ANC 3F Forest Hills/North Cleveland Park
Phil Kogan, SMD 3F01
Karen Perry, SMD 3F02
Robert Maudlin, SMD 3F03
David Bardin, SMD 3F04
Doug Mitchell, SMD 3F05
Cathy Wiss, SMD 3F06
Lyn Oglesby, SMD 3F07

May 8, 2001

D.C. OFFICE OF ZONING
RECEIVED
2001 MAY -8 PM 1:10

Board of Zoning Adjustment
for the District of Columbia
441 4th Street NW
Suite 210-S
Washington, DC 20001

Re: Board of Zoning Adjustment Application No. 16611, Edmund Burke School

Dear Members of the Board:

The pre-hearing statement accompanying the referenced application proposes construction of an addition to the Edmund Burke School at 2955 Upton Street NW. Application 16611 was initially filed with the BZA on July 7, 2000, using BZA Certification Form 1, Zoning Self-Certification Form. In a September 28, 2000, letter ANC 3F requested that the BZA refer Application 16611 to the Department of Consumer and Regulatory Affairs (DCRA) in order that DCRA could conduct a complete review of the application to determine the relief required under the zoning code. ANC 3F reiterates its belief that the most effective and fair way to process applications such as the referenced application is through the normal process of DCRA zoning review. This approach ensures that there is a complete review of the zoning requirements before the application reaches the decision level for a special exception. It also ensures that the rights and interests of all parties are given due consideration and places the burden of zoning review in DCRA, the agency charged with this responsibility.

The referenced application states that relief is requested in the form of a special exception for use as a private school for lots 27, 28, and 65 in Square 2243 and also requests relief from Section 411 of the Zoning Regulations to allow more than one roof structure housing mechanical equipment. These lots are located at the northeast corner of Upton Streets and Connecticut Avenue. Lot 27 fronts on Upton Street to the south; lot 28 is a corner lot that fronts on Upton Street to the south and Connecticut Avenue to the west; and lot 65 fronts on Connecticut Avenue to the west. Each of the lots is bounded on the east by a public alley that accommodates one-way south bound traffic between Van Ness Street and Upton Street.

The area to the immediate north, south, and east of these lots is a densely populated residential area with a mix of apartment buildings and single family homes on Connecticut Avenue, Van Ness Street, and Upton Street. Several thousand ANC 3F residents live in this area. The special exception is requested in order for the Edmund Burke School to construct, in a residentially

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362-6120 (voice)
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Board of Zoning Adjustment
District of Columbia
CASE NO.16611
EXHIBIT NO.150

Case No. 16611
Exhibit No. 150

zoned R-2 district in the case of lot 65 and a residentially zoned R-5-D district in the case of lots 27 and 28, an additional building for the existing school located at 2955 Upton Street NW. The Burke School's pre-hearing statement describes a five story building but does not identify the amount of square feet to be contained in the proposed building. The Applicant proposes to increase the student body of the Burke School from the currently authorized 270 students to 360 students, an increase of 33 percent. Faculty and staff would be increased from the currently authorized 35 to a level of 70, an increase of 100 percent.

ANC 3F considered the Burke School application at five separate meetings over a thirteen month period. Three of these were regular business meetings and two were special meetings devoted primarily to the Burke School application. Representatives of the Edmund Burke School appeared at meetings of ANC 3F on March 13 and October 11, 2000, and on January 16 and April 23, 2001. The Burke School expansion was also on the agenda of a regularly scheduled ANC 3F meeting on October 16, 2000. Each meeting was duly noticed and a quorum was present.

At the April 23, 2001, meeting ANC 3F, after considering the information presented by representatives of the Edmund Burke School and representatives of the surrounding neighborhood, voted three in favor, two opposed, one abstention, and one recused to recommend that the Board of Zoning Adjustment deny the request for a special exception contained in Application 16611. See enclosed resolution.

During development of the proposed addition to the existing school, the staff of the Edmund Burke School held discussions with neighbors in the community and members of the ANC. We appreciate the School's efforts in this regard. However, after considering the substantial negative impacts of the proposed project on the neighborhood, ANC 3F concludes that it strongly objects to the referenced application. Section 206 of the zoning regulations provides the applicable rules for locating private schools. It states that "The private school shall be located so that it is not likely to become objectionable to adjoining and nearby property because of . . . noise, traffic, number of students or otherwise objectionable conditions." If granted, the requested special exception will produce permanent negative impacts relating to traffic, noise, and quality of life for several thousand ANC 3F residents. These conditions are clearly objectionable under the meaning of the zoning regulations.

ANC 3F's specific objections to the referenced application are discussed below.

1. Traffic. The Edmund Burke School at 2955 Upton Street is located in a densely populated residential neighborhood. This neighborhood houses several institutions in addition to the Burke School. The Howard University Law School, the Levine School of Music, the Hillwood Museum, and the Embassy of the Netherlands are all located within approximately one half mile to the east of the Connecticut Avenue and Upton Street intersection. These institutions along with the Burke School generate very heavy traffic and parking demands on Upton Street, Van Ness Street, Tilden Street, 29th Street and Connecticut Avenue. The street system east of the Connecticut Avenue and Upton Street intersection consists of narrow

residential streets that do not follow a complete grid system. These streets were not designed to support the large volumes of traffic associated with current institutional uses.

Approval of this application would produce unacceptable and intolerable increases in already high traffic volumes in the neighborhood surrounding the Burke School. Ken Laden, the Associate Director for Transportation Planning in the Department of Public Works (DPW), examined this application and found that the existing Edmund Burke School currently generates traffic congestion and presents traffic safety problems. The DPW report points out that the neighborhood around the Burke School

> does not have a complete grid system of streets, due to geography and land use patterns. As a result, when there is congestion on Connecticut Avenue, through traffic, local residents and those with business in the community use adjacent alleys and residential streets to travel through the area. These alleys and streets are not designed to handle this level of traffic, compounding congestion and traffic safety problems.

Mr. Laden finds that the proposed expansion of the school would increase these traffic problems and concludes that the Department of Public Works "does not support the application to expand the school to the adjacent property, with a student population and faculty increase." ANC 3F concurs in DPW's conclusion and finds that traffic conditions created by Application 16611 conditions would be objectionable under the zoning regulations.

The referenced application requests a special exception for private school use for three parcels located at the intersection of Upton Streets and Connecticut Avenue Northwest. These parcels front on Upton Street and Connecticut Avenue. They also adjoin an alley that connects Upton and Van Ness Streets. The Connecticut/Upton and Connecticut/Van Ness intersections are heavily used and traffic volumes are high. The applicant's own traffic study determined that the intersection of Van Ness and Connecticut and the westbound intersection of Upton and Connecticut have a level of service of F, the lowest grade possible, during at least part of the day. ANC 3F neighbors in the vicinity of the Burke School know that both of these intersections cause frequent and time consuming delays throughout the day and evening. Further, these intersections feed the Van Ness and Upton residential side streets which are already overburdened with traffic generated by several large institutional neighbors. The Burke School application proposes to increase traffic volume generated by the school by 20 percent. Because this increase will be accompanied by a corresponding increase in traffic congestion and traffic safety problems, the BZA should not approve the application on this basis.

It is also important to note that the traffic study included in the applicant's pre-hearing statement understates traffic volumes since the Hillwood Museum was closed for renovation at the time traffic counts for the study were taken. This museum is permitted 250 visitors per day and has a permanent and volunteer staff of 100, many of whom arrive and leave by automobile. The study also fails to take traffic counts in the alleys that are an integral part of

the school's traffic circulation. The Burke School is a significant source of traffic generation in this neighborhood particularly during the morning and evening drop off and pick up periods. During both times of day neighbors find themselves competing with school generated traffic in order to enter or leave their own neighborhood. The morning period is difficult because of the intensity of the volume of traffic entering the neighborhood during a compressed amount of time. The evening pick up period is troublesome since after school activities extend this period to the evening rush hour. Further, the Burke School has not been effective in managing existing volumes of traffic at the school or in mitigating the impacts of its traffic on the residential neighborhood around it. The amount of disruption caused by school generated intense traffic activity can only increase if the level of traffic is allowed to increase. There is no assurance for the neighborhood, based on past experience, that the school will be able to effectively manage school generated traffic if Application 16611 is approved.

Several thousand ANC 3F residents live within a short distance of the five institutional neighbors which generate very heavy traffic demands on Upton Street, Van Ness Street, Tilden Street, and 29th Street east of Connecticut Avenue as well as on Connecticut Avenue itself. The building proposed by the Burke School will contain a 150 seat theater in addition to the existing 250 seat gymnasium. Events at this facility will further complicate traffic and parking problems for our neighbors. The intersection of Connecticut and Upton, is located one block south of the intersection of Connecticut and Van Ness. The Connecticut/Van Ness intersection as well as the corridor running from the Connecticut/Van Ness intersection to the intersection of Connecticut and Albemarle Street is characterized by major traffic congestion on a daily basis leading to costly delays for thousands of commuters and residents. This traffic back up at the Connecticut and Van Ness intersection often flows to the Connecticut/Upton intersection which is only 350 feet south of Connecticut/Van Ness. The applicant's traffic study classifies the level of service (LOS) at this intersection as F, or unsatisfactory. The westbound intersection of Upton and Connecticut also receives an F, the worst rating possible. The BZA should not approve an application that will significantly increase traffic volume at these intersections and on the surrounding residential side streets.

These traffic conditions can only worsen given ongoing development activity around the Connecticut/Van Ness and Connecticut/Upton corridor. This includes the completion of the International Chancery Center which will eventually house 23 chanceries generating more than 2,000 automobile trips per day in the corridor; the recent construction of an apartment building at 4025 Connecticut Avenue just south of the Connecticut/Upton intersection; recent construction of the Park Connecticut apartment building at 4221 Connecticut Avenue NW; the occupancy of 4250 Connecticut Avenue by several hundred Fannie Mae employees; construction of a 169 unit high rise residential project at 3883 Connecticut Avenue; increased occupancy of the Intelsat building at 4100 Connecticut Avenue; and construction of a 300 seat performance theater at the Levine School of Music.

The applicant's pre-hearing statement proposes to create three new layby areas to manage the substantial increase in drop off and pick up activity associated with Application 16611. ANC

3F opposes these layby areas because they would encroach upon the residential neighborhood and present safety problems. A proposed layby in front of the existing school would destroy three mature trees and create a safety hazard for pedestrians and students by narrowing a sidewalk that provides direct access to Connecticut Avenue. This sidewalk would also provide access for students walking between the existing building and the proposed building. We understand that the applicant has decided to drop this layby from the plan. A proposed layby in front of the new school building on Upton Street would create a safety hazard for pedestrians and students by narrowing a sidewalk that provides access to Connecticut Avenue. This sidewalk would also provide access for students walking between the existing building and the proposed building. Mr. Laden of DPW has stated that his agency opposes this layby. A proposed layby as well as construction of a driveway in front of the proposed building on Connecticut Avenue would eliminate much needed neighborhood parking spaces and create a safety hazard for pedestrians by narrowing a heavily used sidewalk that provides direct access to and from the Connecticut Avenue commercial district and to and from the Van Ness Metro stop. This layby would also remove mature trees.

Recently the applicant indicated informally that a revised traffic plan was being developed that would limit Burke School traffic on Upton Street by directing school generated traffic to the Connecticut Avenue entrance of the proposed building. Such a plan recognizes that substantial additional traffic generated by an expanded Burke School would have damaging effects Burke's residential neighbors and particularly on Upton Street. This plan fails, however, to recognize that substantial increases in traffic volumes cannot be accommodated in the limited amount of space proposed by the applicant. During the morning drop off period this revised plan would direct nearly 200 vehicles to the Connecticut Avenue entrance of the proposed building. This entrance has limited stacking capacity and a very short turnaround radius and would quickly become overwhelmed with traffic.

Back ups at the Connecticut Avenue entrance to the proposed building would create serious traffic problems on Connecticut Avenue which provides only two lanes of north bound traffic during the morning rush hour. Parents seeking to avoid back ups at this entrance would inevitably return to using Upton Street, Van Ness Street, and the alleys running between Veazey Terrace and Van Ness Street, between Van Ness and Upton Street, and between Upton and Tilden Street to approach the school. Vehicles heading downtown after drop-off would continue to use the local alley system as they do now. Afternoon pick-up would present the same problems as the morning drop-off as parents compete for the limited number of spaces in the queuing area. DPW's report points out that "under no circumstances should traffic be allowed to use alleys as a through street or drop-off point." The applicant's plan, because it increases traffic volumes by almost 20 percent, would inevitably lead to increased use of the public alleys for school traffic. The applicant's plan fails simply because the high volume of traffic is greater than the capacity of the available space for managing it.

The applicant's traffic plan also proposes that parents coming to the school from the north along Connecticut Avenue would be required to approach the school from the south. In order to change their direction of travel along Connecticut Avenue, parents traveling south bound

on Connecticut Avenue would be required to turn right onto Van Ness Street, travel to Reno Road and turn left, go to Tilden Street and turn left, and continue back to Connecticut Avenue where they would turn left in order to approach the school in the northbound lane of Connecticut Avenue. We believe it is unlikely that many parents would choose this circuitous route. Rather, it is more likely that they will continue to use the most direct route available to them and turn left at the left turn arrow at Veazey Terrace and Connecticut Avenue. From there this traffic would turn right into the Van Ness/Veazey alley and continue to Upton Street.

While traffic flow during the peak periods of student drop-off and pick-up are of highest concern to the Burke School's residential neighbors, traffic problems extend to the non-peak hours as well. This is because Edmund Burke School activities take place in the evening hours as well as on both weekend days. The Edmund Burke School's operations impact its residential neighbors seven days a week. During non-school hour periods the school's traffic control operations are lacking. This means that during these periods cars are often illegally stopped in the alleys between Van Ness and Upton and between Tilden and Upton Streets thereby blocking residents' access to the alley and to their own driveways. Also during these off peak periods cars are frequently stopped in the middle of Upton Street and block the flow of eastbound and westbound traffic as well as traffic through the alleys. These conditions would only worsen with the substantial increase in students and staff requested by the referenced application.

Further complicating the traffic management plan at the proposed facility is the frequent staging of large, inter-city size buses at the site. These buses transport Burke students to events and activities away from the school and bring visiting students to the Burke school. Application 16611 provides no plan for managing these large buses and no plan for mitigating traffic and parking demands associated with evening and weekend activities and events.

DPW's report states that a "traffic signal would need to be placed at Upton and Connecticut Avenue" as a condition of approval of the application. This recommendation attests to the fact that traffic conditions would worsen at the Connecticut and Upton intersection should the application be approved. This intersection is already rated at a Level of Service of "F", the worst possible rating. The recommendation for a traffic signal also indicates that the applicant's plan for directing traffic to the Connecticut Avenue entrance of the proposed building will not have the intended mitigating effects and that additional measures would be needed to address the increased traffic volume. Further, installation of a traffic signal at the Connecticut/Upton could have the unintended consequence of creating traffic back ups on Connecticut Avenue. With a new signal at Upton Street added to the existing signals at Tilden Street, Van Ness Street, and Veazey Terrace there would be four traffic signals within a very short three and one half block stretch of Connecticut Avenue. Rather than expediting the flow of traffic, this additional signal could have the effect of "boxing" traffic in and impeding the movement of cars in this short three block stretch. The proposed signal could also have the unintended negative consequence of encouraging more traffic onto Upton

Street. A signal at the Upton/Connecticut intersection could act as magnet for drivers seeking an outlet to Connecticut Avenue or a cut through to Rock Creek park.

The applicant's proposal would result in a significant increase in traffic in an already overburdened residential neighborhood. ANC 3F concurs in DPW's finding that in spite of the Burke School's traffic management plan "many vehicles dropping off students would still need to use local streets and alleys to access the school and leave the school site." Mitigation measures cannot be effective because the volume and intensity of traffic exceeds the applicant's physical capacity to handle it. Traffic conditions resulting from Application 16611 would be highly objectionable to neighbors and the application should be rejected on this basis.

2. Recreational Space. The Burke School provides no on-site space for outdoor student recreation activities and no on-site food service facilities for student lunches. Recreational activities frequently occur on neighborhood streets as well as on Howard University's campus and on the property of others in the neighborhood. Such activities are noisy, disruptive, and objectionable. Use of the Howard's campus for such purposes were not contemplated in the University's BZA Order 16110 and, in fact, violate this order. Lunch hour activities are also disruptive since students must leave the school in order to have lunch in the surrounding neighborhood. This activity includes the practice of using neighborhood properties as a place for consuming carry out lunches.

   Application 16611 provides no outdoor recreational space and no food service facilities for the Edmund Burke School. For this reason, the increase in Burke's authorized student level would exacerbate existing disruptive activities and would be objectionable under the zoning regulations.

3. Compliance. BZA Order 13986 specified conditions of approval for a Burke School addition in 1983. The school's failure to comply with key conditions of this order is of the utmost concern to ANC 3F. BZA Order 13986 required that the number of students at Burke not exceed 270, the total number of faculty and staff not exceed 35, and that the school be limited to no more than three non-school related events per month. The Burke School application states that it has 299 students and a faculty and staff of 60. The number of events far exceeds the minimum of three allowed. One estimate is that these events occur three times a week rather than the allowed three times a month.

   On April 23, 2001, ANC 3F Commissioner Robert Maudlin filed a complaint with the Board citing the Burke School's "willful violation" of the BZA Order 13986 (see enclosed). Commissioner Maudlin's complaint points out that the school itself admits to being in violation of the student cap since 1997. The school's explanation of its failure to comply with BZA Order 13986 seems to come down to the plea that "we had to do it" because demand is high and because it is difficult to predict how many of students accepted by the school will actually choose to attend the school. The facts of this case, however, are that the school exceeded its enrollment cap in 1997 and having done so chose to continue to stay at a

level exceeding the caps for the past four years. The school also chose to exceed its authorized faculty and staff level and chose to stay at this level.

The Burke School's failure to comply with BZA Order 13896 does not bode well for the Upton/Van Ness Neighborhood should the BZA approve the referenced application. There are no assurances that the Burke School would live within the limits it has requested for itself. In fact, history suggests otherwise. The impact of a failure to live within its limits would fall directly on the Burke School's residential neighbors. It is also important to bear in mind that the zoning regulations do not provide for the suspension or rescission of a special exception. Ms. Jerrily Kress of the BZA advised ANC 3F on June 30, 2000, that the zoning rules do not provide for the suspension or rescission of special exception once approved even if the applicant is not in compliance with the conditions established when the exception was granted. She stated that "under Section 3205 of the Zoning Regulations, the enforcement mechanism of the conditions contained in the Board's order is through enforcement of the related building permits and/or certificates of occupancy." (See enclosed.) Since a special exception according to Ms. Kress is a grant of authority for use of a property subject to conditions set out by the Board and cannot be rescinded or suspended once issued, such an exception should not be granted without complete assurance that the applicant will abide by conditions in the special exception.

Based on the applicant's failure to comply with previous BZA conditions, the BZA should not approve the referenced application. This is particularly the case since traffic management measures in the application depend upon voluntary compliance to be effectively implemented. Because the applicant has failed to voluntarily comply with previous BZA conditions, the BZA should not approve the referenced application.

In sum, the applicant proposes to construct a five story building of substantial size and mass within a neighborhood zoned for R-2 and R-5 residential uses. This facility will generate significant additional traffic demands on residential side streets and alleys that DPW has determined do not have the capacity to handle these volumes. The applicant further proposes to increase the number of students at the Burke School from 270 to 360, a 33 percent increase over the currently authorized level and a 20 percent increase over the current actual level of 299. This increase in the number of students would exacerbate already disruptive conditions stemming from the fact that the Burke School would provide no on-site recreational facilities and no on-site food service facilities.

The referenced application presents a clear choice between educational priorities and residential priorities. We support the Burke School's continued operation as an educational institution under the terms of the 1983 BZA Order. However, granting a special exception would permanently and seriously degrade the quality of residential life for thousands of residents living in the densely populated neighborhood in the vicinity of the Burke School and would create conditions that are objectionable within the meaning of the zoning regulations. The proposed plan would produce more disruption, congestion, noise, and traffic problems for this neighborhood. Since about 40 percent of the new facility would front on Upton Street approval

of the referenced application would bring an institutional presence even deeper into this R-2 neighborhood. For these reasons, ANC 3F strongly recommends that the Board deny this application.

We thank the Board for the opportunity to present the views of ANC 3F on this matter.

Sincerely,



Phil Kogan
Commissioner, ANC 3F01

Enclosures

cc: Walter Ailes, Edmund Burke School
Phil Feola, Shaw Pittman
Sarah Shaw, Shaw Pittman
Marie Sansome, Office of the Corporation Counsel
Michael Johnson, Zoning Administrator
David A. Clark, Acting Director DCRA
Leslie Hotaling. Director, Department of Public Works
Ken Laden, Department of Public Works
Andrew Altman, Director, Office of Planning
Jennifer Steingasser, Office of Planning
Sherry Pruitt, BZA
Paul Hart, BZA

Res 01-08

ANC3F RESOLUTION OPPOSING BZA APPROVAL OF APPLICATION NO. 16611 EDMUND BURKE SCHOOL

Advisory Neighborhood Commission 3F
North Cleveland Park and Forest Hills
P.O. Box 39290, Washington, D.C. 2016-9290

1. **WHEREAS:** Application 16611 was filed with the Board of Zoning Adjustment (BZA) on behalf of the Edmund Burke School on July 7, 2000, using BZA Certification Form 1, Zoning Self-Certification Form; and

2. **WHEREAS:** the most recent pre-hearing statement describing the project which is the subject of Application 16611 was provided to ANC 3F on April 10, 2001; and

3. **WHEREAS:** BZA Application No.16611 requests special exceptions for use as a private school of Lots 27, 28, and 65 in Square 2243, addressed at 4101 and 4103 Connecticut Avenue and 2969 Upton Street NW which are currently zoned R-5-D; and

4. **WHEREAS:** Application 16611 requests relief from Section 411 of the Zoning Regulations to allow more than one roof structure housing mechanical equipment; and

5. **WHEREAS:** representatives of the Edmund Burke School and residents of ANC 3F appeared at duly noticed public meetings of ANC 3F on March 13, 2000, October 11, 2000, January 16, 2001, and April 23, 2001, a quorum being present at each meeting, to discuss Application 16611; and

6. **WHEREAS:** Section 206 of the Zoning Regulations provides that a special exception for use as a private school may be granted if said school "is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions"; and

7. **WHEREAS:** the Edmund Burke School, Howard University Law School, the Levine School of Music, the Hillwood Museum, and the Embassy of the Netherlands are all located within approximately one half mile to the east of the Connecticut Avenue and Upton Street intersection; and

8. **WHEREAS:** several thousand ANC 3F residents live within a short distance of these institutions which already generate very heavy traffic and parking demands on Upton Street, Van Ness Street, Tilden Street, and 29th Street east of Connecticut Avenue as well as on Connecticut Avenue itself; and

9. **WHEREAS:** the proposed addition to the Burke School would produce a nearly 20 percent increase in school generated traffic in a residential neighborhood already saturated with traffic thereby creating objectionable conditions within the meaning of the zoning code; and

10. **WHEREAS:** the District Division of Transportation (DDOT) draft report of April 6, 2001, opposes the Application 16611 because of traffic congestion and traffic safety problems; and

11. **WHEREAS:** the traffic circulation plan contained in the pre-hearing statement provided to ANC 3F on April 10 contains numerous traffic conflict points that threaten the safety of pedestrians and students; and

12. **WHEREAS:** a proposed layby in front of the existing school would destroy three mature trees and create a safety hazard for pedestrians and students by narrowing a sidewalk that provides direct access to the addition and to Connecticut Avenue; and

13. **WHEREAS:** a proposed layby in front of the new school building on Upton Street would create a safety hazard for pedestrians and students by narrowing a sidewalk that provides direct access to the addition and to Connecticut Avenue; and

14. **WHEREAS:** Mr. Ken Laden, an official of DDOT, has stated DDOT's opposition to a proposed layby in front of the new school building on Upton Street; and

15. **WHEREAS:** a proposed layby on Connecticut Avenue would eliminate neighborhood parking spaces and create a safety hazard for pedestrians by narrowing a heavily used sidewalk that provides direct access to and from the Connecticut Avenue commercial district and to and from the Van Ness Metro stop; and

16. **WHEREAS:** the subject application proposes on-site parking which falls short of the minimum required by the zoning code;

17. **WHEREAS:** the Burke School provides no on-site space for outdoor student recreation activities and such activities occur on neighborhood streets, on Howard University's campus in violation of the University's existing BZA Order, and on the property of others in the neighborhood; and

18. **WHEREAS:** the addition to the Burke School would provide no on-site outdoor recreational space for Burke students which would maintain existing practices thereby creating an objectionable condition within the meaning of the zoning code; and

19. **WHEREAS:** the Edmund Burke School during the past two years has been unable to implement an effective traffic management and student drop off and pick up plan that addresses existing conditions; and

20. WHEREAS: the Edmund Burke School has failed to comply with the conditions of BZA Order 13986 issued October 4, 1983, and has exceeded the caps set in condition 4 of said Order by 29 students (10%) and 29 faculty/staff (67%) and has exceeded the maximum three events per month set in condition 5 of the BZA Order.

THEREFORE, BE IT RESOLVED THAT: ANC 3F recommends that the BZA deny the application for a special exception for the Burke School; and

THEREFORE, BE IT FURTHER RESOLVED THAT: ANC 3F authorizes Commissioners Karen Perry and Phil Kogan to formally represent ANC 3F in order to present the views of ANC 3F on this matter in proceedings before the BZA.

Approved by vote of 3-2-1 at a duly noticed meeting on April 23, 2001 with a quorum present. Commissioner Bardin recused from consideration and vote.

Chair

Secretary

Government of the District of Columbia
OFFICE OF ZONING

June 30, 2000

David J. Bardin, Chair
Advisory Neighborhood Commission 3F
P.O. Box 39290
Washington, D.C. 20016-9290

Re: **BZA Application No. 16110**
Howard University 1997 West Campus Plan

Dear Mr. Bardin:

This is to acknowledge receipt of a copy of your letter dated May 17, 2000, to the Zoning Administrator noting the violations of conditions imposed by the Board of Zoning Adjustment in the above-referenced case. The attached ANC resolution, approved May 15, 2000, petitions the Board to suspend or rescind the special exception approvals given to Howard University for the 1997 West Campus Plan and for further processing of the campus plan in 1998.

The Zoning Regulations do not provide for the suspension or rescission of a special exception approval. Rather, under Section 3205 of the Zoning Regulations, the enforcement mechanism for the conditions contained in the Board's order is through enforcement of the related building permits and/or certificates of occupancy. The ANC's concerns relating to zoning compliance therefore should be directed to the Zoning Administrator as you have already done.

If we can be of any further assistance, please alert us.

Sincerely,
OFFICE OF ZONING

Jerrily R. Kress, FAIA
Director

cc: Michael D. Johnson, Zoning Administrator
Cynthia Giordano, Linnowes & Blocher, counsel for Howard University

ROBERT V. MAUDLIN
Commissioner - 3F03
Advisory Neighborhood Commission

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April 23, 2001

Ms. Sheri Pruitt
Secretary
D.C. Board of Zoning Adjustment
441 4th Street, N.W.
Washington, D.C. 20001

Complaint:
BZA Decision issued September 7, 1983 and Final Order dated October 4, 1983 in application No. 13986, as amended, of Edmund Burke School

Dear Ms. Pruitt:

This complaint concerns the Board of Zoning Adjustment decision dated September 7, 1983 and final order dated October 4, 1983 issued in Application No. 13986, as amended, of Edmund Burke School, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 3101.42 to construct an addition to a private secondary school and for certain variances. The October 4, 1983 final order issued by the BZA granted the application, subject to five conditions. Condition four of the final order states that "The number of students shall not exceed 270 and the total number of faculty and staff shall not exceed thirty-five."

The Edmund Burke School has, unilaterally and without notice to the BZA or an application to amend condition four, exceeded the number of students and number of faculty and staff authorized in condition four of the final order.

I request that the BZA investigate this noncompliance and order Edmund Burke School to comply with the student and staff/faculty caps established in the October 4, 1983 final order. I also request that sanctions be applied to the school

for the willful violation of the BZA's decision and final order.

In a pre-hearing statement filed with the BZA by Edmund Burke School for a public hearing scheduled for October 24, 2000, in BZA Application No. 16611, it is stated "The School currently has 299 students in grades sixth through twelfth and employs fifty-nine faculty and staff." This is clear evidence that in 2000 the school was in violation of both the student and faculty/staff caps provided for in condition four. However, the violations started prior to 2000. In a letter date April 10, 2001, (copy enclosed) Mr. David Shapiro, Head of School, Edmund Burke School, states that "It was not until the fall of 1997 that the school exceeded its enrollment cap. I am convinced that the faculty/staff numbers exceeded 35 some time earlier . . ." Therefore, the school has been in violation of the student cap for four school years and in violation of the faculty/staff cap for a longer period.

On March 19, 2001, I sent a letter (copy enclosed) to Mr. Shapiro, with five questions regarding the school population and faculty/staff population. Mr. Shapiro's response of April 10, 2001 did answer the questions but did indicate that the school is now on a path to grow the student population to 360, or 90 students above the current BZA mandated cap of 270.

There is no justification for the Edmund Burke School to ignore, with impudence, the conditions of an order of the D.C. Board of Zoning Adjustment. This scoff law behavior by the school's administrators also sends the wrong message to the students.

I am looking forward to the BZA addressing this serious violation of its final order of October 4, 1983 at an early date.

Very sincerely yours,

Robert V. Maudlin

enc.

cc: Mr. David Shapiro
Mr. Michael Johnson, DCRA
ANC3F Commissioners

EDMUND BURKE SCHOOL

Dear Commissioner Maudlin, April 10, 2001

I write in response to your letter of inquiry about Edmund Burke School's non-compliance status regarding its enrollment and staffing. I am well aware, of course, of the concerns that have been raised by the ANC and community members regarding Burke's accountability for having exceeded its enrollment cap of 270 students and 35 teachers.

Edmund Burke School stayed within its enrollment cap for thirteen years after the BZA's 1984 zoning order was put in place. It was not until the fall of 1997 that the school exceeded its enrollment cap. I am convinced that the faculty/staff numbers exceeded 35 some time earlier as a result of program development and the addition of student services (e.g., Community Service Director, Director of Diversity and Community, Academic Dean, et al). We have leased space in a nearby office to move some administration functions off site and have leased additional parking spaces, but the net faculty/staff number exceeds our current limits.

The school did not make a decision to grow the enrollment of the school beyond the cap. Beginning in 1998 the school experienced very different dynamics associated with the admissions and yield patterns of the past which resulted in many more acceptances of offers of admissions than had previously been the case. There was a decision not to reduce the enrollment at these entry points to manage growth because that leads you to a very uneven enrollment pattern grade by grade and becomes a staffing and scheduling nightmare. After careful consideration, Burke concluded that a distributed growth among all grades to a total enrollment of 360 students would best sustain the small community feel of the school, allow for much needed facilities improvement, and enable the school to invest in major site improvements that would benefit parking and traffic in the neighborhood.

We shared our enrollment figures and potential plans with neighbors in the late spring of 1999, and we anticipated going before the BZA soon after. The process has taken far longer than we anticipated, and the imbedded fixes to the site have been consequently put off as well. We have annually reported the accurate numbers of enrollment and faculty and staff to the DC Public School office.

Respectfully,

David Shapiro
Head of School

ROBERT V. MAUDLIN
Commissioner - 3F03
Advisory Neighborhood Commission

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March 19, 2001

Mr. David Shapiro
Head of School
Edmund Burke School
2955 Upton Street, N.W.
Washington, D.C.

Dear Mr. Shapiro:

Reference is made to your e-mail of January 31, 2001 to the Commissioners of ANC3F in which you address several concerns raised at the January 16, ANC meeting. One of the issues was condition 4 in the September 7, 1983 decision of the DC Board of Zoning Adjustment (BZA)in Application No. 13986 which is:

> "The number of students will not exceed 270 and the total number of faculty and staff shall not exceed thirty-five."

This condition, in my reading, is clear that the cap is not to exceed 270 students and 35 faculty and staff. There are management tools available to control both student and faculty and staff levels. However, even though Edmund Burke School operations were being managed under the terms of an official BZA order on the maximum number of students the school elected to exceed that number in the spring of 1997.

In order to better understand this issue and the school's justification for this action, please provide responses to the following questions.

1. When did Edmund Burke School make its decision to exceed the faculty and staff cap of 35 and when did the school actually hire faculty and staff that exceeded the cap?

2. What action was taken by Edmund Burke School to notify the Board of Zoning Adjustment or other DC agency that the student and faculty/staff caps had been exceed? When was the action taken?

3. What action was taken by Edmund Burke School to come back into compliance with the student and faculty/staff caps after they had been exceeded?

4. What was Edmund Burke's justification for exceeding student, and faculty and staff caps?

5. What was the highest student population, by class, the highest faculty population and the highest staff population for each of the following school years?

1995-1966
1996-1997
1997-1998
1998-1999
1999-2000
2000-2001

In providing faculty/staff numbers, please include as a separately identifiable item any faculty/staff located in the Van Ness/Upton neighborhood such as those located at 4201 Connecticut Avenue, N.W.

Your representative, Mr. Phil Feola indicated at the March 5, meeting with DPW that the school's pre-hearing statement for the May 15, B.A. hearing will be available not later than April 9, 2001, one week prior to ANC3F's April meeting. It would be helpful if you could provide your responses to the above questions along with the pre-hearing statement by April 9.

I look forward to receiving your response to these questions since this information is very important in understanding the Edmund Burke School's request for a special exception.

Very sincerely yours,

Robert V. Maudlin

cc: ANC3F Commissioners