ARNOLD & PORTER

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August 20, 2001

VIA FACSIMILE

Sheri M. Pruitt
Secretariat
Board of Zoning Adjustment
Office of Zoning
441 Fourth Street, N.W.
Suite 210
Washington, DC 20001

Re: Application No. 16611

Dear Ms. Pruitt:

Attached please find a proposed order submitted on behalf of Sirrus LLC, a party on the above-referenced case.

Sincerely,

Cynthia A. Giordano

Attachment

BZA
Case No. 16611
Exhibit No. 221

Board of Zoning Adjustment
District of Columbia
CASE NO.16611
EXHIBIT NO.221

PROPOSED FINDINGS OF FACT
BZA NO. 16611
EDMUND BURKE SCHOOL—PROPOSED EXPANSION

FINDINGS OF FACT

1. The Department of Public Works (DPW) submitted a report with recommendations to the BZA dated May 21, 2001. The report indicates that DPW had reviewed the revised applicant's revised transportation management plan (dated May 21, 2001). DPW notes that the revised traffic management plan provides a variety of measures designed to shift current school-related traffic to transit and shuttle buses and to reduce vehicular travel on local streets. DPW concludes, however, that "even with these proposed measures, there is no way, at this time, to determine whether these measures will be effective in the near-term or long-term." Therefore, DPW recommended a one-year demonstration of the effectiveness of these proposed mitigation measures before the application is approved. DPW indicates that it recognizes that the full impact of the proposed transportation plans cannot be measured until the school constructs the new building and access loop, but still concludes that there is value in assessing effectiveness based upon interim performance measures.

2. ANC-3F submitted a report to the BZA dated June 29, 2001 stating that at a duly noticed meeting with a quorum present ANC-3F considered the Applicant's revised traffic management plan and unanimously voted to support DPW's proposed one-year demonstration of the effectiveness of the Burke School's revised traffic management plan. The report indicated that ANC-3F has encouraged the applicant to make greater use of mass transit for its students and faculty and to develop other methods for providing relief from school-generated traffic. Although the revised traffic management plan would encourage expanded use of mass transit by faculty and students and enable off-site parent drop off of students for a morning shuttle service, the ability of the school to successfully implement these measures and thereby reduce trips to the school is untested. Therefore, ANC-3C concludes that a one-year demonstration is necessary to evaluate the effectiveness of these proposals.

3. Other parties in opposition to the application including NULS, the Van Ness South Tenants Association, and Sirrus LLC, urged the Board to deny the application based upon the substantial evidence in the record that the proposed expansion will exacerbate the existing adverse impacts of the school's current operations. Such impacts including severe traffic congestion on the residential streets and alleys surrounding the school, the unavailability of street parking due to the use of such parking by school-related drivers, noise from student events and activities in and around the school, and noise from the school's air conditioning equipment. Sirrus LLC suggested that the BZA could deny the application without prejudice should the school decide to implement the transit subsidy and

shuttle bus measures for a one-year trial. Thereafter, the applicant could resubmit the application to the Board with the benefit of additional evidence as to the effectiveness of these measures.

4. The opposition parties also raised the issue of Burke's noncompliance with the current BZA order as an additional reason why the Board should not permit the proposed expansion without clear evidence that Burke can successfully reduce the amount of traffic to the site generated by the school. Burke's history of noncompliance with the existing BZA order as to number of students and faculty authorized was uncontroverted.

CONCLUSIONS OF LAW

1. The Zoning Regulations permit the expansion of a private school in the R-5 District only upon a showing, based upon substantial evidence, that the expansion will not have an adverse impact on neighboring properties because of noise, traffic, number of students or other objectionable conditions.

2. The applicant has not met this burden in this case. To the contrary, the Office of Planning, the Department of Public Works, ANC-3F and numerous parties in opposition have presented convincing evidence of objectionable conditions associated with the school's current operations.

3. The Board concurs with DPW's conclusion that it is impossible to determine at this time whether the applicant's proposed traffic mitigation measures, particularly these measures which are intended to reduce the amount of traffic coming to the site (*i.e.*, the transit subsidy and shuttle service) can be effective in alleviating current adverse impacts.

4. The Board also acknowledges the validity of the opposition parties' assertions that enforcement of BZA conditions can be difficult and ineffective and that such conditions cannot be relied upon in this case to ensure that the proposed expansion will not result in adverse impacts.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the board denies Application 15611 without prejudice thereby enabling the Applicant to resubmit this application to the Board for consideration in not less than one year from the effective date of this Order.

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Fax Transmittal

August 20, 2001

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MESSAGE

Please see attached.

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