ShawPittman LLP

A Limited Liability Partnership Including Professional Corporations

August 27, 2001

VIA HAND DELIVERY

Sheila Cross Reid
Chairperson
Board of Zoning Adjustment
441 4th Street, N.W
Second Floor
Washington, D.C. 20001

Re: Edmund Burke School
Application No. 16611

Dear Chairperson Reid and Members of the Board:

Enclosed please find a copy of the Edmund Burke School's ("School") proposed Findings of Fact and Conclusions of Law for the above-referenced application.

Additionally, the School reiterates the compromise it proposed at the July 10, 2001 public hearing on the implementation of the new building. The School opposes the Department of Public Works suggestion for a year trial with regard to portions of its Transportation Management Plan ("**TMP**') because without the construction of the new building with on-site queing, on-site parking and a viable physical alternative (i.e. Connecticut Avenue access) to using Upton Street for access, the trial is bound to fail. In the alternative, the School offers to construct the new building with the inherent physical solutions to parking and traffic issues and implement the full scope of its TMP and Compliance Plan as presented, with a population "cap" of 340 students. If the School succeeds at meeting its performance standards with an enrollment of 340 for 18 months, the BZA can authorize a further enrollment cap increase to 360. If the School cannot succeed with 340 students, the BZA—in fact, the School's own Compliance Plan—will mandate a decreased enrollment cap. Although an enrollment cap of 340 students does not provide the School with its optimum program and presents a financial hardship for the School, it is the lowest enrollment number that assures financing of the project. The School is willing to expose itself to such a risk, in order to demonstrate to the BZA and the community that the proposed TMP and Compliance Plan can work.

BZA
Case No. 16611
Exhibit No. 229

Board of Zoning Adjustment
District of Columbia
CASE NO.16611
EXHIBIT NO.229

The School is disappointed that it has not been able to achieve a compromise with its opponents. The School took the BZA's advice seriously, at the July 10 public hearing, which encouraged the parties to try to mediate this dispute. The School has made numerous attempts to seek the start of a mediation process beginning shortly after July 10th. Unfortunately, mediation requires two willing parties, and it appears that the opponents have decided to forego this option.

The School respectfully requests that the Board approve this application.

Sincerely,

Phil T. Feola

Sarah E. Shaw

Enclosure

cc: See Certificate of Service

Document #: 1157079 v.2

Application No. 16611 of Edmund Burke School, on behalf of Kenneth Workman, Josef Straka, and Carl and Elizabeth Richmond, pursuant to 11 DCMR § 3104.1 for a special exception to establish a private school under Section 206 for a maximum of 360 students and 70 faculty and staff in a R-5-D Zone District and Section 411 to allow more than one roof structure housing mechanical equipment at premises 2969 Upton Street, N.W. and 4101-4103 Connecticut Avenue, N.W. (Lots 27, 28 and 65, Square 2243).

HEARING DATES: May 15, 2001; May 22, 2001; and July 10, 2001

DECISION DATE: September 4, 2001

DECISION AND ORDER

The Board of Zoning Adjustment approved Application No. 16611 of Edmund Burke School to expand an existing private school into a R-5-D Zone District, subject to conditions and to allow more than one roof structure housing mechanical equipment.

PRELIMINARY MATTERS:

Applicant. The applicant in this case is Edmund Burke School ("Edmund Burke" or the "School"), on behalf of owners of Lots 27, 28 and 65 in Square 2243.

Application. The School filed an application with the Board of Zoning Adjustment on July 7, 2000 for a special exception under 11 DCMR § 3104.1, to allow the expansion of an existing private school under 11 DCMR § 206 (1995) in a R-5-D Zone District at 2969 Upton Street, N.W. and 4101-4103 Connecticut Avenue, N.W. (Lots 27, 28 and 65, Square 2243). The School also requested relief

pursuant to 11 DCMR § 411 to allow more than one roof structure housing mechanical equipment. The zoning relief requested in this application is self-certified pursuant to 11 DCMR § 3113.2.

Notice of Application and Notice of Hearing. By memoranda dated August 16, 2000, the Office of Zoning advised the D.C. Office of Planning, the Zoning Administrator, and the Advisory Neighborhood Commission (ANC) 3F, the ANC for the area within which the subject property is located, of the application.

The Board scheduled a public hearing on the application for October 24, 2000. Pursuant to 11 DCMR § 3113.13, the Office of Zoning, on September 14, 2000, mailed the applicants, the owners of all property within 200 feet of the subject property, and the ANC 3F notice of hearing.

Notice was also published in the D.C. Register. The School's affidavits of posting and maintenance indicate that three zoning posters were posted beginning on October 6, 2000, in plain view of the public. As a preliminary matter, at the October 24 hearing and with the consent of the School, the Office of Planning and persons requesting party status, the Board announced the continuation of the hearing until November 14, 2000. Negotiations continued between the School and various community groups and the hearing was postponed twice more, to January 23, 2001 and finally to May 15, 2001.

Requests for Party Status. The Board granted party status to: (i) Neighborhoods United for Livable Streets, members of which live on Upton Street, N.W., within the same block as the existing School and the proposed expansion; (ii) Linda Jay, who lives at 2951 Upton street, directly east of the existing School building; (iii) Van Ness South Tenants Association, members of which live at Van Ness

South, 3003 Van Ness Street, N.W.; and (iv) Sirrus, LLC, the company which owns the rental apartment building located at 4107 Connecticut Avenue.

Applicant's Case. The School presented testimony and evidence from David Shapiro, Head-of-School; Steve Pruitt, Vice Chairman of the School's Board of Trustees and a parent of an Edmund Burke student; Frank Schlessinger, the principal in Frank Schlessinger Associates, an expert in architecture; Louis Slade and Erwin Andres, of Gorove/Slade Associates, experts in transportation and traffic operations engineers; and Lisa Myers, Metropolitan Police Officer, who also works part-time directing traffic at the School during the morning and afternoon rush hours.

Office of Planning (OP) Report. OP reviewed the application with respect to number of students; noise, traffic; and other objectionable conditions. In a report dated May 2, 2001, OP stated that the location of the proposed addition is a logical area for the School to expand, that it places the expansion away from residential properties and along a major thoroughfare. Additionally, OP noted that private schools provide educational opportunities that help draw and maintain a diverse city population. OP concluded that the project would not have a significant noise impact, that the parking proposed is sufficient, the proposed increase in student and faculty population reasonable, is consistent with the District of Columbia's Comprehensive Plan and would not bring substantial detriment to the public good. Further, OP concluded that approval of the project would not impair the intent, purpose or integrity of the Zoning Regulations and Map. However, based on the conclusion in the May 3, 2001, Department of Public Works report that the proposal will have an adverse impact on the existing neighborhood, OP did not recommend approval. OP stated if the Department of Public Work's concerns can be addressed, or if the Board wishes to approve the application, certain conditions outlined in its report should be implemented.

Department of Public Works (DPW) Report. Through the report dated May 3, 2001, DPW indicated that the traffic control measures proposed by the School would improve traffic congestion and safety over existing conditions, but that local residents would continue to experience traffic congestion. DPW found that the amount and location of additional parking spaces for the proposal is sufficient. DPW issued a supplementary report in response to a supplementary Traffic Management Plan submitted by the School. This May 21, 2001, DPW report stated that traffic conditions in the surrounding neighborhood would improve over existing conditions if the School were to successfully implement the various traffic management improvements outlined in the School's Traffic Management Plan. The May 21 DPW report expressed concerns about the School's ability to implement all of the proposed traffic mitigation measures, the extent to which these measures would be successful in changing driving patterns, and whether the School will be able to maintain these transportation mitigation measures over the long term. Therefore, DPW recommended a one-year demonstration of effectiveness of the traffic mitigation measures proposed by the School before the application is finally approved.

ANC 3F Report. The ANC originally voted on October 16, 2000, to oppose the School's expansion by a vote of 5-1, citing concerns with traffic congestion and inadequate parking. After months of negotiations and improvements to the School's plan, on April 23, 2001, ANC 3F voted 3 in favor, 2 opposed and 1 abstaining, to support a resolution opposing the application. Then on June 18, 2001, the ANC voted unanimously, but for one abstention, in favor of DPW's suggested one-year demonstration period prior to final approval. The ANC continued to express concern about the negative impact the School's traffic would have on residents in the area as well as on the School's ability to implement and enforce its Traffic Management Plan.

Persons in Support of Application. Many neighbors, students and parents testified in support of the application. These persons indicated that the Traffic Management Plan proposed by the School would improve the existing traffic situation. These witnesses also emphasized the quality education available at Edmund Burke and the important contribution past and current Edmund Burke Students make to the community. Many of these witnesses indicated that having the option of sending their child to Edmund Burke was central in their decision to continue residing in the District. A petition signed by residents in the immediate area was submitted in support. A petition of support from neighborhood businesses was submitted. Over 80 letter of support were received in the record.

Parties and Persons in Opposition to the Application. Neighbors United for Livable Streets (NULS), the membership of which consists of residents of Upton Street, N.W. where the School is located, was granted party status and opposed the application due to concerns that the addition will lead to an exacerbation of exiting traffic problems. NULS submitted an undated traffic analysis by MCV Associates, Inc., criticizing the traffic report submitted by the School as inaccurate. NULS also questioned whether the School will have sufficient loading once the addition is built and whether adequate parking and parking spaces will be provided. NULS complained that the School's existing air conditioner creates too much noise. NULS recommended that a one year test period be implemented, before the addition is constructed, in order to determine if aspects of the School's Traffic Management Plan will work as intended.

Sirrus LLC, owner of the apartment building located at 4107 Connecticut Avenue, N.W., which abuts on the north, the property onto which the School seeks to expand, requested and was granted party status. Sirrus LLC opposed the School's application on the grounds that the noise generated by the

addition would disturb the residents of the building. Sirrus LLC also feared the addition would lead to additional traffic and parking problems for residents of the area.

Linda Jay, who lives directly to the east of the existing School building, requested and was granted party status. Ms. Jay could not attend the public hearing, and Milton Shinburg read the testimony of Ms. Jay into the record. Ms. Jay opposed the expansion of the School based on her concerns it would generate greater traffic and noise.

Van Ness South Tenants Association, made-up of residents of Van Ness South apartment building, located at 3003 Van Ness Street, N.W., requested and was granted party status. Morad Eghbal, acting president of VNSTA, claimed to speak on behalf of VNSTA. Mr. Eghbal did not submit evidence of authorization to represent VNSTA. Mr. Eghbal opposed the School's expansion based on concerns about increased traffic. Mr. Eghbal recommended that the School implement parts of its Traffic Management Plan for a year before it be allowed to refile its application.

Closing of the Record. The record was closed at the end of the hearing except for specific documents requested by the Board. These documents were filed timely by the parties, as were responses thereto, as permitted by the Zoning Regulations.

Decision Meeting. On September 4, 2001, the Board voted _____ to approve this application with conditions.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The Property is located at the northeast corner of Connecticut Avenue, N.W. and Upton Street, N.W., where it is separated from the existing School building by a public alley. The Property is located in the R-5-D Zone District. It is irregular in shape and consists of 14,305 square feet of land area. It was most recently occupied by a small apartment building (6 units) and an office/museum building predominantly occupied by the offices of the Cultural Institute of Brazil.

2. There is a six-story apartment building adjacent to the Property to the north. The Intellsat building and the federally owned "chancery" campus is across Connecticut Avenue from the site. There are many commercial and high density residential uses to the north along the adjacent portion of Connecticut Avenue, N.W. North of the site at Connecticut Avenue and Van Ness Street, N.W. is a C-3-A Zone District of intense mixed-use development along Connecticut Avenue. This district contains the Van Ness Center and other commercial developments. In the northwest quadrant of the intersection of Connecticut Avenue and Van Ness Street is the campus of the University of the District of Columbia. Directly behind the existing school building is The Consulate, a 90 foot tall apartment building with over 250 units. South of the subject Property on Connecticut Avenue, the land uses consist of single family houses and large apartment buildings.

3. To the east of the existing School buildings, on the north side of Upton Street, are six single family (duplex) houses, Howard University School of Law and the Selma M. Levine School of

Music. To the east of the existing School, on the south side of Upton Street, are a series of single family row dwellings.

The Proposed Expansion of the Private School Use

4. Edmund Burke School is a private, independent school that was established in the District of Columbia in 1968. The School has been located at 2955 Upton Street, N.W. since 1973. The School currently has 299 students in grades sixth through twelfth and employs fifty-nine faculty and staff. It is a co-educational institution, founded on the belief that the best education is possible through the careful development of imagination, reason and knowledge, with a special emphasis on the abilities and needs of the individual student.

5. The School proposes expanding to the three lots to the west of its existing building at 2955 Upton Street, N.W. (Lot 67, Square 2243). The School seeks to undertake this addition so that it may better serve its student body by providing more classroom and academic space, thereby allowing a wider breadth of educational activities. The proposed new building will contain classrooms for the middle school population, a library, computer rooms, photography labs, music rooms, art studios and administrative space. It will also have a 150 seat auditorium and outdoor terrace space for passive recreation.

6. The proposed new building will be in complete conformance with the requirements for the R-5-D Zone District. The building addition will have a height of 65 feet, well below the 90-foot height permitted in the R-5-D Zone District. The gross floor area of the building is well below the 3.5 FAR permitted as a matter-of-right in this zone. The rear yard is approximately 25 feet

5 inches and the lot occupancy will be seventy-five percent. Based on the private school use of the Property, the Zoning Regulations require 47 parking spaces. Originally, the School had sought to provide 43 spaces on site with another 30 spaces off-site within walking distance to the School. In direct response to community demands, new parking for an additional 51 vehicles will be provided under the proposed building and on site, in addition to the 24 spaces currently provided by the School, for a parking total of 75 spaces.

Noise Impacts

7. Noise emanating from the School will not adversely impact neighboring property in this active and densely populated part of the District. The existing School building and the proposed addition are large enough to satisfy the many academic and extra-curricular program needs of the School, the vast majority of which will take place indoors. The School does not have nor does it contemplate an outdoor athletic field on the site. Also, by locating the addition on property fronting on Connecticut Avenue, the School's expansion will not bring institutional use further into the residential neighborhood and will not adversely affect the character of Upton Street.

8. The School is proposing to establish an Operations Plan, which will establish policies to assure that the School's operations will minimize noise and not create an adverse impact on neighboring properties. The Operations Plan will prohibit the School's assembly spaces from being rented by outside groups, and permit only one special event to be held at any one time. It will limit noise emanating from the School to 60 decibels during the day and 55 decibels during the evening. It will require that all deliveries shall be done during the Schools operation hours and in the designated loading zones.

9. Opponents complained that the existing air conditioner, located near the School's eastern property line, produces excessive noise and that the School's students, walking on the public rights-of-way were noisy.

10. The Board finds that by expanding into the three lots toward Connecticut Avenue, the intensity of use of the existing School building will be lessened, and, as a result, any noise impacts on neighbors to the east of the existing School building will likewise be lessened. The Board finds that an average of 200 students will use the existing School building when the addition is complete, as compared to the 299 students using the existing building currently.

11. The plans show that the existing air conditioner will be relocated to the roof of the existing building and, upon relocation, will cease to create any appreciable noise disturbances to surrounding property owners. While middle and high school students using the public rights-of-way may, at times, create "noise", such noise is merely a part of urban living and not appropriately addressed in a zoning forum.

12. The Board finds that there is nothing in the School's 1983 BZA Order, Order No. 13986, nor is there anything in the 1997 Howard University Law School Campus Plan, BZA Order No. 16110 to prohibit Edmund Burke students from using the field at the Howard University Law School for physical education. The Board finds that continued use of the Howard field by the School will not have a negative impact on neighboring properties and negates the need for additional vehicle trips to, and from, more remote outdoor recreational facilities.

13. The Board finds that with the proposed improvements and implementation of the Operations Plan, made a condition of this Order, there is not likely to be objectionable conditions due to the noise emanating from the property.

Traffic Impacts

14. The transportation consulting firm of Gorove/Slade Associates performed a traffic study of the area in which the subject property is located and generated a Traffic Impact Analysis of the existing and future conditions and a Traffic Management Plan (TMP) for the School. The Traffic Impact Analysis and TMP were submitted as part of the School's pre-hearing statement and revisions to the TMP were submitted as Exhibit No. 163.

15. The Traffic Impact Analysis, together with the TMP, demonstrate that the proposed changes to the School will not adversely affect traffic patterns in the vicinity of the site or have an adverse impact on the road network. The proposed expansion will result in only 29 additional trips to (and from) the School in the morning peak hour and 18 additional trips in the afternoon peak hour.

16. The Traffic Impact Analysis and the Traffic Management Plan develop a strategic plan for handling the burden of drop-off and pick-up traffic on Upton and Van Ness Streets, as well as in the public alley. Ingress and egress to the underground parking garage will be via a driveway and ramp from Connecticut Avenue only. Vehicles dropping off students will access the same driveway off of Connecticut Avenue and veer to the right to enter an on-site traffic loop, drop off students and then continue on the loop back to Connecticut Avenue. In the alternative, vehicles

dropping off students will turn right and continue on a driveway wholly on the School's property to Upton Street. During drop-off and pick-up, all queuing, along Connecticut Avenue and to the east of the new building, will be strictly limited and regulated. All stacking and carpool operations for the School will occur entirely on School property or at the proposed lay-bys, allowing all present lanes of traffic to continue normal flow.

17. As the Traffic Impact Analysis shows, approximately 40% of vehicles coming to the School in the a.m. peak hour arrive from the east; 25% arrive from the west; 15% arrive from the south; and 20% arrive from the north, virtually all of which currently end up on Upton Street. The new plan will redirect approximately 80% of the inbound trips to the new Connecticut Avenue entrance. Under this plan, all vehicles, whether accessing the garage or dropping off students, will use the driveway and ramp off of Connecticut Avenue.

18. The TMP also puts in place several additional policies that will alleviate congestion around the School.

School Operations

• Continue to provide employees transit subsidies to encourage the use of Metrorail and bus;

• Develop a special events management plan to identify measures to manage traffic and parking associated with special events.

• Promote the Van Ness Metrorail station Kiss-and-Ride as an appropriate location for parents to drop-off and pick-up their children as an alternative to avoid the carpool operations at the School. This alternative would be encouraged for parents heading southbound on Connecticut Avenue headed for destinations downtown.

Carpool Operations

• Develop the proposed circulation plan to provide right-turn in/right-turn out access to Connecticut Avenue into the new School building. This plan will provide for ingress on Connecticut Avenue and egress to Connecticut Avenue or Upton Street allowing parents the opportunity and flexibility to head in any direction that they need to proceed.

• Develop the physical plan that will provide a total of 17 (a.m.) stacking spaces in the morning and 19 (p.m.) stacking spaces in the afternoon.

• Schedule faculty meetings to train staff on policy implementation and enforcement at the beginning of each semester to go over the policies and any subsequent modifications to them resulting from observations of the carpool operations.

• Increase faculty/staff duty roster for both a.m. and p.m. carpool operations to facilitate efficient and safe operations. This measure will ensure the most efficient utilization of the on-campus space and will help to speed up the carpool operations.

• Increase faculty/staff duty roster for both a.m. and p.m carpool operations to facilitate efficient and safe operations. This measure will ensure the most efficient utilization of the available on-campus space and will help to speed up the carpool operations.

• Mandate duty staff to enforce all the rules of existing parking and carpool policies.

• Institute disciplinary procedures for violators.

• A traffic control officer will enforce the carpool regulations during the a.m. and p.m. carpool operations.

• Parents will be prohibited from dropping off or picking up students on Upton Street or the public alley.

• The School will retain and off-duty Metropolitan Police Officer to manage the Upton Street traffic.

Parking Policies

- Provide 75 parking spaces on site.
- Access to the parking structure in the new building is provided from Connecticut Avenue only .
- Require students to register their vehicles and display School permits to identify vehicles associated with School students.
- Prohibit all students and faculty who need to drive from parking on Upton Street in front of residences.
- Assign parking spaces for every person who drives to School.

Community-related Issues

- Monitor the effectiveness of the school transportation management elements.
- Maintain a phone log of traffic and parking-related comments received from parents and neighbors.
- Inform community of upcoming special event at the School with a semiannual calendar of events that would be available at the School for interested neighbors.

Subsidies

- As part of the TMP, the School will provide transit subsidies for Maryland and Virginia Students (subsidies are presently provided for D.C. students). The transit benefit is projected to reduce the number of trips by 36, in both the morning and the afternoon. The School will also continue to provide the Metro benefit to all faculty and staff.

Shuttle Service

• The School will implement a Shuttle service as part of its TMP. The shuttle service program will allow for parents coming from the west, north or east to drop off their child at a safe location to be shuttled directly to the School. The School currently owns two vans with a 14-seat capacity. The shuttle program will use these two vans to make two trips each morning to reduce the number of trips by forty. The School has received written permission from the District's Office of Mass Transit to allow it to use two locations as shuttle stops. The two approved locations are at Shoemaker and Tilden Street, N.W. and 40th Street, N.W., between Albemarle and Brandywine Streets, N.W. The shuttle service will operate on normal school days between 7:30 and 8:30 a.m. Further, WMATA has granted the School permission to utilize a bus bay at the Van Ness "Kiss and Ride" for its shuttle.

• The School's TMP also includes a bus accommodations plan, which calls for visiting team buses to be parked in the parking spaces behind the existing building.

19. Through oral testimony at the public hearing and the report dated May 3, 2001, DPW indicated that the traffic control measures proposed by the School would improve traffic congestion and safety over existing conditions, but that local residents would continue to experience traffic congestion. DPW issued a supplementary report in response to a supplementary Traffic Management Plan submitted by the School. This May 21, 2001, DPW report stated that traffic conditions in the surrounding neighborhood would improve over existing conditions if the School were to successfully implement the various traffic management improvements outlined in the School's Traffic Management Plan. The May 21 DPW report expressed concerns about the School's ability to implement all of the proposed traffic mitigation measures, the extent to which

these measures would be successful in changing driving patterns, and whether the School will be able to maintain these transportation mitigation measures over the long term. Therefore, DPW recommended a one-year demonstration of effectiveness of the traffic mitigation measures proposed by the School before the application is finally approved.

20. NULS, through expert testimony and a written traffic report, disputed the findings of the School's traffic experts. NULS traffic expert testified that existing conditions in the area are unsafe and congested and that any additional traffic on the adjacent roadways will add to the existing traffic problems. NULS testified that currently, cars dropping off and picking up students from the School queue up in the public alley and in front of the existing School building on Upton, making ingress and egress difficult for residents on Upton. NULS testified that it believes the TMP, including the significant traffic mitigation measures, proposed by the School will not work and will not be enforced.

21. Based on the DPW reports, the expert reports and the expert testimony, the Board finds that the proposed addition will not cause adverse traffic impacts, and actually will improve existing conditions, if the School's Traffic Management Plan is enacted and enforced.

22. The Board credits testimony of the School and the proffer of a model Compliance Plan, made a condition of the Order, with significant penalties, that the TMP will be strictly enforced.

23. The Board finds that the one-year test period proposed by DPW will not work because many of the improvements to traffic circulation, such as the on-site queuing, the additional parking spaces and the on site loading facilities will not be in place until the addition is constructed. The Board

further finds that the traffic reduction predicted by the School depends on the interplay of the addition, parking, queuing, access and the TMP.

Number of Students and Faculty/Staff

24. The Board finds that the existing School building and the planned addition together are large enough to accommodate the needs and demands of a private school for grades 6 through 12, with a maximum of 360 students and 70 faculty and staff.

25. Concerns were raised, during the course of the public hearing, as to the safety of students exiting cars in the driveway to the east of the existing School and as to how students would safely travel from the existing School building to the addition. The School agreed to close its private driveway between the two buildings, during the academic day, once the morning drop-off period is over, to be reopened for the afternoon pick-up period. The School agreed to assign a staff member to monitor student crossing between the two buildings. The School also offers to construct a bridge connecting the two buildings at the second floor.

Ample Parking

26. This application will permit the increase of on-site parking to 75 parking spaces. The 1983 BZA approval for the School, BZA Order No. 13986 requires the existing School provide 24 spaces. This Order permitted the School to build an addition to its original facility, which included the existing gymnasium, which is, and will remain, its largest assembly space, accommodating 250 students. BZA Order No. 13986 permits the School to have a student population of 270 students

with a faculty/staff of 35 persons. Through this application the School will increase enrollment and the size of its faculty and staff to 360 and 70 respectively.

27. Section 2101.1 of the Zoning Regulations, requires that parking be provided at a ratio of 2 for every 3 faculty and staff and 1 for every 10 seats in the largest assembly space for high schools. Since the largest assembly space (the gym) was approved by the BZA with 24 parking spaces, parking for the new building is based on the increase in faculty and staff from the 35 permitted by BZA Order No. 13986 to the 70 requested in this application. Thus, the additional 35 faculty and staff, multiplied by two-thirds equals a new parking requirement of 23 additional spaces. This new requirement, added to the 24 required by the BZA in Order No. 13986, brings the parking requirement to 47. This analysis was confirmed by the District of Columbia Zoning Administrator (Exhibit No. 212). As shown on the architectural plans, the School plans to provide 75 parking spaces total when the addition is complete.

28. The Board finds that DPW and the Office of Planning support the Zoning Administrator's rationale with regard to parking and that the School's proposed parking is sufficient.

29. The Board finds that the size of the parking spaces provided by the School is satisfactory to meet the requirements of Section 2115 of the Zoning Regulations. Forty-seven of the parking spaces provided by the School must be at least 9 feet by 19 feet. At least 56 of the parking spaces provided for by the School will be 9 feet by 19 feet. The Board finds that any parking spaces that are not a minimum of 9 feet by 19 feet are excess spaces not required to be provided by the School, pursuant to the Zoning Regulations, and thus, not subject to the requirements of the Zoning Regulations.

30. The Board finds that the compact car spaces are parking spaces provided in excess of those spaces that are required pursuant to Section 2100 of the Zoning Regulations, and thus it is not necessary for these spaces to be arranged in groups of five contiguous spaces with access from the same aisle, as provided for in Section 2115.4 of the Zoning Regulations.

31. Students will be strongly discouraged from driving to school. Currently, only 13 students drive to School (6% of the junior and senior classes). The population increase provided for by this application will increase the number of drivers from the junior and senior classes by a total of 10 students. This increase will result in 1 more student driving to School. To the extent that students drive, the School will implement specific parking policies that will be strictly enforced. Those students who need to drive will park in the underground garage and will not be permitted to park in front of nearby residences. All persons who drive to School, students and faculty and staff, will be assigned a specific parking space. In order to ensure compliance, student vehicles will be registered and required to have an Edmund Burke Identification Sticker, so that any violations can be easily reported to the School. A specific staff person will be tasked with monitoring student compliance and responding promptly to any community complaints. The School will work closely with the community to accommodate successfully the traffic and parking needs generated by the School.

32. The Board finds that the School provides more than the required number of on-site parking spaces and that its planned parking monitoring will be effective to ensure that resident parking will not be impacted by Edmund Burke students.

Harmony with the Zoning Regulations and Map

33. The proposed School building is well within the height, lot occupancy and bulk requirements for the R-5-D Zone District.

34. The Generalized Land Use map shows the area as high-density residential. Schools are considered to be part of the fabric of a residential community. As the Comprehensive Plan notes, many residential neighborhoods also include commercial and institutional uses, such as schools, which contribute to the character and enhance the livability of the communities.

Impacts on Use of Neighboring Property

35. The TMP, Operations Plan and Compliance Plan, proffered by the School, and the conditions contained herein will significantly lessen the impact of the School on neighboring property.

36. The above findings largely pertain to impacts on the use of neighboring property and will not be repeated in this section of the Decision and Order.

Relief Requested Under Section 411

37. Section 411.3 of the Zoning Regulations requires that all penthouses and mechanical equipment must be placed in one (1) enclosure. Due to the noise concerns of Sirrus LLC, the owners of the apartment building to the north of the project, the plans for the addition contemplate two penthouses for mechanical equipment.

38. Section 411.11 of the Zoning Regulations provides an exception to Section 411.3 and permits more than one mechanical penthouse, where allowing only one penthouse would be impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or the surrounding area. Pursuant to Section 411.11, more than one roof structure is permitted if (i) compliance would be unduly restrictive, prohibitively costly, or unreasonable; and (ii) the light and air of adjacent buildings will not be affected adversely by the design.

39. The Board finds that it would be unduly restrictive to require the School to house all of its mechanical equipment in one roof structure. By allowing the School to construct two separate penthouses for mechanical equipment, the noisiest portion of the addition's air conditioner can be moved to a location where it will not disturb anyone. Two roof structures also allow the School sufficient penthouse space for its needed mechanical equipment, while minimizing noise to adjacent properties.

40. The Board finds that two penthouses on the roof of the proposed addition will not adversely affect the light or air of adjacent buildings. Both of these penthouses are set back from all exterior walls a distance at least equal to their height above the roof, and their ultimate height is well below the maximum (90') height limit in this zone district.

CONCLUSIONS OF LAW AND OPINION

The Board of Zoning Adjustment is authorized under the Zoning Act of 1938, approved June 20, 1938 (52 Stat.797, as amended; D.C. Code § 5-424(g)(2)), to grant special exceptions as provided in the Zoning Regulations. Edmund Burke School applied under 11 DCMR § 3104.1 for a special exception

pursuant to 11 DCMR § 206 to expand an existing private school. The notice requirements of 11 DCMR § 3113 for a public hearing on the application have been met.

Edmund Burke School is a private school as that term is used in the Zoning Regulations. To meet its burden of proof under Subsection 3104.1, the applicant must demonstrate that the proposed private school use would meet the special conditions listed in Section 206; that it would be in harmony with the general purpose and intent of the Zoning Regulations and Maps; and that it would not adversely affect the lawful use of the neighboring property. Under Subsection 206.2, "The private school shall be located so that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions." Under Subsection 206.3, "Ample parking space, but not less than that required in chapter 21 of this title, shall be provided to accommodate the students, teachers and visitors likely to comet to the site by automobile."

The Board's discretion in reviewing an application for a special exception for a private school is limited to a determination of whether an applicant has complied with the requirements of Sections 206 and 3104.1. If the applicant meets its burden, the Board must ordinarily grant the application. *See The Washington Ethical Society v. District of Columbia Board of Zoning Adjustment*, 421 A.2d 14, 18 (D.C. 1980). As stated in *French v. District of Columbia Board of Zoning Adjustment*, 658 A.2d 1023 (D.C. 1995), "The Board's limited function [in a special exception case] is to assure that the regulations adopted by the Zoning Commission are followed. . . ." *Id.* at 1034, q*uoting Tenley & Cleveland Park Emergency Committee v. District of Columbia Board of Zoning Adjustment,* 550 A.2d 331, 341 (D.C. 1988), cert. denied, 489 U.S. 1082 (1989).

Further, the Board is required under D.C. Code §412.4 to give "great weight" to OP recommendations. The Board is also required under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21, as amended; D.C. Code §1-261(d)) to give great weight to the recommendations of the ANC for the area within which the subject property is located.

The Board has carefully considered the recommendations and reports of OP, the ANC and DPW; however, for the reasons stated below, it does not find workable, DPW's suggestion of a one-year demonstration of effectiveness, during which the School would implement some of its proposed traffic mitigation measures, but during which it would not be able to construct the addition and therefore, would be unable to implement several important aspects of its Traffic Management Plan.

As discussed above in the Findings of Fact relating to traffic impacts, the Board has credited the opinion of the School's traffic experts that the School can be expanded onto the subject property in a manner that would not create objectionable traffic conditions and agrees with DPW that the proposed mitigation measures will improve existing conditions. In addition, by the conclusion of the hearing, the School had agreed to the imposition of a stringent set of conditions, many of which were also proposed by OP and the ANC. The Board has incorporated all of these conditions in its Order.

Based upon the Findings of Fact and having given great weight to the OP and ANC recommendations, the Board concludes that the proposed private school, as conditioned by the Board, can be located at the subject property so that it is not be likely to become objectionable to adjoining nearby property. The Board has imposed numerous, stringent conditions in this order in response to the OP, ANC, DPW and neighborhood concerns, which particular emphasis on traffic and public safety.

The Board also concludes that the proposed private school would provide ample parking. Under 11 DCMR §2101.1, the School is required by the Zoning Regulations to provide at least 47 parking spaces. The Board concludes the School's provision of 75 parking spaces will meet the needs of its faculty and staff, students and visitors.

The R-5-D District is a high-density residential district that allows for all types of urban residential development and also permits those institutional and semi-public buildings that would be compatible with adjoining residential uses and which are excluded from the more restrictive residence districts. The Board concludes that the use of the subject property for the expansion of a private school, as conditioned by the Board, is in harmony with the Zoning Regulations and Map and the use is not inconsistent with the Comprehensive Plan of the District of Columbia.

As discussed above with respect to the requirements of Subsection 206.2 and 206.3, the Board concludes that the proposed private school use, as conditioned by the Board, would not adversely affect the use of neighboring property. As also set forth above, approval of special exception relief for more than one roof structure housing mechanical equipment, in this case is in harmony with the general purpose and intent of the Zoning Regulations and Map and will not adversely affect the use of nearby properties.

For the reasons stated above, the Board concludes that the applicant has met its burden of proof. It is hereby **ORDERED** that the application is **GRANTED**, subject to the following conditions:

1. The addition shall be constructed in accordance with the plans prepared by Frank Schlessinger and Associates and filed in the record as Exhibits Nos. 140, 219.

2. The maximum student enrollment shall be 360 students.

3. The maximum number of faculty and staff shall be 70.

4. The School shall convene quarterly with a duly constituted Compliance Committee, consisting of three neighbors appointed by the ANC, one Edmund Burke parent and one Edmund Burke administrator. The Compliance Committee will review documentation for each of the Compliance areas and indicators, which include enrollment, use of off-site parking for special events, traffic, use of public alleys, parking on residential streets, use of on-site drop off and pick up, use of shuttle and the Metro benefit

5. The Compliance Plan, marked as Exhibit No. 165 of the record, must be fully implemented.

6. Pursuant to the Compliance Plan, marked as Exhibit No. 165 of the record, the School will log the actual enrollment each April, June, July and September and present those logs at the Compliance Committee meetings. If the School exceeds its cap, it will reduce to below 360 by that same number for the next admissions cycle.

7. Pursuant to the Compliance Plan, the School will coordinate its special on-site events with the other schools and institutions in the neighborhood. The School will provide yearly calendars of special events to neighbors at the start of each school year. The School will keep count of the

number of cars that use the off-site parking and shuttle made available by the School for such events and compare it to attendance at the event. The School will present these records to the compliance Committee. If use of the off-site parking falls below an acceptable mark, the School will reduce the number of special events scheduled for the following year.

8. Students and parents shall be strongly discouraged from driving to and from School.

9. The Traffic Management Plan developed by the School's traffic expert shall be implemented. Ingress and egress to the underground parking garage will be by-way of a driveway and ramp from Connecticut Avenue only. Vehicles dropping off students will access the same driveway off of Connecticut Avenue and veer to the right to enter an on-site traffic loop, drop off students and then continue on the loop back to Connecticut Avenue. In the alternative, vehicles dropping off students will turn right and continue on the School's property to Upton Street. During drop-off and pick-up, all queuing, along Connecticut Avenue and to the east of the new building, will be strictly limited and regulated. All stacking and carpool operations for the School will occur entirely on School property or at the proposed lay-bys, allowing all present lanes of traffic to continue normal flow. There shall be no picking up or dropping off in the public alley or Upton Street, except for shuttle buses.

10. All vehicles, whether accessing the garage or dropping off students, will use the driveway and ramp off of Connecticut Avenue.

11. The School shall make available to all employees and students transit subsidies to encourage use of public transportation.

12. Van Ness Metrorail Station Kiss-and-Ride will be promoted as an appropriate location for parents to drop-off and pick-up their children as an alternative to avoid the carpool operations at the School. This alternative would be encouraged for parents heading southbound on Connecticut Avenue headed for destinations downtown.

13. The proposed circulation plan will provide right-turn in/right-turn out access to Connecticut Avenue into the new School building. This plan will provide for ingress on Connecticut Avenue and egress to Connecticut Avenue or Upton Street allowing parents the opportunity and flexibility to head in any direction that they need to proceed.

14. School employees will be trained at the beginning of each semester to implement and enforce the TMP.

15. School employees will be assigned to a.m. and p.m carpool operations in order to facilitate efficient and safe operations. Staff will be trained to enforce all the rules of existing parking and carpool policies.

16. A traffic control officer will enforce the carpool regulations during the a.m. and p.m. carpool operations.

17. Parents will be prohibited from dropping off or picking up students from the south side of Upton Street to eliminate the major source of congestion along Upton Street.

18. The School will retain an off-duty Metropolitan Police Officer to manage the Upton Street traffic during the a.m. and p.m. peak hours.

19. Seventy-five on site parking spaces will be provided as shown in the plans marked Exhibits Nos. 140 and 219 of the record. Students who have compelling reasons to drive to School must apply for permission. If permission is granted, those drives must display visible School permit sticker on their cars. The School will assign parking spaces in the School's garage to all students who drive to school.

20. Access to the parking structure in the new building shall be provided only from Connecticut Avenue.

21. Students shall be required to register their vehicles and display School permits to identify vehicles associated with School students. This measure will provide the opportunity for concerned community members to report students parking in front of residences.

22. Students and faculty shall be strictly prohibited from parking on Upton Street in front of residences.

23. The School shall maintain a phone log of traffic and parking-related comments received from parents and neighbors.

24. The School shall implement a shuttle service allowing parents to drop children off at designated shuttle stops to be taken to the School. Shuttle vans shall make two trips each morning to

designated stops on the east, west and northbound commuter routes to the School. The shuttle service shall operate on normal school days between 7:30 and 8:30 a.m.

25. Parking will be made available for visiting team buses in the spaces behind the existing building, and visiting teams will be directed to park there.

26. All Edmund Burke School parents must sign a copy of the Pledge, which is part of the Compliance Plan, marked as Exhibit No. 165 of the record, which explains the procedures in which drop off and pick up is to work at the School. By signing the Pledge, parents also agree to be bound by its fines and punishments.

27. The Pledge shall require certain pattern of travel.

(a) Families travelling west to the School and coming through Rock Creek Park: Travel west on Tilden Street to Connecticut Avenue. Turn right (north) on Connecticut Avenue. Go past Upton Street, and turn right off Connecticut Avenue to enter the School drop off lane.

(b) Families travelling south to the School: Approach Connecticut Avenue via Tilden Street from Reno Road and turn left on Connecticut Avenue to enter the Burke driveway.

(c) Families may only drop off or pick up students in the School's private drop off/pick up land, which is accessible from the east (northbound) side of Connecticut Avenue, between Upton and Van Ness Streets.

(d) Families shall not drive west on Upton Street.

(e) Families may not drop off or pick up students in front of the School on Upton or Van Ness Streets.

(f) Families may not utilize Van ness Street, the public alley between Van Ness and Upton Streets or the public alley between Upton and Tilden Street to drop off or pick up students or to exit the area.

28. For evening events at the School, the Pledge shall require parents to use the School's parking garage. The School shall make available off-site parking and shuttle service for the evening events at which we expect Burke attendance to exceed what the School garage can accommodate on site. For afternoon and evening events, no students or families may park on the residential streets adjacent to the School.

29. Penalties. Specific penalties shall be enforced for any and all violations of either the Compliance Plan or the Pledge. These penalties shall be:

First violation: Parent will be required to meet with the Head-of-School, who will explain again that each student's enrollment is contingent upon that child and that child's parent abiding by the Compliance Plan and Pledge. The Head-of-School will remind the parent of the penalties to be applied for future violations.

Second violation: Parent will be fined $100.00

Third violation: Parent will be fined $250.00

Fourth violation: Child will not be enrolled for the following academic year.

30. The School shall implement pedestrian safety practices including closing its private driveway between the two buildings, during the academic day and assigning a staff member to monitor student crossing.

31. The School shall use its best efforts to secure approval, and subsequently build, a pedestrian bridge over the public alley in order to connect the existing building with the new building as shown on the plans marked as Exhibit 219 of the record.

Chapter 32 of the Zoning Regulations sets forth provisions with respect to enforcement and penalties for violations of the regulations. Section 3205 requires compliance with conditions in orders of the Board and provides that if a building permit or certificate of occupancy has been issued pursuant to a decision of the Board to approve a special exception, then each condition to the approval of that special exception shall be treated as a condition to the issuance of the building permit or certificate of occupancy as well. 11 DCMR § 3205.3. The failure to abide by the conditions, in whole or part shall be grounds for the revocation of any building permit or certificates of occupancy issued pursuant to this order.

VOTE: _____.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member has approved the issuance of this Decision and Order and authorized the undersigned to execute this Decision and Order on his or her behalf.

ATTESTED BY: _____

JERRILY R. KRESS, FAIA

Director, Office of Zoning

Certificate of Service

I hereby certify that on August 20, 2001, a copy of the foregoing Proposed Findings of Fact and Conclusions of Law 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
c/o Cynthia Giordano, Esq.
Arnold & Porter
555 12th Street, NW
Washington, DC 20004

Sarah E. Shaw

Sarah E. Shaw