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August 31, 2001

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VIA FAX AND HAND DELIVERY

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

BZA
Case No. 16611
Exhibit No. 237

Re: Edmund Burke School
Application No. 16611

Dear Chairperson Reid and Members of the Board:

On behalf of the Edmund Burke School ("School"), the applicant in the above-captioned matter, we hereby oppose the request by Neighbors United for Livable Streets ("NULS") to reopen the record in this case because the information provided by NULS is no more than additional "hearsay" evidence. It has virtually no value in the Board's ability to evaluate this case under the standards articulated in the Zoning Regulations for an addition to a private school in the R-5-D Zone District. Further, we oppose ANC 3F's request, dated August 27, that Chairperson Reid recuse herself from participating in this application.

A. Reopening the Record

Reopening the record would be extremely damaging to the School. This application was filed by the School over a year ago (July 7, 2000). Any further delay in the proceedings jeopardizes the School's ability to plan its future. The BZA was kind enough to hold extensive hearings and develop a voluminous record in this application. The contents of this record contain more than enough evidence to evaluate and decide this case. Reopening the record, to admit additional evidence of marginal value, will delay the Board's decision in this case and this delay will be devastating to this non-profit private school, which awaits direction from the Board of Zoning Adjustment, in order to plan its course for the future. The School takes note that NULS had this "new" information, which it now proposes to submit, as early as July 31,[1] but NULS chose to wait an entire month before asking to have this information submitted to the record. Clearly, NULS' intention, in holding its request until just before the BZA meeting, was intended to further delay a decision on this application. Had this information been submitted on August 1, a delay in these proceedings would not be necessary and the School most likely would not have

[1] See the fax notation at the top of the materials from the Park Police to NULS.

Board of Zoning Adjustment
District of Columbia
CASE NO.16611
EXHIBIT NO.237

opposed reopening the record to admit it. In any event, the bad faith shown by NULS in holding this information until this late date, together with the real prejudice to the School's ability to understand what zoning restrictions may, or may not, be imposed on it by the BZA in order to plan its future, is debilitating to the School.

B. Recusal

The ANC requests that Chairperson Sheila Cross Reid recuse herself from this matter because of an alleged conversation she had with a third party mediator, who is not a party in this case and, as is apparent from the ANC's own filing, did not discuss the case or its subject matter with the Chair. Notwithstanding there is no evidence that this conversation actually took place, it is ludicrous to find fault with a Board member telling a member of the public what his, or her, plans are for remaining or resigning from the Board of Zoning Adjustment. It has absolutely nothing to do with the substance of this case nor is it prejudicial to any of the parties in this matter.

C. Conclusion

In the event that the Board grants NULS request and reopens the record in this case, the School requests that the attached evidence be admitted as its Response to the NULS filing. Further, the undersigned counsel state for the record, that neither they nor any person working with, or related to, the School, saw, or was even aware that, Proposed Findings of Fact and Conclusions of Law were filed on August 20, 2001 by NULS and ANC 3F. Such material was only seen by the School's representatives after August 27, 2001.

Sincerely,

Phil T. Feola

Sarah E. Shaw

Enclosure

cc: David Shapiro
Marie Sansone, Esquire

EDMUND BURKE SCHOOL'S RESPONSE
TO INFORMATION FILED IN THE RECORD AS OF AUGUST 27

I. Neighbors United for Livable Streets

Neighbors United for Livable Streets files a media release and a Shift Summary Report from the United States Park Police indicating that at a certain time on a particular date, i.e., 9:38 a.m. on November 9, 2000, a search for a criminal suspect was conducted in Rock Creek Park. These papers provide no proof to counter the information provided in the record through the testimony of Mr. Erwin Andres (Gorove-Slade) that he was told that Beach Drive was closed to vehicular traffic form 7:00 a.m. to 10:00 a.m. on November 9, 2000, by a person in the National Park Service who is responsible for having such knowledge. The NULS information merely shows that there may have been an additional incident in the Rock Creek Park corridor on that date and/or, as is more likely, the exact times of the incident were misreported as part of the Park Police's media release and/or shift summary. Attached hereto is a letter from Gorove-Slade Associates countering the charges made by NULS.

II. Loading Dock.

The ANC complains that the provision of a loading dock on the plans is somehow "new evidence." This is not the case. In fact, the loading area was shown, in conjunction with a trash "room," to the community in the exact same location over two years ago. While the loading dock was never explicitly shown on the BZA drawings, it was not needed to be shown because no BZA relief was sought for it. Further, it was never an issue before the BZA until it was raised at the very end of the hearing (on July 10) by an opponent. The School's submission showing the location of the loading dock was merely to show the BZA that it

addressed the opponent's concerns. There are many, many architectural details that are not included in plans before the BZA. However, as the BZA is aware, all zoning requirements must be met when a building permit application is filed with the Department of Consumer and Regulatory Affairs. Notwithstanding the above, the ANC has had an opportunity to note its position with regard to the loading dock and has done so.

III. Pedestrian Bridge Variance.

There was no request for a variance made for the pedestrian bridge because no variance is required. It is simply not within the jurisdiction of the Board of Zoning Adjustment to grant or deny the use of air space over a public alley. Thus, the School did not request the BZA to rule on it. The pedestrian bridge was shown in the School's posthearing submission as a potential solution to one of the issues raised at the public hearing. However, the School fully recognizes that it needs to seek that approval for the bridge from other District agencies, not the BZA, and the School specifically stated such in its filing on August 20.

IV. The Zoning Administrator.

The ANC requests "live" testimony from the Zoning Administrator on the parking issue. Testimony from the Zoning Administrator in special exception cases before the Board of Zoning Adjustment is extremely, extremely rare. The Zoning Administrator interprets and effectuates the Zoning Regulations as promulgated by the Zoning Commission and as might be adjusted by various Board of Zoning Adjustment Orders. His ruling occurs, officially, upon his review of a building permit application at which time he performs a detailed analysis

of the project in order to determine whether, or not, that project is consistent with the Zoning Regulations and any BZA Order that may affect the property.

The School's meeting with, and subsequent confirmation letter from, with the Zoning Administrator is the normal, ordinary way of doing business with the District of Columbia to ensure that property owners do not spend an extraordinary amount of time or money proceeding down the "wrong" path only to find out that that path is not how the Zoning Administrator interprets the Regulations. This ruling was issued almost a year ago, before the issue of size of parking spaces and location of parking spaces, was even raised by the opponents of this BZA application. Its only relevance is that it counters the claims made by the School's opponents and supports the School's understanding of the Zoning Regulations.

V. Procedural Errors.

The ANC's claim of procedural errors in this case is without merit. The claim that the ANC did not receive the School's revised Transportation Management Plan ("**TMP**') until shortly before the May 15 hearing session somehow was prejudicial to the ANC and opponents when, in fact, they did not make their presentation until July 10th is a ludicrous claim. The ANC and the community opponents had almost two months to evaluate the TMP and, in fact, did so at the public hearing.

Phil T. Feola

Sarah E. Shaw

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August 31, 2001

Ms. Sheila Cross Reid
Chairperson
Board of Zoning Adjustment
441 4th Street, NW, 2nd Floor
Washington, DC

Dear Chairperson Reid:

On behalf of our firm and the Edmund Burke School, we take exception to the comments presented in the August 27, 2001 letters presented by the Neighbors United for Livable Streets (NULS) concerning the testimony of Louis Slade and Erwin Andres. The comments presented in the August 27 letters sent by NULS state that Louis Slade and Erwin Andres provided false testimony to the Board regarding traffic issues associated with the Burke School. In response, our testimony provided was based on the work that we had performed for the school that meet our profession's standards regarding traffic analysis and transportation planning.

Our firm is a professional transportation planning and traffic engineering consulting firm that has worked on over 20 private schools in the metropolitan DC area over the past 5 years. Based on our extensive experience, we have been able to apply our industry standards in identifying impacts associated with private schools and to develop sound transportation management plans that schools can feasibly implement, especially for schools located within the District. As a firm, we have not compromised and will not compromise the integrity of our work for the sake of any development project. The accusations of false testimony do not represent the level of extensive work our firm has done over the past two years on this project as we continuously modified the traffic plan time and time again to reflect the school's flexibility in trying to meet the community demands. As responsible engineers, we have looked at various circulation alternatives to address the issues that we identified and were raised by the community, as is evident in the various iterations of our transportation management plan.

In conclusion, our testimony in the Burke School hearings has been presented to address questions raised by the opposition. Additional information was submitted to answer questions about counts performed in the summer. Our firm did not perform traffic counts in the summer because it would obviously not reflect the impact of the school's operations. Additionally, questions were raised on our testimony regarding the closure of Beach Drive during which the NULS traffic engineer performed his only independent survey. Our firm was given information from the Park Service that Beach Drive was closed during the morning that would have affected the traffic operations and actually did affect traffic levels on Upton Street.

Thank you for consideration and attention to this matter.

Sincerely,

Louis J. Slade, P.E.
Principal

Certificate of Service

I hereby certify that on August 31, 2001, a copy of the foregoing Letter and Response was served via first class mail to the following:

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