August 27, 2001

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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:

Enclosed are ANC 3F's Proposed Findings of Fact and Conclusions of Law along with Proposed Conditions for the referenced application.

Sincerely,

Phil Kogan
Commissioner

Enclosures

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

BZA
Case No. 16611
Exhibit No. 230

Board of Zoning Adjustment
District of Columbia
CASE NO.16611
EXHIBIT NO.230

CERTIFICATE OF SERVICE

A copy of the attached Findings of Fact and Conclusions of Law have been provided to the parties or their representatives:

Phil Feola, Shaw Pittman
Cynthia Giordano, Arnold & Porter
Pat Brown, Greenstein DeLorme and Luchs
Jody Smolick, NULS
Ken Laden, District Division of Transportation, DPW
Jennifer Steingasser, Office of Planning

ANC 3F
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
BZA APPLICATION 16611

Hearing Dates: May 15, 2001, May 22, 2001, July 10, 2001.

Application 16611 of Kenneth Workman, Josef Straka, Carl and Elizabeth Richmond, pursuant to 11 DCMR 3104 and Sections 206 for a special exception to expand and establish a private school at premises 29969 Upton Street, NW, and 4101 and 4103 Connecticut Avenue, NW, on lots 27, 28, and 65 in Square 2243, for relief from Section 411 of the Zoning Regulations to allow more than one roof structure housing mechanical equipment, for a waiver from the roof structure setback requirements and roof structures with walls of unequal height. These lots are located at the northeast corner of Upton Streets and Connecticut Avenue. Lot 27 fronts on Upton Street to the south; lot 28 is a corner lot that fronts on Upton Street to the south and Connecticut Avenue to the west; and lot 65 fronts on Connecticut Avenue to the west. Each of the lots is bounded on the east by a public alley that accommodates one-way south bound traffic between Van Ness Street and Upton Street.

The area to the immediate north, south, and east of these lots is a densely populated residential area with a mix o f apartment buildings and single family homes on Connecticut Avenue, Van Ness Street, and Upton Street. Several thousand ANC 3F residents live in this area. The special exception is requested in order for the Edmund Burke School to construct, in a residentially zoned R-5-D district, an additional building for the existing school located at 2955 Upton Street NW. The Burke School's pre-hearing statement describes a five story building but does not identify the amount of square feet to be contained in the proposed building. The Applicant proposes to increase the student body of the Burke School from the currently authorized 270 students to 360 students. Faculty and staff would increase from the currently authorized 35 to a level of 70.

FINDINGS OF FACT

1. Advisory Neighborhood Commission 3F (ANC) held duly noticed public meetings on March 13, 2000, October 11, 2000, October 16, 2000, January 16, 2001, April 23, 2001, and June 18, 2001. ANC 3F has submitted to the BZA three resolutions and three pre-hearing statements opposing Application 16611 and describing the objectionable conditions that would result should this application be approved. ANC 3F also submitted a resolution and report supporting a one year demonstration of the Burke School's revised traffic management plan. ANC 3F authorized Commissioners Phil Kogan and Karen Perry to formally represent ANC 3F in order to present the views of ANC 3F on this matter in proceedings before the BZA. Commissioners Kogan and Perry presented statements and provided oral testimony.

2. The subject site is located in an R-5-D district. Section 206 of the zoning regulations provides the applicable rules for locating private schools. It states that "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."

3. The Board granted party status to Neighbors United for Livable Streets (NULS), Ms. Linda Jay, Sirrus LLC, and the Van Ness South Tenants' Association, Inc.

4. If granted, the requested special exception will produce permanent negative impacts relating to traffic, noise, and quality of life for several thousand ANC 3F residents. These conditions are clearly objectionable within the meaning of the zoning regulations.

5. The neighborhood around the subject site houses a number of institutions in addition to the Burke School. The Howard University Law School, the Levine School of Music, the Hillwood Museum, and the Embassy and Chancery of the Netherlands are all located within approximately one half mile to the east of the Connecticut Avenue and Upton Street intersection. To the west are the University of the District of Columbia, Intellsat, and the International Chancery Center. These institutions along with the Burke School generate very heavy traffic and parking demands on Upton Street, Van Ness Street, Tilden Street, 29th Street and Connecticut Avenue.

6. Upton Street, a 30 foot wide, local residential street, and Van Ness Street, a 34 foot wide, dead end street, already host, through special exceptions, and variances, more major institutions than any other similarly situated streets in the District. This saturation of institutional using the underlying residential zoning. These institutions operate 7 days a week, straining the neighborhood's infrastructure to absorb traffic and parking demands. The Hillwood Museum, by variance, operates 6 days a week, and, not counting a staff of 50-100, is permitted 81,000 visitors annually, plus 16 Educational Evenings, a fund raiser for 350, and, with its last variance, 10 Sunday events. The Carnegie Institution which had a staff below 50 persons is now, by special exception, the Levine School of Music, which operates Monday through Friday, with early camp hours, and official hours of 9 a.m. to 9 p.m., and a daily density of 800 persons and on Saturdays from 1 p.m.-4 p.m. for 40 students. Levine is also permitted a fund raiser for 350 persons, 23 performances for 150 persons in the Boiler Room Recital Hall and 35 performances in the yet to be built, but approved, Performance Training Facility. Performances may include 12 Sundays and performances may end at 10:30 p.m.; the Howard University School of Law which, by special exception, operates 7 days a week from 7 a.m. to midnight, with unlimited evening and weekend events, and a student enrollment of 450, 41 faculty, and 173 staff; and the Netherlands Embassy and Chancery Complex with a staff of 150 persons.

7. Upton Street, Van Ness Street, Tilden Street, 29th Street and Connecticut Avenue residents already participate in three institutional committees to deal with mitigating measures from activities at Hillwood, Howard, and the Levine School, which by BZA order, includes the Burke School. If the Edmund Burke School expansion is approved, residents will have to attend a Burke Compliance Committee. Other residents in the District do not have the burden of participating tending four institutional committees and having to consult three institutional event calendars prior to planning a function at one's home in order to ensure

parking will be available.

8. The primary purpose of zoning law in the District of Columbia is to ensure residents stability and protection, to protect property from projects that change the character of a neighborhood, and to restrict projects that bring noise, pollution, commuter traffic, and increased land use density in order to maintain healthy, residential neighborhoods.

9. The street system east of the subject site consists of narrow residential streets that do not follow a complete grid system due to geography and land use patterns. These streets are not designed to support the large volumes of traffic associated with current institutional uses and cannot support new uses.

10. The applicant's own traffic study determined that the intersection of Van Ness and Connecticut and the westbound intersection of Upton and Connecticut have a level of service of F, the lowest grade possible, during at least part of the day. Both of these intersections cause frequent and time consuming delays throughout the day and evening. Further, these intersections feed the residential side streets of Van Ness, Veazey Terrace, Upton, and 29th Street that are already overburdened with traffic generated by a number of large institutional neighbors.

11. The expansion of Edmund Burke will tip the fragile and delicate balance that already exists between residential and institutional uses. This will cause irreversible damage to the residential character of this neighborhood.

12. The Burke site, even with the proposed expansion, is small and cannot contain many of the Burke School's programmed athletic, and recreational activities. This creates objectionable conditions as the Edmund Burke School has increasingly used residential neighborhood streets and neighborhood properties as an extension of its campus.

13. The building proposed by the Burke School would contain a 150 seat theater in addition to the existing gymnasium with a capacity of 250 students. Events at this facility will further degrade traffic flow and add to parking problems for residential neighbors.

14. The Associate Director for Transportation Planning, Department of Public Works (DPW), examined this application and found that the Edmund Burke School's current operations generate traffic congestion and present traffic safety problems. The DPW report points out that the neighborhood around the Burke School the proposed expansion of the school would increase these traffic problems and concludes that the Department of Public Works "does not support the application to expand the school to the adjacent property, with a student population and faculty increase."

15. ANC 3F in its resolutions, reports, and testimony before the Board documented that the school's existing traffic demands on the residential neighborhood are unacceptably high and that additional traffic would have devastating effects on the school's neighbors and on the

quality of life in this residential zone. "Great weight" must be given to the position of ANC 3F.

16. The Office of Planning (OP) and the Department of Public Works (DPW) have concluded they can not support the Burke School application, indicating that the principal issue is whether the expansion of the school, with the requested increase in students and staff, will have an adverse impact on the neighborhood based on criteria set forth in Section 206 of the zoning regulations. Section 206 identifies the criteria for assessing adverse impacts and requires that the applicant demonstrate that such adverse impacts will be avoided in before a special exception can be granted. OP has analyzed the application based on these criteria and determined that the impact of traffic on the residential neighborhood and the school's ability to mitigate this impact is the major issue presented by this application. The Department of Public Works, while acknowledging that the school's proposed traffic measures might improve traffic congestion over existing conditions, found that local residents would continue to experience traffic congestion and traffic safety problems under the untested and untried revised traffic plan. DPW also concluded that the applicant's revised traffic management plan consisted of untried and untested methods and should have a one year test before any change is made to the current zoning. Therefore the Department of Public Works could not support this application. OP also does not support this application.

17. The pre-hearing statement accompanying Application 16611 proposes that Burke's enrollment be raised to 360, a 33 percent increase over the maximum of 270 students specified in BZA Order 13986. Faculty and staff would increase from 35 to 70. The applicant's traffic study indicates that a 20 percent increase in students and the doubling of staff will produce a 20 percent increase in the number of trips per day generated by the school. This means the number of Burke generated trips would increase from the current level of 500 to 595.

18. The applicant's traffic plan relies on a circuitous route to direct southbound Connecticut Avenue traffic to the Burke School's entrance located on the northbound side of Connecticut Avenue. In order to change their direction of travel along Connecticut Avenue, parents traveling south on Connecticut Avenue would be required to turn right onto Van Ness Street, travel to Reno Road and turn left, go to Tilden Street and turn left, and continue back to Connecticut Avenue where they would again turn left in order to approach the school in the northbound lane of Connecticut Avenue. This series of four turns during rush hour makes for a circuitous and difficult route. It is likely that parents would continue to use the most direct route available to them. This direct route takes vehicles traveling south on Connecticut Avenue to the left turn arrow at Veazey Terrace. After turning left, these vehicles turn right into the Veazey/Van Ness alley and continue to the Van Ness/Upton alley which leads to Upton Street. This is how much of the school's Connecticut Avenue southbound traffic arrives at school today. As DPW indicated, this is an inappropriate use of public alleys and such use would only intensify should the school be allowed to expand without reducing traffic. Additional traffic generated by an expansion of the Burke School

likely will be directed to Upton, Van Ness, 29th and Tilden Streets. This traffic will add to the existing heavy flow generated by Burke as well as Howard Law School, Levine School of Music, the Netherlands Embassy and Chancery Complex, and the Hillwood Museum. The additional traffic will overwhelm the residentially zoned neighborhood around the Burke School.

19. During its May 15, 2001, testimony to the Board of Zoning Adjustment (BZA) the Burke School submitted a revised traffic management plan which proposes to increase the use of mass transit subsidies by students and staff; implement the use of shuttle buses from remote sites; institute a parent pledge to reduce the impact of school generated traffic on neighborhood; and implement enhanced traffic management at the school. DPW states that these are untested methods and that a one year demonstration should be conducted and appropriately monitored before a special exception is granted and any before any changes are made to the underlying residential zoning.

20. The parent's pledge is an integral part of the applicant's revised traffic management plan but will not achieve the intended results since it is very unlikely that the Burke School would expel senior year students who violate the pledge. Further, the fact that it is very unlikely that the school would expel seniors, in itself could produce the kind of undesirable behavior that the pledge is intended to prevent.

21. The effectiveness of the pledge is placed in further doubt by the Burke School's failed record on compliance. For several years the school has been out of compliance with BZA conditions relating to student and faculty caps. Having exceeded caps imposed by a decision making agency of the District of Columbia government, it is unrealistic to expect the school to comply with a self imposed pledge simply because it says it will.

22. NULS traffic expert Joe Mehra demonstrated methodological flaws and analytical shortcomings in the applicant's traffic report accompanying the revised traffic management plan. Mr. Mehra showed that traffic data purportedly collected in April 2000 was actually dated July 2000 in the Gorove/Slade report. This raises serious questions about the usefulness of the data since school is not in session in July.

23. Mr. Mehra also showed that there is a problem with Gorove/Slade's assumption that each student accepting a transit subsidy will equate to one automobile trip that would be reduced. Based on the Gorove/Slade data, automobiles arriving at and departing from the Burke School contain an average 1.3 students per vehicle. This is because the use of car pooling results in some cars containing more than one student. This means that Gorove/Slade overstates the amount of traffic reduction that should be associated with the transit option.

24. Gorove/Slade testified that in conducting their traffic counts at Upton Street and Van Ness Street, they did not take into consideration traffic which utilizes the alley system in order to avoid Connecticut Avenue. This was based on their belief that this traffic did not apply to the Burke School. The ANC submitted into evidence a portion of the BZA transcript from

the Levine School hearings whereby Gorove Slade testified that a great deal of traffic was utilizing the alley system and whereby Gorove/Slade associated this traffic with Burke School parents. The Levine transcript references traffic congestion problems with the Veazey-Van Ness-Upton alley system and associates this congestion with Burke School generated traffic. Gorove/Slade also acknowledged that many Burke parents were using the alleys for drop-off and pick-up and that many parents were using the one-way Van Ness-Upton alley the wrong way.

25. Mr. Mehra concluded that the Gorove/Slade circulation plan would result in unsafe conditions at the Upton Street intersection with the school driveway and the public alley. He testified that the circulation plan and access routing proposed by the school for the parents, students, and faculty is not enforceable.

26. Mr. Mehra testified that traffic impacts of the proposed school expansion would make the exiting bad situation worse on Upton Street, the alleys between Veazey, Van Ness and Upton Streets and Connecticut Avenue.

27. Mr. Mehra documented major error in Gorove/Slade's estimates for shuttle bus use. He determined that Gorove/Slade overstated the potential number of trips that could be reduced by shuttle service by including faculty trips, Metro subsidy trips, and shuttle trips as part of the number of trips targeted for reduction. Using Gorove/Slade's own assumptions, the total of vehicle trips would be reduced by 26 vehicles not the 40 trips claimed by the applicant. This testimony was not rebutted by Gorove/Slade or the applicant

28. Mr. Mehra testified that incentives are lacking for parents to drop off their children at remote shuttle lots and not at the school itself. A variety factors can provide a disincentive for use of the shuttle including inclement weather; schedules that are running late; the weight and bulk of items the child must bring to school; or the fact that the shuttle lot is empty because the shuttle is on a run.

29. The methodological and analytical shortcomings in the applicant's traffic report raise serious questions about the accuracy and validity of the data presented by the applicant in support of the revised traffic management plan. Given these shortcomings, there is insufficient cause to conclude that the revised plan would reduce traffic volumes as the applicant has asserted.

30. ANC 3F joined DPW in calling for a one year demonstration before a special exception is granted. On June 18, 2001, at a duly noticed meeting with a quorum present ANC 3F voted unanimously, five in favor, none opposed, one recused, to support the proposed one year demonstration of the effectiveness of the Burke School's revised traffic management plan. The BZA must give the required "great weight" to this recommendation by ANC 3F.

31. Neighbors United for Livable Streets (NULS), Sirrus LLC, and the Van Ness South Tenants' Association, Inc. (VNSTA) support a one year demonstration of the Burke School's revised

traffic management plan.

32. It is necessary for the demonstration to occur over an entire school since traffic volumes fluctuates during the school year as school activity levels change. At many schools, including the Burke School, the Spring tends to be a period when there is a peak in school activity levels. In order to conduct a fair test, one that looks at the range of traffic situations generated by the Burke School, it is necessary to have a demonstration that covers an entire school year.

33. It is the Burke School's position that an effective demonstration cannot be conducted until the addition is built.

34. Contrary to the applicant's assertion, elements of the revised traffic management plan can be effectively tested without constructing a new facility. These elements include shuttle bus service, expanded Metro subsidies for Maryland and Virginia students, a parents pledge, and enhanced traffic management by school staff. These elements are entirely independent of a new building being built and can be tested before a special exception is granted.

35. If a one year demonstration of the revised traffic management plan is not conducted, the decision in this case must rest on the applicant's pre-hearing statement. This statement proposes a 20 percent increase in students from the current level of 270 to 360 and a 100 percent increase in staff from 35 to 70. The applicant states that these increases will generate a 20 percent increase in Burke School traffic which translates to an increase from the current level of 500 trips per day to 595 trips. The revised traffic management plan contains untested and untried methods for reducing school traffic. In addition, testimony has shown that the data in the applicant's report may be seriously flawed. Therefore, the revised traffic management plan cannot be accepted without a one year demonstration. Flawed data along with untested and untried traffic management methods cannot support a decision to grant a special exception. Any attempt to do so would result in an unfair and unjust decision at the expense of the Burke School's residential neighbors.

36. The basis for granting a special exception must be the facts as they are known at the time a decision is rendered. These facts are presented in the applicant's pre-hearing statement which shows that school generated traffic will increase by nearly 20 percent if the special exception is granted. The applicant proposes such an increase in a neighborhood that, according to DPW, cannot absorb additional traffic.

37. The fact that the applicant's revised traffic management plan proposes to reduce traffic below existing levels shows that the applicant is very aware of the problems created by school generated traffic. The hearing transcript shows that the school's representative, Mr. Feola, acknowledges that "there is a problem on these streets. . . .There's no doubt about it." Until the Burke School demonstrates conclusively that this problem can be solved and that the objectionable conditions associated with this problem can be eliminated, the zoning regulations require that the applicant's request for a special exception be denied.

38. The Burke School filed Application 16611 using the Board's self-certification procedures and certified that adequate parking would be provided. Under the zoning code 72 spaces are required. Section 2101.1 of the zoning code states that the number of parking spaces required shall be at a minimum 2 for each 3 teachers and other employees, plus . . . 1 for each 10 seats in the largest . . . area usable for public assembly. . . ." Given a proposed faculty/staff of 70, a minimum 47 parking spaces would need to be provided. Using the existing gymnasium with a capacity of 250 as the largest assembly area, an additional 25 parking spaces would need to be provided yielding a total 72 parking spaces. An analysis of the Burke School's parking proposal by Mr. Milton Shinberg, an architect and member of NULS, shows that only six of 50 spaces proposed to be provided in a parking garage in the new facility would comply with the zoning rules. When combined with the 24 surface parking spaces, the total code compliant parking would be 30 spaces. This means the school would fall far short of the 72 spaces required by the zoning code. Since this is not an attended garage, unless the parking spaces are easily accessible for daytime and evening events and vehicles have sufficient space to maneuver, vehicles will continue to park on neighborhood streets.

39. There is no loading dock in the plans submitted with the pre-hearing statement for the Burke addition. Under the zoning code a loading dock must be provided or a variance requested. According to Title 2201.1 of the zoning regulations the loading dock requirement pertains to any building with 30,000 square feet or more gross floor area. The proposed addition when combined with the existing facility would exceed 30,000 gross square feet.

40. The Office of Planning stated that this project was consistent with the Generalized Comprehensive Plan in Subsection 102.3. The ANC introduced verbal and written testimony from the Ward 3 Plan that identifies the Comprehensive Plan's more general objectives and policies. The Ward 3 Plan states that "There are a large number of institutional uses in Ward 3 and that many of these facilities have structures that are an exception to the neighborhood land use or do not conform to the underlying zoning, and that these uses must be maintained and expansion carefully controlled." The plan also asserts that "redevelopment pressures must be strictly limited and redirected to other areas of the city specified in the Comprehensive Plan for new economic development." The plan further states that "A distinctive feature of Ward 3 is the clustering of retail nodes at regular intervals along major arteries and the commercial nodes are separated by long segments of residential development." Placing a school at the intersection of Connecticut Avenue and Upton Street will insert a private school zone into a segment of Connection Avenue designated for housing thereby changing the character of a well laid-out corridor in a way that is contrary to the uses identified in the Comprehensive Plan.

41. A principal problem for the Burke School in developing a solution for its traffic problems has been the physical and geographical constraints of the site. The incomplete network of streets and alleys cannot safely and effectively handle the volumes of traffic the school generates. The proposed facility would house 360 students on less than three quarters of an

acre of land in a densely populated residential neighborhood. This is far below the norm for private schools in the District which is closer to one acre per one hundred students.

42. In the past, the applicant has failed to comply with the conditions of its existing BZA Order and has substantially exceeded its authorized student enrollment level of 270 as well as the faculty and staff level of 35. Because traffic management measures in the revised traffic management plan depend largely upon voluntary compliance to be effective, the failure to comply with the existing BZA Order weighs heavily against the applicants request for another special exception. The applicant needs to demonstrate a willingness and ability to achieve voluntary compliance before a new exception is granted.

43. The Edmund Burke School knew of its non-compliance since 1997 and made no attempt to bring the school into compliance or to apply for a change in their operating order until the expansion was contemplated. The Burke School did not make the neighborhood or the ANC aware of its non-compliance. It was not until an Upton Street resident reviewed the previous BZA order and compared it to a Fact Sheet provided by Burke at its first meeting with the neighborhood regarding expansion, that the non-compliance became publicly known.

44. In requesting this special exception, the applicant has failed to show that no harm will be done if the special exception is granted. The Burke School's residential neighbors demonstrated that great harm would be done in terms of traffic, noise, and parking impacts.

CONCLUSIONS OF LAW

Based on the evidence and testimony presented, the Board concludes that the Burke School has not met its burden of proof, that the proposed expansion is not consistent with the Ward 3 Plan, and that the expansion would be objectionable to adjoining and nearby properties because of noise, traffic, operations, number of students, and other site-related, objectionable conditions. The Board also concludes that ample parking is not provided to accommodate the students, faculty, staff, buses, and visitors likely to come to the site since most of the spaces in the underground garage do not comply with the zoning requirements and because the site itself cannot accommodate the proposed volumes of traffic.

In reaching its conclusion, the Board gives substantial weight to the expert testimony of the Department of Public Works which finds that the street system east of the subject site consists of narrow residential streets that do not follow a complete grid system due to geography and land use patterns and were not designed to support the large volumes of traffic associated with current institutional uses. The report of the Office of Planning supports DPW's findings. The Board concludes that these streets cannot support the new uses proposed by the Burke School.

With regard to traffic and transportation issues, the Board finds that the testimony and written report of NULS transportation consultant are more credible than the applicant's transportation expert, who admitted on the record that they did do alley counts and submitted methodologically

flawed traffic count data.

The Board finds that the NULS video of existing traffic patterns is more credible than the Applicant's video, which was done during Passover week when school activities experience a lull.

The Board credits the expert testimony of architect Milton Shinberg as it relates to the proposed underground parking garage and the zoning requirements for parking spaces.

The Board gives weight to the cumulative impacts of its own decisions in granting special exceptions to the Levine School of Music, Howard University Law School, and the Hillwood Museum, as well as to the Burke School in 1983, all of which operate in the same residential neighborhood and all of which generate substantial traffic and parking demands on a network of streets and alleys that cannot sustain such a load. The Board concludes that the cumulative impacts of these special exceptions has brought the Upton/Van Ness/Tilden neighborhood to the point of saturation with regard to institutional development. Additional development in this small neighborhood at this time would severely damage it's residential character and is not desirable.

The Board gives "great weight" to the resolution and report of ANC 3F opposing Application 16611. ANC 3F points to the negative impacts of the expansion on a residentially zoned neighborhood. The report along with ANC 3F testimony showed that the proposed expansion of the Burke School would create objectionable conditions and that traffic and noise in this neighborhood has reached levels that should not be exceeded.

The Board is concerned by the Edmund Burke School's non-compliance with its previous BZA order and the message this sends to other institutions with BZA agreements. The Board does not believe the School merits an expansion at this time or a new BZA order. It must first show a willingness and ability to comply with its existing order, become a good neighbor, and institute effective traffic mitigating measures. At such time as the school takes these steps, it may apply to the BZA with "Clean Hands" and a proven track record.

For these reasons the Board denies Application 16611.

ANC 3F
PROPOSED OPERATING CONDITIONS

EDMUND BURKE SCHOOL
BZA Application Number 16611

All operating and construction conditions apply to 2955 Upton Street, N.W., 2969 Upton Street, N.W., And 4101-4103 Connecticut Avenue, N.W.

- Before this special exception may take effect, the Burke School shall implement a one year demonstration of the traffic management plan that demonstrates and documents to the satisfaction of the Department of Transportation and ANC 3F that Burke has successfully implemented the traffic management plan submitted to the BZA to take traffic from the local residential streets and neighborhood alleys and that such plan does not exceed the traffic level standards contained in that plan, which included, but is not limited to, Metro Check, shuttle vans, and parent mandated routes of travel.

- All modifications to the Burke architectural/construction plans as presented to the BZA must be submitted to the BZA and ANC 3F for determination as to whether further special exception and/or variance relief is required from the BZA and determination as to how these modifications affect the surrounding residential community. This includes, but is not limited to, the number of parking spaces should the underground parking lot not conform to all Zoning Requirements; special exception/variance relief under Zoning Regulations should Burke decide to bridge the alley and connect the buildings with an enclosed walkway to ensure that the height keeps the alley open for fire trucks and other emergency vehicles, vehicular traffic, delivery and trash trucks; and special exception and/or variance relief from the loading dock provisions if the buildings are connected.

CONSTRUCTION CONDITIONS:

1. No construction trucks and/or construction machinery, including bulldozers, cement mixers, construction trailers, etc., performing work on the existing Burke School site or proposed site will be allowed to stand and/or park on Van Ness Street or Upton Street, N.W., nor will this machinery be allowed to block the public alleys between Veazey and Van Ness Street, between Van Ness Street and Upton Street, and between Upton Street and Tilden Street.

2. The Burke School and its respective contractors will respect the surrounding residential neighborhood and shall not perform demolition work, earth moving, construction staging, construction, or other noisy construction activities on weekends and D.C. and Federal holidays. All staging and construction work will take place Monday through Friday from 8 a.m. to 6:00 p.m.

3. All construction contracts will require that construction workers park at an off-site,

commercial facililty, and the contractor will provide shuttle service to the off-site facility. The Burke School will ensure through monitoring that no construction workers are parking on either Upton Street or Van Ness Street. The contractor shuttle will not use the residential alleys as short-cuts to the site.

4. All construction traffic will access the site from the north and south on Connecticut Avenue using a new temporary entrance at Connecticut Avenue. All construction-related deliveries will be made from this new temporary entrance.

5. The Burke School will ensure that Upton Street, Van Ness Street, and the alleys are kept free from all construction debris and litter. All construction related debris will be contained in covered containers and/or dumpsters.

6. The Burke School will be responsible for appointing and maintaining a construction liaision committee to answer questions and provide information to the community. Burke will appoint a ranking staff member to mitigate and resolve neighborhood concerns about traffic and parking problems The name of the Burke School and contractor liaison, along with a telephone and pager number, will be provided to the parties to the BZA case and the ANC. Membership on the committee will be afforded to the parties to the BZA case and the ANC.

7. All staging and construction storage will be contained within the construction zone. All staging for work will be from the temporary driveway and Connecticut Avenue. During morning and evening rush hour restrictions, the Burke School and its contractor will keep all Connecticut Avenue traffic lanes open and free from standing and/or parked construction vehicles.

OPERATING CONDITIONS:

1. A report certifying compliance with the operating conditions below shall be delivered to the Office of the Zoning Administrator, and the Advisory Neighborhood Commission, with a copy available for inspection by neighbors. The report shall be made by the Board of Trustees on behalf of the school and shall be issued every August 1st and January 1st. Each report shall include, in addition to the specific conditions below, the school's projected student enrollment and faculty/staff size for the next six-month period.

2. Use of the existing building and the proposed site shall be limited to the Edmund Burke School. Burke shall not rent, sublease, make available free of charge, or otherwise make available any space or facilities at the subject properties to any other persons or organizations for any purpose, other than voting for governmental elections.

3. The Burke School shall hold only those activities at the site that are directly related to the school's educational purpose.

4. The number of students shall not exceed 270, and at least 60% of the student population must reside in the District of Columbia.

5. The number of faculty and staff shall not exceed a total of 35.

6. Burke shall remain in compliance with student, faculty, and staff numbers and, if it comes out of compliance, Burke will immediately with the next school session come into compliance.

7. The school's hours of operation shall be 8:15 a.m. to 3:30 p.m., Monday through Friday.

8. The Burke School shall host no more than 3 evening events at the subject properties per month. The term "event" is defined as all after school activities, including, but not limited, to sports events, theater performances, "Back to School Night, etc." Evening events must be completed by 10:00 p.m. The only exception to this is the prom. In no event shall the Burke School hold two events simultaneously in the auditorium and the theater.

9. Because of its proximate location to public transportation, Burke will become an all-Metro, bus, public transportation school. There will be no parent drop-off, pick-up. The only exception will be for persons with disabilities and staff who demonstrate the need for driving.

10. In the event that parent pickup and drop-off occurs, it shall be managed in accordance with the conditions that follow:

    a) The Burke School would immediately implement a traffic control plan with approved travel routes and require parents, faculty, students and staff to follow only those approved routes.

    b) Parents, students, faculty and staff would be prohibited from using the neighborhood alley system to access the School, except those personnel who are provided parking behind the existing school.

    c) The Burke School will ensure that morning that morning and afternoon pickup is contained on the Burke School site, and the Burke School will ensure that no pickups and drop offs take place on Connecticut Avenue or in the public alley between Van Ness Street and Upton Street and the public alley between Upton Street and Tilden Street.

    d) The Burke School shall prohibit all parent drop-off, pick-up activity on Upton Street, Van Ness Street, and the neighborhood alleys, Veazey-Van Ness; Van Ness-Upton; Upton-Tilden Street.

e) The Burke School will implement a Metro Check Program and/or any other transit subsidy program available to encourage student, staff and faculty use of public transportation. The Burke School shall maintain a log, open to inspection, as to how many students, faculty and staff are availing themselves of these programs.

f) The Burke School shall employ the use of off-duty police officers, monitors, and greeters for day-time and evening traffic control in order to keep Connecticut Avenue, Upton Street, and Van Ness Street safe for pedestrian and vehicular traffic and to prevent parents, guardians, student, and faculty from using the neighborhood alley system.

g) All student, staff, and faculty vehicles must be registered with the School and will be required to have an Edmund Burke Identification Sticker, so that any violations can be easily reported to the school. A staff person will be tasked with monitoring student, faculty, and staff compliance, and responding promptly to any community complaints.

h) The Burke School shall install permanent video equipment at the Upton Street alley side of the School and on the frontage of the Connecticut Avenue proposed site, and shall use a remote video camera at the Van Ness Street entrance to the alley to film traffic for compliance with the Traffic Management Plan. Filming will occur at least once a week during all morning drop-off and afternoon pickup activity. The video will be made available to the Neighborhood Compliance Committee.

i) The Burke School shall implement a shuttle van system at the sites presented in testimony and submissions to the BZA—Van Ness Metrorail Station, Tenley Circle Metro Area, Tilden Street.

11. The Burke School shall provide all parents and guardians of prospective and registered students, faculty, and staff with a copy of its school and event traffic management plan as part of its parent handbook. This plan shall be made an integral part of each student, faculty, and staff contract. The Burke School shall fully implement the provisions of the traffic management plan, including the imposition of fines on parent, guardians, faculty and staff who do not comply with its conditions. The traffic management plan, with approved routes, and the following penalty schedule apply, regardless of who drives the students to or from school. The Burke School shall impose a fine of $100.00 for the first offense; $250.00 for the second offense; and $500 for the third offense. The fourth offense shall result in mandatory expulsion of the student, or, in the case of staff and faculty, termination. All fines must be paid within 14 calendar days after the citation is issued. Fines that are not paid within 14 days shall be doubled, except that a fine for a third offense that is not paid within 14 days shall result in mandatory expulsion. The monies collected will be turned over to the Advisory Neighborhood Commission for community purposes. The Burke School shall maintain a log of all violation of the

traffic management plan, which shall be made available to the neighborhood and the ANC during regular business hours.

12. The Burke School use of the subject properties shall not cause any roadway safety problems or operational deficiencies and shall not affect the health, safety, or general welfare of roadway users or adjacent neighborhoods. The public alleys, Van Ness-Upton; Upton-Tilden, may not be obstructed by school-generated traffic and must be kept open at all times.

13. The Burke School shall be required to build a parking garage under the proposed School that would be accessed off Connecticut Avenue, N.W. The driveway to the garage is required to provide safe two-way access to and from the garage. A minimum of 75 parking spaces shall be provided on site; 25 spaces behind the existing school and 50 spaces in the underground parking garage under the proposed building. All parking spaces shall conform to the requirements of the Zoning Regulations including, but not limited to, requirements for size of spaces, aisles widths, tandem arrangement, handicapped spaces, and all other applicable standrds. No spaces shall be considered to meet the requirements of this order, any other BZA requirements, and requirements for issuance of building permits or for Certificates of Occupancy unless they conform with these standards.

14. The Burke School shall be required to construct and maintain a student drop-off, pick-up site within the proposed School property that would be accessed from Connecticut Avenue and would provide for exit by either Connecticut Avenue or Upton Street westbound only.

15. The Burke School must mechanically vent the parking garage and the drop-off/pick-up area through the roof to minimize automobile fumes from entering the apartment building next door. This mechanical ventilation system on the roof will be 40 feet from the apartment building.

16. The Burke School shall be required to construct a private 20 foot wide drive to allow vehicles leaving the student drop-off, pick-up area to exit onto Upton Street and maintain the existing alley width. The private drive and public alley must be separated by a permanent physical barrier. Parent, guardian, student, faculty and staff vehicles will be prohibited from using the public alley, except for faculty and staff with parking privileges behind the existing school building.

17. The Burke School shall be required to place traffic control officers near the student drop-off, pick-up sites to direct vehicles, and at the intersection of the alley/private driveway and Upton Street to ensure safe turning movements and to prevent drivers from accessing the Upton-Tilden alley.

18. Parking shall be available for all daytime and evening activities at the School. In the

event the school hosts a large function where on-site parking for students, parents, faculty, staff, and visitors is insufficient to meet the number of attendees, the Burke School shall rent sufficient spaces in a nearby, commercial parking facility to accommodate all attendees who cannot be accommodated on site.

19. The Burke School shall prohibit students, faculty, staff and parents/guardians from parking on the neighborhood residential streets of Upton Street, Van Ness Street, 29th Street, Tilden Street, and Linnean Avenue during school hours and at afterschool programs and evening events.

20. The Burke School shall establish a community/compliance outreach program to include: (A) A community liaison committee to meet at least once every two months, beginning with the first month in which the new building is occupied, to discuss and resolve issues of mutual concern. The Burke School shall have the responsibility of recording minutes and maintaining documents related to issues addressed at these meetings. In addition, the Burke School shall have the responsibility to maintain a log of all complaints made to the school, the date of the complaint, and the Burke School response to the complaint. (B) The Burke School shall have the responsibility to coordinate all evening events (defined as after-school activities) with the other institutions in the area (Howard University, Levine School of Music, Hillwood Museum, the Netherlands Chancery) so that no conflicting events/activities occur. The Burke School shall continue its participation on the Levine School coordinating committee.

21. The Burke School shall develop and implement a circulation and parking policy for buses owned or chartered by the School, and buses from visiting from schools, which would prohibit their parking on Upton Street, Van Ness Street, Connecticut Avenue, during rush hour restrictions, or other nearby residential streets. At all times, the Burke School will prohibit buses from blocking nearby alleys. In order to minimize any adverse impacts on neighborhood streets and public alleys, the Burke School will ensure that all buses used by the school for special events, or buses bringing students from visiting schools are not standing or parked, loading and unloading, on Upton Street or Van Ness Street.

22. The Burke School shall submit its certificate of occupancy applications to ANC3F for review at least 30 days in advance of filing the applications with the Department of Consumer and Regulatory Affairs.

23. Public alleys, and the private driveway, adjacent to, or within the traffic management area of the plan, must be kept completely open for one-way or two-way traffic at all times. No stopping for pick-up or drop-off of students or staff, nor for delivery, shall be permitted by the school.

24. The Burke School use of the subject properties shall not result in the creation of an easement, constructive or otherwise, with regard to any use of the abutting public alleys.

25. The Burke School shall undertake snow removal and salting of the public alley and Upton Street abutting the subject properties and any other traffic routes used by the school as part of its traffic management plan.

26. The Burke School shall pick up litter daily around the perimeter of the subject properties.

27. Loading and delivery and refuse collection shall be restricted to the weekday hours of 9:00 a.m. to 2:30 p.m., and must not conflict with the morning arrival and afternoon pickup of students. The applicant may not operate any trash compactors on-site between the hours of 6:30 p.m. and 8:30 a.m. or on weekends and holidays. All trash receptacles must be kept within the new building. The Burke School shall ensure that no delivery trucks, trash trucks, etc. block the public alley and shall ensure that these trucks do not park on Upton Street or Connecticut Avenue during the rush hour restrictions.

28. Any exterior lighting used to illuminate the subject properties and parking areas must be installed and operated so that all direct rays of such lighting are confined to the subject premises and do not exceed the lighting regulations for a residential area.

29. Any sign advertising the school must not be illuminated and must be consistent with the sign requirements for a residential neighborhood, including the school sign on Connecticut Avenue and Upton Street.

30. The Burke School shall develop and implement a landscaping plan to minimize the school's impact on the residential neighborhood on Connecticut Avenue and Upton Street, including replacement in public space of any trees damaged or removed as a result of construction.

31. The Burke School shall sign a restrictive covenant to maintain the side yard landscaped buffer from the east face of the existing school to the property line of 2951 Upton Street, and shall maintain that area in such a manner as to diminish the existing school impact on neighboring properties. The area shall not be used for parking. No HVAC equipment of any kind shall be located in this east side yard. At least 60% of the ground surface shall be planted area. Existing trees shall not be removed and/or pruned without consent of the neighboring property owner and replacement of like kind and size.

32. The HVAC system and all mechanical equipment at both the existing school site and the new site shall not exceed 60 decibels during the day and 55 decibels at night as measured from the nearest property line. The school shall make available to the neighbors a certified report of these sound levels, prepared by qualified experts. The report shall be repeated every August 1st and the results made available by August 15th. The HVAC system shall not be used if these sound levels are exceeded. The Burke School shall not run HVAC equipment during non-school hours, on weekends and holidays, or when the school is not in use for evening events.

33. The Burke School will cease using the outdoor athletic fields at Howard University School of Law within 30 days of approval of this agreement as this use violates the Howard University Campus Plan approved by the BZA and agreed to by the ANC and neighborhood. The Burke School will also cease using as an outdoor play area the State Department owned property on Upton Street. The Burke School will cease its use of neighborhood streets for recreational and athletic uses.

34. The Burke School programs, curricula, and activities shall be confined to the Burke site and not the neighborhood streets and/or neighborhood residential properties. The Burke School shall monitor its students to ensure safety by confining them to paved sidewalks and the Burke School will prevent students from walking through the alley system which provides right-of-way for vehicles.

35. The Burke School shall not sell the air rights over the School-owned properties.

36. The Burke School shall ensure that the outside terrace space is used for only passive recreation and shall not pose any noise-related problems for the adjoining residential building or residential neighborhood.

37. The Burke School shall not seek another special exception and/or variance for an increase in enrollment at this site and shall not expand or construct additions to this site or expand school operations or program activities to other residential properties next to or in the vicinity of this site.