the Applicant. The FCCA also urged the BZA to adopt the St. Patrick's Operations Plan (Exhibit No. 86) into the Final Order. Other neighbors testified as persons in support, and the BZA received many letters of support for the application.

Parties and Persons in Opposition to the Application. There were no parties or persons in opposition to the application that appeared at the public hearing. The record contains letters of opposition to the application, but the concerns cited in those letters are effectively addressed by the Applicants' submissions at the June 13, 2006 hearing and by the conditions of this Order.

FINDINGS OF FACT

The Subject Property and the Surrounding Area

1. The Property consists of 17.3 acres of undeveloped land and is located in an R-1-B zone district at 1801 Foxhall Road (Lots 825, 826, 827, Square 1346). The Property had previously been used as a farm and for a single-family dwelling known as the Brady Estate.
2. The Property is located in Ward 3 and is bordered by Foxhall Road on the west; Whitehaven Park on the north; Glover-Archbold National Park on the east; and Hoban Road and the Colony Hill neighborhood of 41 single-family dwellings on the south. The German Embassy complex is located across Foxhall Road from the Property.
3. The Property has been undeveloped for several years and is highly vegetated. It is improved only with parts of the foundation of the Brady Mansion, a gate and stone driveway, a perimeter fence, and some retaining walls.
4. The topography of the Property consists of moderate, to sharply, rolling terrain with slopes ranging up to 40 percent. There are two prominent knolls on the Property, one near its center, and one on the northern portion of the Property. Generally, the

Property slopes from a high along Foxhall Road, with an elevation of 240 feet above sea level, toward Glover-Archbold Park, with an elevation of 150 feet, and from the Whitehaven Park down toward Hoban Road. Notwithstanding past uses of the Property, many of the natural contours and slopes still exist.

5. The Property contains two natural drainage areas, the "Northern Dell" located at the north of the Property, which is well-preserved in a natural state, and the more heavily-manipulated "Southern Swale," located near the southern edge of the Property.

6. The Southern Swale contains an ephemeral stream, which the ACOE determined constitutes a "Waters of the United States," and over which it took jurisdiction.

7. Other than the ephemeral stream, the ACOE determined that there are no other areas on the Property which are subject to its jurisdiction.

8. There are many mature trees on the Property, approximately 293 of which are designated as "special" trees under District of Columbia law, with a circumference of 55 inches or greater.

9. To measure the project's environmental impact, the Applicant commissioned an Environment Assessment, included as Exhibit F of the Applicant's Pre-Hearing Statement, marked as Exhibit No. 35 in the Record.

10. The Applicant also commissioned a Phase 1 Archeological Study, included as Exhibit G in the Applicant's Pre-hearing statement, marked as Exhibit No. 35 in the record. The Phase 1 Archeological Study concluded that the Property had been extensively farmed and/or landscaped during the 19th and 20th centuries. Thus, although it appears in a natural, unlandscaped state, the entire Property, but most markedly the Southern Swale, was likely disturbed by farming or landscaping in the past.

11. The Property is also encompassed within the upper reaches of a larger surface drainage area that feeds into an off-site stream that flows northeast into Glover-Archbold Park and drains into Foundry Branch, a minor tributary of the Potomac River.

12. DOH has decided to take jurisdiction over an isolated wetland located in the highly manipulated Southern Swale and has requested that the Applicant file a Wetlands Application to the D.C. DOH and ACOE for mitigation of the impact on this isolated wetland. The Applicant filed the Wetlands Application on May 10, 2006.

The Applicant's Proposed Project

13. The Applicant proposes to divide the Property into three separate parcels, each with a different use.

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14. One parcel will be used for a new private middle and high school, one will remain undeveloped, and one will be developed with multiple single-family dwellings.

15. The northwest corner of the Property, currently Lot 827, consisting of 7.72 acres, will be developed with a new middle school and high school, with attendant accessory buildings, such as a gymnasium, and a playing field.

16. The playing field is to be located to the south of the school campus and runs lengthwise parallel to Foxhall Road. It is bordered by a tree buffer between it and the new single-family dwellings to be built to its south and east.

17. Beginning as a strip to the north of the playing field, widening as it curves to the east and north, and ending at Whitehaven Park, is the second parcel, known as the "Northern Dell." It is currently Lot 826, consists of 1.53 acres, and will remain undeveloped except for a pedestrian path. The Dell will remain under the School's control.

18. The third and last parcel, consisting of 8.05 acres, currently Lot 825, occupies a strip of the Property south of the playing field and, essentially the eastern half of the Property, ending at Hoban Road to the south and Glover-Archbold Park to the east.

19. Lot 825 is to be subdivided into 27 lots for single-family dwellings, nine of which will front Hoban Road and are matter-of-right for zoning purposes. The remaining 18 lots will be theoretical lots for zoning purposes, and will be serviced by an internal private road.

The Proposed Private School Use

20. St. Patrick's Episcopal Day School, a co-educational Episcopal Day School, was founded in 1956. Currently, St. Patrick's educates students in grades nursery through eight and is located at 4700 Whitehaven Parkway and 4925 MacArthur Boulevard, NW.

21. The new middle and high school will have a total enrollment of 440 students in grades seven through twelve and 100 faculty and staff.

22. The School campus will be constructed on the northern portion of the Property so as to be closest to the existing elementary school on Whitehaven Parkway.

23. The School will be constructed as two separate campus quadrangles, one for the high school and one for the middle school. In addition to the academic quadrangles, the campus will include separate accessory buildings/uses – a(n) administrative building,

gymnasium, athletic field, and school theater/auditorium – as well as a 170 car underground parking structure.

24. The buildings are designed to be tucked into the Property's topography to limit the School's visual impact. The campus as a whole will be integrated within the Property and will have significant green set asides including a campus green area. The School buildings will be set back 50 feet from Whitehaven Park and will include stepped, planted retaining wall/bank areas.

25. The School campus is designed to meet and/or exceed the zoning requirements of the R-1-B zone district. Specifically, the buildings will not exceed 40 feet in height and they will have side and rear yard setbacks substantially in excess of those required. The total lot occupancy of the School site will be 19.3 %, and a total of 217 parking spaces are being provided, in excess of the 112 parking spaces required by the Zoning Regulations. See, respectively, 11 DCMR §§ 400.1, 405.9, 404.1, 403.2, 206.3, and 2101.1.

26. As will be discussed in greater detail in Finding of Fact Nos. 32 and 33, the School has adopted an Operations Plan, marked as Exhibit No. 86, and attached hereto as an addendum to this Order, which the School must fully implement and comply with as a condition of this Order. The Plan addresses various aspects of the School's operations, both day-to-day, such as traffic and parking, use of the playing field, and deliveries, and more out-of-the-ordinary operations, such as use of the School's facilities for "events" outside the normal school routine.

27. Highlights of the Operations Plan include: (1) a cap on the number of in-bound morning peak hour trips to the School at 146 trips, (2) all parking on-site, (3) limits on the use of the athletic field, including no lights for nighttime athletic use, (4) a limitation on the number of events (not related to School operations) with more than 50 participants, (5) a closed campus, and (6) no summer camp or adult education programs or classes.

28. The School has also adopted a "Six Point Travel Management Plan" ("TMP"), marked as Exhibit No. 35, Attachment I, and attached hereto as an addendum to this Order, which the School must fully implement and comply with as a condition of this Order. The Plan will be discuss in greater detail in Finding of Fact 46, but essentially it sets forth six initiatives to alleviate any potential traffic or parking impacts which the School's operations would otherwise have: (1) carpool initiative, (2) shuttle bus service plan, (3) parking solutions plan, (4) student driving initiative and controls, (5) walk/bicycle initiative, and (6) staggered arrival and dismissal time plan.

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A. Noise Impacts

29. Due to the School's relative isolation, bordered to the north by Whitehaven Park, to the east and south largely by the undeveloped Northern Dell, and to the west by Foxhall Road, no excessive noise is likely to spill beyond the campus boundaries.

30. The School buildings are 640 feet from the existing neighbors to the south, 350 feet from a single neighbor to the north, and more than 250 feet from the German ambassador's residence across Foxhall Road.

31. The School buildings and playing fields are tucked into the topography, further reducing any noise impact from the School.

32. As noted in Finding of Fact No. 26, the School has submitted the St. Patrick's Operations Plan, attached hereto, which establishes policies and specific constraints to assure that the School's operations will not create an adverse noise impact on neighboring properties.

33. The Operations Plan includes the following limitations with respect to athletic events:

- (a) Games, practices, and other organized uses will not be scheduled to start on the athletic field after 5:30 p.m. and practices and other organized uses of the field (except for games) will conclude at the earlier of dusk or 7:00 p.m.;
- (b) Games, practices, and other organized uses will not be regularly scheduled on Sundays and will not be held on Sundays unless required by the School's athletic league for make-up games or unless on an emergency basis;
- (c) Sound systems or any amplified sound on or near the field will not be permitted, although a temporary amplification system may be used for special events no more than three times per year; and
- (d) The athletic field may not be rented or use outside individuals or groups.

34. With respect to non-athletic events, the Operation Plan provides that, within any given year, the School may hold no more than:

- (a) Ten "major" non-athletic events, all of which must conclude by either 10:00 p.m. (Sunday through Thursday) or 11:00 p.m. (Friday and Saturday) except for a limited number of late evening events;
- (b) Five events per year that are not directly related to the business or activities of either the middle school or the high school and for which the number of attendees is expected to exceed 50, but none of these events may be held on the athletic field;

- (c) Five events during the summer that conclude after 7:00 p.m. and for which the number of attendees is expected to exceed 50 and any such events may be held indoors or outdoors, but will not be held on the athletic field;
- (d) Six indoor (non-athletic) evening events per year that conclude after either 10:00 p.m. (Sunday through Thursday) or 11:00 p.m. (Friday and Saturday); and
- (e) Four outdoor (non-athletic) evening events that conclude after 8:00 p.m. which will conclude by either 10:00 p.m. (Sunday through Thursday) or 11:00 p.m. (Friday and Saturday). Only two of these four events may conclude after either 10:00 p.m. (Sunday through Thursday) or 11:00 p.m. (Friday and Saturday) and these events will not be held on the athletic field.

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B. Traffic Impacts

35. Foxhall Road, at this location, is a four lane arterial road, which carries a high volume of commuter and local traffic.

36. The Applicant is working with DDOT to improve the Foxhall Road right-of-way in the vicinity of the School to avoid adverse traffic impacts from the existence of the School. The Applicant will provide a full-movement, signalized intersection on Foxhall Road at the School's entrance. This intersection will feature a demand-activated traffic signal, approximately 700 feet south of Whitehaven Parkway and 1100 feet north of Reservoir Road.

37. The Applicant, working with DDOT, will also add a dedicated southbound left-turn lane on Foxhall Road leading to the School's entrance, enabling the two existing southbound lanes to remain as unimpeded through lanes.

38. The Applicant, working with DDOT, will also add a right-turn lane on Foxhall Road leading to the School's entrance, enabling the two existing northbound lanes to remain as unimpeded through lanes.

39. The Applicant, working with DDOT, will construct a six-foot sidewalk along Foxhall Road to ensure easy pedestrian access to the School and to permit students to safely walk from the existing lower school campus to the proposed middle and high school campus.

40. The School campus includes an internal circulation system with a 1,175-foot two lane loop road, operated counterclockwise, that will accept vehicles entering the site from Foxhall Road, and on which all student drop-offs and pick-ups will occur.

41. The School's loading requirements will also be serviced on-site on the loop road and attendant areas, used as needed.

42. The campus' internal road system provides queuing space for 47 cars in one lane, and 94 cars in both lanes. The projected demand for queuing spaces is 24 cars; therefore, the design more than adequately addresses the need for on-site vehicular queuing.

43. The School will generate 262 vehicle trips during its morning peak hour, but has agreed to "cap" in-bound morning peak hour trips to 146 to mitigate any effect on morning rush-hour traffic.

44. The School will generate 175 vehicle trips during its afternoon peak hour, and 189 vehicle trips during the peak p.m. commuter hour, but the Board credits the testimony of DDOT and the Applicant's traffic expert that these peak-hour increases will be kept within reasonable limits by the installation of the new left-turn lane and signal and by the implementation of the Traffic Management Plan.

45. The School has submitted the TMP attached hereto, which establishes policies and specific constraints to assure that the School's operations will not create an adverse impact on traffic and parking in the neighborhood. The TMP includes the following measures:

- (a) A carpool initiative with a goal of achieving an average vehicle occupancy of 1.75. The carpool program will be closely monitored, and incentives, such as an "express lane" for cars with high vehicle occupancies, may be implemented;
- (b) A shuttle bus service between the School and appropriate locations, such as Metro stations; the School is also exploring the possibility of a joint shuttle bus service with other neighborhood institution. The School will provide the number of shuttle buses necessary to operate the program;
- (c) The School will provide a total of 217 parking spaces on-site and will create, implement, and enforce a strict set of guidelines relating to student drivers and where they are permitted to park;
- (d) A student driving plan mandating that student drivers must apply for permission to drive to the School, must park on campus, must carpool, and must park in designated spaces. Students will not be permitted to drive off-campus for lunch;
- (e) A walk/bicycle initiative to encourage students to arrive at School other than by car, including requiring any student whose sibling is dropped off at the School's Whitehaven campus to walk to the Foxhall campus; and
- (f) A staggered arrival and dismissal time plan, with at least a 20-minute difference between the middle and upper school start and dismissal times and a requirement that faculty report before 7:30 a.m.

46. The TMP will be part of the enrollment contract between the School and the students' families and compliance with it will be required for continued enrollment at the School.

47. The School will observe and monitor on-site traffic, driveway use, queuing, parking, and arrival and dismissal of students, and any students violating parking policies will be subject to revocation of driving privileges or eventual suspension or expulsion from the School.

48. The Board credits DDOT's oral testimony at the public hearing and its reports dated February 24, 2006 and June 9, 2006, in which it stated that implementation of School's access and circulation plan, its TMP, and the Revised Foxhall Road Plan (Exhibit No. 84) will ensure that the School will not create any adverse impact due to traffic.

C. Parking

49. For middle schools, the Zoning Regulations require two parking spaces for every three faculty and other employees. For high schools, the requirement is two spaces for every three faculty and other employees plus one space for each 20 classroom seats, or one space for each 10 seats in the largest gym, auditorium, or area useable for public assembly, whichever is greater. 11 DCMR § 2101.1.

50. As a private school use, the School is also required to have "ample" parking, 11 DCMR 206.

51. The Zoning Regulations therefore require that a minimum of 112 parking spaces be provided by the School. The School is providing a total of 217 on-site parking spaces, 170 underground spaces and 47 above-ground spaces.

52. In the event more parking is required, perhaps it will be provided on the Whitehaven campus. If parking need exceeds even this capacity, the School will arrange for satellite parking and shuttle buses.

53. The School will also carefully monitor all parking on the campus and is attempting to prevent any off-campus or street parking by anyone involved with the School to avoid any impact on the neighborhood.

D. Other Potentially Objectionable Conditions

54. The Applicant will take several precautions to avoid any immediate objectionable impact on the surrounding parkland, including moving all the retaining walls at the perimeter of the Property 18 inches inside the property line and away from the parkland, and removing a staircase that was originally planned to descend to Glover Archbold Park.

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The maximum height of the retaining walls will also be capped at five feet and if the grade requires a higher wall, a planted slope bank and second retaining wall further away will be constructed.

55. The Applicant will plant evergreen and deciduous trees to screen the school buildings and the playing field from Foxhall Road.

56. To manage storm water and runoff during rain and snow events, the Applicant will incorporate 24-hour extended detention of the one-year storm into the proposed detention vaults. This method is "state-of-the-art" in protecting against downstream erosion and has recently been adopted into the storm water standards of both Maryland and Virginia. The storm water management system adopted by the Applicant will provide detention for the two- and 15-year storms and storm water quality management as required by the District of Columbia. The storm water management system will limit discharge rates to two cubic feet per second ("CFS") at each of the four proposed storm water facilities for the one-, two-, and 15-year storm events, but not for larger events. Existing, pre-development, storm water flows for larger storm events also exceed two CFS.

57. Storm water fall-out will be directed into the Northern Dell, but the School's storm water management system also incorporates a special overflow mechanism that, in the case of an extreme storm event, will share the overflow between both the Northern Dell and the Southern Swale drainage systems. There are also two smaller storm water release locations, one in the northeast of the Property, and one in the southwest corner.

58. The storm water management facilities will have sand, cartridge, or similar filters to filter out suspended solids and consideration will be given to using natural features, such as plunge pools, bio-retention areas, and natural grasses, to enhance filtering capabilities.

59. A system of pedestrian paths through the School site will use, at least in some portions, porous paving materials, further enhancing storm water control and management.

60. The Applicant has adopted a tree preservation plan and intends to save at least 50% of the healthy special tree candidates and to plant many other new trees on the site. A Special Tree removal permit must be obtained for each special tree to be removed.

61. The Applicant will retain the Northern Dell as undeveloped, open space with no fence between it and Whitehaven Park. The School's landscape plan includes three open space areas – a nature amphitheatre, a large campus green, and a smaller courtyard. The landscape design also preserves valuable viewsheds.

62. The School will have a closed campus, with no students driving or walking off campus, except for emergencies or scheduled appointments.

E. Harmony with the Zoning Regulations and Map

63. The Comprehensive Plan Generalized Land Use Map designates the site as low-density residential and many residential neighborhoods include institutional uses, such as schools.

64. The Board credits the report and testimony of OP, which stated specifically that "the [School] proposal fulfills the intent of the Zoning Regulations."

The Residential Development/Theoretical Lot Subdivision

65. The Applicant is proposing to subdivide the remainder of the Property into 27 lots, each to contain a single-family dwelling.

66. The lots will vary in size, but all will meet the minimum lot size and lot width required for this R-1-B zone district. *See*, 11 DCMR §401.3. The minimum lot width will be 50 feet and the lot sizes will be between 7,800 square feet and 20,780 square feet, with an average size of 10,363 square feet.

67. Nine of the lots will be matter-of-right lots for zoning purposes, with street frontage on Hoban Road and vehicular access provided by a rear alley.

68. The other 18 lots will be theoretical lots for zoning purposes, and will be created pursuant to 11 DCMR § 2516. An internal, private road to be constructed by the Applicant will provide street frontage and access to these 18 lots.

69. All of the single-family dwellings to be constructed on these 27 lots will meet all the dimensional requirements of the R-1-B zone district. Each will have a maximum of 40% lot occupancy, a maximum height of 40 feet and three stories, a rear yard of (at least) 25 feet and side yards of (at least) eight feet. *See*, 11 DCMR §§ 400.1, 403.2, 404.1, 405.9, and 2516.9.

70. As required by § 2516.5(b), the theoretical lots are also designed to leave an (at least) 25-foot front yard (front porticos excepted). Although not required of the matter-of-right lots on Hoban Road, the Applicant is setting back the dwellings on those lots (at least) 25 feet from Hoban Road (front porticos excepted).

71. The internal, private access road is a loop road and is a northward extension of existing 45th Street, N.W., which currently ends at Hoban Road. No part of the area to

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be used for the loop road is part of any of the theoretical lots or their yards. *See*, 11 DCMR § 2516.6(a).

72. The internal loop road will have sidewalks on one side to provide a safer, more “walkable” neighborhood.

73. For most of its length, the internal loop road is 28 feet wide, with two 10-foot travel lanes and one eight-foot parking lane. In some areas, however, the road narrows to 22 feet (within a 25-foot right-of-way), with two 11 foot travel lanes and no parking lane.

74. The Zoning Regulations require that the loop road be 25-feet wide for its entire length (11 DCMR § 2516.6(b)), and that if there is only one entrance or exit from the internal loop road to roads outside the theoretical subdivision, a turning area of not less than 60 feet in diameter must be provided. 11 DCMR § 2516.6(c). Section 2516.6(d), however, permits the Board to modify these requirements if the modification will not have an adverse effect on the present character and future development of the neighborhood. The Board must specifically consider building spacing and parking requirements.

75. The Board finds that even at 22 feet at some points, the internal loop road adequately provides safe access to the theoretical lots and that the reduced width is necessary due to the topography of the site and the preservation of trees.

76. Even with a somewhat reduced road width, the building spacing leaves ample open space between and around the single-family dwellings, and there is still sufficient room for parking in the parking lanes provided in the wider portions of the road, in the garages provided with the dwellings, and, if necessary, in the driveways also provided.

77. There is only one entrance/exit from the internal loop road to outside the theoretical lots – at the intersection of Hoban Road and 45th Street, N.W. There is no turning area provided, however, the fact that the road is designed as a loop obviates the need for a turning area, which would be necessary if the single access roadway ended in a cul-de-sac.

78. The Board credits OP’s testimony that “the modification from cul-de-sac to loop road is preferable” and that “the proposed loop road will not affect the future development of the area and the lots are above the area requirements and appropriate parking for each house is provided.”

79. The development of 27 single-family dwellings is not overly dense for the neighborhood and each dwelling will provide off-street parking.

80. The Development will generate between approximately 17 and 28 peak hour trips, less than one every two minutes, therefore, no objectionable increase in local traffic or street parking on currently-existing roadways is anticipated.

81. Vehicular access to all the new dwellings, including those fronting on Hoban Road, will be from the interior of the site, either directly off the internal loop road or from an alley system connecting to the loop road. Therefore, no curb cuts will need to be made along Hoban Road and traffic will not be hindered by vehicles entering or exiting driveways onto Hoban Road.

82. The combined traffic from the School and the Residential Development will have a minimal impact on Foxhall Road because it will only increase northbound peak hour traffic on Foxhall as little as five, but not more than 14%, and it will only increase southbound peak hour traffic by between one and four per cent.

83. In terms of delays, the combined traffic would add about 12 seconds of delay for vehicles entering the Foxhall/Whitehaven intersection at the a.m. peak hour and no measurable delay during the p.m. peak hour. At the intersection of Foxhall and Reservoir, 3-8 seconds of delay would be experienced.

84. In order to ensure that the Residential Development does not have an adverse effect on the present character and future development of the neighborhood, the Applicant has agreed to implement, three documents containing restrictions and constraints on various aspects of the Residential Development.

85. These three documents, called the Architectural Agreements, marked as Exhibit No. 87, and attached hereto as an addendum to this Order, must be fully implemented and complied with by the Applicant as a condition of this Order.

86. The first of the Architectural Agreements sets forth guidelines, covenants, conditions, and restrictions applicable to all the dwellings in the Development. The guidelines cover general site and building elements, such as fences, retaining walls, leadwalks and steps, mailboxes, fenestration, chimneys, stoops, and porches and porticos. Examples of the covenants, conditions and restrictions are also set forth, and are those that are generally applicable to residential developments with homeowners' associations, such as no billboards or signs may be displayed, trash must be regularly removed, and no noxious or offensive activities can be carried on. The last part of the first Agreement sets forth a simplified set of architectural restrictions to apply only to the new dwellings fronting on Hoban Road.

87. The second of the Architectural Agreements sets out, in great detail, specific architectural restrictions relating to the initial construction of the dwellings fronting on

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Hoban Road. These restrictions control many aspects of the appearance of the dwellings, including the percentage of the façade which must be fenestrated, the size and orientation of window openings, the materials to be used to cover the exterior walls, and whether or not shutters will be used.

88. The last of the Architectural Agreements explains how the Applicant and the builder(s) will comply with, and enforce, the Hoban Road restrictions, including an explanation of dispute resolution mechanisms to be used if a dispute arises with the neighborhood, specifically with the Colony Hill Neighborhood Association.

89. The Applicant will plant many new trees throughout the Residential Development and has designed the Development, including the internal loop road, so as to save as many existing trees as possible.

90. The Residential Development will include three pocket parks, two of which feature important, mature trees, and one of which contains an ephemeral stream. The ACOE took jurisdiction over a 400-foot stretch of the stream and the Applicant is preserving a 25-foot buffer around it.

91. The design of the Development has also been altered from its original in order to enhance protection of adjoining parkland. Specifically, to achieve this goal, the number of dwellings to be constructed was reduced by one and the Applicant has designed the project to create appropriate and attractive park edge conditions. All the dwellings are set back 30 feet from the parkland and a staircase planned to descend to the Glover-Archbold Park was removed. All retaining walls were moved 18 inches back from the parkland and their maximum height will be capped at five feet. If the grade change requires a higher wall, a planted slope bank and second retaining wall further away will be constructed.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized to grant a special exception where, in its judgment, the special exception will be "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property." 11 DCMR § 3104.1. Certain special exceptions must also meet the conditions enumerated in the particular sections pertaining to them. In this case, the Applicant had to meet both the requirements of § 3104 and § 206 (Private Schools and Staff Residences) with respect to the School, and had to meet the requirements of both § 3104 and § 2516 (Exceptions to Building Lot Control, *i.e.*, Theoretical Lot Subdivisions) with respect to the Residential Development.

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The School Special Exception

Section 206.2 of the Zoning Regulations mandates that the School be located so as not to become objectionable to surrounding properties due to noise, traffic, number of students, or other objectionable conditions. 11 DCMR § 206.2. Section 206.3 states that ample parking must be provided, but not less than that required by Chapter 21, to accommodate students, teachers, and visitors. 11 DCMR § 206.3. Similarly, § 3104 stipulates that the special exception use not tend to affect adversely neighboring properties, and further, that it be in harmony with the Zoning Regulations and Map.

The Board finds that the School use will not adversely affect, or be objectionable to, the surrounding properties. The School buildings will be situated within the topography so as not to cause any particular visible or audible (noise) impact on the surrounding neighborhood. To further mitigate any such impacts, the Applicant has agreed to be bound by an Operations Plan, controlling various aspects of the School's use, particularly the use of the athletic field. To alleviate any potential impacts on local traffic, the School is both implementing a strict Travel Management Plan and is working with DDOT, and paying for, improvements to Foxhall Road and its intersection with the School's entrance.

The size of the School, at 440 students and 100 faculty members, is manageable on the site and within the community. The enrollment maximum permits all the School's current elementary students to remain enrolled at the School while allowing for some natural expansion at grades seven and nine as is the practice at many schools. The School will be providing ample on-site parking, and significantly more than is required by Chapter 21. The 217 spaces provided will be more than sufficient to accommodate the needs of students, teachers, and visitors. Parking is also addressed in the TMP and the Applicant has been sensitive to the needs of the community regarding parking, as well as student drop-offs and pick-ups.

The Applicant has also worked with the neighborhood and the National Park Service to strike a balance between the needs of development and the preservation of the most valuable natural resources of the Property and the adjoining parkland.

The Applicant's proposal for the School is in harmony with the purpose and intent of the Zoning Regulations and Map. The School buildings will be constructed within all the dimensional requirements of the R-1-B zone district and the use is consistent with the designation of low-density residential on the Comprehensive Land Use Map, particularly at its location at the confluence of two larger streets – Whitehaven Parkway and Foxhall Road.

The Applicant has requested that it be permitted to construct the various School buildings in phases, over a multi-year period. This Order is conditioned to allow the Applicant to do so.

The Residential Development Special Exception

Section 2516 permits the construction of two or more principal buildings on a single subdivided lot in a residence zone, including private schools. The Applicant intends to subdivide Lot 825 into 27 individual lots and construct a new single-family dwelling on each one. In order to be permitted to do this, the Applicant must meet certain provisions set forth in § 2516. As set forth in the Findings of Fact and briefly discussed below, the Applicant's proposed Residential Development meets all the applicable provisions of § 2516, as well as the requirements of § 3104.

Each of the new dwellings will meet all the dimensional requirements of the R-1-B zone district and/or the special requirements of § 2516, and each will provide an off-street parking space. Each of the dwellings will have street frontage, either on Hoban Road or on an internal, private loop road. No part of the road will also comprise a part of any of the theoretical lots or yards. Although the road will not be 25 feet wide for its entire length and there is no turning area provided, which are requirements of § 2516.6(b) and (c), respectively, the Board is permitted to modify these requirements pursuant to § 2516.6(d).

Modification of the street width and turning area requirements necessitates that the Board consider whether such modification is likely to have an adverse effect on the present character and future development of the neighborhood, taking into account the spacing of buildings and the availability of parking. The Residential Development was designed to provide ample open space around the dwellings, with trees and other landscaping. The parking provided along the loop road, in the garages, and in the driveways, as necessary, is sufficient to meet the needs of residents, guests and service/deliverymen. The loop road is two-way and circles the development, providing easy ingress and egress. Because it is a *loop* road, and does not end in a cul-de-sac, as is often the case in theoretical lot developments, there is no need for a turning area. The Board concludes that the street width and turning area modifications are not likely to have an adverse effect on the present character or future development of the neighborhood.

Pursuant to § 2516.9, the entire Residential Development must meet the same standard – no likely adverse effect on the present character and future development of the neighborhood. Similarly, § 3104.1 mandates that the Development must not tend to affect adversely the use of neighboring property and that it must be in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board concludes that these requirements are clearly met by this application. The Development is

consistent with the type of development envisioned in an R-1-B zone district. In fact, with lot sizes substantially larger than required by the Zoning Regulations, the density of the Development is significantly less than that permitted. There is no evidence that the Development will likely have any adverse effect on the neighborhood or on the use of neighboring property.

Great Weight

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations of the Office of Planning. D.C. Official Code §§ 309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive.

The School Special Exception

ANC 3D recommended conditional approval of the School special exception. The Board agrees with the ANC's recommendation of approval. The ANC's recommendation included conditions regarding noise, traffic, parking, enrollment, and environmental protection. Although each of the ANC's requested conditions may not be met to the degree to which the ANC would perhaps like, the Board concludes that all of the ANC's concerns are adequately recognized, addressed, and dealt with in the conditions to this Order and by the provisions of the Applicant's Operations and Travel Management Plans. The Office of Planning likewise recommended conditional approval of the School special exception and the Board likewise agrees with this recommendation. OP recommended a list of 11 conditions, addressing various aspects of the School's operations. The Board concludes that all of OP's concerns are adequately recognized, addressed, and dealt with in the conditions to this Order and by the provisions of the Applicant's Operations and Travel Management Plans.

The Residential Development Special Exception

The ANC recommended conditional approval of the Residential Development special exception. The Board agrees with the ANC's recommendation of approval. The ANC's conditions included implementation and recordation of the Architectural Agreements, as well as conditions dealing with traffic and environmental issues. The Board concludes that the ANC's concerns have been adequately recognized, addressed, and dealt with by the Applicant and by the conditions to this Order. The ANC's proffered conditions concerning environmental issues are more detailed than the Board feels is necessary, but overall, the Board concludes that even these detailed conditions have been met substantially by the Applicant and the conditions to this Order.

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The Office of Planning also recommended conditional approval of the Residential Development special exception. The Board, again, agrees with this recommendation of approval. OP recommended 13 conditions, all of which, the Board concludes, have been adequately addressed and substantially met by the Applicant and the conditions to this Order.

One of OP's recommendations merits a brief mention here. OP encouraged the Applicant to use pervious materials on the driveways in the Residential Development. The Board credits the testimony of the Applicant's architect that due to the large gradient changes, the low impermeability of the soil on the Property, and the high failure rate when traversed by heavy vehicles, the use of pervious materials on the driveways and roadways is not practical or advisable. Moreover, the Environmental Protection Agency recommends against the use of porous materials for this type of property. See, Exhibit No. 91.

For the reasons stated above, the Board concludes that the Applicant has met its burden of proof with respect to an application for a special exception pursuant to §§ 3104 and 206 to construct a middle and high school campus, and with respect to an application for a special exception pursuant to §§ 3104 and 2516 to construct a residential development of 27 new single-family dwellings, including an 18-lot theoretical lot subdivision. **THEREFORE**, it is hereby **ORDERED** that the application for a special exception for a private school for Lots 826 and 827 in Square 1346 is **GRANTED**, **SUBJECT** to the following **CONDITIONS, NUMBERED 1 THROUGH 14**, which are applicable to **Lots 826 and 827 only**:

1. The School shall be constructed in accordance with the plans prepared by Macris, Hendricks and Glascock, P.A. dated June 8, 2006 and marked in the record as Exhibit 94.
2. The School shall be constructed in accordance with the Illustrative Plans prepared by Barnes Vanze Architects, Inc. and marked in the record as Exhibits Nos. 93 and 96.
3. The maximum student enrollment shall be 440 students.
4. The maximum number of faculty and staff shall be 100.
5. The Northern Dell, Lot 826, shall remain as open space.
6. With the consent and approval of DDOT, the School shall implement, or cause to be implemented, all the changes to the Foxhall Road right-of-way shown on the

Revised Foxhall Road Plan (Exhibit No. 84) including the southbound left turn lane, northbound right turn lane, two northbound through lanes and traffic signal.

7. The School shall fully implement and comply with the St. Patrick's Operations Plan, marked in the record as Exhibit No. 86.
8. The School shall fully implement and comply with the 1801 Foxhall Road X-Point Travel Management Plan ("TMP"), which is Exhibit I to the Applicant's Pre-Hearing Submission, marked in the record as Exhibit No. 35.
9. The School shall submit its final St. Patrick's Travel Management Plan to DDOT and ANC 3D prior to the opening of the 1801 Foxhall Road campus;
10. With the consent and approval of DDOT, the School shall construct a six-foot sidewalk along Foxhall Road pursuant to DDOT recommendations and approval.
11. The School shall provide an annual report of the TMP, including a report on the inbound peak hour traffic count, to the DDOT and ANC 3D.
12. The School shall construct its stormwater management system in accordance with the Conceptual Storm Drain and SWM Plan, marked as Exhibit 94. The School's stormwater detention facilities will be designed in accordance with the District's requirements for storm water management and, in addition, will provide 24 hour extended detention of the one year storm. Further, discharge rates from these facilities will not exceed two cubic feet per second for one-, two-, and 15-year storm events.
13. The School shall conform to the Illustrative Parkland Edge Conditions restrictions, marked in the record as Exhibit No. 93.
14. The School may be constructed in phases over the course of seven years.

FURTHER, it is hereby **ORDERED** that the application for the special exception for a theoretical lot subdivision for Lot 825, Square 1346 is **GRANTED**, subject to the following **CONDITIONS, NUMBERED 1 THROUGH 6**, which are applicable to Lot 825 only:

1. The Residential Development shall be constructed in accordance with the plans prepared by Macris, Hendricks and Glascock, P.A. dated June 8, 2006 and marked in the record as Exhibit No. 94.

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2. The design of the Residential Development shall be constructed in accordance with the Illustrative Plans prepared by Barnes Vanze Architects, Inc. and marked in the record as Exhibit No. 96.
3. The Applicant shall fully implement and comply with the Architectural Agreements, marked in the record as Exhibit No. 87.
4. The Applicant shall construct its stormwater management system in accordance with the Conceptual Storm Drain and SWM Plan, marked as Exhibit No. 94. The Residential Development's stormwater detention facilities will be designed in accordance with the District's requirements for stormwater management and, in addition, will provide 24 hour extended detention of the one year storm. Further, discharge rates from these facilities will not exceed two cubic feet per second for one-, two-, and 15-year storm events.
5. The Residential Development shall be constructed in accordance with the Illustrative Tree Preservation Plan marked in the record as Exhibit No. 96.
6. The Residential Development shall generally conform to the Illustrative Parkland Edge Conditions restrictions marked in the record as Exhibit No. 93.

**VOTE ON THE SCHOOL
SPECIAL EXCEPTION: 4-0-1**

(Geoffrey H. Griffis, Curtis L. Etherly, Jr., John A. Mann II, and John G. Parsons to grant; Ruthanne G. Miller abstaining, not having participated in deliberations.)

**VOTE ON THE RESIDENTIAL
DEVELOPMENT SPECIAL
EXCEPTION: 4-0-1**

(Geoffrey H. Griffis, Curtis L. Etherly, Jr., John A. Mann II, and John G. Parsons to grant; Ruthanne G. Miller abstaining, not having participated in deliberations.)

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

Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning 

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FINAL DATE OF ORDER: NOVEMBER 16, 2006

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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.

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, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. LM

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 17429

As Director of the Office of Zoning, I hereby certify and attest that on NOVEMBER 16, 2006, a copy of the 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:

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