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September 19, 2001

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 – Summary of Major Issues

ANC 3F has presented to the Board numerous reports, testimonies, and submissions which spell out in great detail the reasons why the Board should deny Application 16611. We strongly recommend that the Board Members review these documents before making a decision on this case:

1. ANC 3F Report to the BZA dated May 8, 2001.
2. July 10, 2001, testimony of Commissioner Kogan.
3. July 10, 2001, testimony of Commissioner Perry.
4. ANC 3F Findings of Fact and Conclusions of Law dated August 27, 2001.
5. ANC 3F Submission to the Board dated August 27, 2001 describing procedural errors and administrative irregularities.
6. ANC 3F submission to the Board dated August 29, 2001, describing neighborhood efforts to mediate; use of the Howard Law School field by the Burke School; and parking issues.

In order to assist the Board in reviewing these documents, we have enclosed a summary which includes discussion of the following major issues in this case:

1. The **underlying zoning** of the site is residential. Yet a series of BZA decisions has produced institutional saturation in this residential neighborhood. This should not be allowed to continue. The plan proposed in this application would further seriously erode the residential character of this neighborhood in a way that is inconsistent with the zoning code and that is contrary to the requirements of the Ward 3 Comprehensive plan. The application should be denied on this basis. The Board must also recognize that approval of Application 16611 would mean that the only residential housing remaining on the north side of the 2900 block of Upton Street NW would be six single family homes. The remainder of this block would consist of institutions. This would represent unacceptable institutional intrusion and, for this reason alone, the Board should not approve Application 16611.

2. **Traffic** is an overriding issue in this case. The applicant has proposed a revised traffic management plan that hinges on voluntary compliance by the Burke School. Yet the school has a failed record on compliance. The Board should not allow this application to proceed

BZA
Case No. 16611
Exhibit No. 244

Board of Zoning Adjustment
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EXHIBIT NO.244

without a one year demonstration of the applicant's willingness and ability to implement the revised plan. Without a one year demonstration, the Board must proceed on the basis of the applicant's pre-hearing statement. On this basis the application must be denied since approval would produce a 20 percent increase in traffic in a neighborhood that DPW says cannot absorb such an increase. DPW, ANC 3F, and OP oppose the application on the basis of its traffic impacts. Further, the applicant's traffic management plan and analysis was proved to be methodologically flawed and was shown to contain gross errors in data and assumptions. Therefore, the applicant's plan provides no analytical basis for a Board decision approving the referenced application.

3. **Site limitations** make it extremely difficult for the applicant to achieve the goals of the referenced application without creating severe negative impacts and objectionable conditions for the surrounding residential neighborhood. The proposed facility would use three quarters of an acre of land in a densely populated residential neighborhood to house 360 students. This equates to **450 students per acre**, far surpassing the normal density for private schools in the District which is closer to **100 students per acre**. These space limitations mean that Burke School activities would spill over into the surrounding residential neighborhood in ways that are highly objectionable. In effect, the surrounding neighborhood would become an extension of the school's campus creating objectionable conditions for the school's residential neighbors. This unforgiving site is separated by a public alley which generates student safety problems. A pedestrian bridge in this residential zone would not be an acceptable solution to safety problems since it would be an inappropriate intrusion of institutional uses in a residential district. No pedestrian bridges have not been built in residential zones in the District of Columbia and such a bridge should not be built at this site.

4. **Parking** provided by the applicant would not meet the requirements of the zoning code due largely to the limitations of the site. The failure to provide adequate parking also would have a spill over effect on the surrounding residential neighborhood since inadequate parking would increase the demand for limited parking on neighborhood streets.

We thank the Board for the opportunity to present our views on this case.

Sincerely,

Phil Kogan
Commissioner

Karen Lee Perry
Commissioner

Enclosure

Enclosure

1. The Underlying Zoning is Residential – Previous BZA Decisions Have Produced Institutional Saturation

In its decision on Application 16611 the BZA must take into account the fact that the underlying zoning of the site is residential and that the zoning of the neighborhood which surrounds the site is also residential. Through the process of special exception, this neighborhood has become saturated with institutional uses. In addition to the Burke School, other institutions located in the neighborhood include the Howard University School of Law, the Levine School of Music, the Hillwood Museum, and the Embassy of The Netherlands.

It is also important to understand that these institutions are located in a residential neighborhood that does not have a complete grid system of streets and alleys. Therefore, these institutions generate significant amounts of traffic and parking demand on a neighborhood infrastructure that was not designed to support such demand. The expansion of Edmund Burke would tip the fragile and delicate balance that currently exists between residential and institutional uses in a way that will irreversibly damage the residential character of this neighborhood.

Upton Street is a 30 foot wide local residential street and Van Ness Street a 34 foot wide dead end residential street. Together these small residential streets bear a significant portion of the institutional traffic and parking demands on this neighborhood. These institutional uses are eroding the underlying residential zoning. Institutions in this neighborhood operate seven days a week and are pushing to the breaking point the ability of the neighborhood's fragile infrastructure to absorb the intense traffic and parking demands they generate. The Hillwood Museum under a BZA variance operates six days a week with a staff of 50-100. It is permitted 81,000 visitors annually, 16 Educational Evenings, a fund raiser for 350, and under its most recent variance ten Sunday events.

The Carnegie Institution with a staff of fewer than 50 persons has been replaced by the Levine School of Music under a BZA special exception. This institution operates Monday through Friday and is authorized early camp hours while official hours are 9 a.m. to 9 p.m., daily density is 800 persons, and Saturday operations run from 1-4 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. The performance schedule may include 12 Sundays and performances may end as late as 10:30 p.m. The Howard University School of Law by special exception operates seven days a week from 7 a.m. to midnight with unlimited evening and weekend events and has a student enrollment of 450, 41 faculty, and 173 staff. The Embassy of The Netherlands and Chancery Complex conducts complete chancery and ambassadorial operations seven days a week and has a staff of 150 persons.

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 four institutions including the Burke School, the Howard Law, the Levine School, and the Hillwood Museum. If the Edmund Burke School expansion is approved, residents will

have to attend a Burke Compliance Committee.

Institutional growth is unraveling the residential fabric of this neighborhood. This is contrary to the Ward 3 Comprehensive Plan which states

> 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 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 Ward 3 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." The Board should adhere to the guidance laid out in the Ward 3 Comprehensive Plan and should not expand institutional uses in this residential neighborhood. Nor should the Board approve a special exception for a school at the intersection of Connecticut Avenue and Upton Street. Such a decision would insert a private school zone into a segment of Connection Avenue designated for housing and would thereby change the character of a well laid-out corridor in a way that is contrary to the uses identified in the Comprehensive Plan. This would be seriously detrimental to the residential character of this neighborhood.

The Board must also recognize that approval of Application 16611 would mean that the only residential housing remaining on the north side of the 2900 block of Upton Street NW would be six single family homes. The remainder of this block would consist of institutions. This would represent unacceptable institutional intrusion and, for this reason alone, the Board should not approve Application 16611.

2. Traffic

An overriding issue in this case is traffic. DPW has reported 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. DPW says that these streets are not designed to support the large volumes of traffic associated with current institutional uses and cannot support new uses. DPW's report points out that 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." The applicant acknowledges that traffic conditions are unacceptable and submitted a revised traffic management plan which proposes to reduce traffic below existing levels. 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." DPW, ANC 3F, and NULS have called for a one year demonstration of the applicant's untried and untested traffic management measures. Until the Burke School demonstrates conclusively that their traffic 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.

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.

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. On the basis of an increase in traffic to levels that are unacceptable and in the absence of a one year demonstration to show that the applicant has devised methods for reducing traffic, this application should be denied.

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.

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 would further degrade traffic flow and add to traffic problems for residential neighbors.

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.

The Office of Planning (OP) and the Department of Public Works (DPW) have concluded they cannot support the Burke School application, indicating that the principal issue is whether the expansion of the school, including 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 addressed 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 is the major issue presented by this application. The Department of Public Works concluded 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 that a one year test should occur before any change is made to the current zoning.

It is the applicant's position that an effective demonstration cannot be conducted until the addition is built. However, 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.

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 applicant's request for another special exception. The applicant needs to demonstrate a willingness and ability to achieve voluntary compliance before a new exception is granted.

There is too much at stake for ANC 3F residents and for the neighborhood for the Board to accept the school's assertions without documentation and without demonstrated results that the revised traffic management plan can work and eliminate 112 trips on residential streets each school day. If the school thinks they have a better way to manage their operations and reduce the traffic impacts on the neighborhood, the burden should be on them to implement these measures and begin a one year demonstration. Without such a demonstration, the referenced application should be denied.

3. Site Limitations

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 limitations of the site are further exacerbated by the fact that the proposed facility would house 360 students on less than three quarters of an acre of land in a densely populated residential neighborhood. This equates to **450 students per acre** and is far below the norm for private schools in the District which is closer to **one hundred students per one acre per**.

Site limitations create other conditions that are objectionable. Approval of Application 16611

will result in a private school with 360 students and that is located in a densely populated residential neighborhood yet has no cafeteria and no playing field. This means that students must use residential streets and alleys for recreational space and for lunch hour activities. In effect, the neighborhood becomes an extension of the school's campus. Because of severe site constraints, these uses of the neighborhood go well beyond the coming and going of students that is associated with normal school activities. The intensity and frequency of these activities make them incompatible with the residential character of the neighborhood. This is an objectionable condition under the meaning of the zoning code and the application should be denied on this basis.

Constructing an addition on the proposed site would mean that the existing building and the proposed building would be separated by a public alley. Students would have to cross the alley to travel between buildings. The applicant suggests that a pedestrian bridge could be built to address student safety. However, a pedestrian bridge would not be an acceptable solution since it would be a further intrusion of institutional uses in a residential zone which is already saturated with institutional uses. A bridge would also be an unwanted visual intrusion into the neighborhood and would invade the public space over a public alley. Such intrusions would be objectionable under the zoning code. We know of no pedestrian bridge that has been allowed in a residential zones in the District of Columbia. Such a bridge at this site would be inappropriate and should not be allowed. These problems with the bridge add additional proof to the fact that there are significant problems are posed by this unforgiving and limited site.

4. Parking

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. The applicant's inability to provide adequate parking further underlines the limitations of the site and adds additional proof to the fact that the site is inadequate to meet the applicant's needs without producing negative impacts on the residential neighborhood. The applicant is attempting to force more parking spaces onto the site than the site is physically able to accept. This results in a parking plan that falls short of code requirements. Board approval of such a plan would produce very negative consequences for the neighborhood since parking spaces and parking garage aisles that are inadequate in size will be a disincentive for drivers to use the parking garage. This in turn will push more cars onto residential streets that are already over saturated with demand from other BZA approved institutional uses.

CERTIFICATE OF SERVICE

A copy of this letter has 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
Marie Sansome, Corporation Counsel0