GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



September 21, 2001

Phil Kogan, Commissioner
Karen Lee Perry, Commissioner
Advisory Neighborhood Commission 3F
P.O. Box 39290
Washington, D.C. 20016-9290

RE: BZA Application No. 16611

Dear Commissioners Kogan and Perry:

The Office of Zoning is in receipt of your correspondence dated September 20, 2001, regarding the above-referenced case. The Office of Zoning welcomes your interest and input; however, this document is being returned to you because your correspondence was not specially requested by the Board at the conclusion of the public hearing in this matter and was received after the deadline for the submission of post-hearing documents requested by the Board of Zoning Adjustment. The record in this case is closed. If the record in this case becomes active again, the Office will gladly accept any correspondence for the case. Once again, thank you for your interest and I look forward to working with you in the future.

Should you have any questions or need clarification, please feel free to contact Paul Hart at (202) 727-6311.

Sincerely,

JERRILY R. KRESS, FAIA
Director
Office of Zoning

Enclosure(s)

BZA
Case No. 16611
Exhibit No. 251

Board of Zoning Adjustment
District of Columbia
CASE NO.16611
EXHIBIT NO.251

ANC 3F Forest Hills/North Cleveland Park

September 20, 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 – Applicant's September 18, 2001, Submission

Dear Members of the Board:

We respectfully request that the Board waive its procedures regarding the submission deadline for the referenced application as established at the September 4, 2001, public meeting. This request is made in light of new evidence as well as allegations against ANC 3F contained in the applicant's September 18, 2001, submission. In this submission the applicant includes incorrect assertions and misrepresentations about ANC 3F procedures and operations. The applicant has also, once again, introduced new evidence in an attempt to discredit the NULS organization. In the interest of fairness and full disclosurewe respectfully request the opportunity to set the record straight on these matters.

1. **Views of the ANC as Represented by Commissioners Kogan and Perry.**

In a footnote on page one of the September 18 submission Mr. Feola states that

> [N]one of the post-hearing filings, contain any acknowledgment that the materials therein contained are the opinion of the full ANC, taken by a vote after a duly noticed meeting. We believe these filings represent the views of the Commissioners who signed them and do not necessarily represent Advisory Neighborhood Commission 3F. . . .There is no evidence in the record to suggest the pages of material filed by ANC Commissioners Kogan and Perry, explaining their various positions is anything but their own personal opinions.

We previously provided to the Board a copy of ANC 3F Resolution 01-08 of April 23, 2001, which spells out in great detail ANC 3F's position on the referenced application. This resolution was approved by a majority of Commissioners at a regularly scheduled duly noticed meeting and "authorizes Commissioners Karen Perry and Phil Kogan to formally represent ANC 3F in order to present the views of ANC 3F on this matter in proceedings before the BZA." We also provided to the Board a copy of ANC 3F Resolution 01-14 of June 18, 2001, which spells out ANC 3F's unanimous support for a one year demonstration of the Burke School's traffic

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management plan. The applicant is also in receipt of these resolutions.

In each case where Commissioners Kogan and Perry presented information to the Board, they acted with ANC 3F's authorization to represent the ANC's views. Further, in each case where information was presented to the Board, this information was based on discussions held during duly noticed ANC 3F public meetings. ANC 3F has tape recordings of its public meetings and the Board as well as the applicant may review these tapes to verify this point. Finally, all materials submitted to the Board represent the views of the Commissioners voting on the matters discussed.

We assure the Board that all ANC 3F Commissioners have been provided copies of all materials submitted to the Board by Commissioners Kogan and Perry during this proceeding. We also assure the Board that the procedures and method of operation observed by Commissioners Kogan and Perry in the referenced case are consistent with and in conformance with the normal operating procedures of ANC 3F in such matters.

2. **Mediation**.

The discussion of mediation Attempt #1 on page 4 of the September is incomplete and factually incorrect. The events discussed occurred in February 2001, not in the Spring 2001. Additionally, prior to being contacted by Walter Ailes of the Edmund Burke School about a possible "facilitated" meeting, Commissioner Kogan had a telephone conversation with Mr. Feola about the Burke School matter. During this conversation Mr. Feola remarked that both parties "have their heels dug in so deep" that he, Mr. Feola, was not sure there was a way to bring them together. During the telephone conversation with Mr. Ailes, Commissioner Kogan pointed out that communications between the Burke School and its neighbors had broken down. To illustrate this point, Commissioner Kogan referred to Mr. Feola's characterization of the situation and the fact that "both sides have their heels dug in so deep." Commissioner Kogan said that he agreed with Mr. Feola's characterization and suggested that the Burke School needed to repair its relationship with its neighbors before a mediation could be conducted. On this basis Commissioner Kogan declined Mr. Ailes invitation to get in the middle of the two parties and encouraged Mr. Ailes to work directly with the Burke School's neighbors in pursuing the school's agenda.

While Commissioner Kogan declined to sponsor a "facilitated" meeting, at no time did he oppose such a meeting or state any objection to such a meeting occurring.

In a February 28, 2001, e-mail to ANC 3F Commissioners, Commissioner Kogan summarized his views on the Burke School's proposal for a facilitated meeting:

> . . . I encouraged Burke's Walter Ailes to do whatever Burke thinks it needs to do to improve its relationships with its residential neighbors. I told Walter that if Burke decides this includes a facilitated conversation, Burke should go ahead and do that. I declined, however, to take responsibility for arranging such a "facilitated conversation". As I explained to both Walter and David, I see the ANC as primarily an advisory body and I see my principal role in the Burke case

at this time as synthesizing as best I can the neighborhood position on the school's expansion proposal and representing that position as best I can in an advisory role before the BZA. For that reason, I asked the school to take responsibility upon itself for setting up a facilitated meeting if they decide they want to hold that kind of meeting.

3. <u>New Evidence.</u>

The applicant's discussion of a real estate transaction in the last paragraph on page 3 exceeds accepted guidelines for rebuttal, introduces new evidence not in the record or used during cross-examination, and is a last-ditch attempt to demonize some of the neighbors in opposition to the referenced application. Further, no evidence and no documents were submitted during the pre- or post-hearing period on this issue. ANC 3F believes this submission violates the Board's own directive that no new evidence be introduced in these final submissions.

However, if the Board chooses to accept the submission, then, in the interest of fairness, the residents involved should have a chance to answer the unsubstantiated charge in an open, on-the-record hearing. ANC 3F submits that there is no evidence in the record to substantiate the applicant's assertion that Linda Jay, Milton Shinberg, Rob Vircella, Jody Smolick, or Don Vereen tried to sell their homes to the Burke School or that this offer was rejected. The applicant is suggesting motives for the position taken by these parties based on events which were never discussed during the hearing and which were never made part of the evidence record. This clearly violates the Board's rules of admissible evidence. We believe, and hope the Board will agree, all members of NULS are sincere residents attempting to defend their homes and their neighborhood against further institutional encroachment and a further degradation of the quality of life in their neighborhood. As the Board will recall, it was the Chair's suggestion that the many individual citizens in opposition to this application join together under the NULS umbrella, designate representatives, and present a unified case. We believe the NULS group has ably and commendably executed the Chair's suggestion.

4. <u>Use of Howard Law School</u>.

ANC 3F believes all institutions in the city should abide by their campus plans and BZA orders or modify those orders with the appropriate governing body. Howard University Law School is no exception. ANC 3F has provided the Board with the complete history of the Law School campus showing that Howard has repeatedly asserted that they have no athletic fields and no athletic activity on this campus and that the "so-called" athletic fields was to be a buffer between Howard and its R-1-A zoned neighbors. This is codified by the 1997 five-hundred page Howard University West Campus Master Plan, approved by the BZA, requesting approval for the new library and a President's House. The Campus Plan, on page 18 clearly states, "There is no athletic program requirement for the School of Law and no athletic activities take place on the West Campus. No part of the West Campus is used by the University for outdoor activities." Further, ANC 3F submitted a letter from Howard University representative, Robert A. Malson, stating, "that the use of the buildings and grounds is restricted to Law School or Law School-related events, with one category of exceptions. The use of the Chapel is controlled by the Dean of the Chapel..."

Further, the Campus Plan contains a landscaping plan for these fields, a copy of which was provided to the Board with ANC 3F's submission on August 29, 2001. ANC 3F firmly believes that the continued use of the fields at Howard by the Burke School for its athletic program and after school and weekend sports activities clearly violates Howard's Campus Plan.

Sincerely,

/s/ /s/

Phil Kogan
Commissioner

Karen Lee Perry
Commissioner

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 Counsel