Expansion Approval Cannot Be Granted
Based Upon Unsupported Pledges Of
Repeated Violator Of BZA Order

Opportunity Is Presented Here
To Be Fair And At The Same
Time To Warn Future Violators
That BZA Orders Are To Be
Complied With

Existing Law. The Board of Zoning Adjustment (BZA) enacted Order # 13986 in 1983 limiting the enrollment of students at the Edmund Burke School to 270 students and 35 faculty members.

Current Enrollment: 297 students; 59 faculty members.

Permission for Enrollment Increase: NONE SOUGHT (until the pending application)-NONE GRANTED

This Board in 1983 capped the enrollment as indicated above so as not to unduly adversely effect the neighboring residents and so as not to allow gridlock in the neighborhood.

Illegal Actions: The school, commencing in the year 1997,intentionally violated your Order # 13986 because it wanted to grow the school on its own terms. Furthermore the school knew that it could get away with these illegal actions and , until now, it has flouted the law without penalty. Furthermore the school has persisted in these illegal actions for almost four years with impunity.

The School had ample opportunity prior to the date of the pending case to seek to cure its violations but chose not to do so. It now comes before this board to increase its enrollment cap only because it needs a special exception to build an additional school building.

Fairness: Parties whose rights are involved in adjudicatory proceedings before the Board are entitled to the same fairness, impartiality, and independence of judgement as are expected in a court of law. Jarrott v. Scrivener, 225 F. Supp. 827 (D.D.C. 1964). There is an old legal maxim that he who seeks equity must come with "clean

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hands"; meaning the applicant must have acted correctly before he seeks further advantage. Mr. Shapiro does not come with clean hands.

Mr. David Shapiro: Nowhere in Mr. Shapiro's prepared statement submitted to the Board is there any expression of remorse for the persistent violations of your Order. Nowhere does he state that he regrets these violations. This is so because MR SHAPIRO DOES NOT REGRET THESE VIOLATIONS. He tells you quite clearly that in his judgement the cap placed in your Order could be amended unilaterally by him because he wished to grow the school. Not a public school for D.C.residents, but an expensive private school serving almost as many Maryland and Virginia students as District of Columbia residents.

Credibility: On the basis of Mr. Shapiro's past record and his attitude concerning the irrelevance of your orders how can you trust him to fulfill the pledges he is now making? How can you grant the relief Mr. Shapiro requests and fulfill your obligation to be fair to the neighboring residents?
The neighbors opposing this application do not believe Mr. Shapiro, The ANC does not believe Mr. Shapiro and the Department of Public Works does not believe Mr.Shapiro.

The Application should be denied.

Trial Period: This application should not again be considered until the school has demonstrated during the trial period recommended that it will perform in accordance with its pledges.

Enforceability of BZA Orders: When a person runs a red light the traffic court does not excuse the violation because the driver states "everybody else is doing it". When a speeder is tried for doing 75 mph in a 55 mph zone, a defense that " everybody else is doing it "will not avoid a conviction on that offense. Similarly, when an applicant repeatedly violates a BZA Order he should not be able avoid the consequences of his actions simply because other schools or entities are also violating BZA Orders.

BZA Has Opportunity To Restore Credibility Of Its Orders.

The Board can restore confidence and credibility to its orders in this case by letting the public know that if applicants have obtained relief from this Board and yet choose to ignore pertinent parts of that order then there will be consequences should such applicant seek further relief from this Board, if not before.

Relevant Portions of Mr. Shapiro's Prepared Statement

1) "Like all schools we send out more acceptances than students we expected to enroll".
Burke is not like " all schools". It has an enrollment cap by order of this Board. The cap should have been considered when deciding how many acceptances it sent out.

2) "The violation of the 1883 enrollment cap was not intentional"

The violation was intentional. Mr. Shapiro knew the cap and he purposefully violated it and continues to violate it to the present date.

3) "The school…..knew it could not retract its offers nor could it close admissions in subsequent years.."

Why not? Mr. Shapiro had a choice of complying with the law or fulfilling his own unilateral personal preferences about school enrollment. He purposefully chose the latter.

THOMAS P. BROWN, III