16611

Government of the District of Columbia

OFFICE OF ZONING

441 4TH STREET, N.W.
SUITE 210
WASHINGTON, D.C. 20001
(202) 727-6311

October 24, 2001

Robert V. Maudlin
Single Member District Commissioner – 3F03
Advisory Neighborhood Commission 3F
P.O. Box 39290
Washington, D.C. 20016

Re: Edmund Burke School – Compliance with Conditions of BZA Order No. 13986 Related to Student Enrollment

Dear Commissioner Maudlin:

The Office of Zoning is in receipt of your letters dated April 23, 2001 and October 15, 2001, concerning an alleged violation of Condition No. 4 in the above-cited Board of Zoning Adjustment (BZA) Order. I am sorry for the lateness of this response, which was caused by the lengthy BZA deliberations in this matter that only recently concluded on September 25, 2001. Condition No. 4 did in fact place a limitation on the number of students, faculty and staff allowed at the school.

Please be advised that the Office of Zoning does not have enforcement powers over the adherence of conditions in BZA Orders. The compliance of BZA Order conditions are investigated and enforced by the Department of Consumer and Regulatory Affairs (DCRA). For this reason, the Office of Zoning has forwarded your April 23, 2001 letter to the Zoning Administrator's Office within DCRA. Please be advised however that you must file a formal complaint with DCRA in order for them to initiate an investigation into this issue. Please contact Ms. Evon Epps in the Zoning Administrator's office at (202) 443-4576, to file a complaint of a zoning violation.

EX. 253

Board of Zoning Adjustment
District of Columbia
CASE NO.16611
EXHIBIT NO.253

Please feel free to call Richard S. Nero, Jr., Special Assistant, on (202) 727-6311, if you have any questions or if we can provide you with further assistance in this matter.

Sincerely,

JERRILY R. KRESS, FAIA
Director

Attachment

cc: EVON EPPS
DCRA

ROBERT V. MAUDLIN
Commissioner - 3F03
Advisory Neighborhood Commission

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April 23, 2001

D.C. BOARD OF ZONING ADJUSTMENT
2001 APR 25 PM 4:49

Ms. Sheri Pruitt
Secretary
D.C. Board of Zoning Adjustment
441 4th Street, N.W.
Washington, D.C. 20001

Complaint:
BZA Decision issued September 7, 1983 and Final Order dated October 4, 1983 in application No. 13986, as amended, of Edmund Burke School

Dear Ms. Pruitt:

This complaint concerns the Board of Zoning Adjustment decision dated September 7, 1983 and final order dated October 4, 1983 issued in Application No. 13986, as amended, of Edmund Burke School, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 3101.42 to construct an addition to a private secondary school and for certain variances. The October 4, 1983 final order issued by the BZA granted the application, subject to five conditions. Condition four of the final order states that "The number of students shall not exceed 270 and the total number of faculty and staff shall not exceed thirty-five."

The Edmund Burke School has, unilaterally and without notice to the BZA or an application to amend condition four, exceeded the number of students and number of faculty and staff authorized in condition four of the final order.

I request that the BZA investigate this noncompliance and order Edmund Burke School to comply with the student and staff/faculty caps established in the October 4, 1983 final order. I also request that sanctions be applied to the school

BZA
Case No. 16611
Exhibit No. 147

for the willful violation of the BZA's decision and final order.

In a pre-hearing statement filed with the BZA by Edmund Burke School for a public hearing scheduled for October 24, 2000, in BZA Application No. 16611, it is stated "The School currently has 299 students in grades sixth through twelfth and employs fifty-nine faculty and staff." This is clear evidence that in 2000 the school was in violation of both the student and faculty/staff caps provided for in condition four. However, the violations started prior to 2000. In a letter date April 10, 2001, (copy enclosed) Mr. David Shapiro, Head of School, Edmund Burke School, states that "It was not until the fall of 1997 that the school exceeded its enrollment cap. I am convinced that the faculty/staff numbers exceeded 35 some time earlier . . ." Therefore, the school has been in violation of the student cap for four school years and in violation of the faculty/staff cap for a longer period.

On March 19, 2001, I sent a letter (copy enclosed) to Mr. Shapiro, with five questions regarding the school population and faculty/staff population. Mr. Shapiro's response of April 10, 2001 did answer the questions but did indicate that the school is now on a path to grow the student population to 360, or 90 students above the current BZA mandated cap of 270.

There is no justification for the Edmund Burke School to ignore, with impudence, the conditions of an order of the D.C. Board of Zoning Adjustment. This scoff law behavior by the school's administrators also sends the wrong message to the students.

I am looking forward to the BZA addressing this serious violation of its final order of October 4, 1983 at an early date.

Very sincerely yours,

Robert V. Maudlin

enc.

cc: Mr. David Shapiro
Mr. Michael Johnson, DCRA
ANC3F Commissioners

JK/EB
R-510

ROBERT V. MAUDLIN
Commissioner - 3F03
Advisory Neighborhood Commission

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October 15, 2001

Ms. Sheri Pruitt
Secretary
D.C. Board of Zoning Adjustment
441 4th Street, N.W.
Washington, D.C. 20001

Dear Ms. Pruitt:

On April 23, 2001 I sent to you a complaint regarding BZA Decision issued September 7, 1983 and Final Order dated October 4, 1983 in application No. 13986, as amended, of Edmund Burke School. I have not received a reply to my complaint.

I would appreciate receiving a report on the status of my complaint.

Very sincerely yours,

Robert V. Maudlin

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 13986, as amended, of Edmund Burke School, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 3101.42 to construct an addition to a private secondary school and for variances from the lot occupancy requirements (Sub-section 3303.1), from the prohibition against required parking spaces measuring less than nine feet by nineteen feet (Sub-section 7204.1) and from the prohibition against parking spaces not being accessible directly from streets or alleys (Sub-section 7206.4) in an R-2 District at premises 2955 Upton Street, N.W., (Square 2243, Lots 30, 49 and 50).

HEARING DATE: July 13, 1983
DECISION DATE: September 7, 1983

FINDINGS OF FACT:

1. As originally advertised, the application requested a side yard variance from the requirements of Sub-section 3305.1 of the Zoning Regulations. Subsequent to the advertisement of the hearing, the Zoning Administrator determined that this relief was no longer required since only one side yard is required for a private school in the R-2 District and the applicant is providing one side yard in excess of the requirements. The Board therefore permitted the amendment of the application to eliminate the side yard variance request under Sub-section 3305.1 of the Zoning Regulations.

2. The subject site is located on the north side of Upton Street between Connecticut Avenue and 29th Street, N.W. and is known as premises 2955 Upton Street, N.W. It is in an R-2 District.

3. The site is rectangular in shape containing 22,050 square feet of land area and 150 feet of frontage on Upton Street, N.W. The site is improved with a two-story and basement brick structure presently used as a private school. At the rear of the school, to the north and accessible from a sixteen-foot wide public alley, is a paved area approximately 100 feet in length and thirty-five feet in depth. A sixteen-foot wide public alley also abuts the site to the west. There is a ten foot building restriction line along the Upton Street frontage.

4. The site is located in an R-2 District which runs from the alley immediately west of the site eastward to

approximately 29th Street. The R-2 portion of Upton Street is a residential neighborhood consisting of three-story single-family row dwellings and, approaching 29th Street, semi-detached dwellings. The R-2 District includes portions of the Howard University Law School Campus.

5. North and west of the site is an R-5-C District which also runs parallel to Connecticut Avenue south of the site. The R-5-C area is characterized by high density residential development contained in row dwellings and apartment houses of varying heights and bulk.

6. Northwest of the site at Connecticut Avenue and Van Ness Street, N.W. is a C-3-A District of intense mixed-use development along Connecticut Avenue. This district contains the Van Ness Center and other commercial developments. In the northwest quadrant of the intersection of Connecticut Avenue and Van Ness Street is the Van Ness Campus of the University of the District of Columbia.

7. The applicant proposes to construct a three-story brick addition to the existing structure. The addition will be constructed to the west of the existing structure over to and contiguous with the western lot line. Each floor will be interconnected with the existing structure. The addition will include a gymnasium, stage and additional classrooms. The gymnasium will also serve as an auditorium. Renovation of the existing structure is also planned.

8. The height and design of the addition will be consistent with the existing structure.

9. The applicant, the Edmund Burke School, in an independent, co-educational middle and secondary school offering grades seven through twelve. The present enrollment is 165 students, of which seventy-three percent resides in the District of Columbia. Over sixteen percent of the students receives financial aid. There are twenty-eight teachers and other staff members on the payroll, but only twenty are at the school at any given time.

10. It is anticipated that the proposed addition will provide for a maximum number of 270 students. The staff will increase to thirty-five persons, although only twenty-eight will be on the site at any one time.

11. There are approximately twelve students per classroom at the present time. That number is expected to increase to fifteen.

12. The Edmund Burke School was established in 1968 and moved to its present location following approval by this Board in BZA application No. 11428, Order dated September 6, 1973. The site has been used almost exclusively as a school

since 1911. From 1926 until 1951, the property was used as the Devitt School which had at one time 250 students and also had evening classes. Later, the Board approved the use of the subject premises as a Science School for Dunbarton College in BZA Appeal No. 9200.

13. The high school curriculum for each student at the Edmund Burke School includes four years of English, three years of math, three years of foreign language, four years of history, two years of fine arts, and three electives. Independent study is also encouraged and voluntary community service is required. Further, there is a full complement of extracurricular activities including athletics, yearbook, dramatic and musical productions, poetry readings, an "It's Academic" team, backpacking, canoeing, and skiing trips and a number of ad hoc events. Students have been successful in obtaining acceptance at leading colleges and have maintained a high performance level.

14. School activities are completed by 6:00 P.M.

15. The applicant envisions community use of the gymnasium and the art facilities. Presently, the existing building is used by neighborhood civic associations and non-profit organizations.

16. All of the activities planned in conjunction with the proposed addition will be entirely contained within the structure.

17. The addition will have fourteen-inch thick concrete and masonry walls to provide maximum sound insulation. The gymnasium is located seven feet below grade in the basement to contain noise. Rock below the seven foot level prohibits the gymnasium from being any lower. Windows in the gymnasium will be double glazed.

18. A regulation, full-size basketball court measures eighty-four feet by fifty feet. The applicant, however, is only able to provide a court measuring approximately seventy-four feet by forty-two feet in the addition. The proposed gymnasium will be the minimum size that still can function efficiently for instructional purposes. A permanent stage is also proposed which will be located adjacent to the gymnasium floor so that the room may be used as an auditorium.

19. The School's outdoor recreational activities are located off the subject site on the grounds of the Howard University Law School approximately 250 feet away. Students walking to the field are supervised by the physical education teacher. Fewer trips are planned to the field since the proposed gymnasium will accommodate additional activities than presently occur.

20. Approximately three percent of the students will be allowed to drive an automobile to school. Student parking will be provided on-site in extraordinary situations. Parents of the students must request in writing permission to allow a student to drive to school. A student may drive only when there is no adequate public transportation or in other exceptional circumstances.

21. Twenty-eight percent of the students are dropped off at the school. Five percent ride with someone who parks at the school. Fifty-one percent use mass transit and fourteen percent will walk or ride bicycles.

22. Forty percent of the faculty drive automobiles to work. The remaining sixty percent either walk, use mass transportation or ride in a car pool. A majority of faculty and staff drive compact cars.

23. The landscaped side yard east of the existing building, measuring approximately thirty-four feet in width, serves as a buffer between the school and the adjacent properties. There is also a four foot grade increase in this side yard, thereby making it inappropriate for parking. The existing public alley adjacent to the western property line will serve as an open space buffer between the addition and other adjacent uses.

24. The school is located approximately one block from Connecticut Avenue, N.W. bus service and two blocks from the Van Ness Metrorail Station. Additional parking is available at nearby commercial parking facilities.

25. The R-2 District permits a maximum lot occupancy of forty percent or 8,820 square feet. As proposed, 12,284.85 square feet are to be occupied, requiring a variance of 3,464.85 square feet or 39.28 percent.

26. At the Board's request, the applicant revised the originally proposed parking layout of twenty-five spaces to include a defined pedestrian walkway to the rear door, to preserve the existing trees in the rear and side yards and to clearly locate the trash dumpster. The Board was also concerned that in the original parking layout, the spaces were offset, so that a vehicle in one space actually blocked two others.

27. Twenty-five off-street parking spaces measuring nine feet by nineteen feet are required. Under the revised plan, two spaces at nine feet by nineteen feet, nine spaces at eight feet by sixteen feet and fourteen spaces at eight feet by nineteen feet are proposed to be provided. Variances are required for those spaces measuring less than nine feet by nineteen feet. The revised plan did show one parking space partially in front of the rear exit. Such a condition

could be hazardous in the event that quick egress from the building was required in an emergency.

28. Nine spaces are not directly accessible to a street or alley with access available only across another parking space. These spaces require variance relief from the provisions of Sub-section 7206.4.

29. The Office of Planning, by report dated July 6, 1983, recommended deferral of consideration of the original application until further explanation of the proposal could be obtained. The Office of Planning was concerned with the size of the addition and the extent of the lot occupancy variance. The Office of Planning was further concerned with the impact on the neighborhood resulting from the increased enrollment. Subsequent to the filing of the report and prior to the hearing before the Board, the applicant resolved all of the Office of Planning's concerns and the Office testified in support of the application at the hearing.

30. The Forest Hills Citizens Association, by letter dated July 13, 1983, stated no objection to the application but expressed concern over the possible increase in traffic on Upton Street. The applicant has agreed to work with the neighborhood to help reduce any traffic impacts.

31. Many letters in support of the application were received into the file. The letters were submitted by neighboring property owners and District of Columbia educators.

32. Advisory Neighborhood Commission 3F by letter dated July 13, 1983, recommended its support of the application. The Board waived its Rules to admit the ANC report into the record even though the report was not timely filed.

33. No one appeared in opposition to or in favor of the application at the public hearing.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception under Paragraph 3101.42 to construct an addition to a private middle and secondary school and variances from the parking space size requirements under Sub-section 7204.1, from the prohibition against parking spaces not being accessible directly from streets or alleys under Sub-section 7206.4 and from the lot occupancy requirements under Sub-section 3303.1.

Regarding the special exception, the applicant must prove that it has complied with the requirements of Paragraph 3101.42 of the Zoning Regulations. The Board concludes

that the applicant has met its burden of proof. The addition will not be objectionable to adjoining or nearby property. The addition will be constructed of brick to provide maximum sound insulation and all activities planned will be entirely contained within the structure. Use of the site as a private school has been consistent since 1926 without adverse effect. The addition's height, bulk, scale and design are compatible with the existing building and will not adversely effect neighboring property. The increase in the number of students and faculty at the school will not over intensify the use of the available space. The number of trips generated by the addition will not create an adverse impact on the transportation system in the area, and the applicant will provide an adequate number of parking spaces. Therefore, the Board concludes that the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and will not adversely affect the use of the neighboring property.

As to the variance relief sought, the Board concludes the site is affected by an extraordinary or exceptional condition in that the existing structure was built prior to the adoption of the existing Regulations. A sub-soil condition of the site is such that extensive and costly excavations below the seven foot level would be required to construct the addition. This condition creates a practical difficulty in the property.

The Board further concludes that the requested variances can be granted without detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. The Board notes that the revised parking plan locates one parking space partially in line with the rear exit, creating a potentially hazardous condition in the event of emergency egress from the building. Accordingly, it is ORDERED that the application is hereby GRANTED subject to the following CONDITIONS:

1. Operation of the school shall be limited to the Edmund Burke School, except as provided in Condition No. 5.

2. Twenty-four parking spaces shall be provided on-site. Parking shall be in accordance with Exhibit No. 33A of the record, except that the parking space immediately adjacent to the west side of the rear exit shall be eliminated.

3. The noise emanating from the structure shall not exceed 55 dba (decibals) as measured at the property line nor exceed the provisions of Sub-paragraph 6102.613 of the Zoning Regulations.

4. The number of students shall not exceed 270 and

the total number of faculty and staff shall not exceed thirty-five.

5. All non-school-related use of the building shall be limited to no more than three events per month.

VOTE: 4-1 (Lindsley Williams, Carrie Thornhill, William F. McIntosh and Douglas J. Patton to grant; Charles R. Norris opposed to the motion).

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

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: OCT -4 1983

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

13986order/KATE10