Neighbors United for Livable Streets

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Via Hand Delivery

Ms. Sheila Cross Reid, Chairperson, Chairperson
The Board of Zoning Adjustment
441 4th Street, NW
Suite 210-S
Washington, DC 20001

Re: Application Number 16611 (Kenneth Workman, Josef Straka, Carl and Elizabeth Richmond)

Dear Ms. Reid and Members of the Board:

Per the authorization of the Board, I am submitting the following analysis of On-Site Parking.

This will clarify issues raised at the hearing relating to required vs. provided parking. Holding the applicant to regulation preserves standards, neighborhood needs, and legal process in this self-certification in which no variances of any kind regarding parking were requested.

Overall, *with or without the assumptions of the applicant regarding parking requirements*, this will show that the school has failed to fulfill the requirements of a special exception as regards parking. Granting the application will overlook substantial matters outlined below.

This analysis will encompass the following:
The applicant has not provided sufficient parking, based on its own calculation of requirements;
Outline a more appropriate approach to calculating requirements;
Analyze why the applicant's calculation of parking requirements is flawed; and
Address the location of required parking spaces.

I have also attached a copy of a letter sent to the Zoning Administrator, Mr. Michael Johnson, providing the same information and appealing his confirmation to the applicant of certain assumptions and conclusions that I believe are not well supported by available regulation or analysis. Further, Mr. Johnson's letter precedes the applicant's reduction of 4 spaces from the previous BZA order, which I believe would have raised significant issues and undermined the basis for his confirmation.

Sincerely,

Milton Shinberg, on behalf of NULS

BZA
Case No. 16611
Exhibit No. 218

Board of Zoning Adjustment
District of Columbia
CASE NO.16611
EXHIBIT NO.218

Analysis of Parking re Application Number 16611

The applicant has not provided sufficient parking, *based on its own calculation of requirements.*

The application states a requirement for 47 spaces.

20 are provided for behind the school (current 24 less 4 proposed for bus use.

6 are provided in the new building that qualify

47 less 26 = 21, the number of spaces lacking. Therefore, based on its own calculations, the school would provide insufficient parking and the application should be denied on that basis alone.

Only 6 of the spaces shown on the Applicant's plans do not qualify. The attached plans (information shown at the hearing) identify non-qualifying spaces. In many cases, spaces are substandard for more than one reason. The applicant did not challenge this presentation of non-conformities at the hearing.

The non-qualifying spaces are inadequate because of:

Insufficient access to spaces (DCMR 11, 2117.5 for standard space, and 2117.6 for compact car spaces):
Aisles of less than 20' for self-parking facilities, which the applicant indicates this is.

Arrangements of compact car spaces: (DCMR 11 2115.4) demand a minimum of 5 contiguous spaces.

Tandem spaces: Section 2117.4 requires that "each required parking space shall be accessible at all times" via a standard route. No allowance in a self-park facility is offered.

Waiving of "parking space dimensional, size, design and striping" is only allowed when a garage is operated "by employed attendants who park the vehicles using the parking facility." This not an attendant park facility. At special events, non-regulation spaces will be significantly more difficult to use. Further, this section (2115.11) does not identify aisle width as a candidate for waiving.

Size of parking spaces: Per DCMR 2115.1), spaces must be measured "exclusive of access drives, aisles, ramps, columns..." The handicapped spaces (2), in addition to aisle access problems, which are all the more critical for them, do not appear to have the required width.

Lower standards apply to attendant-parking facilities, which are not claimed by the applicant and are inconsistent with the self-park use pattern described in testimony, both for faculty/staff, guests and those using the facility for evening performances and meetings.

No application for variances has been made by the school in this self-certification to address any of these issues. Accordingly, the application is incomplete in not stating needed variances, as well as deficient, and should be denied at this time.

Calculating the number of required spaces

Two calculations

The approaches below both result in a requirement for more spaces than are currently proposed by the applicant.

Total Load of the Campus

In terms of the impact of the school on the neighborhood, particularly given the applicant's overarching view that the school expansion should be seen as creating a campus, the total required parking load would be:

Consider total load, not just "additional" load for starters:

For **70 faculty/staff**: **47 spaces** (@ 2 spaces per 3 faculty/staff);

For **360 students**: **36 spaces** (@ 1/10 seats in the largest assembly space, identified by the applicant as the gymnasium.

My analysis below, under "The Applicant's Calculation of Required Loads," estimating at least 500 capacity in the gym for seating, would yield a *50 space* requirement).

Total Spaces:	**83 spaces**
Less spaces at the existing building:	**[20 spaces]**
Remainder to be provided:	**63 spaces**

or, Increased Student Load, rather than total student load

While the Board can choose to accept the applicant's position that the capacity of the gymnasium as auditorium accommodated the previously approved 270 students @ 1 parking space/10 seats, the question remains as to how the increased intensity of the proposed population plays out.

The added capacity inherent in going from 270 to 360 students demands 9 more spaces (again 1/10 seats in the auditorium). Using this logic, the total required spaces would be 47 (faculty/staff, as argued by the applicant) + 9 = 56. Again, subtracting the 20 spaces remaining behind the existing building, the shortfall would be 36, to be provided in the new structure. This would be a minimum amount if this position were more supportable than the 63 space total above.

However, a 63-space conclusion demands that the Board agree that either:

the original 270 students were represented in the prior Board's analysis (they state that students won't park on site, except in "extraordinary circumstances);

or that the neighborhood's overall interest, in conjunction with violation of the previous BZA 24-space arrangement, does not point clearly to the 83-space "campus" approach. The applicant's overall position is that everyone should look at this as a campus.

Given this analysis, the new structure would have to yield a minimum of 63 additional required spaces on the new site.

The applicant's calculation of required parking is flawed, because:

The basis for considering the prior BZA order as grandfathering <u>student population</u> is flawed.

It ignores the content and logic of the Order:

Nothing in the Findings of Fact or Conclusions of Law in the 1983 BZA order (Application No. 13986) makes mention of either

basing parking requirements on any student load, or

auditorium/gym capacity (the "largest space" approach) specifically.

No connection between the gymnasium space or its capacity is cited. To the contrary, finding of Fact 20 says that "Student parking will be provided on-site only in extraordinary situations."

Faculty Loads:

Population of faculty/staff alone is basically consistent with the 1983 Order, determining parking requirements on a basis *other* than students:

The maximum population of faculty/staff at that time was 35. Using the rule of 2 spaces per 3 faculty/staff, the requirement would be 23. The order was for 24 spaces (reduced from 25 due to an exiting hazard). The difference between the Board's conclusion of 25 required spaces and the 23 spaces generated by faculty/staff do not have a basis in satisfying general student parking requirement, but rather in the mention of "extraordinary situations."

Therefore, the concept of grandfathering is applicable only to faculty/staff loads, with the exception of one maximum conceivable space (24-23=1).

The number of spaces under the "grandfathered" approach has been reduced by the current plan:

The Zoning Administrator's confirmation of a credit of 24 spaces from the existing building (10/30/00 confirmation of the applicant's 9/27/00 letter), was made prior to the applicant's proposed taking of 4 spaces (*one of every 6*), invalidating the basis for grandfathering. 20 spaces clearly do not support any prior student load, as they total less than any rational faculty/staff load for 35 (23 spaces).

This same reduction of 4 spaces would have triggered a revue of Section 2117.2, which does not allow such reduction without BZA agreement. The only standard provided by regulation is that the use intensity has *decreased*. Clearly, this is not the case, and should have had a substantial impact on the Zoning Administrator's now-incomplete confirmation.

The Gymnasium Capacity, even if applicable, is likely much greater than described, affecting the calculation of required parking downstream from a grandfathered assumption.

As the letter to the Zoning Administrator alleged that the prior BZA order was based on the largest assembly space (the gym) being part of the calculated load, which is not supported by that Order, the confirmation of the Zoning Administrator is based on assumptions I believe are not correct and should be put aside in the Board's careful review of its prior order. In addition, the capacity of the gym for assembly was stated at 250 people, and there is no indication that this number was justified, certainly not in the letter. Based on my square footage take-off of the plans submitted, and applying the 7sf/person standard used elsewhere in the regulations for unfixed, the capacity of the space for seating would be more than double that number, greater than the proposed total new population.

Therefore, I believe that the proper basis for calculation of parking spaces requirements should be:

Allowing the continued use and crediting of the remaining 20 spaces behind the existing building (though severely deficient in size and use of stacking, but *specifically* accepted in the prior BZA order as an acceptable configuration);

Calculating the entire faculty/staff load conventionally (as it evidently was done in the prior BZA order). This is consistent with the applicant's position.

Calculating the student load conventionally, taking the gym/auditorium capacity as the basis, which exceeds the increased student population proposed.

Reduction of Parking Spaces: Authority of the Board (Section 2108)

The Applicant does not meet the standards for reduction of parking spaces, or, even with maximum reductions, does not provide sufficient required spaces.

Under 2108.1, the *maximum* reduction can be 25% for a school:

(a) The total number of required spaces the applicant states must be provided at the new building is 27 (47 – 20), given the reduction of spaces at the existing building from 24 to 20 by a taking of 4 spaces for busses.

Therefore, a maximum 25% reduction would still leave a requirement of ¾ x 27, or 20 spaces. Taking the 6 qualifying spaces, the application *would still be deficient by 14 spaces, or 30%.*

Under 2108.3, considerations for reductions of up to 25%:

None of the items below provides a reasonable basis for reduction. Under the standards, the high bar applied to special exceptions would require the most conservative analysis, and even a more liberal reading, which is not accessible, would not support reduction here. There is no inherent rationale to sympathize with the applicant who *proposes* a non-conforming use, *chooses* an unforgiving site, and then *causes negative impact* on the neighborhood by insufficient required parking.

2108.3 (a) "The nature and location of the structure" are not at issue. The location of the structure is of the applicant's choice and the applicant has chosen to occupy 100% of the site. If there is a will to fulfill requirements, location is not an issue.

The nature of the structure does not limit the ability to fulfill requirements. Simply, there is a school above, parking below. How much below, and how it is configured is a variable within the school's control. Again, if the school has the will to comply, spaces can be provided. Their duty to the city and community comes first.

2108.3 (b) The applicant has not argued that the number of required spaces go beyond those needed for faculty/staff and students. The number to be provided, they argue, is entirely for staff. None of the required spaces are identified for use by visitors or guests. If it is argued that some are part-time, please refer to DCMR 12 2118.3 which requires computation of parking requirements 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." Therefore, this section does not allow for reduction of required spaces.

2108.3 (c) "The amount of traffic congestion existing or which the building or structure can reasonably be expected to create in the neighborhood." *Without question, the current situation cannot argue for a reduction in the number of spaces. The opposite condition exists.*

2108.3 (d) Regarding "the quantity of existing public, commercial or private parking other than curb parking," there has never been much, and recent development of the Connecticut Avenue corridor and major leasing have virtually wiped out such parking opportunity.

2108.3 (e) The presence of Metrorail has not, at this time, made it a sufficient force to justify reduction. During its existence over many years, the stress of parking on the neighborhood, *even without the proposed faculty/staff/student increases*, has not created a sufficient umbrella to protect the neighborhood. The applicant's proposal for increased subsidy is untested, by their own admission, and unfounded, by the report of the Department of Public Works. Therefore, this does not make a credible support for a reduction in required spaces.

The location of the parking spaces

Spaces not on the same lot

The school proposes to locate 27 of the 47 spaces they believe are required on the new lot, rather than on the existing one. Clearly, elimination of 4 spaces on the existing lot, and transferring that load to the new lot triggers the provision. 2116.1 requires "same lot" location and applies this both to required and accessory spaces (Rules of Interpretation Section 2118.9, when using "all parking spaces" language in any provision).

I found no provision in the regulations that allows for transfer of *required* spaces to another lot, even with BZA approval. The transfer option is specifically for accessory spaces. The applicant has not (and cannot under regulation) requested relief from the standard under 2116.1, and so no basis for granting it has been established. The only relief available is for accessory spaces, per 2116.7.

In its September 27, 2000 letter to Michael Johnson, Zoning Administrator, the applicant acknowledges that locating parking on a separate lot, even across an alley and on residentially zoned land requires specific BZA approval, but the application requests no variance. In doing so, the applicant once again characterizes the proposed development as a "campus," does not cite the sections which apply, and argues that transfer should be approved. No inference from the Administrator's "confirmation" should legitimately be taken that the applicant does not need to present its case to proper authorities, the BZA, which should fail. Further, in using the "campus" characterization once again, the applicant properly strips the protection of piecemeal evaluation of each site. If a campus approach applies to parking, it must also apply to loading berths, for example.

In that letter, he NCS case was cited as precedent, but, in addition to extraordinary differences in context, not least the presence of easily accessible, usable ground for parking, the issue of transfer was not conclusively and specifically addressed, which is a reasonable burden for the Board.

Unless citation is possible to support transfer, it cannot be granted. In confirming this aspect of the letter, the Administrator surely did not infer that BZA was not the deliberative body to consider a specific application , particularly if applicable regulation does not exist.

Proposed Burke School P[redacted]ing Level One
1 1/16 " = 1' – 0'
Markup/Analysis over Frank Schlesinger Associates Architects plans

A = Aisle deficiency. 20' minimum required for regular and compact cars

T = Tandem spaces

R = Rows of compact cars with less than 5 contiguous spaces accessed from the same aisle

4 Qualifying Spaces



Proposed Burke School Parking Level Two
1 1/16 " = 1' – 0'
Markup/Analysis over Frank Schlesinger Associates Architects plans

A = Aisle deficiency. 20' minimum required for regular and compact cars

T = Tandem spaces

R = Rows of compact cars with less than 5 contiguous spaces accessed from the same aisle



2 Qualifying Spaces

Neighbors United for Livable Streets

Via Hand Delivery

August 20, 2001

Mr. Michael D. Johnson
Zoning Administrator
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E., 2nd Floor
Washington, DC 20002

Re: BZA Case 16611

Dear Mr. Johnson:

I am writing in regard to a letter written to you regarding the Edmund Burke School application to the BZA for a special exception under Section 206. The letter was dated September 27, 2000 (copy attached).

You provided a confirmation in the form of a signature on an attachment to the letter. I respectfully submit that there are compelling reasons that the conclusions of the letter are not correct. The content of the letter makes assumptions that I believe are either not adequate to support the conclusions or not supported by opportunities provided within the regulations.

On that basis, I am writing to appeal your confirmation.

Further, there has been a significant development since your confirmation. The number of "grandfathered" spaces in the applicant's plan are to be 4 less than the 24 the BZA had ordered in 1983, its last ruling. This may void any use of grandfathering, or at the least further confronts transfer of required spaces to another site, which regulation does not support. This issue is discussed in detail in the attachment.

I have attached an analysis of issues contained in the letter. The analysis is being submitted to the BZA as part of the opponents' analysis of parking issues.

Sincerely,

Milton Shinberg
on behalf of NULS, a representative of parties to Application 1611 as approved by the BZA.

Cc: The Board of Zoning Adjustment, via Hand Delivery
Phil Kogan, Karen Perry, ANC Commissioners

ShawPittman

A Law Partnership Including Professional Corporations

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RECEIVED 9/27/00

September 27, 2000

VIA HAND DELIVERY

Mr. Michael D. Johnson
Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E., 2nd Floor
Washington, D.C. 20002

Re: Edmund Burke School
(2955 and 2969 Upton Street, N.W.,
4104 and 4103 Connecticut Avenue, N.W.)

Dear Mr. Johnson:

Thank you for the opportunity, on September 12, 2000, to discuss the proposed expansion of, and parking plan for, the Edmund Burke School ("School").

As we discussed, pursuant to Board of Zoning (BZA) Order No. 13986 (attached as Exhibit A), the School is presently required to provide twenty-four spaces. This Order permitted the School to build an addition to its original facility. The addition included its existing gymnasium which is, and will remain, its largest assembly space (250 students). Order No. 13986 permits the School to have a student population of 275 students with a faculty/staff of 35 persons. The School has applied to the BZA (Application No. 16611) for an additional building and permission to increase enrollment to 360 and the size of its faculty and staff to 70.

As you know, Section 2101.1 of the Zoning Regulations, requires that parking for private schools be provided at a ratio of 2 spaces per 3 faculty and staff and one for each 10 seats in the largest assembly space. Since the largest assembly space (the gym) was approved by the BZA with twenty-four parking spaces, we are of the opinion that parking for the new building should be based on the increase in faculty and staff from the 35 permitted by BZA Order No. 13986 to the 70 currently requested. Thus, the proposed 70 faculty/staff (if approved by the BZA) minus the 35 faculty/staff permitted previously by the BZA equals an additional 35 faculty and staff. The new faculty/staff increment, multiplied by 2/3rds, creates

a new parking requirement of 23 spaces. This new requirement, added to the 24 required by the BZA, would bring the required parking count to 47. As shown in Exhibit B, the School plans to provide 48 parking spaces total when the addition is complete. By providing these parking spaces, the School is meeting its parking requirement.

As shown in Exhibit B, these required parking spaces will be located on the "campus", that is, spread between the two distinct lots. Because the School will be expanding from its current location on Lot 67, onto a new lot separated by a public alley, we believe it is permitted to meet its parking requirement on any, or all, of these lots. As we discussed, there is zoning precedent for such a parking arrangement at a private school located in a residential district. In 1992, the BZA approved the expansion of the National Cathedral School ("NCS") on Square 1922 and required the majority of the parking for NCS to be on the Cathedral Close, Square 1944, which is separated from the approved expansion site by a public street (Woodley Road.) Exhibit C is the BZA orders approving the NCS expansion and Exhibit D is the parking plan approved by the BZA in that case.

Thus, it is our opinion, and past precedent confirms, that parking for private schools, if approved by the BZA pursuant to Section 206 of the Zoning Regulations, may be located anywhere on the School's premises, even if the addition or expansion of that school is on a separate record lot.

As you indicated in our meeting, you agree with our analysis. Kindly confirm your opinion by signing a copy of this letter in the space provided below.

Thank you for your attention to this matter. If you have any questions or comments, please feel free to call either of the undersigned at (202) 663-8789 or (202) 663-8902.

Sincerely,

Phil T. Feola

Sarah E. Shaw

CONFIRMED

Michael D. Johnson
Zoning Administrator

Dated: Oct 30, 2000

Enclosures
cc: Walter Ailes

Document #: 996711 v.1