

**Advisory Neighborhood Commission 3D
PO Box 40846, Palisades Station
Washington, DC 20016**

February 17, 2004

Mr. Geoffrey Griffis, Chair
District of Columbia Board of Zoning Adjustment
441 Fourth Street, N, Suite 210-S
Washington, DC 20001

**Re: St. Patrick's School (St. Patrick's) - 4925 MacArthur Boulevard, NW
Request for Clarification or, in the Alternative,
Modification of BZA Order No. 16852**

Advisory Neighborhood Commission 3D opposes the application of St. Patrick's School for a clarification or, in the alternative, modification of BZA Order No. 16852. The time for such a request has expired and the changes to the basement have been completed. Two years ago the Commission voted 5-0-0- to oppose the application of St. Patrick's to place a junior high school for 60 students in the midst of a residential neighborhood after careful consideration of the requirements listed under Title 11, §206. The BZA granted permission for the establishment of the junior high school based on a number of conditions that include the plans filed as exhibits. The use of the basement space has been changed, violating a condition of BZA Order No. 16852. Timely notification was not given by St. Patrick's. In addition, the change of use of the basement and creation of more useable space allows more intense use of the building. (TAB 1).

1. SUMMARY OF FACTS

One fact remains constant throughout exhibits and testimony presented during BZA hearings on Application 16852, and in the Final Order – the use of the basement area of the building. The basement was designated as usable utility space. There would be no student load per BOCA in the building's existing basement containing 1316 sq. ft. The request for clarification or modification to BZA Order 16852 is not about the creation of a music room, it is about a change of use of basement space that took place after BZA Order 16852 was signed on March 25, 2002.

- The Statement of the Applicant (Statement) signed by Allison Prince on April 2, 2002, states (p. 6): "The building contains approximately 4,325 square feet of usable space...suited to...SPS's middle school program." (TAB 2).
- The Statement discusses complete rehabilitation and upgrading of the existing building (p. 7), "the building will be fully renovated and used for seminar-style classrooms." (TAB 3).

- The Statement includes a list of proposed upgrades to the building (p.18) that does not list any proposed change in use of the basement. (TAB 4).
- Exhibit A in the list of Exhibits in Support of the Application (p.23), denotes the net amount of classroom space on each floor which is consistent with the statement on page 6 mentioned above – the total amount of useable space is 4,325 sq. ft. (TAB 5).
- Exhibit A in the list of Exhibits in Support of the Application (p.23), states, “88 Total Students per BOCA Code allowances.” (TAB 5).
- Exhibit A in the list of Exhibits in Support of the Application (p.23), refers to the “Plans for the renovation of the school,” Maximum Occupancy Information, states, “Basement Plan: 1316 sq. ft. No student occupant load. To be used as utility space.” (TAB 5).
- Exhibit A in the list of Exhibits in Support of the Application (p.23), does not include the 1316 sq. ft. of basement space in the total usable space in the building. (TAB 5).
- The drawings, (Exhibit A of the Statement), indicate Utility Room on all spaces with the exception of the proposed life safety and handicapped accessibility upgrades and elevator machine room. (Exhibit A, GTM Architects, 04/01/2002). (TAB 6).
- Testimony on April 16, 2002 (p. 286) by David Konapelsky references upgrades to the building: “a three-story with the basement life safety addition which includes a code-compliant, fire-rated enclosed stair and an elevator for handicapped access. The addition measures 386 square feet per floor, roughly 19 by 19, including an offset for the elevator.” (TAB 7).

2. CHANGE OF USE

The Statement of Applicant dated April 2, 2002, followed a “Preliminary Design Review Meeting” held February 25, 2002, between Sidney Lester, Bellur Ravishankar and Toyee Bello of DCRA and David Konapelsky and Amanda Kahles of GTM Architects. Mr. Konapelsky is listed as St. Patrick’s Project Architect (Statement, p. 21). The *Meeting Minutes* reveal discussions took place concerning the basement use and reflect the following: “[a]ll spaces in the basement should be identified as unusable space or mechanical rooms on the plans. If rooms are to be used for storage, they must be rated and sprinkled according to their size. If the basement is to be converted into usable space, the floor level would need to be lowered to accommodate a 7' 6" ceiling height and an additional exit would need to be provided at grade on the front of the building.” (TAB 8).

Mr. Konapelsky was informed of what changes would be required if the basement use were to change from utility/mechanical space to classroom space on February 25, 2002 and the meeting minutes are on file at BLRA with Mr. Konapelsky's permit drawings. A Feasibility Study (GTM Architects Letter to Peter Barrett), submitted to St. Patrick's School on March 5, 2002, refers to the Preliminary Design Planning Review Meeting with the District and references basement use in relation to the location of the elevator in the life safety addition. The Feasibility Study notes, "[t]he elevator also makes access to the basement convenient, which is where storage and utility spaces would be logical." The sprinkler system is also noted, "[a]ddition of a sprinkler system would not be required for the building since the total square footage is not more than 20,000 sf or higher than 3 stories." (TAB 9).

The Statement of Applicant and Feasibility Study are consistent in their description of use of the basement space -- No Student Load.

The decision to change basement space from utility/mechanical space to classroom space occurred after the final BZA hearing (October 8, 2002). The addition of a sprinkler system, whether voluntary or required, and second means of egress on the front of the building became necessary as a result of the change of use of basement space. On October 23, 2003, seven months after the BZA Order was signed, Mr. Konapelsky prepared a memo to St. Patrick's justifying the change of use in the basement. The memo refers to the Preliminary Design Meeting (February 25, 2002), with District Building Code Officials, and states, "[a]ll spaces in the basement should be identified as unusable space or mechanical rooms on the plans. If rooms are to be used for storage, they must be rated and sprinkled according to their size. If the basement is to be converted into usable space, the floor level would need to be lowered to accommodate a 7' 6" ceiling height and an additional exit would need to be provided at grade on the front of the building." Mr. Konapelsky was informed on February 25, 2002 -- twenty months before his memo was written to the school on October 23, 2003 -- detailing the requirements to change the basement utility/storage space into useable classroom space. There are no plans or exhibits in the BZA record, nor was there any testimony, to indicate there was intention or need to change the basement from utility/storage space to classroom space. (TAB 10).

3. THE PERMITTING PROCESS

A meeting Neighbors United Trust (NUT) and I had on November 19, 2003, with Drek Wilson, deputy to zoning administrator Denzil Noble, revealed that none of the Exhibits presented during the BZA hearings or a copy of BZA Order 16852 were on file at DCRA. A copy of the Order was given to Mr. Wilson, and Mr. Wilson stated that in his opinion the drawings were "good, or code compliant" on which a construction permit had been issued on June 23, 2003. (TAB 11).

Because there was a significant question as to the legality of DCRA action, a request for an

inspection and stop work order were filed with DCRA by NUT. (TAB 12).

Multiple follow-up calls were placed to Denzil Noble who was “on leave,” “at a staff retreat,” “at a hearing,” “out of the building,” or “not at his desk.” Although I identified myself as the ANC Commissioner for the Single Member District, Mr. Noble never returned a phone call. The failure of DCRA to respond or to investigate the complaint resulted in the filing of Form 300 with the Office of Zoning by NUT on January 21, 2004. The complaint specifically addressed the change of use of basement space and enclosure of a portion of the front porch to allow for the addition of a second means of egress on the front of the building. (TAB 13).

The February 2, 2004, request of St. Patrick’s to the BZA, for a clarification or modification, (p. 3), states “[f]ollowing the BZA’s approval of the application, the architects for St. Patrick’s produced working drawings based on the drawings submitted to the BZA.” The Exhibits presented to the BZA (Statement, Exhibit A) (TAB 6) and those submitted on February 2, 2004 in Tab B, as BZA Plan, (TAB 14) indicate utility rooms, elevator, elevator machine room and a new stair. The addition of life-safety systems was addressed in BZA Order 16852, (Findings of Fact, #3, page 4). (TAB 15). The change of use from utility space to classroom space in the basement was not addressed in BZA Order 16852 in any exhibits submitted by Mr. Konapelsky, or in any statement made by Mr. Konapelsky. His representations were consistent regarding the use of basement space -- there would be “no student load.”

Further, on February 25, 2002, DCRA informed Mr. Konapelsky what changes would be necessary if the use of the basement space were to change to permit student use of the basement space. In fact, Mr. Konapelsky knew more than two months before the first BZA hearing (April 16, 2002) what would be necessary to convert the basement into useable space. But the BZA was not informed by St. Patrick’s of the change of use until February 2, 2004, two years after Mr. Konapelsky’s meeting with DCRA and one year after BZA Order 16852 was issued. **Only when DCRA placed a hold on the Certificate of Occupancy did St. Patrick’s submit a request to the BZA for Clarification or, in the Alternative, Modification of BZA Order 16852 (dated March 25, 2003).**

The creation of a travel path, increase in ceiling height, addition of a sprinkler system and creation of a second means of egress on the front of the building would be required if the use of basement space were to change from utility space to classroom space. It was not necessary to create a pathway of 10' by 12'. It was not necessary to change its use from utility space to classroom space. It was not necessary to create a second means of egress on the front of the building, lower the basement to create ceiling height of 7' 6" for the entire room, and install a sprinkler system until the change of use from utility space to classroom space occurred. Changes made to the building were major in nature and therefore are outside the scope of Section 3129.7.

4. TIME HAS EXPIRED TO MODIFY THE PLANS

St. Patrick's has requested a modification to the plans based on provisions of 11 DCMR § 3129. The Zoning Regulations state: "A: request for modification of the plans shall be filed with the Board not later than six (6) months after the date of the final order approving the application." Accordingly, the school needed to file its request on or about September 25, 2003. (TAB 15).

The date (April 7, 2003), on the plans in St. Patrick's submission requesting a clarification or modification indicates St. Patrick's knew that the use of the basement would be changed. That was just two weeks after BZA Order 16852 became final and well before September 25, 2003 when the school should have filed its request for a modification. (See Building Permit Plan). (TAB 16).

5. EXPANSION FROM A ZONING STANDPOINT

St. Patrick's argues that **None of the modifications constituted an expansion from a zoning standpoint. There was no increase in the footprint of the building, no addition of gross floor area and no change in the maximum number of faculty, staff and students permitted in the building.** The Exhibits presented to the BZA on April 16, 2002 and throughout the hearings automatically became Conditions of BZA Order 16852. (§3125.7 & 3125.8). Therefore the change of use of the basement **does** constitute a violation of the Zoning Code because 120 sq. ft. additional useable space was created by lowering the basement floor and would permit six additional individuals in the building under BOCA requirements. In this case the Conditions of BZA Order 16852 determine the number of students and teachers allowed in the building, however, when St. Patrick's sells the building the new owner would apply for 94 persons in the building under BOCA instead of the current 88 indicated in The Statement of Applicant (p.17). Not only does the change in use create more useable space in the basement, it allows more intense use of the entire building and construction was not carried out in accordance with the approved plans. (TAB 17).

6. A PATTERN OF BEHAVIOR

Across time, a pattern of behavior by St. Patrick's has emerged. In 1999 the school filed for a special exception to build a gymnasium and parking lot for 68 cars. The request received unanimous approval from ANC 3D. An application was approved on December 8, 1999 for a special exception to allow the construction of a one-story athletic building and gymnasium for which the BZA issued Order 16517 on December 28, 1999. On June 28, 2000, six months after BZA Order 16517 was issued, St. Patrick's met with Michael D. Johnson, Zoning Administrator, to request a revision to the plans for the gymnasium. Parking spaces would be reduced from 68 to 62 and an additional curb cut would be required to permit two levels of parking. This request,

“for a minor change” did not go back to the BZA and there are only plat drawings in the BZA files from the December 8, 1999 hearing. The school claimed the revisions were necessary because “the gymnasium depicted in the original plans proved to be financially untenable for St. Patrick’s to construct. Rather than returning to the BZA to request a “change or modification” to the Order, the school went directly to DCRA on June 28, 2000. (TAB 17).

On July 9, 2002, David Konapelsky was cross examined regarding the enclosure of the front terrace. Mr. Konapelsky was asked if the front terrace was included in the footprint of the building. He responded, “[i]n the overall footprint, when we calculated percentage of lot occupancy, yes, but not in the usable footprint. In other words, it’s not a functional space or a place where we calculated student populations.” The basement of the building was not calculated in functional space. (July 9, 2002 Transcript, p. 372). (TAB 18).

A follow-up question was raised regarding the enclosure of the front terrace, “[c]ouldn’t the school later build on it and substantially increase the size of the building?” Ms. Prince, St. Patrick’s zoning attorney responded, “[a]nd of course, Board of Zoning Adjustment approval would be required for any enclosure of the existing porch, even though it’s part of the footprint...[b]ecause it increases the habitable space for the use of the school.” St. Patrick’s architect and zoning attorney were aware that if changes were to be made that would increase useable space, the school would be required to return to the BZA. (TAB 19).

Condition 8b of BZA Order 16852 states, “[b]efore seeking a certificate of occupancy for the subject property, the Applicant shall submit the carpool program for review and approval by the District Department of Transportation (DDOT). The Applicant shall submit a progress report evaluating the carpool program to DDOT once per year...” No report has been submitted to DDOT since October 6, 2002. A Certificate of Occupancy was issued without a progress report. (TAB 20).

On September 22, 2003, a letter was sent to Denzil Noble explaining that the yield from acceptances had caused St. Patrick’s to exceed its student cap due to an increase in students on Financial Aid. The condition governing the school’s student cap of 440 was set forth in BZA Order No.15374, dated October 30, 1990. (TAB 21).

A hearing took place on December 3, 2003 and on January 13, 2004, the BZA granted the request of St. Patrick’s for an increase in the faculty and staff cap (BZA Application No. 17081). BZA Order No. 15374, dated October 30, 1990, capped the number of staff at the school at 60. The school had 103 staff members when it appeared at the public meeting on January 13, 2004. (TAB 22).

7. POSITION OF ANC 3D

On April 4, 2002, ANC 3D submitted a letter reflecting the vote of the ANC 3D on the application of St. Patrick's for a special exception to locate a junior high school at 4925 MacArthur Boulevard. The Commission voted 5-0-0 to deny the request. In its deliberations the Commission thoroughly reviewed each element under Title 11 §206, noise, traffic, number of students or otherwise objectionable conditions. The Commission's findings are outlined in the April 4, 2002, submission to the BZA.(TAB 22).

Advisory Neighborhood Commission 3D does not support the untimely request of St. Patrick's School for a Clarification or, in the Alternative, Modification of BZA Order No. 16852. Numerous indications were given in plans and exhibits that the basement would be used as utility/storage space. Additional useable space has been created in the basement outside plans and exhibits presented to the BZA. The use of the basement has changed and intensity of use of the building has increased. Therefore, ANC 3D requests that the BZA take the following actions with regard to the request of St. Patrick's:

- deny a modification of BZA Order 16852;
- deny any student load in the basement;
- deny any use of the basement space for other than utility/storage space or that required to make the basement space code compliant;
- require St. Patrick's to seal up the second means of egress on the front of the building if it is not required to make the building code compliant; and
- require the school to install proper buffering if noise is a concern for Mr. and Mrs. Houy, the neighbors living immediately to the east of the school.

Advisory Neighborhood Commission 3D requests that its opinion be afforded the great weight to which it is entitled under DC Law.

Sincerely,

Alma H. Gates
Chair, ANC 3D

cc: All Parties

Mr. Geoffrey Griffis
February 17, 2004
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**Certificate of Service
16852**

I hereby certify that on February 17, 2004, a copy of the foregoing letter and attachments was delivered by hand to the following:

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