Statement by Karen Perry, ANC 3F02
Before the Board of Zoning Adjustment
Application 16611, Edmund Burke School
July 10, 2001

Ms. Reid, members of the Board.....

Commissioner Kogan has talked about the ANC recommendation for a one-year trial and the traffic and parking problems associated with the expansion of Burke. My name is Karen Perry and I am the co-commissioner appointed by our ANC to discuss the Burke School. Over the last year and a half, the ANC has held numerous public meetings regarding Burke and commissioners have also met with residents and attended a series of smaller neighborhood meetings to discuss the expansion. Sentiments from all these meetings echoed what was said at the ANC meetings, and my section of the ANC report will deal with some of the other issues and objectionable conditions raised by our constituents.

You have already heard from a Burke witness, Al Hunt, who told you what a wonderful school Burke was for his son. No one in the neighborhood has said Burke is not a good school; what residents have said is that Burke is not a good neighbor and that the neighborhood cannot take the expansion of another institution on two small residential streets with a limited, if non-existent, grid system of streets.

You have also heard powerful testimony from Emma Jordan, an educator at GW University, who lives in the R-1 section of Upton Street asking you not to allow the expansion of Burke and telling you the impact Burke and the other institutions on Upton Street have had on degrading her residential quality of life. Before her testimony to you, she called me and said, "Maybe I should just sell my house and move like many of my neighbors." I am sure you will hear from many more Burke witnesses extolling the virtues of Burke and the community service work they do in other sections of the city. Most of these witnesses, however, do not live in the neigborhood and do not have to deal

BZA
Case No. 16611
Exhibit No. 201

Board of Zoning Adjustment
District of Columbia
CASE NO.16611
EXHIBIT NO.201

with the impact of the school. In the BZA file, you will also find petitions against the expansion, signed by most of the residents of Upton Street, 4007 Connecticut Avenue, and others impacted by the school's operations. The petitions signed by the residents of the Consulate are missing and we will need to locate them and make them a part of the file. With me here today, I also have a letter from the Board of Van Ness East. It was mailed to you, but had not arrived when I last checked the file.

When the residents of Van Ness Street, Upton Street, and Connecticut Avenue decided to oppose the Burke School expansion, they knew they faced an up-hill climb at the BZA. First because it was a school, second because it was an existing institution. No one at the ANC meetings or here today denies that Burke is a good school, no one denies that Burke gives scholarships, and no one denies that Burke does community work. But that was not the issue before the ANC nor is it the issue before the Board today. The issue is whether Burke should be able to expand and whether Burke can truly contain the traffic and parking problems associated with its daytime and evening events that have plagued the neighborhood for years.

In spite of the obstacles, and the constantly changing and last minute traffic management plans, the neighborhood still has the firm conviction that this residential neighborhood cannot take any more traffic or any more institutional activity. It is truly at the breaking point for those residents who wanted an urban life, but bought their homes on residential side streets. One of the primary purposes of zoning is to ensure residents, whether they buy into R-1, R-2, or R-5 zones, stability and protection. Property owners rely on zoning to ensure that their property values will not plummet by projects that change the character of a neighborhood, and property owners need zoning to restrict noise, pollution, commuter traffic, and land use density to maintain their healthy, residential neighborhoods.

It has been stated that the BZA can only deal with the Burke expansion and the special exception for the Connecticut Avenue buildings and could not consider the full impact of the Burke School and its proposed expansion on the neighborhood. However, zoning cannot be done in a vacuum and the ANC is asking you not just to spot zone a

building, but to consider the full impact of the existing school and its expansion on the neighborhood. The buildings are connected....new students will be in both buildings, the library in the new building will serve both buildings, the new underground parking lot and the existing building's parking will serve both buildings, the new theater will serve both buildings, the existing auditorium will serve both buildings, and students will be going from building to building all throughout the day and evening. Therefore, the ANC feels that the full impact of the school and the school's activities must be taken as a whole when rendering your decision.

Through special exceptions and variances, residential properties on Upton Street became institutions. The institutions have grown, and are continuing to grow, within the residential neighborhood; the neighborhood has not grown around the institutions.

Beginning in 1901 with the creation of the McMillan Commission, planners from all around the country looked more and more to Washington to set a high standard for the rest of the Nation. The recommendations of the McMillan Commission inspired the establishment of the Commission of Fine Arts in 1910, the Height and Buildings Act, and the Washington Zoning Ordinance in 1920, one of the first in the country. As stated in the Zoning Primer, published in 1922 by Secretary of Commerce Hoover, zoning can be compared to one's household, " Someone has asked, `Does your city keep its gas range in the parlor and its piano in the kitchen?' (*Zoning Primer, A. Advisory Committee on Zoning, Washington, D.C., Department of Commerce, 1922, p.1)* These original regulations and the concerns they addressed; namely, the need to reduce the congestion of land use and to differentiate residential, commercial, and institutional areas gave city officials an effective mechanism for controlling inappropriate land uses and protecting neighborhoods. Now the ANC is also asking you to exercise your authority and leadership as a Zoning Board to consider the impact of an institutional expansion into another section of a residentially zoned area and to consider the full impact of all the institutional uses on just two blocks of a residential neighborhood by the existing Burke School, its proposed expansion, Howard, the Levine School and the planned Levine Performance Theatre, the Netherlands complex, and the Hillwood Museum before

agreeing to any more institutional use in this residential neighborhood. As part of a zoning comprehensive plan, we are asking you to determine how many institutions are acceptable on one or two blocks of a local residential street. While the Office of Planning has said this expansion will take place toward Connecticut Avenue, that section of Connecticut Avenue is zoned residential.

Residents in our ANC view the purchase of these residentially-zoned properties and their conversion to an institutional use no differently than the residents that have expressed concerns about the expansions of George Washington University, American University, and Georgtown into the residential areas of those neighborhoods and taking those properties off the tax roles and further diminishing their residential quality of life. All of our institutions operate seven days a week, twelve months a year, from morning until night. In our case, the property at 2969 Upton Street is a moderately-priced, six unit apartment building. The properties at 4101-4103 Connecticut Avenue are also residentially zoned. The Ward 3 Plan says that "the relative dearth of low-and moderate income housing in the ward is in large part attributable to development pressures and thus, the major public policy issue confronting the ward is the prevention of further displacement of residents, particularly those with low-and moderate-income, as a result of redevelopment, conversions, and escalating taxes." The purchase of these properties by the Edmund Burke School has done just what the Ward 3 plan hoped to avoid -- the displacement of tax-paying residents – in order to expand institutional use into residential areas.

The Office of Planning report states that the Generalized Comprehensive Plan notes in Subsection 102.3, "Many city neighborhoods also include integral commercial and institutional uses that contribute to their character. Neighborhood businesses, schools, park and recreational facilities, churches and other public facilities all add to the livability of our communities. These uses must be protected, stabilized and improved." However, the Ward 3 Plan interprets the Comprehensive Plan's more general objectives and policies and is silent only when an omission means that the Comprehensive Plan statement is applicable without qualification to the Ward. In this case the Ward 3 Plan is

not silent. It specifically states, "There are a large number of institutional uses in Ward 3. Many of these facilities have structures that are an exception to the neighborhoods land use or that do not conform to the underlying zoning. The compatability of these uses must be maintained, expansion carefully controlled, changes to neighborhood-related uses encouraged, and conversion to other nonconforming uses prevented." From beginning to end the Ward 3 plan states that "The effects of nonresidential development on the Ward's residential neighborhoods, and of non-neighborhood-serving redevelopment on the ward's commercial areas, must be carefully controlled and limited". The plan goes so far as to say "A distinctive feature of Ward 3 is the clustering of retail nodes at regular intervals along major arteries and with the exception of a portion of Wisconsin Avenue, the commercial nodes are generally separated by long segments of residential development, primarily apartment buildings."

Placing a school at the intersection of Connecticut Avenue and Upton Street will insert a private school zone into a segment of Connecticut Avenue designated for housing thereby changing the character of a well laid-out corridor and splitting the residential neighborhood on two sides of a school. Van Ness Street and Upton Street, two small local residential streets, already host a large number of institutions, and the residents cannot find any other residential streets in the City that host as many institutions. Nor can we find another residential neighborhood that already has three BZA instituted committees to deal with mitigating measures from activities at Hillwood, Howard, and the Levine School which, by a BZA condition, includes the Edmund Burke School. Neighbors have become reticent to attend these meetings especially since they have been unable to get compliance with any of the institutional BZA agreements. As we learned, once the BZA makes the special exception, it cannot be rescinded even if that institution does not comply with the terms of the agreement. Now Burke is proposing residents take part in another committee – a compliance committee. We cannot find another neighborhood in the city that has to consult an institutional event schedule before determinining whether it is feasible to plan a birthday party, graduation party, or anniversary party. Part of the quality of residential life is also having time with your

family after the work day and not having to attend evening or weekend meetings to see if an institution is in compliance or to see what the institutions have scheduled --- a schedule in which you have no voice --- and a schedule that is never accurate because something has always just come up or is not considered an event because it is a school activity, even though it might take place on a holiday, in the evening, or over a weekend. Residents request that you think how you would feel if this was your street and how your neighbors would feel if you approved another institutional expansion and setup another compliance committee for them to attend.

As the ANC noted, the expansion of Edmund Burke will tip the fragile, delicate balance that already exists between residential and institutional uses and will further degrade the quality of life for residents in an area choked by traffic congestion and institutional activity. In fact the Ward plan specifically states, "The Connecticut and Van Ness area has overloaded, and therefore poorly functioning intersections." The Ward 3 plan also states that "Because of the Ward's attractiveness and stability such redevelopment pressures are likely to continue, especially in the areas around the five Metrorail stations. The Comprehensive Plan and the Ward 3 Plan recognize that and states that redevelopment pressures must be strictly limited and redirected to other areas of the city specified in the Comprehensive Plan for new economic development."

The Burke site is small, even with the proposed expansion, it is ¾ of an acre. That has added to the strain between the neighborhood and Burke. Many of Burke's activities cannot be contained on the site and the neighborhood has become an extension of Burke and Burke's campus. What one person finds objectionable, another might not. But the Board also has to take into consideration, objectionable conditions other than traffic and parking. Some of the concerns raised by residents is Burke's use of Upton Street for jogging and exercise class, students running past the homes in gym attire to use the fields at Howard for athletic classes and baseball practice and the ensuing noise for neighborhood properties from baseball and other activities on these fields, the fact that use of these fields is a violation of Howard's BZA order, noise from the volleyball and cheerleading practice on State Department owned land in violation of State Department

rules, and being ~~woken up~~ awakened in the morning by noise only to find out it is a Burke photography class under your bedroom window on private property. Contrary to assertions that the character of the Burke students has been degraded, it is not the students, it is the site that has led to some of these problems. Even if Burke is granted the expansion, the site will not be able to contain Burke's activities and the students will still not have outdoor recreational facilities and the neighborhood will still be part of Burke's open campus programming. And contrary to what Burke has stated here, use of the fields at Howard is a violation of Howard's campus plan. Careful research will show that in Burke's 1983 BZA order, in which no one from the neighborhood or the ANC appeared, in the Findings of Fact is a statement by Burke which states, "The school's outdoor recreational activities are located off the subject site on the grounds of the Howard University Law School approximately 250 feet away. Students walking to the field are supervised by the physical education teacher. Fewer trips are planned to the field since the proposed gymnasium will accommodate additional activities than presently occur." However, all of the Howard campus plans and BZA order going back to their first one in 1974 ~~all say~~ state that Howard will not maintain or have any athletic fields and all letters from the administration of Howard, including their recent campus plan, state that the use of the site is solely for the Howard University School of Law and programs for those students and that the only outside activity, other than graduation, will be Howard students studying on the lawn. Even though Burke might have a letter from the current Dean saying they can use the fields, the Dean cannot unilaterally change a Campus Plan, a BZA order, or the written statements and facts put in the complete campus plan which led to the ANC and neighborhood approval of the plan with operating conditions.

There is an important saying in legal business, and that is when coming before a court or a government body to ask for something, an individual or an entity must have "Clean Hands." In this case Burke has the stigma of non-compliance with its previous BZA order. Burke exceeded its faculty and staff count, then exceeded its student

population cap and, even after being made aware of that fact, continued to exceed those caps and made no attempt at compliance or at going to the Board for a change in their order until they decided that expansion was in their best interests. In an editorial in the Northwest Current, David Shapiro wrote that the school exceeded their student limits in 1997. Knowing this and knowing that they had an upcoming BZA hearing, it was strange for the residents to read in the September 13, 2000, Northwest Current, in School Dispatches, that "Ninth grade picks up the most new students of any grade in the school, with the class almost doubling in size to 54." He further writes, "I know it took me some time to adjust to Burke life, and it probably will for the new ninth-graders, as well as the rest of the 60-odd new students in the school" Burke further exceeded their BZA condition not to have more than three non-school related events per month. Burke did not make the ANC aware of these compliance problems. Rather, Burke at its first appearance at the ANC passed out a "fact street" showing how many students they had, how many teachers, etc. and indicated that the expansion would only be 60 students and a few teachers. It was the neighborhood residents who made the ANC aware of the non-compliance, and, as you will hear later, Burke did not make the neighborhood aware of its non-compliance. It was not until an Upton Street resident obtained the previous BZA order that the neighborhood and probably Burke become aware of their non-compliance. Burke never told the ANC or the neighborhood they were over their BZA order as it related to faculty and staff. Instead of 35, they have 59. And, Burke has never responded to Commissioner Maudlin's letter requesting information on when they exceeded their faculty cap. And, while you can say, it is an old order and the difference was only 30 students and 24 teachers and staff, the neighborhood noticed the difference in terms of traffic and activity on the residential streets. The residents approached Burke many times about what appeared to be increased activity and they were never told about the additional students, teachers, or events.

Credibility in this case is critical. Burke is saying, if allowed to expand, the neighborhood problems regarding parking, blocked streets, traffic congestion, buses, alley congestion will all be solved. Burke in trying to get this approval is now

suggesting that they can mandate routes the parents will take to the school, that they can prevent anyone from stopping on Upton Street, Van Ness Street, or in the alleys connecting Upton Street with Van Ness Street and Tilden Street. They are also proposing a Metro-check program for the students from Maryland and Virginia and Burke shuttle bus pickup at designated sites to cut-down on cars. All of this sounds good. But in the more than two and a half years the neighborhood has been trying to work with Burke on existing traffic problems related to the parent drop-off and afternoon pickup, the buses, the evening traffic for afterschool events, and the evening, weekend, and holiday use of the site, Burke, even with the traffic control officer, has not been able to control their traffic and the parent and student parking on the residential streets. They have had every opportunity to put some of these programs into place, especially Metro and shuttle bus pickup, to see if they would alleviate some of the existing traffic. In fact, on March 28, 2000, Walter Aisles, the Burke Assistant Principal, at a traffic meeting convened by Councilmember Catania, committed to imposing parking restrictions in tuition contracts for the academic year starting in September 2000 to to use moral persuasion for the remainder of the year following Spring Break. It has either never been done or it has not worked. Now they are coming here with an untested program and expecting the neighborhood to believe they can make it work. What if it doesn't? Instituting fines on parents who do not comply is not the answer once the school is in place. Parents paying $17,000 a year will not be concerned with a $50 or $100.00 fine and that is only if they are caught. Burke's plan does not envision traffic control on Van Ness Street even though, as Ken Laden testified, parents are using the street for drop-off and pickup and using the Van Ness South driveway for U-turns. Just putting in fines for students that park on the residential streets or parents that don't follow the plan is not the answer and it turns the residents into watchdogs for compliance. Burke's compliance officers or camera will only cover a limited neighborhood area.

And, some residents are asking if the BZA should reward an institution that has violated its BZA order. What message does that send a neighborhood about trust and compliance with BZA orders and what message does it send to other institutions about

their need to comply with BZA orders. ANC 3F believes the BZA should make Burke comply with its previous order, become a good neighbor, institute some of its traffic mitigating proposals to deal with its current parent pickup and dropoff in the morning and afternoon and problems associated with traffic and parking for evening events, and then come before the BZA with "clean hands" and a proven track record.

In closing I will say that there is a psychological precept that says, "the best prediction of what people are going to do is to look at what they have already done."