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October 2, 2000

OFFICE OF ZONING
DISTRICT OF COLUMBIA
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By Hand Delivery

Ms. Sheila Cross Reid, Chairperson
District of Columbia Board of Zoning Adjustment
441 4th Street, NW, Suite 210
Washington, DC 20001

Re: Board of Zoning Adjustment
Application No. 16611, Edmund Burke School

Dear Chairperson Reid:

On behalf of the Applicant in the above-captioned Application, we hereby oppose ANC 3F's request to postpone the October 24, 2000, hearing on the above-referenced Application. The Applicant has worked and intends to continue working with the ANC on this Application; however, the crux of the ANC's postponement request really focuses on what the ANC perceives as inappropriate rules and procedures of the BZA in general rather than objections to this Application specifically.

The Applicant, by utilizing the self-certification process contained in the Zoning Regulations, is merely following procedures that have been established by the Zoning Commission and the Board of Zoning Adjustment for BZA cases. Time frames articulated in the rules have been in place for many years and the Applicant, as noted in the ANC's letter, has attempted to accommodate the ANC by filing its Pre-hearing Statement almost three weeks prior to its required deadline. Further, not withstanding ANC's suggestions to the contrary, the issues in this case are very straightforward and uncomplicated. The Application requests a special exception for use of property in the residential zone for a private school. The tests for a private school in a residential zone are clearly articulated in the Zoning Regulations, and the information that the Applicant has provided to the ANC, and the community, covers all of those issues.

The ANC complains that the project has "changed" and while that is a correct statement, the change has resulted in the need for less zoning relief from the BZA. This change simplifies the case before both the ANC and the BZA. It should also be noted that the Applicant first presented its expansion plans to the BZA in March 2000 and has continually met with immediate neighbors as well as individual ANC Commissioners in order to keep them involved and informed about any changes that have occurred.

BZA
Case No. 16611
Exhibit No. 25

Board of Zoning Adjustment
District of Columbia
CASE NO.16611
EXHIBIT NO.25

A delay in this process will significantly prejudice the Applicant because its contingent contracts on the subject properties will expire, costing the Applicant the right to purchase these properties if the BZA process is delayed. The entire project will be in jeopardy, and the vast amount of monies that the school has spent on architecture, engineering and the like will be at risk.

Notwithstanding the opposition to the ANC's request for a postponement, Edmund Burke School intends to continue to work with the ANC and the neighbors to try to resolve outstanding issues. It strongly believes that a delay in the zoning hearing will not serve the process or Edmund Burke School's rights as an applicant for a special exception.

Very truly yours,

Phil T. Feola/SES

Phil T. Feola

Sarah E. Shaw

Sarah E. Shaw

Enclosure
cc: ANC 3F
Marie Sansone, Esq.
Mr. Andrew Altman
Mr. Walter Ailes

Document #: 1007769 v.2

ANC 3F Forest Hills/North Cleveland Park
Phil Kogan, SMD 3F01
Karen Perry, SMD 3F02
Robert Maudlin, SMD 3F03
David Bardin, SMD 3F04
Doug Mitchell, SMD 3F05
Phil Heinrich, SMD 3F06
Duane Fitzgerald, SMD 3F07

September 28, 2000

Board of Zoning Adjustment
for the District of Columbia
441 4th Street NW
Suite 210-S
Washington, DC 20001

Re: October 24, 2000, Hearing on Application No. 16611, Request for Zoning Relief for Use as a Private School

Dear Members of the Board:

ANC 3F respectfully requests that the Board of Zoning Adjustment (BZA) postpone the October 24, 2000, hearing on Application No. 16611 and refer this application to the Department of Consumer and Regulatory Affairs (DCRA) in order that the Zoning Administrator may review the application and determine the need for special exceptions, variances, and other adjustments required by the District of Columbia's zoning regulations. Such referral is customary prior to a hearing on applications associated with requests for significant, complex, or controversial zoning adjustments. Without such review by the the Zoning Administrator and without the results of such review made available to the public, we believe the requirement for proper notice has not been met by the BZA. We strongly recommend that the subject application be referred to DCRA and that sufficient time be provided for ANC 3F and the general public to receive and review the Zoning Administrator's report prior to the BZA rescheduling a hearing date. On August 21, 2000, ANC 3F by unanimous vote of 4-0-0 (one recusal) authorized this request to the BZA. See attached resolution 00-21.

ANC 3F received notice from Ms. Jerrily R. Kress on August 16, 2000, that Application 16611 was filed with the BZA on July 7, 2000. This application was filed using BZA Certification Form 1, Zoning Self-Certification Form. The July 7 application contained only the barest minimum information about the nature of the zoning relief sought. It contained none of the details that are required to be submitted in support of applications to the BZA. Indeed, the description of the relief sought by the application has changed substantially since the July 7 filing. Whereas relief from roof structure requirements was initially sought along with a special exception for private school, the current application has dropped the roof structure relief request. Under the BZA'a self-certification procedures the full submission, including all supporting materials, is due at least 14 days prior of the date of the hearing. Changes to the application can be made up to ten days prior to the hearing. We believe these procedures are inappropriate in

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this case since the relief being requested, if granted, could have significant and lasting consequences in our ANC.

The subject application requests relief in the form of a special exception for use as a private school for lots 27, 28, and 65 in Square 2243. These lots are located at the northeast corner of Upton Streets and Connecticut Avenue. To the south Lot 27 fronts on Upton Street; lot 28 is a corner lot which 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 to the east by a public alley which provides for one-way south bound traffic between Van Ness Street NW and Upton Street NW. The special exception is requested in order for the Edmund Burke School to complete its acquisition of the three lots and construct a 40,000 square foot addition to the existing school located on Upton Street NW. Granting this exception could potentially produce permanent negative impacts relating to traffic, parking, and quality of life for thousands of residents living in the densely populated neighborhood in the vicinity of Upton Streets and Connecticut Avenue.

On September 26, 2000, ANC 3F received a copy of the Burke School submission that accompanies Application No. 16611. We appreciate the fact that this information was provided in advance of the 14 day deadline for submission. However, we and our neighbors are now required within 28 days to review this detailed material which includes architectural drawings, plans, a construction operations plan, a transportation plan, and a traffic impact analysis; hold a duly noticed public meeting in our ANC, receive comment from the public; assess the consequences of the requested exception on our community; summarize the public comment received at our meeting; and prepare and file a report and recommended course of action with the BZA.

It is unreasonable to require ANC 3F and the community to do all of these things in fewer than four weeks when the initial application was filed more than 11 weeks ago. It is inappropriate for the BZA to hear a significant case such as this one with only a short period of time allowed for public review and assessment of the consequences on the community of a grant of the requested relief. It is also inappropriate for the BZA to hear and decide this case with no input from DCRA's zoning staff since a principal function of this staff is to review and analyze such requests. While ANC 3F is making every effort to meet the Board's deadline, we very strongly assert that the schedule provided by the Board works against the interest of public comment, public input, and public participation in a process that could potentially produce very significant and lasting consequences for our community and our city. Further, the process for hearing the subject application does not meet the BZA's own notice requirements since the details of the requested zoning adjustment was not made publicly available until 29 days prior to the hearing. Such an approach puts our citizens at a great disadvantage. The purpose and intent of the zoning laws and District government policy is to provide a reasonable opportunity for public comment and public participation in the zoning process. The self-certification procedure runs counter to these requirements. In fact, it stands the zoning process on its head and presumes that the application is sufficient based merely on the applicant's own certification that it is. Self-

certification places an unreasonable burden on citizens to review an application within a very narrow time frame and determine for themselves without any support from the Zoning Administrator the sufficiency of the application.

Given the very short deadlines in the self-certification procedure, ANC 3F requested on September 5, 2000, a waiver of the filing period so that we may file a report to the BZA on the date of the hearing. We will make every effort within the short deadlines to provide a report prior to the hearing. We trust the Board will grant this waiver. But we also believe the Board should go one step further and ensure that this application is processed in the routine and customary manner that applies to similar applications. We respectfully request that the BZA postpone consideration of Application 16611 and refer the Application to the Zoning Administrator. The hearing on this matter should be rescheduled after the Zoning Administrator has conducted a complete review of all zoning issues raised by the application and prepared and submitted a report for review by the Board, ANC 3F and the general public. Following the Board's customary procedures in processing this application will bring fairness to the process and ensure a fair opportunity for public participation, public input, and public comment in the Board's decision making.

The reasons why it is appropriate for the BZA to take this action are discussed below.

1. Self-Certification is Inappropriate for Applications that raise Significant, Complex, and Non-Routine Zoning Issues. The self-certification procedure can be useful in expediting applications containing routine and non-controversial requests. Enabling applicants to apply directly to the BZA can relieve the backlog of requests in the Zoning Administrator's office and expedite the processing of applications. However, given the short deadlines and expedited application procedures of the self-certification process, it is inappropriate to use self-certification where significant, complex, and non-routine issues are raised and where there is an clear need for public comment and public participation in the decision making process. Our ANC very strongly opposes the use of self-certification for Application No. 16611 since this application is not routine, requests a significant zoning adjustment, and raises complex traffic and parking issues in our ANC.

2. Significant and Complex Traffic and Parking Issues are Associated with Application No. 16611. The subject application requests a special exception for private school use for three parcels located at the intersection of Upton Streets and Connecticut Avenue Northwest. These parcels front on Upton Street and Connecticut Avenue. The Edmund Burke School, Howard University Law School, and the Levine School of Music are all located within approximately one half mile to the east of this intersection. Several thousand ANC 3F residents live within a short distance of these institutions which generate very heavy traffic demands on Upton Street, Van Ness Street, Tilden Street, and 29th Street east of Connecticut Avenue as well as on Connecticut Avenue itself. Parking as well is a major problem for the several thousand ANC 3F residents living within a one half mile radius of these institutions since parking demands generated by these institutions is extremely high. The addition

proposed by the Burke School will contain a 150 seat auditorium. This will further complicate traffic and parking problems for our neighbors.

Additionally, the intersection of Connecticut and Upton is located one block south of the intersection of Connecticut and Van Ness. The Connecticut/Van Ness intersection as well as the corridor running from the Connecticut/Van Ness intersection to the intersection of Connecticut and Albemarle Street is characterized by major traffic congestion on a daily basis leading to costly delays for thousands of commuters and residents. This traffic back up often flows to the Connecticut/Upton intersection which is only 350 feet south of the Connecticut/Van Ness intersection. The traffic study supporting the application for a special exception classifies the level of service at this intersection as F, or unsatisfactory. The potential negative consequences of the granting of a special exception on traffic conditions on Connecticut Avenue, the Connecticut/Van Ness intersection, and the Connecticut/Upton intersection are of the highest concern to ANC 3F. On January 10, 2000, ANC 3F unanimously adopted a resolution requesting Department of Public Works (DPW) and Metropolitan Police Department (MPD) to direct their attention to traffic congestion problems in the Connecticut Avenue corridor. See attached resolution 00-03. At our May 15, 2000, meeting MPD Second District Commander Peter Newsham agreed that traffic conditions on this section of Connecticut Avenue warrant special attention. Previously, the DPW Director in a meeting with ANC 3F agreed to work on traffic issues relating to congestion on Connecticut Avenue.

These conditions can only worsen given the continuing development activity around the Connecticut/Van Ness and Connecticut/Upton corridor. This includes the completion of the International Chancery Center which will contain 23 chanceries generating more than 2,000 automobile trips per day in the corridor; the recent construction of an apartment building at 4225 Connecticut Avenue just south of the Connecticut/Upton intersection; construction of the Park Connecticut apartment building at 4221 Connecticut Avenue NW; the acquisition and upgrading of 4250 Connecticut Avenue by Fannie Mae; proposed construction of a 169 unit high rise residential project at 3883 Connecticut Avenue; increased occupancy of the Intelsat building at 4100 Connecticut Avenue; and construction of a 300 seat performance theater at the Levine School of Music. While ANC 3F supports development in our neighborhood, this development should be allowed to continue only if accompanied by an overarching strategy for managing traffic and parking.

We are very concerned that the granting the requested special exception could mean that conditions could become markedly worse unless there is proper planning. The Zoning Administrator must work with DPW to study existing traffic and parking conditions on Connecticut Avenue, Van Ness, Upton, Tilden, and 29th Street; assess the consequences of the requested special exception on both traffic and parking; present solutions for the problems identified; and provide a report to the BZA and the public for consideration and review prior to a public hearing on Application 16611. Simply relying on the findings of a traffic consultant hired to prepare a report supporting the subject application is not sufficient given

the potential consequences of granting a special exception.

3. Zoning Staff at DCRA and Traffic Staff at DPW Should Review Application 16611 Prior to a Hearing. Zoning staff at DCRA and traffic staff at DPW are the District's experts on matters of zoning and traffic. The mission of these taxpayer financed agencies is to review and analyze zoning requests from the perspective of potential impacts on the city as a whole prior and from the perspective of the interests of all citizens of the District of Columbia; address all interests that may be impacted by a request; identify solutions; and produce a fair and balanced report based on this analysis. The fact that these organizations may be underfunded and/or understaffed does not change their central mission and the requirements placed on them. Nor does the fact that these organizations are operating under very intensive workload demands change this mission. The BZA should request and receive a report from the Zoning Administrator with input from DPW prior to a hearing on Application 16611 and prior to making a decision on the subject application. Use of Self-Certification to bypass the normal review and analysis process shortchanges the citizens of the District of Columbia who are entitled to these reviews before any zoning decisions are made.

4. The Zoning Regulations Do Not Provide for the Suspension or Rescission of A Special Exception. Ms. Kress advised ANC 3F on June 30, 2000 that the zoning rules do not provide for the suspension or rescission of special exception once approved. She stated that "under Section 3205 of the Zoning Regulations, the enforcement mechanism of the conditions contained in the Board's order is through enforcement of the related building permits and/or certificates of occupancy". (See attached.) Since a special exception according to the Ms. Kress is a *permanent* grant of authority for use of a property subject to conditions set out by the Board, and because such an exception cannot be suspended or rescinded once issued, such an exception should not be granted until and unless there is a full opportunity for public involvement and public comment. The self-certification procedures do not provide such an opportunity and the Board should not issue a special exception until the requirements for public comment and public participation have been fully met.

We thank you for the opportunity to present the views of ANC 3F on this matter.

Sincerely,

Phil Kogan
Commissioner, ANC 3F01

Karen Perry
Commissioner, ANC 3F02

Enclosures

cc: Walter Ailes, Edmund Burke School
Phil Feola, Shaw Pittman
Marie Sansome, Office of the Corporation Counsel
Michael Johnson, Zoning Administrator
Director, Department of Public Works
Andrew Altman, Director, Office of Planning
Paul Hart, BZA

Res 00-21

ANC3F RESOLUTION REGARDING BZA APPLICATION NO. 16611
4101 and 4103 Connecticut Avenue and 2969 Upton Street, N.W.

Advisory Neighborhood Commission 3F
North Cleveland Park and Forest Hills
P.O. Box 39290, Washington, D.C. 2016-9290

WHEREAS: ANC3F received formal notification from Ms. Jerrily R. Kress on August 17, 2000, that Application No. 16611 was formally filed with the Board of Zoning Adjustment (BZA) on July 7, 2000, and was scheduled for a hearing on or about October 24, 2000; and

WHEREAS: the documentation provided by Ms. Kress indicates that Application No. 16611 was filed using BZA Certification Form 1, Zoning Self-Certification Form, and requests a special exception for Lots 27, 28, and 65 in Square 2243 which are currently zoned R-5-D for "use as a private school and relief from roof structure requirements to allow for the construction of more than one roof structure, a waiver of roof setback requirements and roof structures with walls of unequal heights, which is provided for in Sections 411 and 206 of the Zoning Regulations"; and

WHEREAS: Application No. 16611 appears to raise complex zoning issues, the resolution of which could have significant impacts on our community and the District of Columbia; and

WHEREAS: the use of self-certification procedure is not appropriate in such a case.

THEREFORE, BE IT RESOLVED THAT: ANC 3F authorizes Commissioners Karen Perry and Phil Kogan to formally request on behalf of ANC 3F that the BZA refer Application No. 16611 to the Zoning Administrator in order that all zoning issues may be properly researched, reviewed, and identified and that any information developed by the Zoning Administrator be made publicly available in accordance with normal zoning procedures so that the ANC, the community, and the general public have reasonable and adequate time to understand and respond to the application; and

BE IT FURTHER RESOLVED THAT: the BZA be requested to reset the hearing date for this application pending submission of the Zoning Administrator's report.

Approved by vote of 4-0-0 at a duly noticed meeting on August 21, 2000 with a quorum present. Commissioner Bardin recusing

Chair

Secretary

Res 00-03

RESOLUTION

Advisory Neighborhood Commission 3F
North Cleveland Park & Forest Hills
P.O. Box 39290
Washington, D.C. 20016-9290
Phone: (202) 362-6120
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Traffic Congestion on Connecticut Avenue

WHEREAS, one of the major areas of traffic congestion in ANC3F is Connecticut Avenue between Tilden and Albemarle Streets;

WHEREAS, the flow of traffic appears to be restricted on Connecticut Avenue between Upton Street and Windom Place;

WHEREAS, the congestion impedes the flow of traffic on Connecticut Avenue;

NOW, THEREFORE BE IT RESOLVED THAT,
Advisory Neighborhood Commission 3F, at a duly noticed, regularly scheduled meeting on January 10, 2000, with a quorum present,

A. requests that the Bureau of Traffic Services, DPW, conduct a detailed traffic survey of the area and report to ANC3F the Bureau's recommendations for improving the flow of traffic on Connecticut Avenue, and

B. requests that District 2 of the Metropolitan Police Department increase patrols in the area to assure that traffic and parking
regulations are being enforced to assure that traffic flow and access by residents or emergency vehicles is not impeded by traffic
violators.

Adopted - January 10, 2000
Vote: 6-0-0

/s/ David J. Bardin
Chair

/s/ Robert V. Maudlin
Secretary

Government of the District of Columbia
OFFICE OF ZONING

June 30, 2000

David J. Bardin, Chair
Advisory Neighborhood Commission 3F
P.O. Box 39290
Washington, D.C. 20016-9290

Re: BZA Application No. 16110
Howard University 1997 West Campus Plan

Dear Mr. Bardin:

This is to acknowledge receipt of a copy of your letter dated May 17, 2000, to the Zoning Administrator noting the violations of conditions imposed by the Board of Zoning Adjustment in the above-referenced case. The attached ANC resolution, approved May 15, 2000, petitions the Board to suspend or rescind the special exception approvals given to Howard University for the 1997 West Campus Plan and for further processing of the campus plan in 1998.

The Zoning Regulations do not provide for the suspension or rescission of a special exception approval. Rather, under Section 3205 of the Zoning Regulations, the enforcement mechanism for the conditions contained in the Board's order is through enforcement of the related building permits and/or certificates of occupancy. The ANC's concerns relating to zoning compliance therefore should be directed to the Zoning Administrator as you have already done.

If we can be of any further assistance, please alert us.

Sincerely,
OFFICE OF ZONING

Jerrily R. Kress, FAIA
Director

cc: Michael D. Johnson, Zoning Administrator
Cynthia Giordano, Linnowes & Blocher, counsel for Howard University