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August 27, 2001

By Hand Delivery

Mrs. Sheila Cross Reid
Chairperson
District of Columbia Board of Zoning Adjustment
441 4th Street, NW
Washington, DC 20001

Re: BZA Application No. 16611, Edmund Burke School

Dear Chairperson Reid and Members of the Board:

This letter represents the Edmund Burke School's ("**School**") response, pursuant to 11 DCMR Sections 3121.6 and 3121.7, to the post-hearing submissions filed by Neighbors United for Livable Streets "("**NULS**") and ANC 3F dated August 20, 2001 in the above-captioned matter.

A. Response to NULS Parking Analysis

NULS' analysis of the parking required by the School's application is so deficient and so grossly in error that it demonstrates that either NULS completely misreads and misunderstands the Zoning Regulations, or worse, intentionally distorts the requirements contained in the Zoning Regulations. Further, the NULS submission shows just how disingenuous its intentions are with regard to this application. Instead of seeking and suggesting solutions to problems in its community (caused by traffic and lack of parking), NULS merely complains, incorrectly, about minute details. As was pointed out in a letter to the BZA dated November 7, 2000 (Exhibit 49 in the Record), from ANC 3F (excerpts of which are attached as Exhibit A), the community demanded at least 72 on-site parking spaces for the School as part of this application. As the Board is well aware the School's initial application contained only 43 on-site parking spaces. In an effort to accommodate this neighborhood concern, the School redesigned the project and is now proposing, at significant cost, to build two levels of parking below grade to achieve a total of 75 parking spaces on-site. Now NULS, notwithstanding its entire misreading of the Zoning Regulations, complains that some of these spaces, in its opinion, are a few inches too short, a few inches too narrow or accessed by aisles a few inches too small. In fact, as demonstrated by the plans in the record, the zoning confirmation letter by the District of Columbia's Zoning Administrator and the School's post-hearing filing dated August 20, 2001, the School's proposed parking plan including the size of the spaces meet all the

BZA
Case No. 16611
Exhibit No. 228

Board of Zoning Adjustment
District of Columbia
CASE NO.16611
EXHIBIT NO.228

requirements in the Zoning Regulations. NULS post-hearing submission again demonstrates what NULS demonstrated at the public hearing and its continuing refusal to enter into mediation, that it has absolutely no interest in finding solutions to problems and merely wants to "kill" the School.

Notwithstanding NULS obvious goal, the School is compelled to critique NULS analysis to point out at least a few of its numerous errors. It would be too lengthy a treatise to point out all the mistakes in the NULS parking analysis, however, the following are a few of the more notable mistakes. For example, NULS claims that the School's parking analysis is deficient because four of the existing 24 parking spaces will be for bus use. Obviously, either NULS was not listening at the public hearing, did not read any of the applicant's submissions or is trying to mislead the BZA, because the use of those spaces by the "buses" will only be after school hours and only for the visiting athletic team's vans, after the demand for use of the faculty/staff parking is virtually non-existent. These spaces are not being removed, but merely used for another purpose when they are not need for parking. The School proposed using this area for visiting teams buses as a way to solve a problem raised by NULS during the hearing that the visiting athletic team buses were parking on nearby public streets, a perfectly legal practice.

Another example of the many errors in its submission is the claim that NULS makes that the proposed parking spaces do not "qualify" as parking spaces because of size, tandem, nature and the like. NULS either misreads the plans, cannot measure dimensions correctly or, again, is misrepresenting the facts of this case. The Zoning Regulations are extremely clear. Only required parking spaces need be the minimum size and need to be accessible directly from aisles. As we stated in our August 20th submission, the proposed parking plan will provide fifty-six (56) full size automobile parking spaces, when only forty-seven (47) spaces are required. NULS conclusion is directly counter to the written letter of the Zoning Regulations and 50 years of interpretation by the District of Columbia's Zoning Administrator's Office.[1]

NULS then offers its own alternative calculations for how much parking is required. Without basing it on any fact, evidence, rule of law or precedent, NULS claims

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[1] Also, as the BZA knows, if the School is wrong and cannot meet the letter of the Zoning Regulations with regard to these issues, its building permit application will be rejected by the District of Columbia.

that the BZA needs to look at this application as if there is no existing school on the site. This is ludicrous, contrary to law, the Zoning Regulations and logic. The Zoning Regulations state: "When the intensity of use of a building ... is increased by an addition or additions of employees, dwelling units, gross floor areas, seating capacity or other unit of measurement specified in §2101 parking spaces shall be provided for the addition or additions" (11 DCMR §2100.6). NULS position completely ignores the fact that the Board of Zoning Adjustment approved use of this facility for 270 students and 35 faculty/staff in an application that was specifically intended to add a gymnasium to the School. To believe NULS, you would have to believe that the BZA did not "see" the gym when it approved the School's expansion in 1983.

Further, NULS errs when it fails to acknowledge that the Edmund Burke School is a combination junior and senior high school and it computes the required parking spaces as if the School were only a high school. This mistake is important because the Zoning Regulations have fewer parking requirements for middle (junior) schools than high schools. The parking requirement for a junior (middle) school is merely for 2 parking spaces for every 3 faculty/staff. There is no additional requirement of 1 space per 10 seats or 1 space for each 10 seats in the largest assembly area. The requirement for parking for high school is 2 spaces for each 3 faculty/staff plus one space for each ten classroom seats or one space for each 10 seats in the largest assembly space. In the present application, 120 of the 360 students proposed in the new Burke population would be junior high school students (sixth, seventh and eighth grade). The additional 240 students are intended to be high school students for which the additional requirement is 1 parking space for every 10 student seats, or the largest assembly space (which is the gymnasium which seats 250 students). Therefore, for the high school students, the School must provide 2 spaces for each 3 faculty/staff (2/3 of 70 = 47) + 1 space for each 10 high school classroom seats (240 ÷ 10 = 24) or 1 space for each 10 seats in the largest assembly space, the gym, (250 ÷10 = 25) if this were a brand new facility. However, as noted, this application is for an addition to a BZA approved project which included the School's largest public assembly area – the gymnasium. Since the gym computes to the higher number, that is the number that is "grandfathered" pursuant to the 1983 BZA approval. NULS would have us believe that in 1983, the BZA was really not aware that it was approving the gymnasium and/or that it was not aware that the gymnasium could be used as an assembly space.

NULS' complaint about the location of the parking spaces being on separate lots is even more ridiculous. Again, the School has the legal right pursuant to the BZA Order No. 13986 to occupy the existing facility (and gymnasium) with 270 students and 35

faculty/staff and provide no more than 24 parking spaces. If the School approached this application as two separate buildings with two separate requirements, the parking analysis would result in the same number of parking spaces. The existing school, which plans show to be exclusively for high school could have 240 students with the 35 faculty/staff. The new addition, which is intended to be used by the middle school, would have to provide 23 new parking spaces (2/3 of 35). The new (middle school) building would have no parking requirement for assembly space[2] and therefore would be required to provide only 23 parking spaces in that facility. Clearly, the "campus approach" that the School has used in the application to combine the buildings and the property, not only has precedent in BZA law (see National Cathedral School, BZA Application No. 15691) but is logical, makes more sense and will ultimately result in a lesser impact on surrounding communities than the piecemeal approach suggested by NULS.

The School strongly believes that its parking analysis is consistent with the law. This analysis was approved by the Zoning Administrator well before this issue became controversial and well before NULS began its effort to "lobby" the Zoning Administrator to convince him that his previous determination was wrong. Further, the School's analysis of parking has also been confirmed and supported by the Office of Planning and the Department of Public Works.

"OP agrees with the applicant's assertion that the required new parking must address the new addition, thereby requiring 23 spaces for the increase in staff. The zoning regulations further require a space for every 10 seats in the largest gathering space. The existing auditorium in the existing building is the school's largest space and its parking is covered by the existing BZA order. The applicant has, however, provided 48 additional spaces proposed with the new addition satisfy almost any calculation arrangement... There has been concern expressed that some of the spaces are tandem and therefore not within compliance with the zoning regulations. §2117.3 reads that the spaces must be accessible at all times. The garage and its parking spaces are clearly under the full and continued control of the school and OP feels that, in light of the unilateral control, the use of tandem spaces is not in violation of the zoning regulations.

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[2] Here again NULS errs (page 2 of its analysis): "The added capacity inherent in going from 270 to 360 demands 9 more spaces (again 1/10 seats in the auditorium)."

The DPW report also indicates their feeling that the parking requirements have been satisfied." (OP Report, p. 7-8, Exhibit 152 of the Record).

DPW states: "The proposed parking plan, which provides for up to 50 underground spaces and 25 surface parking spaces, addresses the Department's concerns regarding adequacy of parking for students, staff, faculty and guests. A review of the zoning regulations in 11 DCMR 2101 indicates that a high school must provide 2 parking spaces for every 3 teachers and staff, and 1 parking space for every 20 classroom seats, or 1 parking space for every 10 seats in the largest auditorium or gymnasium, which ever is greater. With a requirement for 47 spaces for the estimated 70 faculty and staff, and 24 approved parking spaces for the largest assembly areas (the gymnasium) the Edmund Burke School would need to provide a total of 71 parking spaces. Thus, the proposed parking facilities meet this requirements." (DPW Report, p. 3, Exhibit 176 of Record).

Notwithstanding NULS machinations to pick at the minutiae of this application, the ultimate truth is that if this project is built there will be 51 new parking spaces for the School on-site. Since 60 of the 90 additional students would be sixth, seventh and eighth graders, who by law would not be able to drive, and only 10 of the proposed new students (high school juniors and seniors) will be of driving age, the additional 51 parking spaces will serve the proposed 35 person increase in faculty/staff comfortably. It will also provide 51 more spaces on-site for various School events. The School will provide 75 on-site parking spaces. The net increase is an additional 51 parking spaces which will alleviate parking in the streets by users of the Burke facility.

B. ANC 3F

ANC 3F submitted a voluminous pile of paper, some of which dates from 1974, insinuating that in this pile was a prior BZA and/or District of Columbia action prohibiting the use of fields at Howard University for Edmund Burke's physical education classes. After reviewing every word in the documents filed, we have been unable to find one sentence that utters that statement. Further, the only operable zoning restriction on the Howard Law School campus is the 1994 BZA approval (Order No. 16100) issued on February 18, 1998. The only restriction on Howard's use of its outdoor fields is contained in Condition No. 12 of BZA Order No. 16100, the Howard University Campus Plan, which states: "No outdoor event shall take place on the West campus to cause excessive noise (e.g. music, loud speakers, etc.) with the exception of graduation". This restriction on Howard was clearly intended to address the use of the campus for concerts, weddings, parties and the like. It does not prohibit neighbors from throwing

frisbees on the fields, walking their dogs on them or Edmund Burke physical education classes from using them. Further, there has been no contention in the record of this case that the Edmund Burke gym classes use loud speakers, music or create excessive noise. In fact, the only official BZA statement with regard to Burke's use of Howard's fields is contained in the 1983 Edmund Burke Order which specifically notes that Burke uses the fields on the West Campus of the Howard Law School for its outdoor recreational activities (See BZA Order No. 13986, Find of Fact No. 19).

Notwithstanding the lack of documentation for its position, the ANC's request that the use of these fields be prohibited is contrary to everything it has stated in the record in this case. The Board does not need to be reminded that traffic congestion is the critical element of this case. Nonetheless if Burke is prohibited from using the Howard field for its gym classes, to which the students walk, it will have to add vehicular trips to the street system i.e., vans that it will have to use to take the gym classes to a more remote field. This would add automobile trips to the streets surrounding the School. Thus, its counterintuitive that the ANC would take this ridiculous position. As the attached plan shows (Exhibit B), the students walk on a public sidewalk past six private houses before they enter the public space adjacent to Howard University Law School. If the BZA adopted the ANC's proposed prohibition on use of Howard by Burke, every Burke physical education class would have to pile into a van and be taken to an alternative, more remote facility.

The School believes that sharing facilities with Howard (and the other institutions in the neighborhood) makes ultimately more sense than adding to the traffic congestion that exists in the public streets. Further the School believes that students walking on the sidewalk, be they from public school or private school, is part of an urban environment and is what makes a city a vibrant place to live.

C. Conclusion

The School believes that the filings made by NULS and the ANC clearly show that neither entity is interested in solving problems and is only interested in defeating this application. The matters that they raise in their post-hearing filing materials are not based on fact or law. Further, there respective positions are contradictory to solving the very problems they claim exist in the neighborhood. The provision of more parking spaces, whether they are six inches too short or not, has to improve the existing condition. The ability to use an athletic field within walking distance, is a better solution to traffic

congestion than adding more traffic in the form of the School's vans to move students to a more remote location.

We are confident that the BZA sees through the transparent purposes of NULS and the ANC and discounts their positions accordingly

Sincerely,

Phil T. Feola

Sarah E. Shaw

Document #: 1156257 v.3

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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
Phil Heinrich, SMD 3F06
Duane Fitzgerald, SMD 3F07

November 7, 2000

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:

ANC 3F received the pre-hearing statement accompanying the referenced application on September 26, 2000. This submission proposes construction of an addition to the Edmund Burke School at 2955 Upton Street NW. Two ANC 3F Commissioners and several Burke School neighbors initiated a meeting with representatives of the Burke School on Sunday, October 29. These discussions reflected ongoing ANC 3F and neighborhood efforts to find a way to accommodate the needs of Burke's residential neighbors as the school pursues its expansion plans. The neighbors made suggestions for a redesign of the Burke School project as proposed in the referenced application to achieve several key objectives which included the following:

(1) remove the traffic burden from Van Ness and Upton Streets and the alley that runs between these two streets by directing drop off and pick up activity to the Connecticut Avenue side of the new building;
(2) accommodate the required 72 parking spaces on-site in the new building;
(3) maintain the landscaped buffer between the Burke School and the residential community.

On November 3, 2000, the Burke School through their attorney Mr. Phil Feola responded with updated plans for the proposed Burke School expansion. Mr. Feola stated that the School intends to ask the Board of Zoning Adjustment to amend its application at the November 14 public hearing to accommodate the updated plans. This letter and the attached ANC 3F resolution respond to the September 26 pre-hearing statement accompanying Application 16611. In order to meet the filing deadline for this statement, there was not adequate time to analyze the updated plans. We request, however, that the Board assess any updated plans within the context of ANC 3F's objections to traffic, parking, and compliance problems associated with the September 26 pre-hearing statement.

P.O. Box 39290 Washington, D.C. 20016-9290
362-6120 (voice)
686-7237 (fax)

Res 00-24

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

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

WHEREAS: Application 16611 requests a special exception 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 and said application indicates that this is the only relief required under the zoning regulations; and

WHEREAS: these lots are currently zoned R-5-D and are located at the intersection of Connecticut Avenue and Upton Street; and

WHEREAS: representatives of the Edmund Burke School appeared at duly noticed public meetings of ANC3F on March 13 and October 11, 2000, a quorum being present at each meeting, and presented information in support of the application and nearby residents presented their views on the proposed expansion; and

WHEREAS: the applicant furnished ANC 3F with its Pre-hearing Statement which includes a proposed construction operations plan, traffic impact analysis, traffic management plan, plans for the proposed addition and existing and proposed automobile circulation and stacking plans; and

WHEREAS: the proposed plans provide for a new 24,000 square foot building on the northeast corner of Connecticut Avenue and Upton Street and a new driveway on the east side of the existing school building at 2955 Upton Street; and

WHEREAS: Section 206 of the Zoning Regulations provide 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 ample parking space is provided as required in chapter 21 of the zoning regulations, and

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

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

WHEREAS: granting this exception could produce negative impacts relating to traffic, parking, and quality of life for several thousand residents by adding to the already heavy flow of traffic and further limiting parking in this overburdened area thereby creating objectionable conditions within the meaning of the zoning code; and

WHEREAS: the applicant proposes an elaborate site traffic plan without including further effort to reduce vehicular traffic at the site; and

WHEREAS: the traffic queuing "loop" plan proposed in support of this application will result in paving over and regrading the side yard which supplies green space between Burke School and the residential neighborhood; and

WHEREAS: the subject application proposes 48 on site parking spaces which falls short of the 72 parking spaces that are the minimum required under the zoning code; and

WHEREAS: the subject application has not received the appropriate reviews from the Department of Consumer and Regulatory Affairs and other District of Columbia agencies; and

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 24 faculty/staff (67%) and has exceeded the maximum three events per month.

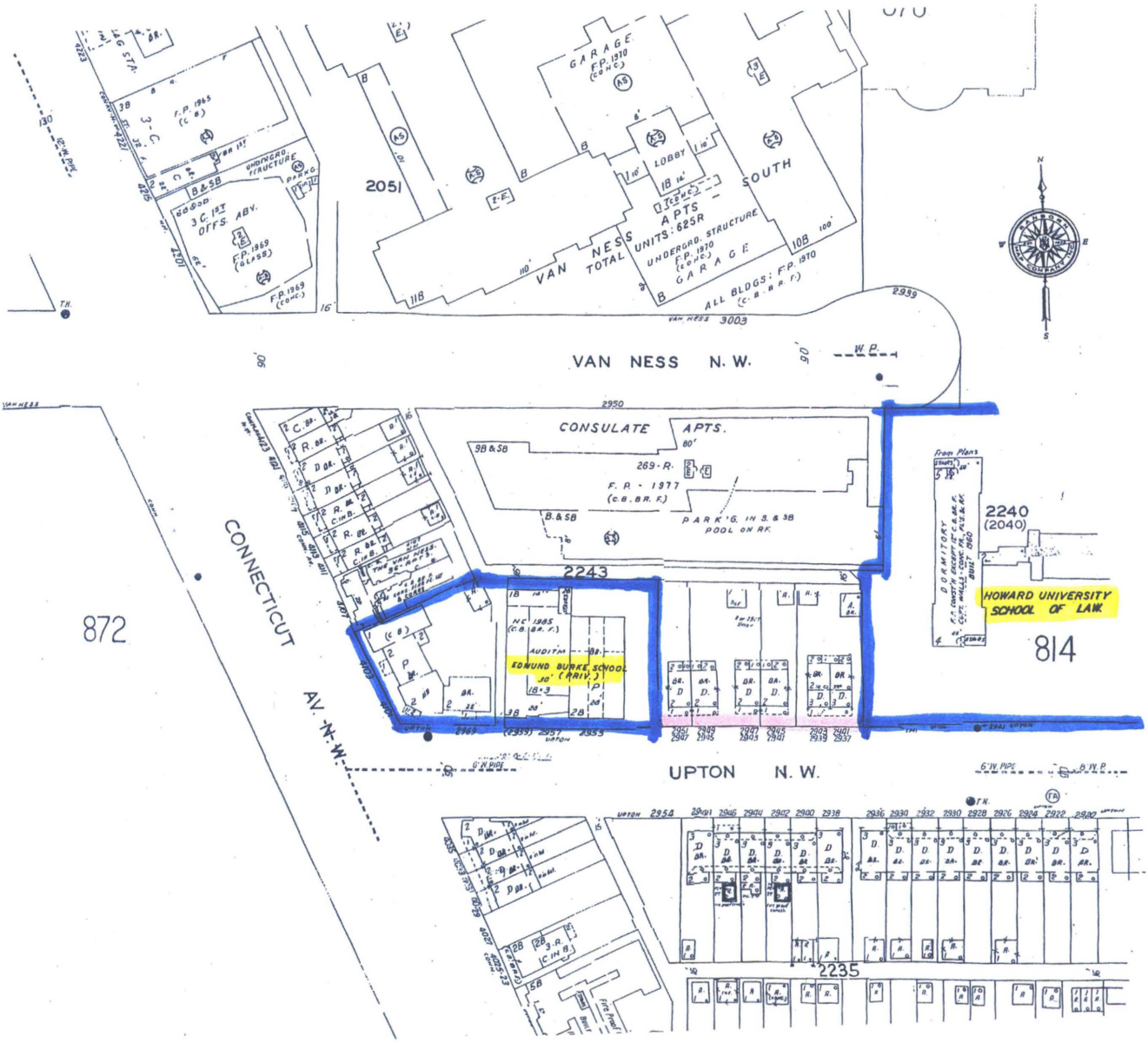
THEREFORE, BE IT RESOLVED THAT: ANC 3F recommends that the BZA deny the application for a special exception for the Burke School; and

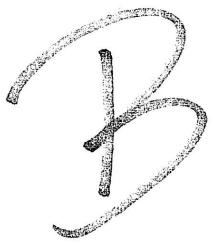
THEREFORE, BE IT FURTHER RESOLVED THAT: ANC 3F authorizes Commissioners Karen Perry and Phil Kogan to formally represent ANC 3F in order to present the views of ANC 3F on this matter in proceedings before the BZA.

Approved by vote of 5-1-0 at a duly noticed meeting on October 16, 2000 with a quorum present. Commissioner Bardin recused from consideration and vote.

/s/ /s/

Chair Secretary


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Certificate of Service

I hereby certify that on August 27, 2001, a copy of the foregoing Response to Opposition Filings was served via first class mail to the following:

Jennifer Steingasser
Office of Planning
801 North Capitol Street, NW, 4th Floor
Washington, DC 20002

Mr. Kenneth Laden
Department of Public Works
2000 14th Street, NW, 5th Floor
Washington, DC 20009

ANC 3F c/o Phil Kogan
Health and Human Services
200 Independence Ave, SW, #503H
Washington, DC 20201

Linda Jay
2951 Upton Street, NW
Washington, DC 20008

And

3634 Veazey Street, NW
Washington, DC 20008-3135

Van Ness South Tenants Association
c/o Pat Brown
Greenstein, DeLorme & Luchs
1620 L Street, NW, Suite 900
Washington, DC 20036

NULS
c/o Jodie Smolik
2945 Upton Street, NW
Washington, DC 20008

Sirrus, LLC
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555 12th Street, NW
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Sarah E. Shaw