Study Tips

Of course, students are always encouraged to develop their own individual strategies as well as to consult with their teachers and advisors.

Notebook Organization

1. Use a loose-leaf notebook with a section for each course.

2. In each section keep a folder with a pocket for filing returned papers and tests.

3. At the front of your notebook have:

   a. A copy of your schedule

   b. A zippered plastic bag with several pens & pencils

   c. A monthly calendar on which you can write the dates of your major tests and papers and other commitments (orthodontist's appointments, games, music lessons, etc.)

4. When you have finished a major unit in a course, remove all papers relating to that unit and store them in a separate folder at home where they will be available when you review for finals.

In Classroom Lectures and Discussions

1. **Before class starts**

   a. Open your notebook, get out a pen and your text and put everything else under your seat

   b. Quickly scan the notes, formulas, diagrams that you made as part of your homework and review the answers to 3-4 important questions which you expect the teacher will ask

2. **Listen attentively**

   a. Concentrate

      1. Try not to doodle, but if you do, keep a separate piece of paper for your drawings so that you don't clutter your notes or text with distracting pictures

      2. Focus your attention on the teacher or student speaking

         (a) Listen for main ideas and supporting evidence

         (b) Be alert for signal words and phrases (e.g. "a second point" or "on the other hand") or verbal clue (e.g. changes in tone of voice)

   b. Anticipate what will come next, asking yourself:

      1. What conclusions can be drawn from the discussion or lecture

      2. What examples might illustrate the general points being made

3. **Participate**

   a. Ask questions (if possible, when they come up; otherwise at the end of class)

   b. Volunteer answers (the more you volunteer, the less likely the teacher will call on you when you are uncertain of an answer)

   c. Challenge opinions you disagree with

4. **Take good notes**

   a. Use the Cornell format (Leave a 2 ½" margin on the left and use that space to indicate main topics, key words, etc.)

   b. Turn the teacher's questions into topic headings for your notes

   c. Indent to set off minor points from major ones (labeling points ABCD isn't as important if you space properly)

   d. Use abbreviations and symbols (e.g. = for example; w - with)

   e. Use ink - pencil smudges, fades

   f. Date your notes in the left margin

   g. Use wide-ruled paper - Your writing will be easier to read later

   h. Leave plenty of empty space for filling in if you think you might have missed something

   I. Don't plan on recopying your notes

   j. After class, edit your notes

      1. Fill in missing information (check the text, friends' notes)

      2. Label important points and terms; finish diagrams and sketches

      3. Underline or highlight important ideas or topics

Organizing Homework and Study Time

1. **Check assignments and books before leaving school**

2. **Schedule regular times to study each day**

   a. Several short periods of time are better than one long period (If possible, try to do at least one subject before dinner)

   b. Estimate the time needed for each assignment and use these estimates to help you stay on task

   c. Set sub-goals for yourself and reward yourself when you reach them (This means you should break big assignments into smaller units; when you finish a smaller unit, take a break; however, don't treat yourself until you have finished the task.)

3. **Choose the proper environment for study**

   a. Good desk, comfortable chair, good light

   b. Usually no music - most studies show vocal music is distracting

Board of Zoning Adjustment
District of Columbia
CASE NO. 17022
EXHIBIT NO. 126A2

4. **If your mind starts to wander**, stand up and face the opposite direction. This serves to break the cycle and helps you call your mind back to work.

5. **Use effective study techniques**

a. Survey your assignment and set your purpose

b. Choose your reading method: skim, scan, or careful study

c. Apply the SQ3R study method:

1. **Survey** or review the material

(a) Read the titles, subheads, highlighted material, etc.

(b) Note the charts, tables, maps, etc.

(c) Read the introduction and closing summary

(d) Use the questions at the end of the selection or chapter as a guide to the important points

2. **Question**

(a) Turn the headings into questions so that you will know what you are trying to find when you begin reading

(b) Remember the standard questions you apply over and over again for a particular subject (e.g. in science: what are the important structures, what are their functions, how do they change over time or relate to other structures; in math: what are the givens, what are the unknowns, what are the formulas and their relationships?)

3. **Read** the section to find the answer to your questions.

4. **Recite**, tell yourself the points you have learned and take notes in outline form (see the description of the Cornell format in the preceding section). Writing helps you remember better than just saying the answer to yourself; your notes are also useful when you review for tests.

5. **Review**: Cover the right hand side of your notes and look at the questions or topics on the left. See if you can tell yourself the answers.

Studying for Tests

1. Establish a review schedule for major tests

2. Organize your notes, tests, and quizzes

3. Find out as much as you can about the test from your teacher

4. For finals, start to study a week in advance

5. Gather, organize, and learn the answers to potential essay questions:

a. theories and principles

b. events with multiple causes and effects

c. controversial issues , pros and cons

d. trends

e. themes and character relationships

f. comparison/contrast of two or more works or events

6. For math, review formulas, steps in solving problems, typical word problems, chapter review units, the hardest problems

7. For short answer questions, review definitions, important names, events, physical structures & their characteristics, etc.

8. Learn by quizzing yourself and checking your answers

9. Allow enough time to learn new material and then to review it a day or so later (otherwise you will probably forget much of it)

Taking Tests

1. Survey the whole test and plan your time

2. Read the questions carefully

3. Answer the easiest questions first

4. Make an educated guess if there is no penalty for wrong answers; you might get partial credit

5. Organize your essays carefully

a. State a 1-2 sentence thesis

b. Answer the questions step-by-step (most questions can be broken down into several parts)

c. Use signal words to highlight your main points

d. Use specific supporting examples to back up your generalizations

e. Outline if you have run out of time

f. Add a 1-2 sentence conclusion if you have time

EBS Student Government Constitution

At the end of the summer, the student government began to make significant changes to this out of date constitution. They will continue to tweak the document this fall; thus, by the new calendar year, this piece may look quite different

Purpose

The purpose of the student government which this document describes is:

To provide a forum for students to voice their thoughts and grievances;

To provide an organization to implement the plans the students find important to their well-being and education in both academic and other areas.

Organization

Sixteen members make up the government, each member with one vote. There are fourteen grade representatives-two from each grade-and a President and Vice-President. The grade representatives must be members of the grade they represent during the year that they hold office. The President and Vice-President must be juniors or seniors in the year they hold office.

There will be both a treasurer and a secretary. Both will be class representatives, and one person cannot be both secretary and treasurer.

The government will meet on the first and third Wednesday of every month, beginning with the first Wednesday in May; at this first meeting, the government of the previous year will be present. The government must also meet once during the summer.

Elections

All balloting, except for the election of the Treasurer and Secretary of the government, should be done in secret. Absentee ballots should be provided for those absent from the election proceedings.

Presidential Election

In a school-wide assembly three Fridays before the first Wednesday in May, nominations will be taken. A nomination and second are all that is needed to nominate someone. By the end of the next Monday, any nominee who has not declined becomes a candidate. If there are more than five candidates, a run-off election will take place on the Friday before the first Wednesday in May. The five candidates with the highest number of votes will proceed to the next election on the Monday before the first Wednesday in May. If there are five or fewer candidates, then the election will take place on the Monday before the first Wednesday in May.

The entire student body, except seniors, votes in the presidential election. The candidate with the most votes becomes President. The first runner-up becomes Vice-President.

A person may be elected President or Vice-President two years running.

Representative Elections

There will be a homeroom meeting on the Friday before the first Wednesday in May in which each grade, excluding the senior class, will nominate candidates for their representatives. A nomination, a second, and an acceptance are needed to make the person a candidate. On the Monday before the first Wednesday in May, ballots will be cast for the grade representatives. The two candidates with the most votes become the representatives.

The incoming sixth grade executes the same procedure, but within the first month of school, to elect representatives for that year.

Special Elections

In the event that a member of the government leaves office (e.g. impeachment or resignation), a replacement must be elected. If the President leaves, the Vice-President becomes President, and an election takes place within two weeks, according to the rules for Presidential elections to fill the Vice-President's position. If it is the Vice-President or any representative that leaves office, then the position is filled within two weeks by the appropriate election. A representative may be elected Vice-President as a replacement. If so, the vacant class representative position will be filled by the appropriate election.

Secretary and Treasurer Elections

At the government's first meeting without the old government, a treasurer and secretary will be elected from the members of the government by the members of the government.

Resolutions

If a resolution deals with an issue where the government has power, and/or the administration agrees with the resolution, it carries the authority of the administration. If a resolution is contrary to school policy, or administrative opinion then the resolution is a formal statement of the opinion of the government, as the agent of the student body, to open negotiations between the administration and the government.

For a resolution to be passed, at least three quarters of the government representatives must be present. Any member of the government may propose a resolution. When one is proposed, the government will discuss it and then vote on it; each member of the government has one vote. The resolution must be written for it to be voted on. If a majority of the attending members of the government votes for the resolution, it is passed. In the event of a tie, the President's vote will act as two to break the tie.

Bill of Rights

The students of the Edmund Burke School have, and shall be accorded, the following rights:

1) The right to an education.

2) The right to be free from unreasonable search and seizure of their person and property, to a reasonable degree of privacy, and to a safe and secure environment.

3) The right to make their own decisions where applicable.

4) The right to freedom of religion and culture.

5) The right to freedom of speech and expression, including symbolic expression, such as display of buttons, posters, choice of dress, and length of hair, so long as the symbolic expression does not unreasonably and in fact disrupt the educational process or endanger the health and safety of the student or others.

6) The right to freedom of the press, except where material in student publications is libelous, slanderous, or obscene.

7) The right to peaceably assemble and to petition the redress of grievances.

8) The right to freedom from discrimination.

Powers of the President

The President runs all government meetings and is the spokesperson between the government and the administration/faculty and between the government and the student body.

Student Activities

The government will appoint, at the beginning of the year, between three and six people to be the Student Activities Committee. Before the appointments are made, the student body should be asked for volunteers. Members of the government may not be appointed. The tenure of members should last for one year; however, if a member does not fulfill his/her responsibilities as a member of the SAC, then he/she can be removed from the committee by the government. The government may or may not make a replacement appointment, except when a replacement must be made to maintain the minimum number of members.

The SAC is meant to run Burke dances and other such school functions (excluding the prom) and to run fund-raisers for the government. The purpose of the committee is therefore twofold: 1) to provide the community with enjoyable activities; and 2) to raise money for the government.

Funds

Money raised by the government is in the charge of the Treasurer, who acts under the direction of the government as a whole. Money raised by the government may be used as the government sees appropriate for the benefit of the student body. The main purpose of these funds is to subsidize sanctioned student organizations.

For an organization to become sanctioned by the government, it must have been active and successful in its endeavors for a trimester.

Monitoring

A government representative will be designated for each sanctioned schoolwide organization. These monitors are responsible for keeping the government informed of the actions of the organization to which they are assigned, and providing communication between the government and the organization. There should be two overseers for the yearbook.

Monthly Homeroom

In order that a regular habit of communication between the government and the student body be well established, a monthly homeroom will be held. On the first Monday of each month, each grade will congregate with its representatives. The representatives will then give an update on what has occurred within the government and have an open forum for the students to voice any complaints, compliments, or suggestions that they might have.

NOTE: In the junior and senior class homerooms, the representatives, not the President and/or Vice-President, run the meetings.

[Note from School: In most grades, cyclical grade homerooms have become the norm.]

Assemblies

The student government will establish a schedule for at least the upcoming month of B and F Day assemblies. Any one or two government officials may be scheduled to run a single assembly. The student government is responsible for ensuring that someone from the government runs these assemblies.

With the approval of the administration, the student government may organize special, or emergency assemblies. Any student may propose a topic or speaker to his or her representative.

Academic Integrity Committee

The Academic Integrity Committee is the judicial branch of the student government. This committee will be overseen by the student government and its faculty advisors. This committee will retain all of its original rules and regulations as to content and procedure, except in terms of the actual election process of committee members.

By the completion of the third week of September each grade, 6-12, will give a list of nominees of possible AIC members to the student government. These lists must have at least five nominations of which none may be members of the student government of the present year. The government will choose one nominee from each class list to serve as a committee member. They will also choose one runner-up from each grade, in case of absences or failure to live up to committee responsibilities. The junior representative from the previous year becomes the chairperson for the present year; thus, there are two members from the senior class.

Resignation

If any member of the student government, SAC, or AIC feels that he/she is no longer capable of fulfilling his/her responsibilities, then that member may remove him/herself from the government at any time.

Impeachment

The impeachment process is intended to give the student body a means of removing government officials who do not fulfill their responsibilities or do not uphold proper ethics. The impeachment process will be carried out should 1) a government official be unable to execute his/her duties efficiently and effectively, or, 2) he/she be convicted of an academic dishonesty, or, 3) he/she commit a serious infraction of school regulations.

All members of the student body, faculty, or administration are expected to tell the government of irresponsibilities or infractions that warrant impeachment.

The government must promptly decide, through a majority vote of all the representatives, whether or not to impeach the official. Should the government vote to impeach the President or Vice-President, then the student body votes on whether or not to remove him/her. If three-quarters of the student body vote for removal, then the impeached is removed.

A grade representative may also be impeached on the same grounds as the President or Vice-President. The impeachment process for the representatives consists of a vote by the grade represented. If three-quarters of the students in the class vote to remove the representative, then the representative is removed from office.

Amendments

The purpose of amendments is to change the Constitution to better uphold the stated purpose of the student government. A suggested amendment is formally brought before the government by a representative or by a student or faculty member. The government votes on whether the amendment should be brought before the whole school. To vote, all members of the government must be present. The government should base its decision on whether the amendment is serious enough to warrant a schoolwide vote. If one-half of all the representatives vote in favor of presenting the amendment to the School, then a special assembly is called to inform the student body of the amendment and its details. Then, the entire student body votes on whether to add the amendment to the Constitution. A two-thirds majority is required for ratification.

Amendment 1

Section I: At the end of the first and second trimesters each sanctioned activity will submit a budget proposal to the government describing its plans and needs for the forthcoming trimester. The proposal must also include a description of the group's proposed sources of income.

Section II: The student government then reviews the proposal and determines whether subsidies are necessary for the implementation of the activity's plans. If the subsidies are approved, they will be in the form of loans and/or direct stipends.

Section III: Each activity is responsible for repaying the loans by the end of the school year. In the case of stipends, the activity will be held accountable to the government for the use of the funds.

Amendment 2 *

In the presidential election, there will be groups of two running for office, one for President, one for Vice-President. In a school-wide assembly three Fridays before the first Wednesday in May, nominations for President will be taken. A nomination and second are all that is needed to nominate someone. By the end of the next Monday, any nominee who has not declined becomes a candidate. Also by this date, each nominee must have chosen a running mate whom will be his/her Vice-President. If there are more than five running groups, a run-off election will take place on the Friday before the first Wednesday in May. The five running groups with the highest number of votes will proceed to the next election on the Monday before the first Wednesday in May. If there are five or fewer candidates, then the election will take place on the Monday before the first Wednesday in May.

All students, except seniors, vote in the presidential election. The running group with the most votes will become President and Vice President.

A person may be elected President or Vice-President two years running.

*This amendment replaces the Presidential Election section of the standing Constitution.

Index

Absences 16
Academic accommodations policy 12
Academic affairs committee 7
Academic credit 10, 13
Academic integrity committee 28, 34
Academic probation 13
Academic requirements 10
Accidents 17
Adding courses 11
Admissions procedures 28
Advisory system 10
AIDS and infectious disease policy 29
Alerts 12
Alumni Association 24
Annual Fund 7
Annual re-enrollment 28
Anti-harrassment policy 19
Arrival and departure procedures 16
Assemblies 4, 26
Athletics 23
Atrium 14
Attendance procedures 16
Back to School Night 12, 24, 26
Balcony study/tutoring area 14
Board of Trustees 6
Bonding trips 26
Business Office 8
Buzz Book 2, 5
CD player policy 19
Capital Campaign 8
Cell Phones 19
Changing courses 11
Child abuse policy 29
Clubs 23
College counseling 14
Communication (see Contacting the School) 5, 8
Community building trips 26
Community service 10, 27
Computer use policy 14, 30
Concerns 5
Conferences 12, 26
Contacting the school 5, 8
Counselor 7
Curriculum 2, 10
Daily schedule 4
Development office 8
Diversity and community 5
Drama program 21
Dropping courses 11
Dropping Students off 16
Early dismissal 16
EBPA (Edmund Burke Parents' Association) 7, 24
Eighth grade moving up ceremony 27
Extended time 12
Extensions (see Assessments) 10
Extra curricular activities 23
Faculty and staff listing 5
Family conferences 12, 26
Field trips 11, 26
Financial aid 28
First aid 17
Floor plan 3
Founders Day 27
Grade Deans 6
Grading 13
Graduation 27
Graduation requirements 10
Gym use 15
Harassment 19
Homeroom groups 4
Homework 11
Honor roll 13
Incompletes 13
Injuries 17
Internet Use policy 30
Interscholastic sports 23
Labs 14
Late arrival 17
Lateness 17
Learning specialist 7
Learning support services (see Academic accommodations) 12
Leaving Messages 17
Leaving school early 16
Leaving School grounds 19
Library 14
Locker room 15
Lockers 15
Lost and Found 15
Lunch/lunch recess (see Leaving School grounds) 20
Map 2, inside back cover
Medical requirements 28
Medicine 17
Messages 17
Metro 16
Mission 5, 6
Music 23
Orientation 26
Out of school credit 13
Parents association (see EBPA) 7, 24
Parent volunteers 7, 24
Parking at the school 16
Peer counseling 12
Peer tutoring 24
Performing Arts 23
Philosophy 5
Phone use 17
Placement of students 11
Planned Giving 8
Prearranged absence 16
Problems 10, 12, 20
Progress reports 12
Public telephone 17
Publications 2, 8, 23

PVAC 23
Questions 5
Re-enrollment policies and procedures 28
Report cards 13
Rules 18
SAT Review 13, 14
School closing 16, 40 (appendix B)
School schedule 4
Senior seminars 9
Senior Send-Off 28
Sign in procedure 16
Ski trips 27
Snow policy 16
Special assemblies 26
Sports Night 27
Standardized testing 13
Student activities 23, 26
Student driving/parking 16
Student drop-off 16, 38 (appendix A)
Student government 23, 26, 34
Student placement 12, 13
Student publications 23
Student visitors 19
Study halls 11
Study Tips 31
Tardiness (see Lateness) 17
Testing 13
Traditions 26
Traffic plan 38 (appendix A)
Transcripts 13
Transportation options 16
Trips 11, 26, 27
Tutoring 11
Valuables (see Lost and Found) 15
Winter Holiday Party 27

Appendix A

THE MORNING DROP-OFF TRAFFIC PLAN

(7:30 am – 8:30 am)

As described below, the now mandatory plan is a simple common-sense approach designed to reduce the amount of Burke traffic on Upton Street and adjoining alleys by offering alternative drop off locations for students coming to Burke from each direction. While there will be a traffic officer at the school to enforce the plan, its ultimate success continues to rest on our families' understanding and willing assumption of our obligation to be part of the solution to neighborhood traffic congestion.

Restricted Use of Residential Streets and Alleys (See enclosed map)

The morning drop-off plan prohibits drop offs in the indicated areas on the enclosed map. In addition, a list of specific prohibited drop off locations is also listed below:

- In front of the school (and anywhere on Upton Street) except for Burke shuttle and carpools
- The parking lot behind the school
- Upton Entrance to Howard Law School (including U-turns)
- Entrance to the Consulate apartment building on Van Ness
- Driveway of Van Ness South
- Bank drive through on Van Ness Street
- Van Ness Street at head of Van Ness/Upton alley
- Bottom of Tilden Street alley
- Mid point of Upton/Tilden alley
- Veazey Terrace east of Connecticut Avenue

Where *can* I drop off my child?!

- **Shuttle Bus Service**

  From 7:30 am - 8:15 am, Burke will run a shuttle bus from Shoemaker Street, just across from Pierce Mill (see enclosed map). Two vans will be used for this service so that one van will always be at the embarkation point to accept riders. Students who ride the shuttle will be dropped off in front of the school.

  Families presently coming to school from west of Connecticut Avenue should go east on Tilden to the shuttle, continue on Shoemaker Street to its intersection with Tilden, then proceed east or west on Tilden (see map).

  Families presently coming to school from the east through Rock Creek Park should go west on Tilden, turn left to the shuttle, continue on Shoemaker to its intersection with Tilden, then proceed east or west on Tilden (see map).

- **Veazey Terrace Pull-Off (Former Van Ness Kiss 'N Ride Exit)**

  Families coming south on Connecticut Avenue should drop off students at the Veazey Terrace pull off on the west side of Connecticut, which used to serve as the exit of the former Van Ness Kiss 'N Ride. The Veazey Terrace pull-off is a very short walk to school, but on days when dropping off students there is impossible for one reason or another, families should proceed to the Burke Shuttle (see map).

- **Carpools**

  Carpools will not only help mitigate traffic congestion on Upton and Van Ness Streets, they can play a role in decreasing pollution in the city. Families who have registered as carpools (a minimum of 3 students per car) will be given numbered "CARPOOL #" signs to display on their dashboards. Each vehicle in the carpool will receive its own carpool sign. Carpools will drop off students in front of school, on the north side of Upton Street, only, then proceed to Connecticut Avenue and go north or south. Carpool vehicles will not be allowed to use any of the alleys to gain access to or depart from the school. Please call Karen Klautky at 202-362-8882 x109 to register your carpool.

- **Metro Benefit**

  Burke students who live in DC are currently eligible for a Metro Benefit of 55 cents/trip. Burke also offers that benefit to all Virginia and Maryland families whose children come to school in the morning or go home by public transportation. Please contact Burke's Business Office for further information about registering to receive this benefit.

- **Student Drivers**

  Those students who drive to school will be required to register their cars' makes and license plate numbers with the school. In addition, they will be required to display Burke stickers on their cars. Students, even those with Zone 3 permits, are not allowed to park in any restricted spaces in the neighborhood. Student parking is allowed only in unrestricted parking areas.

- **Whenever you drop off your children, remember that:**

  a. Students, faculty, and visitors to the school should obey all traffic regulations, including crossing streets only at designated crosswalks;

  b. Students should be ready to get out of their cars as quickly as safety permits.

  c. Drivers should be courteous to pedestrians and yield them the right of wa.y.

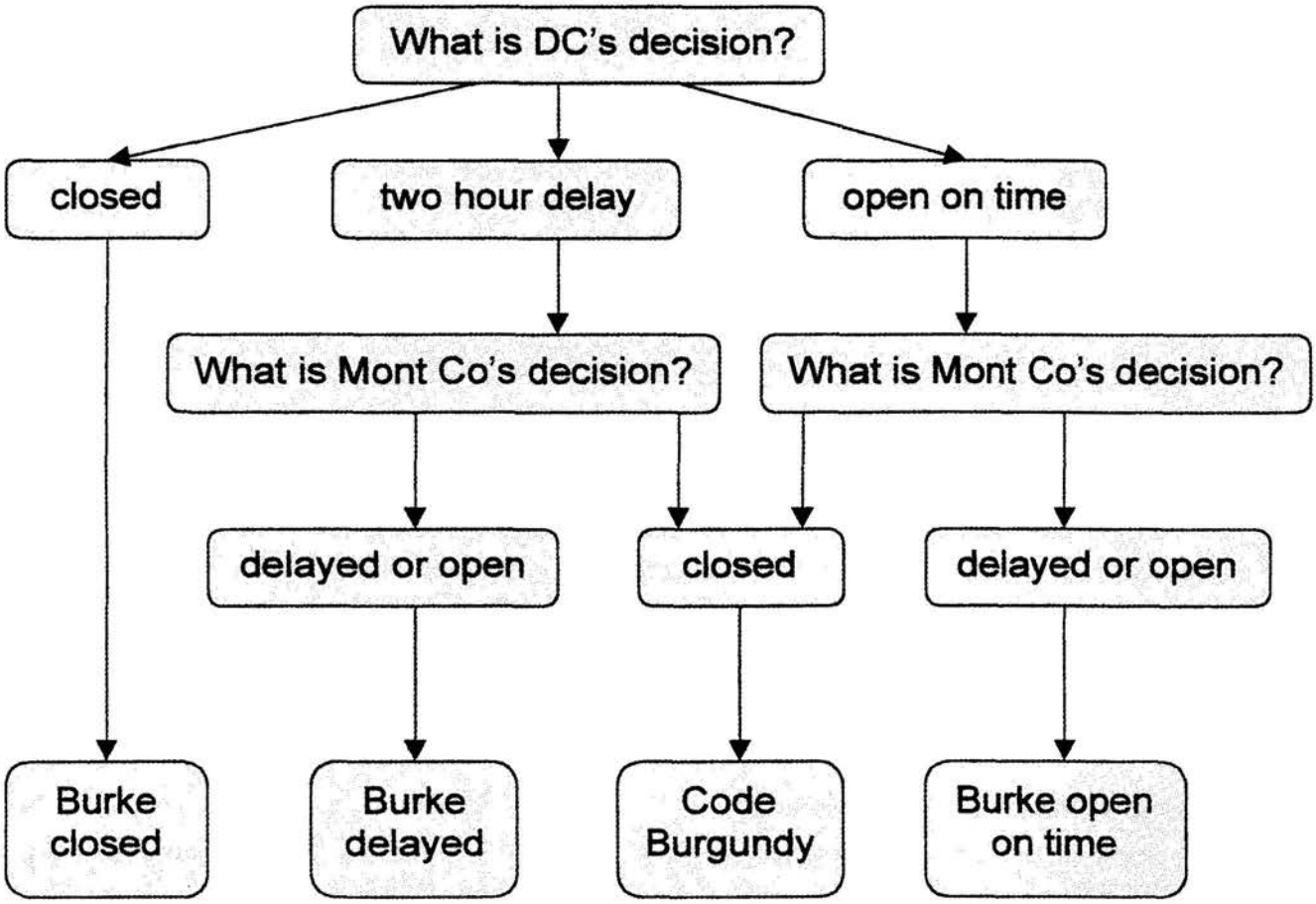
  d. Student pedestrians are urged to cross at crosswalks, to walk only on sidewalks, and to walk on the side of the alley closest to school.

  e. Dropping off your kids on the north or south side of Connecticut is not only dangerous but against the law.

Schedule of Fines for Non-compliance

- The first violation of the Compliance Plan and Pledge will result in a family meeting with David Shapiro who will again review the morning drop off plan and subsequent penalties for future violations. However, the family will incur an automatic $100 fine along with a meeting with David Shapiro for a first infraction that occurs in the Van Ness to Upton public alley or the lateral East-West alley that joins it.
- The second violation will result in a $100 fine.
- The third violation will result in a $250 fine.
- The fourth violation will result in denial of the family's reenrollment for the following academic year.

WEATHER-RELATED CLOSING PROCEDURES



Decisions regarding weather-related school closings will be posted by 6 AM on Burke's web page (on the home page under "What's New"), on our outgoing telephone message, and also sent for broadcast on WTOP, 1500 AM and 107.7 FM. In addition to announcements that are self-explanatory, we may also be using one called **Code Burgundy**. Code Burgundy means that Burke's start will be delayed until 10:15, and that a final decision about whether we'll open at all will be posted on our web page and outgoing telephone message by 7:00 AM.

The guide we'll use *most often* in making decisions is represented in the flow chart, above. It can be summarized as follows:

The Edmund Burke School follows DC Public Schools for weather-related closings when (1) DC Public Schools are closed and/or when (2) DC and Montgomery County decisions coincide. If DC schools are open and Montgomery County schools have a delayed opening, Burke will open on time, understanding that some students may be arriving late or staying at home.

In the event of other disparities between the two systems, Burke will adopt Code Burgundy. Under Code Burgundy, we are assessing whether most of our students and teachers can make it to school by 10:15. By 7:00 AM, we'll post on our web page (on the home page under "What's New") and outgoing telephone message whether we are starting at 10:15 or remaining closed for the day.

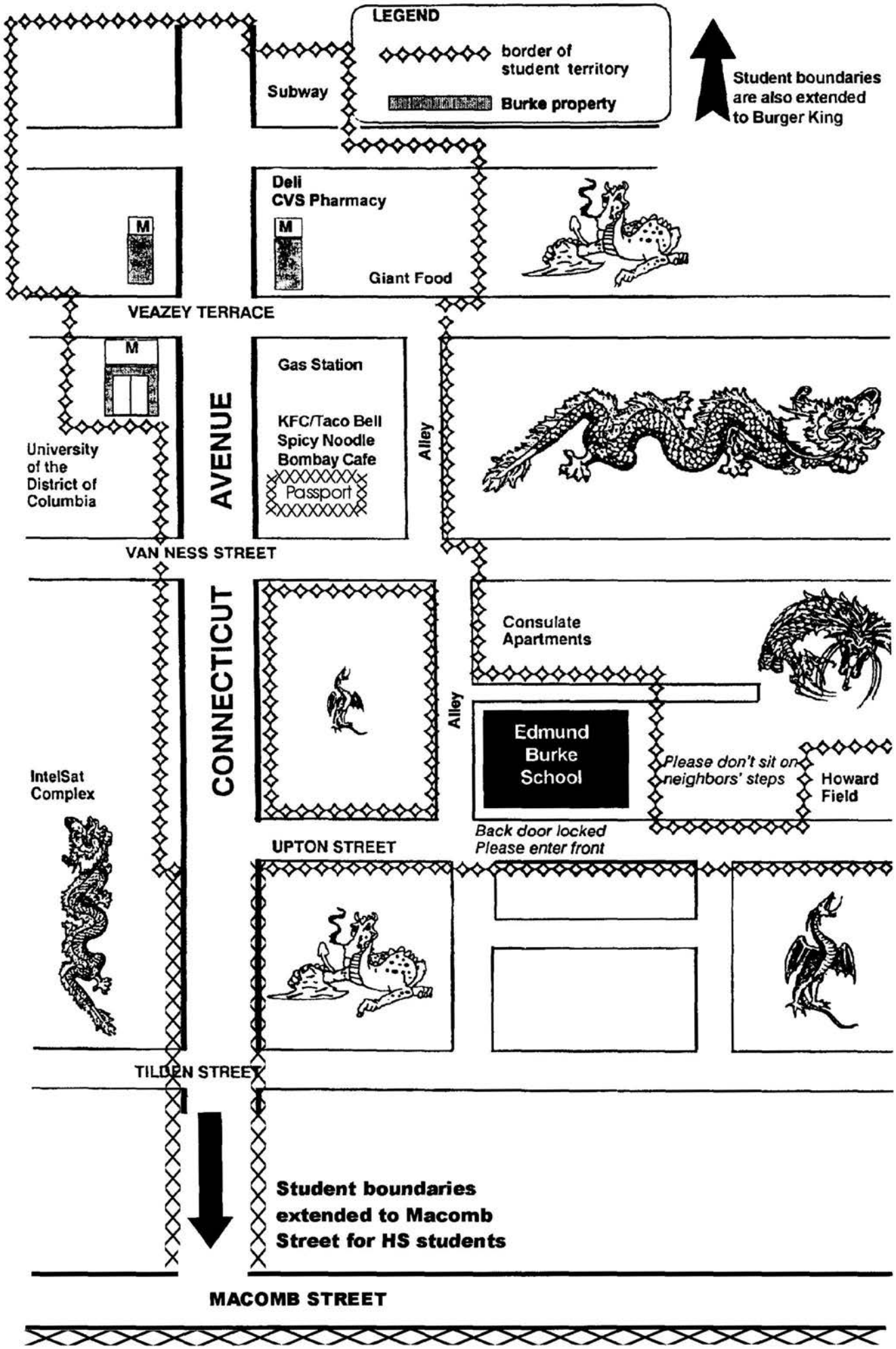

LEGEND
border of student territory
Burke property
Student boundaries are also extended to Burger King
Subway
Deli
CVS Pharmacy
Giant Food
VEAZEY TERRACE
University of the District of Columbia
AVENUE
Gas Station
KFC/Taco Bell
Spicy Noodle
Bombay Cafe
Passport
Alley
VAN NESS STREET
CONNECTICUT
Consulate Apartments
Alley
Edmund Burke School
Please don't sit on neighbors' steps
Howard Field
Back door locked
Please enter front
IntelSat Complex
UPTON STREET
TILDEN STREET
Student boundaries extended to Macomb Street for HS students
MACOMB STREET

Exhibit A-3

EDMUND BURKE SCHOOL

August, 2003

Dear Families:

Below you'll find the goals and details of the Edmund Burke School morning drop-off plan including a schedule of fines for non-compliance. The plan is centrally important to Burke's future, and I hope that you will take the time to read it carefully. There will be a meeting at Burke on the evening of August 28 at 7 p.m. to review the plan and answer any additional questions you may have. If you have questions before then, please feel free to call me directly at 202-362-8882 or e-mail me at david_shapiro@eburke.org.

Best regards,

David

David Shapiro
Head of School

THE MORNING DROP-OFF TRAFFIC PLAN (7:30 am – 8:30 am)

Edmund Burke School's commitment and its ability to maintain the quality of life in our neighborhood was wonderfully demonstrated by Burke families' voluntary adoption of last year's morning drop-off program which dramatically reduced traffic on Upton Street and the adjoining alleys starting March 2002. I want to thank all of the Burke families who responded with such good will and consistent adherence to the morning drop-off plan and to let new families know how our plan works.

As we wrote last year, there is no doubt that the most responsible way to go to and from our urban school is by public transportation, particularly as we are fortunate to have such convenient access to both Metrorail and Metrobus service.

For those who have no choice but to commute by car, we will continue the "Morning Drop-off Traffic Plan." As described below, the now mandatory plan is a simple common-sense approach designed to reduce the amount of Burke traffic on Upton Street and adjoining alleys by offering alternative drop off locations for students coming to Burke from each direction. While there will be a traffic officer at the school to enforce the plan, its ultimate success continues to rest on our families' understanding and willing assumption of our obligation to be part of the solution to neighborhood traffic congestion.

Restricted Use of Residential Streets and Alleys (See attached map)
The morning drop-off plan prohibits drop offs in the indicated areas on the attached map. In addition, a list of specific prohibited drop off locations is also listed below:

Map Location #1	In front of the school (and anywhere on Upton Street) except for the Burke shuttle and carpools
Map Location #2	The parking lot behind the school
Map Location #3	Upton entrance to Howard Law School (including U-turns)
Map Location #4	Entrance to the Consulate apartment building on Van Ness
Map Location #5	Driveway of Van Ness South
Map Location #6	Bank drive through on Van Ness Street
Map Location #7	Van Ness Street at head of Van Ness/Upton alley
Map Location #8	Bottom of Tilden Street alley
Map Location #9	Mid point of Upton/Tilden alley
Map Location #10	Veazey Terrace (East of Connecticut Avenue)

(over please)

Edmund Burke School

Morning Drop Off Plan

Preferred morning drop-off locations in "green circle" areas. Drop off prohibited in areas indicated in red.

Specific drop off locations that are prohibited include:

1. In front of the school except for Burke shuttle and carpools.
2. The parking lot behind the school.
3. Entrance to Howard Law School. (p.s. U-turns in the entrance is not allowed)
4. Entrance to the Consulate apartment building on Van Ness.
5. Driveway of Van Ness South.
6. Bank drive through on Van Ness Street.
7. Van Ness Street at head of Van Ness/Upton alley.
8. Bottom of Tilden Street alley.
9. Mid point of Upton/Tilden alley
10. Veazey Terrace (East)

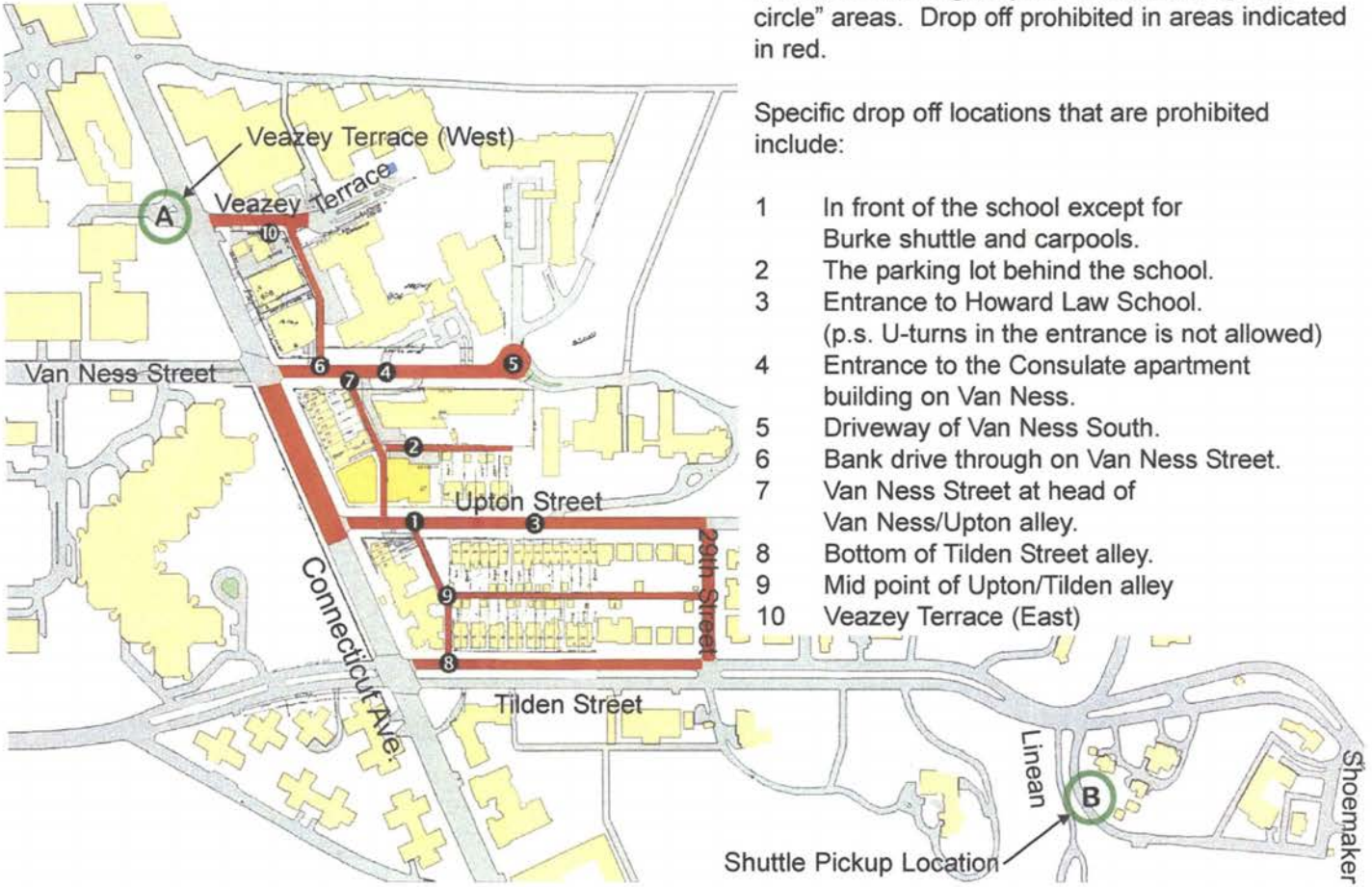


Exhibit B-1

Memorandum

Date: September 22, 2003

To: Phil Feola, Shaw Pittman

From: Jonathan Rodvien

Project: Edmund Burke School

Project No.: 02007

Subject: Gross Building Area and Vehicular Storage/Circulation

1. Building Area by Floor

1st Floor*	9,800 gsf
2nd Floor	9,454 gsf
3rd Floor	7,194 gsf
4th Floor	7,828 gsf
Total FAR	34,276 gsf

* includes 4,370 gsf dedicated to parking, loading/unloading, garage ramp, and drive aisles

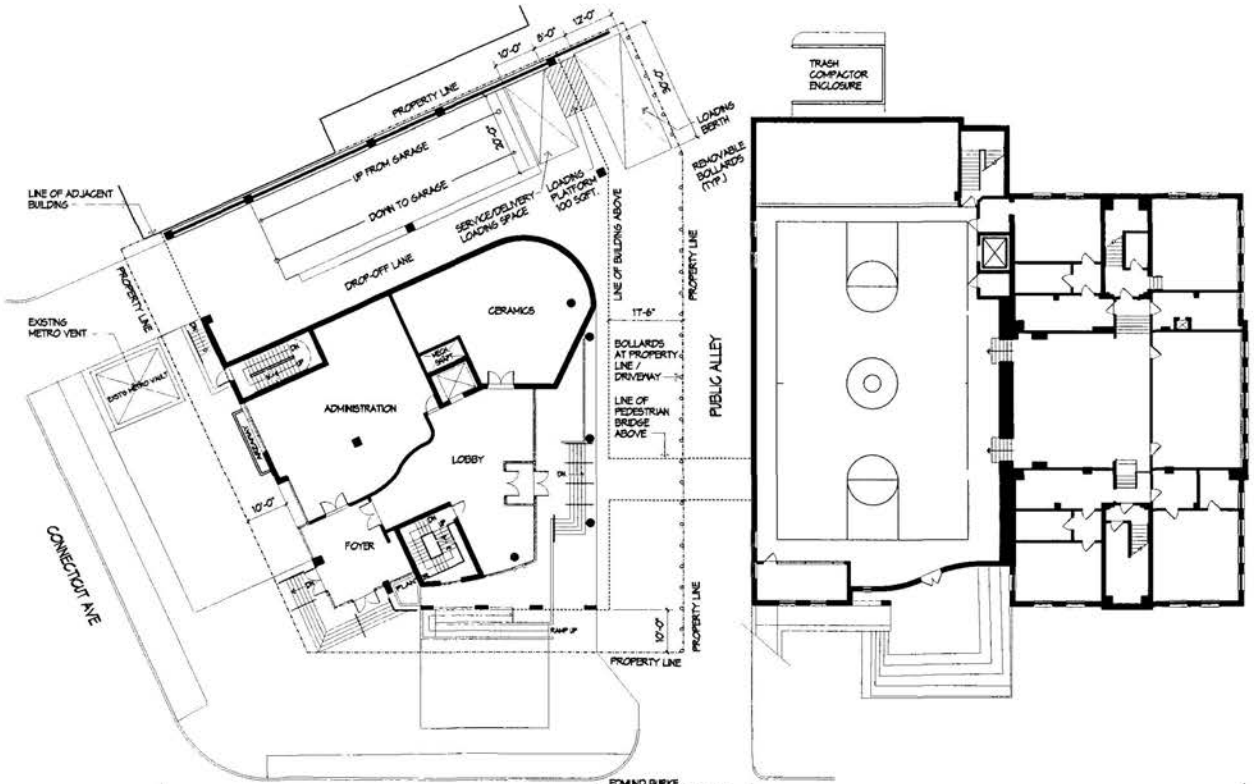
2. Building Area Adjusted for Vehicular Storage/Circulation

Total FAR	34,276 gsf
1st Floor *(dedicated to parking, loading/unloading, garage ramp, and drive aisles)*	4,370 gsf
	29,906 gsf

copies to: ☐ Chronological file
☐ Project File
☐

Bowie Gridley Architects, P.L.L.C.
1010 Wisconsin Avenue, N.W., Suite 400
Washington, D.C. 20007
Tel: 202-337-0888
Fax: 202-337-2626
bga@bowie-gridley.com

Exhibit B-2



FIRST FLOOR PLAN (ALTERNATIVE)

BOWIE GRIDLEY ARCHITECTS

SCHEMATIC DESIGN

EDMUND BURKE SCHOOL 7.15.03

Exhibit C-1

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Office of Zoning

Appeal No. 16716A of Nebraska Avenue Neighborhood Association, pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs, in the issuance of a building permit (No. B435464) on March 3, 2001, to Sunny and Louis Reyes *et al.* to permit the construction of a 102-unit handicapped assisted-living-apartment residence in an R-2 and R-5-D District at premises 5111, 5113, 5117, 5119, 5121, 5123, and 5125 Connecticut Avenue, N.W., and 5201, 5203, and 5205 Chevy Chase Parkway, N.W. (Square 1989, Lots 49-57 and 161).

HEARING DATES: July 17, 2001; August 3, 2001

DECISION DATES: September 4, 2001; October 2, 2001

DECISION AND ORDER

This appeal was filed on March 16, 2001, by the Nebraska Avenue Neighborhood Association (NANA) challenging on various grounds the Zoning Administrator's decision to approve the issue of Building Permit No. B435464, to Sunrise Assisted Living LLC to construct the 7-story Sunrise Assisted Living facility at 5111 Connecticut Avenue, N.W. After a public hearing, the Board denied the appeal, affirming the Zoning Administrator's approval of the permit.

PRELIMINARY AND PROCEDURAL MATTERS

Parties. The co-appellants in this case are the Nebraska Avenue Neighborhood Association, represented at the hearing by its President, Dr. Anne Page Chiapella, and Advisory Neighborhood Commission ("ANC") 3G, represented at the hearing by Marilyn Holmes, Esq., Commissioner of ANC Single Member District (SMD) 3G-07. The subject property is located within the area served by ANC 3G. As indicated by its letters dated April 9, 2001 (Ex. 16) and June 25, 2001 (Ex. 29), ANC 3G joined in this appeal with NANA in challenging the Zoning Administrator's decision.

Toye Bello, from the Department of Consumer and Regulatory Affairs, Zoning Review Branch, appeared on behalf of the Zoning Administrator. The Office of the Corporation Counsel represented the Zoning Administrator.

When the building permit application was filed on July 10, 2000, the subject property was owned by a number of individual property owners and Sunrise Connecticut Avenue Assisted

Living LLC (hereinafter "Sunrise" or "owner"). Subsequent to the issuance of the building permit on March 8, 2001, Sunrise completed its purchase of all of the subject property. As the owner of the property that is the subject of this appeal, Sunrise is automatically a party in this appeal pursuant to 11 DCMR § 3199.1. Sunrise is represented by ShawPittman LLP.

Notice of Appeal and Notice of Public Hearing. By memoranda dated March 26, 2001, the Office of Zoning advised Sunny and Louis Reyes, ANC 3G, the Zoning Administrator, the ANC Commissioner for the single-member district within which the property is located, the Ward 3 council member, the D.C. Office of Planning, and the Office of the Corporation Counsel of the filing of the appeal.

The Board scheduled a public hearing on the appeal for July 17, 2001. Pursuant to 11 DCMR § 3112.14, the Office of Zoning, on May 31, 2001, mailed ANC 3G, NANA, and the Zoning Administrator notice of hearing. Notice of hearing was also published in the *D.C. Register* on June 1, 2001, at 48 DCR 4898-99.

On May 7, 2001, Sunrise filed a motion to recuse Board Member Anne Renshaw. On July 10, 2001, after reviewing the motion and the responses thereto and debating the matter in a public meeting, four members of the Board requested that Member Renshaw voluntarily recuse herself. When Ms. Renshaw refused to recuse herself, the Board voted 4-1-0 to recuse her. An Order evidencing this decision was mailed to all parties to this appeal on July 26, 2001. No challenge of that order has been filed.

On July 16, 2001, NANA filed a request for clarification of the status of Sunrise as the property owner, a request to strike from the record a portion of the Property Owner's Statement and a motion for the participation of four Board Members requesting that the Board not proceed with the hearing with fewer than four Board members participating. After confirming the Board's right to consider any application or appeal with a quorum of three members, the Board noted that the request was moot since four members were in attendance. Further, the Board confirmed that Sunrise is the owner of all the property that is the subject of the appeal and that there was no basis for striking a portion of the Property Owner's Statement.

Appellants' Case. The Appellants raised eight issues on appeal that they assert constitute error on the part of the Zoning Administrator, and which form the basis for their argument that the building permit should be revoked. The issues are:

(a) the building permit application was not complete before the Zoning Commission setdown date for the rezoning of the property;
(b) incomplete and inaccurate information on the Building Permit Application materials invalidates these forms;
(c) the approved building violates the FAR requirements;
(d) the building has an inadequate rear yard setback;
(e) the height of the building exceeds the permitted height in the R-5-D zone;
(f) the housing for the mechanical equipment and the elevator penthouse is improper;
(g) the parking spaces and loading areas are inappropriate;
(h) the plans were not referred to the Office of Planning (OP) for review and report before final approval of the roof structures plan; and

(i) the proposed facility does not meet all applicable code and licensing requirements of 22 DCMR 3242 and 3257.

Zoning Administrator's Case. Mr. Bello, Chief of the Zoning Review Branch, testified about the components of a complete building permit application and discussed the plan review process. He described the use of architectural embellishments and their application to the roof structures here, the FAR calculations for the cited areas of the building, and the judgments required due to the uniquely shaped lot. Mr. Bello described the Zoning Administrator's practices regarding application intake, application amendments, plan referral to OP, building height measurements, and uniform treatment of community-based residential facilities under the Regulations.

Property Owner's Case. Sunrise presented testimony from Sean Ambrose, its Vice President for Development. Sunrise also called two expert witnesses, one in architecture, Steve Ruiz the project architect, and one in building and zoning regulatory matters, Armando Laurenco. Messrs. Ambrose and Ruiz testified about consultations with the Zoning Administrator pre-application and plan changes requested by the Zoning Administrator during the application review process. Sunrise, through counsel, objected to the appellants' testimony and argument regarding the Building Code and Department of Health as outside the jurisdiction of the Board.

Public Agency Reports. There are no public agency reports in this case.

ANC Report. There is no ANC report in this case. ANC 3G presented testimony and argument at the hearing.

Closing of the Record. The record closed at the conclusion of the August 3, 2001 hearing, with the exception of an e-mail from OP related to the referral regarding 11 DCMR §411.10 and Mr. Bello's additional response to elevator machine room setback and documentation establishing when the application was actually accepted for intake.

When submitting its proposed findings of facts and conclusions of law, Sunrise attached a drawing illustrating the penthouse. NANA filed a memorandum requesting a public hearing to permit additional cross-examination on the exhibit. Sunrise then moved to strike the memorandum or to withdraw the exhibit. The Board declined to accept the drawing and ordered it stricken from the record. *See* 11 DCMR §§3121.5, 3121.9.

Decision Meeting. At its decision meeting on September 4, 2001, the Board, voting 4-0-1, with Member Renshaw not voting, denied the appeal in all aspects, except for the structure plan not reviewed by the Office of Planning and the stair and elevator/penthouse setback requirements. The Board, voting 3-1-1, with Member Renshaw not voting, denied the appeal based on roof structure not being reviewed by the Office of Planning. The Board, voting 3-1-1, with Member Renshaw not voting, moved to deny the appeal regarding the stair and elevator penthouse setbacks and locations adjacent to exterior walls.

Motion for Reconsideration. At the Board's October 2, 2001 public meeting, Zoning Commission member Carol J. Mitten requested that the Board reconsider its September 4, 2001 votes on the roof structure review by the Office of Planning and the stair and elevator penthouse setbacks. Ms. Mitten, who heard the Appeal but submitted her vote by proxy at the September meeting, wished to present her reasons for her vote and her request for reconsideration to the Board in person. After discussion, the Board voted 2-2-1, with Member Renshaw not voting, and the motion for reconsideration of the Board's previous votes failed for want of a majority.

FINDINGS OF FACT

The Subject Property

1. The property that is the subject of the appeal is located at 5111, 5113, 5117, 5119, 5121, 5123, and 5125 Connecticut Avenue, N.W., and 5201, 5203, and 5205 Chevy Chase Parkway, N.W., Square 1989, Lots 49-57 and 161, in an R-5-D District.

2. The property is an irregularly shaped lot that includes frontage on Connecticut Avenue, N.W. and Chevy Chase Parkway, N.W.

Pre-Application Rulings and Building Permit Application Intake and Review

3. On October 15, 1998, Sunrise met with then Deputy Zoning Administrator, Gladys Hicks, to discuss the proposed use of the property as an assisted living facility. On December 17, 1998, Sunrise received written confirmation from Ms. Hicks that the proposed assisted living use would be permitted as a matter of right, once the proposed amendments to the Zoning Regulations were adopted regarding housing for the handicapped.[1] Sunrise received additional confirmation from Ms. Hicks on March 8, 1999, regarding the number of required parking spaces and loading berths for the assisted living facility. (Record Exhibit ("Exh.") 34, p. 5.)

4. The Appellants became aware of Sunrise's development plans early in the process. The ANC and the community opposed the alley closing application filed by Sunrise on August 2, 1999, to close the alley stub in Square 1989 adjacent to the subject property.

5. As a result of this opposition, Sunrise abandoned the alley closing application and pursued a building design that did not require closure of the alley. (Exh. 34, p. 6.)

6. On May 2, 2000, Sunrise met with the current Zoning Administrator, Michael Johnson, to review the matter-of-right zoning requirements for the proposed building, including height, rear yard setback, side yard setback and court determinations. On July 8, 2000, Michael Johnson provided written confirmation of the appropriate development parameters for the proposed assisted living facility on the site. (Exh. 34, pp. 6-7.)

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[1] The D.C. Zoning Commission adopted these amendments to the Zoning Regulations in Zoning Commission Order No. 869, which became effective on April 30, 1999.

7. On July 10, 2000, Sunrise filed a building permit application with the Building and Land Regulation Administration ("BLRA") of the Department of Consumer and Regulatory Affairs ("DCRA"). The detailed working drawings that were filed with the application included 178 pages and showed the construction of an assisted living facility for seniors. (Exh. 34, p. 7.)

8. Among other information the submission contained scaled drawings that showed the lot's exact shape, topography and dimensions; the plan, elevation, location and dimensions of existing and proposed structures and the proposed use; parking and loading plans; and building plats required by 11 DCMR §3202. The building permit application filed on July 10, 2000 was complete.

9. DCRA accepted a filing fee and issued a receipt on July 10, 2000. DCRA will only accept a filing fee for a building permit application that the intake officials at the Permit Review Branch deem complete.[2]

10. The building permit application correctly referred to the proposed use as an assisted living facility.

11. Internal notes made on the building permit application by the permit intake personnel did not invalidate the initial filing date or in any way affect the owner's representation of the proposed use.

12. During its October 16, 2000 public meeting, the Zoning Commission set down for hearing a proposed map amendment that would downzone the subject property from R-5-D to R-3.

13. By virtue of 11 DCMR §3202.5, the property owner had to file a complete building permit application by October 16, 2000, in order to allow the processing of the building under the R-5-D zoning.

14. Once plans are filed, it is common for the permit reviewers to comment or make notations on the plans, require plan clarification, additional drawings or plan modifications to address specific issues.

15. DCRA reviewed the application and the detailed working drawings for eight months. During the review process, DCRA required Sunrise to amend or supplement portions of its plans. The adjustments associated with this building permit application were typical of the building permit review process.

16. During the review process, the Zoning Administrator did not specifically refer the roof structure plans to the Director of the Office of Planning for review and report as required by 11 DCMR §411.10.

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[2] Except where otherwise noted, the findings of facts stated herein are based upon the testimony of Toye Bello, Sean Ambrose, Steve Ruiz and Armando Laurenco and the evidence admitted in the record in the course of that testimony.

17. The Office of the Zoning Administrator has not made a specific referral of roof plans to the Office of Planning for several years.

18. Sunrise submitted a revised building permit application in February 2001.

19. Building Permit No. B43564 was issued on March 8, 2001, authorizing the construction of a "seven story cast in place concrete structure containing assisted living residences (CRF, housing for the handicapped as the term is defined by the Fair Housing Act) with undergrd parking." (Exh. 6.)

Matter-of-Right Use

20. A community residence facility intended to be operated as housing for persons with handicaps is permitted as a matter-of-right in the R-5-D zone pursuant to 11 DCMR §330.5(i) which permits a community based residential facility as a matter-of-right in the R-4 and higher zone districts provided that the Zoning Administrator determines that the community based facility, otherwise complies with the zoning requirements of Title 11 that are of general and uniform applicability to all matter of right uses in an R-4 district, and is intended to be operated as housing for persons with handicaps.

21. The Sunrise facility, as described, is a community residence facility.

22. The Appellants did not challenge the determination that the facility would provide housing for the handicapped.

23. The proposed facility, as a community residence facility that provides housing for the handicapped, is permitted as a matter-of-right use on the property given its R-5-D zoning.

Floor Area Ratio ("FAR") Calculations

24. FAR for the building was calculated correctly in that the gross floor area calculations included all the portions of the building that are to be counted pursuant to the definition of gross floor area and correctly excluded the areas for which the Zoning Regulations specifically provide exemptions. For example, ventilation and utility shafts and rooftop terraces are excluded, but interior balconies are included.

25. The third floor roof terrace is excluded from FAR because it does not constitute habitable space; it is not fully enclosed. The terrace's columns are not exterior walls, there is no permanent roof, and the space is open to the elements.

26. The building has only seven stories. The eighth level consists only of roof structures, housing for mechanical equipment, stairway and elevator penthouses, described 11 DCMR §411.1 and therefore is not a story within the meaning of 11 DCMR §199.1. The penthouses qualify for the excess FAR that is allowed penthouses under 11 DCMR §411.7.

27. Floors or levels in roof structures that are less than six feet and six inches in height are excluded from FAR. The mechanical room on the roof was correctly excluded from the building's FAR calculation.

28. The architectural embellishments above the roof's parapet line do not constitute usable space and therefore are excluded from FAR.

29. The Zoning Administrator uses a perimeter calculation to determine the ratio of gross floor area that would constitute a basement by applying the definition of basement or cellar and prorating the amount of square footage that is devoted to each function. Testimony of Bello.

30. The portion of the building's lower level that qualifies as basement was correctly counted and included in the building's FAR. The FAR computations correctly excluded a portion of the garage level of the building because only 11.9% of that level constitutes basement space as defined in 11 DCMR §199.1.

31. FAR calculations were based only on the lot area of the R-5-D portion of the split-zoned site.

32. The building's FAR of 3.47 fully complies with the 3.5 limit applicable in the R-5-D zone.

33. Appellants' FAR computations were erroneous in many respects. The computations improperly included rooftop penthouses. The rooftop terrace over the low roof of the second floor was improperly counted toward FAR as if it were an exterior balcony. The appellants did not apply the perimeter wall computation correctly in determining the gross floor area of the lower level of the building in that they incorrectly measured from adjacent finished grade to the underside of the slab rather than the finished ceiling. This error resulted in an overstatement of the basement area and, accordingly, an overstatement of gross floor area.

Rear Yard and Side Yard

34. The property is on a corner lot with a highly unusual configuration.

35. Corner lots, by definition, have more than one front. Once the property owner chooses the front, for purposes of determining yards, the rear yard is designated as the yard opposite the chosen front.

36. For a corner lot, "the depth of rear yard may be measured from the center line of the street abutting the lot at the rear of the structure." 11 DCMR §404.2.

37. A side yard is not required in an R-5-D district, but if one is provided, it must be at least three inches wide per foot of height of the building, but no less than eight feet wide. 11 DCMR §405.6.

38. In the case of unusually shaped lots, the Zoning Administrator must make a judgment call. The side and rear yard computations were determined appropriately given the highly unusual configuration of the lot.

39. The Zoning Administrator correctly determined that Connecticut Avenue and Chevy Chase Parkway were the fronts and the portion of the lot east of the building, abutting the north-south rear alley that runs roughly parallel to Connecticut Avenue and Chevy Chase Parkway, was the rear.

40. Given the Zoning Administrator's interpretation, the rear yard depth of 34 feet was correctly measured as the depth of the yard located between the rear building line and the north-south alley.

41. The manner in which the rear yard was computed for this irregularly configured lot was reasonable and consistent with the longstanding interpretation of the Zoning Regulations by the Office of the Zoning Administrator and does not yield an unnatural result.

42. The Zoning Administrator correctly determined that the south side yard was the portion of the lot that abutted the building on the south at 5109 Connecticut Avenue.

43. The building's north wall continues to the building restriction line on the north that coincides with the boundary line separating the R-5-D and R-2 zones. The Zoning Administrator determined that no side yard is required on the north side.

44. There is an extremely generous open space between the proposed building and the residential properties to the north because the entire R-2 zoned portion of the site will contain no building area.

45. The Zoning Administrator's ruling yielded an appropriate and natural result because it will ensure ample open space surrounding the building, consistent with the intent of the Zoning Regulations.

Building Height

46. The building height is the vertical distance between the level of the curb opposite the middle of the front of the building to the highest point of the roof or parapet. 11 DCMR §199.1.

47. The building height was 83 feet, which is seven feet less than the maximum permitted height of 90 feet in the R-5-D zone.

48. Accurate measurement of height under the Zoning Regulations requires the correct classification of the architectural and structural features that are permitted on rooftops. In determining the height of the subject building, the height was measured to the top of the three-foot parapet. 11 DCMR §199.1.

49. The roof contains several structures that do not count toward the determination of the height of the building under 11 DCMR §400.8. These structures include a mechanical penthouse that houses mechanical equipment, a stairway and an elevator machine room.

50. Architectural embellishments above the parapet line do not constitute habitable space and are not counted toward the building's height. 11 DCMR §199.1; Testimony of Bello. These embellishments include towers such as the one that houses the elevator equipment which is capped with a purely decorative peaked roof element as well as the other architectural embellishments that simulate the look of a mansard roof around the building's perimeter.

51. The Zoning Administrator correctly determined that the height of the building was in compliance with the Zoning Regulations and followed standard review procedures that had been used in cases since 1958.

52. The Appellants were unable to refute the accuracy of the datum points that formed the basis of the measurement of the building height.

Elevator Penthouse and Rooftop Mechanical Equipment

53. The architectural embellishments and penthouse elements were correctly excluded from both the height and FAR computations.

54. The Chief of the Zoning Review Branch correctly determined that the mansard roof-like structure that wraps around the perimeter of the building serves as an enclosure of the entire penthouse under 11 DCMR §411.3.

55. The roof plan meets the requirement that penthouses and mechanical equipment be placed within a single enclosure.

56. The Chief of the Zoning Review Branch correctly determined that the elevator tower located at the rear edge of the roof of the building was located within an architectural embellishment and accordingly was not subject to the penthouse setback requirement.

57. There is no prohibition against including mechanical equipment within an architectural embellishment.

58. The Zoning Review Branch regularly approves tower elements and architectural embellishments that are not set back from the exterior face of the building when they are incorporated with any other architectural element for dual functions and are not designed to gain additional habitable space.

59. The same doctrine was applied by the Zoning Administrator in approving similar designs in which architectural embellishments that are not set back from the edge of the roof include mechanical equipment at 2590 L Street, N.W., 1725 I Street, N.W., and 1818 H Street, N.W.

60. The enclosing façade of the elevator penthouse was deemed to be an architectural embellishment designed for the predominant purpose of architectural uniformity of the roof plan and therefore, not subject to the setback requirements of 11 DCMR § 400.7(b).

61. The determination that the façade was an architectural embellishment is consistent with a previous design in which the architectural embellishment was proposed as an extension of a façade or curtain wall above the main roofline to conceal mechanical equipment behind the wall.

62. The Zoning Regulations are silent on the issue of the amount of functionality that is permitted for an architectural embellishment. Architectural embellishments cannot be used to provide habitable space; but there is no prohibition of the functional duality afforded by locating mechanical equipment in an architectural embellishment.

63. The decision to include the elevator enclosure in the excess FAR allowed penthouses is logical given the roof plan proposal, which was designed to create uniformity with the mansard and turret roofs on other portions of the building, and the function of the penthouse enclosure.

64. The Office of Planning made no comments as to any negative impact of the roof structure on neighboring properties although it received notice of the appeal and had access to the plans.

Parking and Loading

65. The plans meet the parking requirement the Zoning Administrator applied to the proposed use.

66. The Zoning Regulations do not explicitly establish a ratio of required parking spaces for community residence facilities in the R-5-D zone. The Zoning Administrator applied the ratio applicable to publicly assisted housing for the elderly because the Regulations do not provide a parking ratio for the proposed use.

67. In reviewing the permit application, the Chief of the Zoning Review Branch applied an even more restrictive standard, that for a rooming house or a boarding house. The project also satisfied the more restrictive requirements for a rooming or boarding house. The plans provide for 31 parking spaces.

68. The proposed loading dock and berth fully satisfy the requirements of the Zoning Regulations.

69. The convenience of use or the exact manner in which the loading facilities will function is beyond the purview of the review of the Zoning Administrator.

70. The approved plans adequately depict the location of the loading berth, loading platform and service delivery space. The plans show that the loading platform is contiguous to the loading berth and that there is unobstructed access from the berth to the platform.

71. The Zoning Regulations do not provide a ratio for loading spaces. The Zoning Administrator correctly applied the ratio required for any other use in all districts.

Licensing Requirements of 22 DCMR 3242 and 3257

72. Such licensing issues are issues that are beyond the scope of this appeal because they fall within the jurisdiction and expertise of the Department of Health.

Referral of Roof Plans to the Office of Planning

73. See Findings of Fact 16 and 17.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized under §8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Code, 2001 Ed. §6-641.07(g)(1) (2001)) ("Zoning Act"), to hear and decide appeals where it is alleged by an appellant that an administrative officer erred in any administrative decision based in whole or in part upon any Zoning Regulation or Zoning Map. This appeal is properly before the Board pursuant to 11 DCMR §§ 3100.2, 3101.5, and 3200.2. The notice requirements of 11 DCMR §3112 for the public hearing on the appeal have been met.

The appellants, NANA and ANC 3G, appeal the decision of the Zoning Administrator to approve the issuance of a building permit for a seven-story building to permit the construction of a 102-unit handicapped assisted-living-apartment residence on a variety of procedural and substantive grounds.

Complete Building Permit Application

In order to vest its rights under the R-5-D zoning, pursuant to 11 DCMR §3202.5, Sunrise had to file a complete Building Permit Application prior to October 16, 2000, the date upon which the Zoning Commission set down the application to down zone the site for public hearing. Based on the evidence submitted by the property owner, the testimony of the Chief of the Zoning Review Branch, and evidence in the record including a receipt for the payment of a filing fee on July 10, 2000, the Board concludes that the property owner filed a complete Building Permit Application on July 10, 2000, well in advance of the October setdown date for the rezoning of the property.

Matter-of-Right Use

Historically, the Zoning Regulations have treated assisted living facilities as a type of community based residence facility. 11 DCMR §199.1. The owner's property is located in an R-5-D zone. The Board notes that housing for the handicapped is clearly permitted as a matter of right use in an R-4 District under 11 DCMR §330.5(i), which states:

> Community based residential facility; Provided that notwithstanding any provision in this title to the contrary, the Zoning Administrator has determined that such community based facility, which otherwise complies with the zoning requirements of this title that are of general and uniform applicability to all matter of right uses in an R-4 District, is intended to be operated as housing for persons with handicaps. For purposes of this subsection, a "handicap" means, with respect to a person, a physical or mental impairment which substantially limits one or more of such person's major life activities, or a record of having, or being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance.

The Board concludes that the Zoning Administrator applied general and uniform zoning requirements applicable to multi-family residences in an R-4 District, such as parking requirements, in his review of the application for a building permit. There is no evidence in this case that the proposed building does not otherwise satisfy the zoning requirements for a multi-family residence in an R-4 or R-5 District. Community residential facilities for handicapped persons in the multi-family districts are not subject to a greater level of regulation than that applicable to housing for non-handicapped persons.

Appellants presented no evidence that the proposed building is not intended to provide housing for "handicapped" residents within the meaning of Section 330.5(i). Finding of Fact ("FF") 22. Based upon its testimony, Sunrise plans to serve residents who meet the definition of handicapped under the Federal Fair Housing Amendments Act and qualify as members of a protected class under the act by virtue of having "a physical or mental impairment which substantially limits one or more of such person's major life activities." 42 U.S.C. § 3602(h); *see, e.g., Hovson's, Inc. v. Township of Brick*, 89 F.3d 1096, 1103 and n. 3 (U.S. Ct. App. 1996); *Assisted Living Associates of Morristown, LLC v. Morristown Township*, 996 F.Supp. 409, 435 (D.N.J. 1998). The proposed facility will assist residents in major life activities such as eating, bathing, toileting and grooming. This particular facility will also serve individuals with cognitive impairment caused by Alzheimer's Disease. The Board concludes that the uses of the building, described by Sunrise, are consistent with a community residence facility providing housing for the handicapped. Therefore, Sunrise' proposed use is permitted as a matter-of-right in an R-5-D zone.

Floor Area Ratio ("FAR") Calculations

The Board concludes that FAR has been properly calculated and fully complies with the 3.5 FAR limit applicable in the R-5-D zone. The testimony of record from the architect and the owner's zoning expert demonstrates that the FAR was based on a careful evaluation of gross floor area contained in the regulations. In determining the amount of the garage level that should count towards the building's FAR, Sunrise applied the well-established and long recognized "perimeter wall test." The owner's zoning expert demonstrated to the Board's satisfaction that several areas of the building that are not countable toward FAR were incorrectly included by the Appellants.

Rear Yard and Side Yard

The Board concludes that the proposed building fully complies with the rear yard setback requirement of 11 DCMR §404.1. The Board notes that the subject lot has more than the usual four sides and hence its shape is highly irregular. Further, an alley stub protrudes into the lot at an angle. The Board concludes that in considering the lot's unusual configuration, the Zoning Administrator correctly determined that Connecticut Avenue was designated the front, and that the portion of the lot abutting the north-south alley to the rear, running roughly parallel to Connecticut Avenue was the rear. The Board concludes that the ruling of the Zoning Administrator yields a logical and natural result that is consistent with the intent and meaning of the Zoning Regulations.

The Board is also constrained to conclude that the Appellants' interpretation of the rear yard requirement is not supported by the regulations and would produce illogical results. The portion of the building that abuts the alley stub cannot be considered the "rear line of the building" and such a determination would render a disproportionately large portion of the lot not buildable. The Board concludes that the building, as proposed, provides significant open space and ample light and air to adjacent properties consistent with the intent of the yard requirements.

Building Height

The Board concludes that the Chief of the Zoning Review Branch and the owner's zoning expert have demonstrated that the building height was measured properly and that, at 83 feet, the height is well below the allowable 90-foot height limit in the R-5-D zone. The Chief of the Zoning Review Branch and the owner's zoning expert also demonstrated that architectural embellishments and penthouses do not count toward the building height, therefore they were correctly excluded from the building's height computation. The Board further notes that the 83-foot building height was conservatively measured to the parapet line of the tower element which contains the elevator machine equipment, while the Zoning Regulations would permit the measurement to be taken at a lower point, the roof itself, thus resulting in an even lower height for the building. The Board also notes that, while a portion of the building consists of seven stories, the southern portion of the building steps down to only six stories. The Appellants produced no evidence to demonstrate that the height of the building was measured incorrectly.

Elevator Penthouse and Rooftop Mechanical Equipment

The Board concurs with, and longstanding administrative precedent supports, the Zoning Administrator's interpretation of the portions of the Zoning Regulations addressing rooftop structures and architectural embellishments. Accordingly, the Board concludes that the penthouse and architectural embellishments associated with the proposed building fully comply with the Zoning Regulations. The testimony of the Chief of the Zoning Review Branch and post-hearing submission on this issue provide compelling evidence that architectural embellishments do not count toward building height and are not subject to the penthouse setback requirements. The Board agrees with the testimony of the Chief of the Zoning Review Branch and his conclusion that the elevator tower located at the rear edge of the roof of the building was correctly designated as an architectural embellishment, and accordingly is not subject to the penthouse setback requirements.

The Board agrees with the Zoning Administrator and therefore concludes that there is no prohibition against including mechanical equipment within an architectural embellishment and that there is ample precedent for this issue in other recently approved buildings in the District of Columbia. The Board concludes that the Office of the Zoning Administrator regularly approves tower elements as architectural embellishments that are not set back from the exterior face of the building. The practice represents a reasonable interpretation of the Zoning Regulations. The Board also concludes that the mansard roof-like structure that wraps around the perimeter of the building acts as an enclosure of the entire penthouse as required by the regulations. Accordingly, the roof plan meets the requirement for having a single penthouse enclosure. Further, the Board notes that the building height was measured to the parapet at the top of the stair tower, while the regulations do not require measurement to that point.

The Board concludes that the Appellants have not successfully refuted the Zoning Administrator's interpretation of the penthouse requirements and the longstanding interpretation of the treatment of architectural embellishments. While the Appellants argued that the elevator tower embellishment constitutes an eighth story, the Board concludes that the Chief of the Zoning Review Branch demonstrated that such an element does not meet the definition of a story.

Failure to Refer Roof Plans to the Office of Planning

Section 411.10 of the Zoning Regulations provides that:

> Before taking final action on a roof structure plan, the Zoning Administrator shall have submitted the plan to the Director of the Office of Planning for review and report. The report shall be returned within fifteen (15) days of the date of submission unless a different period has been provided by mutual agreement of all parties involved.

There is no dispute that the Zoning Administrator failed to make this referral. Instead, it was pointed out to the Board that Office of the Zoning Administrator does not routinely make such referrals. The customary violation of a zoning regulation does not repeal the provision. Thus, the Zoning Administrator's failure to refer the subject plans violated the specific roof referral requirement set forth in the Zoning Regulations.

However, in this instance, the Board does not believe that this single violation justifies revocation of the permit issued here. Based upon its review of the record, the Board has found no substantive grounds for revoking the permit. During the course of this hearing, the Board could have requested the input from the Office of Planning with respect to the roof structure plans (*see,* D.C. Official Code §6-626.04 (2001), but did not do so. OP's only statement on the issue was an email stating that it does not customarily review such plans. Even if the Board remanded the permit for the purpose of a referral, OP's views would not be binding on the Zoning Administrator. Thus, a referral could very well accomplish nothing but delay. Given the fact that the Board has concluded that issuance of the building permit was consistent with the substantive requirements of the Zoning Regulations, the administration of those regulations is

not furthered by having the Office of Planning make non-binding recommendations with respect to matters already decided in this Order.

Parking and Loading

The Board concludes that the building permit drawings correctly show fully compliant loading facilities. In addition the plans include 31 parking spaces, which exceed the number required for comparable uses under the regulations. The Board concludes that the Zoning Administrator correctly determined the applicable parking and loading requirements, and that a ruling from the Zoning Administrator was necessary because the regulations do not set forth specific parking and loading ratios for a community residence facility in the R-5-D zone. The Board concludes that the loading facilities provide unobstructed access as required under the Zoning Regulations.

The Board concludes that the Appellants offered no persuasive evidence to merit a reversal of the Zoning Administrator's ruling on this issue.

Non-Zoning Issues

With regard to the non-zoning issues raised by the appellants, the Board finds that these issues are outside the scope of the Board's review authority. Section 8 of the Zoning Act provides for appeals to the BZA that are "based in whole or in part upon any zoning regulation or map." In implementing §8 of that act, 11 DCMR §3100.2 provides that the BZA may "hear and decide appeals where it is alleged by the Appellants that there is error in any order, requirement, decision, determination, or refusal made by any administrative officer or body, including the Mayor, in the administration or enforcement of this Title." The BZA has consistently confirmed that interpretation on many occasions. Accordingly, the allegations brought by NANA that DCRA officials failed to address external agency concerns and did not provide full access to DCRA records are not zoning matters and are not properly before the Board. Similarly, any and all issues related to the licensing of assisted living facilities by the Department of Health and other District agencies are similarly outside of the scope of the Board's authority.

The Board is required under D.C. Official Code §1-309.10(d)(3)(A) (2001) to give "great weight" to the affected ANC's recommendations. Under D.C. Official Code §1-309.10 (d)(3)(B) (2001), the Board must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice under the circumstances and make specific findings and conclusions with respect to each of the ANC's issues and concerns. The ANC presented no report in this matter, but joined with the appellant in presenting its legal arguments. The Board has addressed each of the issues raised by the appellants and the ANC, and explained, in each instance, why it agreed or disagreed with the specific positions taken by these parties. The Board thus gave great weight to the issues and concerns raised by the ANC in this appeal.

Motion for Reconsideration – The Effect of a Tie Vote

Under §8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 799, as amended; D.C. Code, 2001 Ed. §6-641.07(h)), "The concurring vote of not less than a full majority of the members of the Board shall be necessary for any decision or order." The Board's Rules of Practice and Procedure likewise provide in 11 DCMR §315.2 that "The concurring vote of at least a full majority of the Board shall be necessary for any decision." Because the Board is composed of five members, a decision to grant Ms. Mitten's Motion for Reconsideration requires at least three affirmative votes.

A tie vote occurs when 50 percent of a body votes in favor of a motion and 50 percent votes against the motion. If there is no way to break a tie vote, the motion is lost. A tie vote that is not broken by a subsequent vote thus operates to deny the relief that was the subject of the motion. *See Morrison v. District of Columbia Bd. of Zoning Adjustment,* 422 A.2d 347, 349 n.5 (D.C. 1980) (tie votes); *see also Hubbard v. District of Columbia Bd. of Zoning Adjustment,* 366 A.2d 427, 428 (D.C. 1976) (failure to achieve super-majority vote tantamount to denial of motion for rehearing). In this case, there is no way to break the tie because the Board's fifth member is recused from this Appeal. Accordingly, the motion for reconsideration is deemed denied.

CONCLUSION

For the reasons stated above, the Board concludes that the appellants have not met their burden of proving by a preponderance of the evidence that the Zoning Administrator erred in approving the issuance of the building permit because the building plans do not conform in all respects to the applicable Zoning Regulations. It is hereby **ORDERED** that the appeal of the issuance of Building Permit Number B435464 filed by the Nebraska Avenue Neighborhood Association and joined by Advisory Neighborhood Commission 3G is **DENIED.**

VOTE: 4 – 0 - 1 (Sheila Cross Reid, Carol J. Mitten, Geoffrey H. Griffis, and David W. Levy to deny appeal in all aspects, except for the structure plan not reviewed by the Office of Planning and the stair and elevator/penthouse setback requirements; Anne M. Renshaw, not voting, recused).

VOTE: 3 – 1 - 1 (Sheila Cross Reid, Geoffrey H. Griffis, and David W. Levy to deny the appeal based on roof structure not being reviewed by the Office of Planning; Carol J. Mitten, opposed; Anne M. Renshaw, not voting, recused).

VOTE: 3 – 1 - 1 (Sheila Cross Reid, Geoffrey H, Griffis, and David W. Levy to deny the appeal regarding the stair and elevator penthouse setbacks and locations adjacent to exterior walls; Carol J. Mitten, opposed; Anne M. Renshaw, not voting, recused).

VOTE: 2 – 2 - 1 (Carol J. Mitten and David W. Levy to grant the motion for reconsideration of the Board's decisions (i) to deny the appeal based on roof structure not being reviewed by the Office of Planning and (ii) the stair and elevator penthouse setbacks and locations adjacent to exterior walls; Sheila Cross Reid and Geoffrey H. Griffis, opposed; Anne M. Renshaw, not voting, recused).

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

Each concurring member approved the issuance of this Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

DATE OF ORDER: OCT 12 2001

AB/PY

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Office of Zoning

BZA APPEAL NO. 16716A

As Director of the Office of Zoning, I hereby certify and attest that on OCT 12 2001 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Page Chiapella, President
Nebraska Avenue Neighborhood
Association
5126 Nebraska Avenue, N.W.
Washington, DC 20008

Anne Mohnkern Renshaw, Chairperson
Advisory Neighborhood Commission 3G
Chevy Chase Community Center
P.O. Box 6252
Washington, DC 20015

Marilyn Holmes
Single Member District Commissioner 3G07
3700 Military Road, N.W.
Washington, DC 20015

Maureen E. Dwyer
ShawPittman
2300 N Street, N.W.
Washington, DC 20037-1128

Michael Johnson, Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, DC 20009

Councilmember Kathleen Patterson
Ward 3
1350 Pennsylvania Avenue, N.W.
Suite 107
Washington, DC 20004

Alan Bergstein
Office of the Corporation Counsel
441 4th Street, N.W., 7th Floor
Washington, DC 20001

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

Exhibit C-2

Paul A. Tummonds, Jr.
202.457.7854
ptummonds@wilkesartis.com

Wilkes Artis

Chartered
Attorneys at Law

Suite 300, 1666 K Street, NW
Washington, DC 20006-2803
202.457.7800
Fax: 202.457.7814

May 16, 2000

VIA HAND DELIVERY

Mr. Michael Johnson
Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, D.C. 20002

Re: Proposed Sunrise Assisted Living Facility at 5111 - 5123 Connecticut Avenue, N.W., Square 1989, Lots 49-57 and 161, (the "Subject Property")

Dear Mr. Johnson:

The purpose of this letter is to confirm the matters discussed in our meeting on May 2, 2000 regarding the Subject Property. The Subject Property is split-zoned R-5-D and R-2. Sunrise Development, Inc. ("Sunrise") intends to construct an assisted living facility only on the portion of the Subject Property that is located in the R-5-D District.

In order to proceed with the production of the building permit application drawings, you confirmed the following information:

1) the maximum building height is 90 feet which is measured from the level of the curb opposite the mid-point of the building frontage along Connecticut Avenue, N.W. to the highest point of the roof (including the parapet wall);
2) the rear yard setback requirement is 34 feet based on the 102 foot height of the building measured from the finish grade at the rear of the building to the highest point of the roof or parapet and the required 4 inches of setback for each foot of vertical distance;
3) the side yard requirement on the southern portion of the Subject Property will be 22 feet 6 inches based on the 90 foot height of the building and the requirement to provide 3 inches of setback for each foot of height;

RECEIVED 6/6/00 — Duplicate sent (Requires MDJ Concurring Signature)

4) no setback is required or provided on the R-5-D portion of the Subject Property along Chevy Chase Parkway; and
5) the R-2 portion of the Subject Property is an open court that has a width requirement of 22 feet 6 inches based on the requirement to provide 3 inches of court width per foot of building height.

The dimensions and locations of those open spaces are shown on the attached drawing prepared by Beery, Rio and Associates dated May 11, 2000.

Pursuant to the issues discussed in the May 2, 2000 meeting and outlined in this letter, please sign this letter in the space provided below to indicate your concurrence with the above.

If you have any questions or comments regarding this letter, please feel free to call us at (202) 457-7800.

Sincerely,

Paul A. Tummonds, Jr.

Steven E. Sher

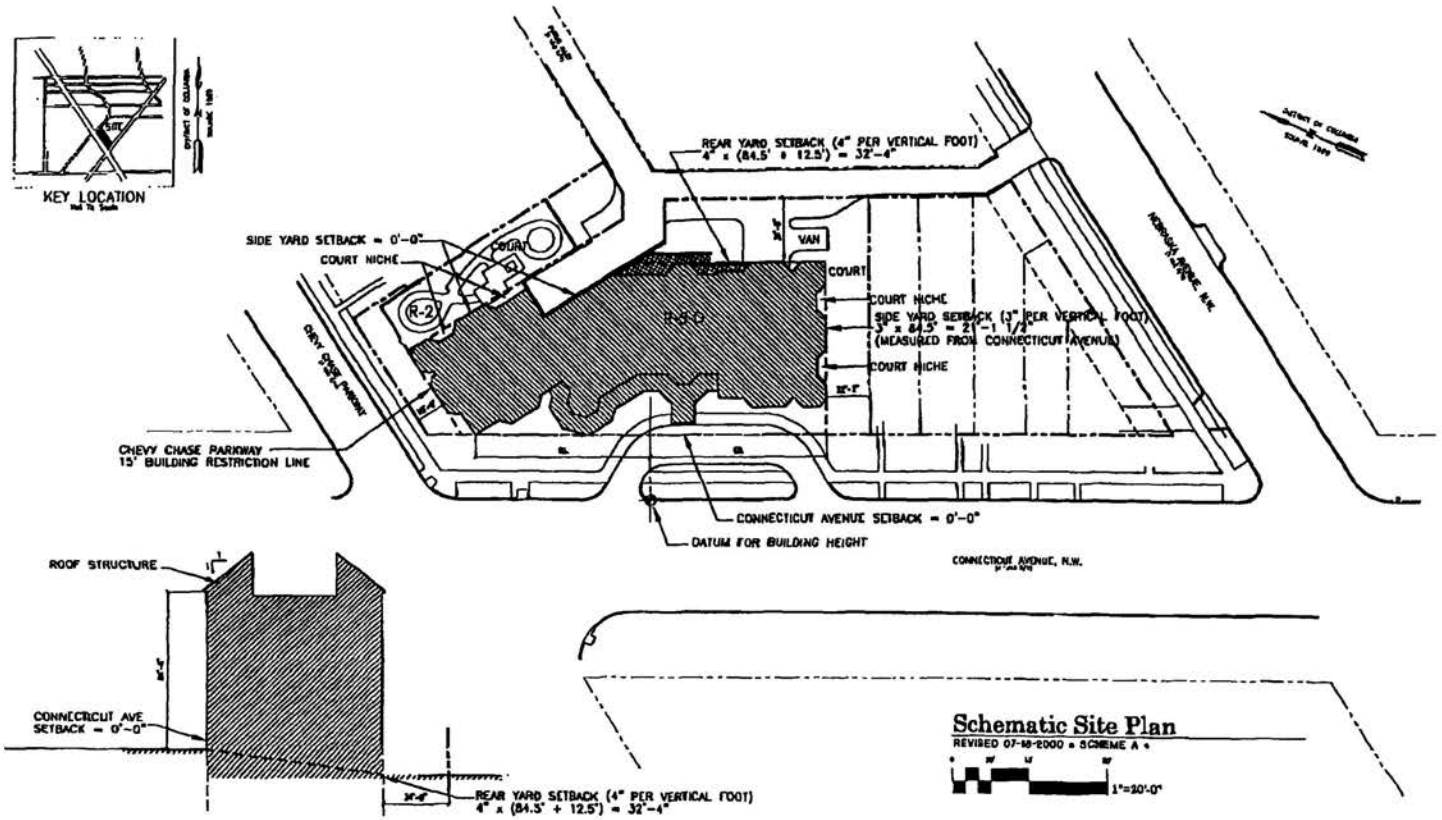
CONCUR

Date: July 8, 2000

Michael D. Johnson
Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs

Enclosure

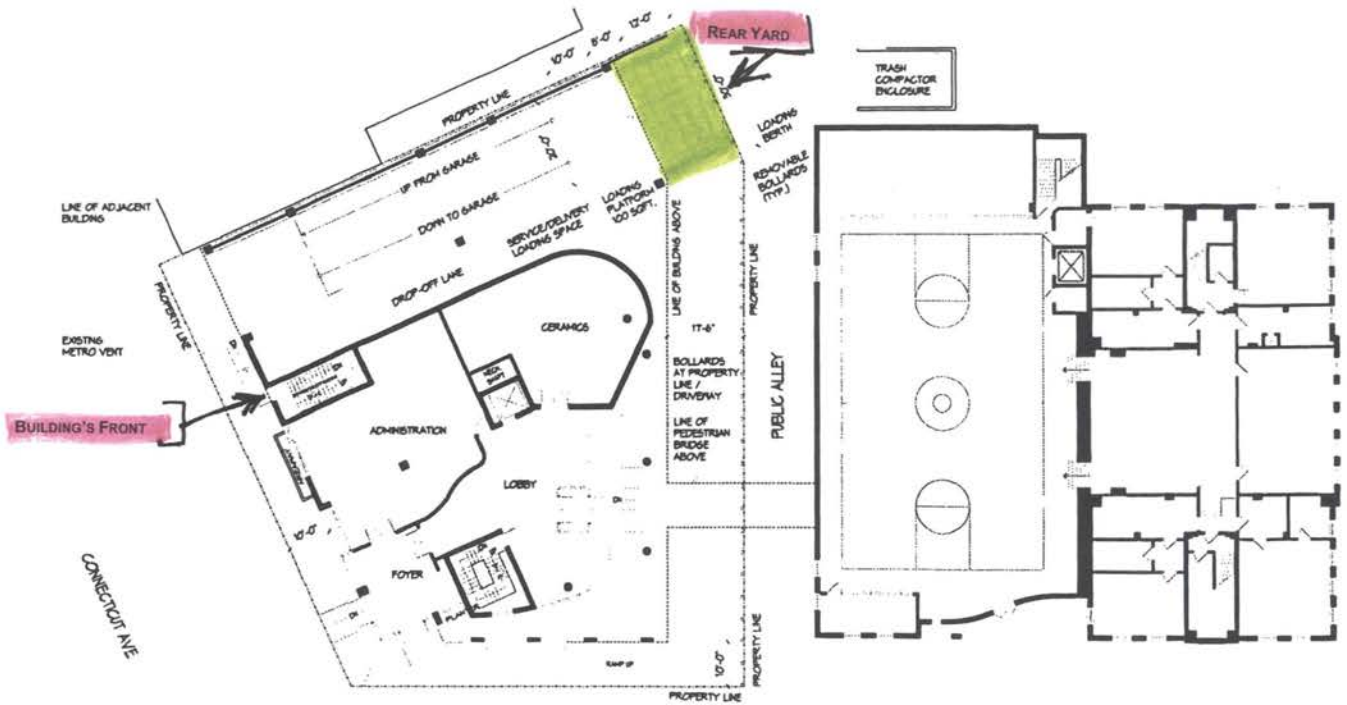
cc: Sean Ambrose
Maureen Dwyer



SUNRISE

of Connecticut Avenue, Washington, DC

Exhibit C-3



FIRST FLOOR PLAN

Exhibit C-4

ShawPittman LLP
A Limited Liability Partnership Including Professional Corporations

MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Phil Feola
Ashleigh Dale Horne

DATE: September 23, 2003

RE: Edmund Burke School ("**EBS**"): Satisfaction of Rear Yard Requirements

Introduction

At the public hearing on July 15, 2003 an issue was raised by opponents of the EBS BZA application concerning whether, or not, the EBS' proposed new building satisfies the rear yard requirements of the Zoning Regulations. The issue was raised because EBS has shown a "future" connection ("**Bridge**") between its existing building and the proposed building across the public alley. Notwithstanding that the Bridge is outside of the authority of the BZA because it spans public space and thus its approval needs to be granted by either the District of Columbia Public Space Committee or the Zoning Commission and it is a future plan, thus speculative for this application, EBS submits that even if the Bridge were a part of the application, the project meets the requisite rear yard requirements of the Zoning Regulations.

Facts

A. The New Building

Edmund Burke School has proposed to construct the New Building on Lot 68 in Square 2243 ("**Property**"). The Property is located across the Alley from the Existing Edmund Burke School

Building ("**Old Building**"), and is highly irregular in shape. The Property has five sides, only two of which are parallel. Two sides of the Property are located on the corner of Connecticut Avenue and Upton Street. Two additional sides of the Property are bounded by public alleys. The fifth side borders an apartment building. Thus, all but one side of the Property is bordered by a street or a public alley.

The New Building and the Old Building will be separated by the Alley. The Old Building is located on the property line abutting the Alley. The proposed plans for the New Building depict an elevated pedestrian bridge ("**Bridge**") that will connect the New Building and the Old Building. The Bridge, if approved and built, will be located at the second level above grade of both buildings. It will be constructed at a height of 15 feet 6 inches above the grade of the alley and will be one story.

The entrance for the New Building is located at the point of the corner created by the intersection of Connecticut Avenue and Upton Street. Accordingly, the front of the building is either the Connecticut Avenue or Upton Street. Because of its irregular shape, there is no straight boundary of the Property which is immediately opposite the front. However, immediately opposite the front is an irregularly shaped area that is intended to remain open and unobstructed. This area represents the New Building's required rear yard, see plan attached.

B. <u>Zoning parameters for rear yards.</u>

Section 404 of the District of Columbia Zoning Regulations provides that the rear yard of a building located in the R-5-D Zone District must be 4 inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or

parapet wall, but not less than fifteen feet (11 DCMR § 404.1). If the building is located on a corner lot or a through lot abutting three or more streets, the depth of the rear yard may be measured from the center line of the street abutting the lot at the rear of the structure (11 DCMR § 404.2).

Under § 2502.1, the rear yard of a building must be "open and unobstructed to the sky" (11 DCMR § 2502.1). However, the Zoning Regulations provide some exceptions to this requirement. For example, cornices and eaves (§ 2502.2) and fences and retaining walls (§ 2503.5) may be located in a rear yard. Further an accessory building may, indeed must, be located in a building's rear yard (11 DCMR § 2500.2).

The Zoning Regulations do not require a side yard for a non-residential building in the R-5-D Zone District (11 DCMR § 405.6).

Discussion

A. The New Building satisfies the rear yard requirement of the Zoning Regulations because the lot is irregularly shaped and the area opposite the front of the Building is unobstructed and of adequate size for a rear yard

In Appeal No. 16716A (the "**Sunrise Case**"), the BZA held that when a property is located on a corner lot, the property owner may choose the front (BZA Order 16716A ("**Order**") at 7 ¶ 34). The BZA further determined that the rear yard will be designated as the yard opposite the chosen front (Id.). In the Sunrise Case, the Zoning Administrator ("**ZA**") evaluated an unusually shaped lot located on the corner of Connecticut Avenue and Chevy Chase Parkway. One boundary of the lot was adjacent to an alley stub that protruded into the lot at an angle. The ZA determined that the portions of the building facing those streets were the fronts and that the portion running "roughly parallel" to the fronts was the rear (Id. at 8 ¶ 39.). Neighborhood residents appealed, arguing that the

portion adjacent to the alley was the rear yard, and that it was not sufficient (Id. at 2.). The BZA upheld the determination of the ZA, finding that "the proposed building fully complies with the rear yard setback requirement of 11 DCMR § 404.1" (Id. at 13.). The BZA concluded that the interpretation by the ZA was the most logical because it provides significant open space and ample light and air to adjacent properties (Id.).

The most logical location for the rear yard of Edmund Burke School's New Building is the portion of the building opposite and parallel to Connecticut Avenue. The front of the building is located on Connecticut Avenue. The area most nearly opposite the front is the area currently designated as the rear yard. As in the Sunrise Case, requiring the rear yard to run the length of the public alley adjacent to the Old Building would not be logical. The portion of the New Building in which the Bridge is located is more appropriately the side yard. Because no side yard is required, the Bridge may be located there.

B **The yard adjacent to the Alley satisfies the rear yard requirement because the pedestrian bridge in an accessory building.**

Under § 2500.2 of the Zoning Regulations, an accessory building "shall be located only in a rear yard" (11 DCMR § 2500.2). The Zoning Regulations define "accessory building" as "a subordinate building located on the same lot as the main building, the use of which is incidental to the use of the main building" (11 DCMR § 199.1). An accessory building located in a rear yard may not exceed one story or 15 feet in height (11 DCMR § 2500.4).

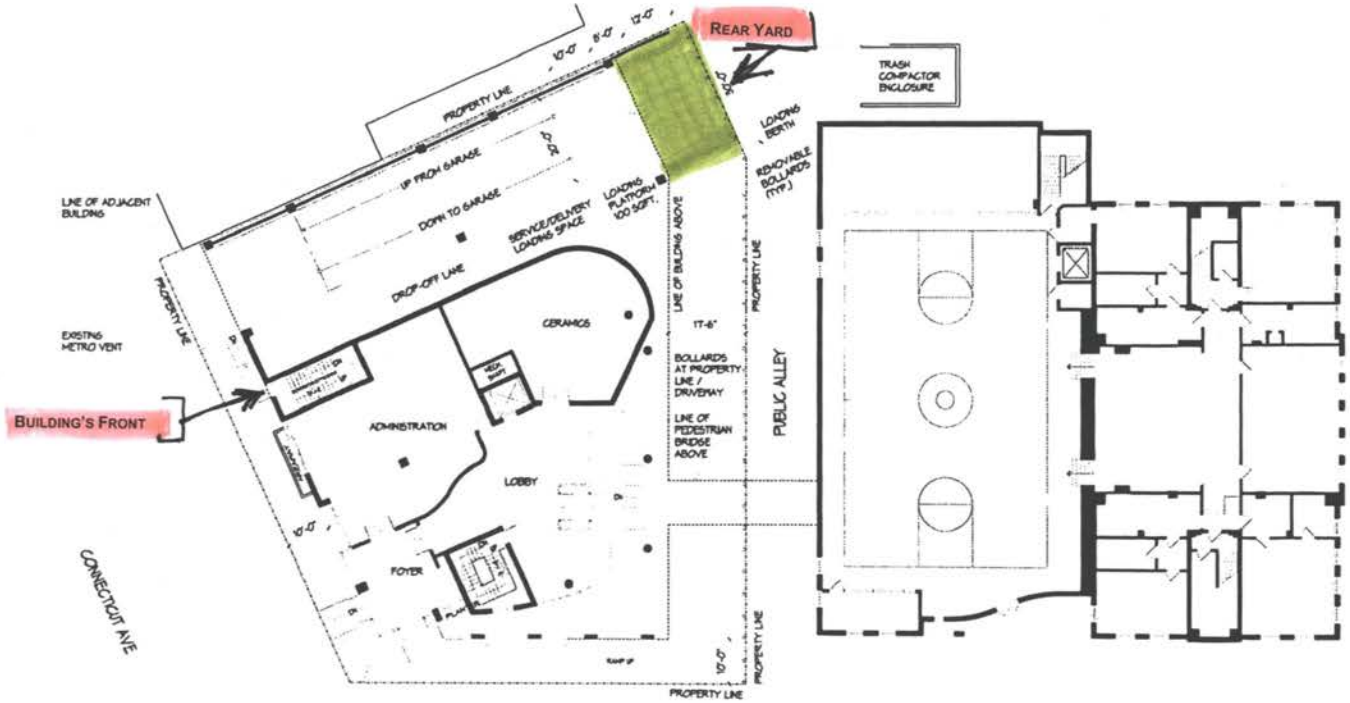
The New Building satisfies the Zoning Regulations even if the portion of the New Building that is adjacent to the Alley is designated the rear yard because the Bridge is an accessory building.

The Bridge has no freestanding use. Its only function is to provide access to the New Building. Thus, the Bridge is subordinate and incidental to the New Building. Further, it is located on the same lot as the New Building. Finally, it will be only one story tall and will not exceed 15 feet in height.

Section 2502.1 cannot logically apply to any accessory building, such as the Bridge, which must, by the Zoning Regulations, be located in a rear yard, otherwise any accessory building located in a rear yard would prevent the entirety of the rear yard from being "open and unobstructed to the sky," and would violate § 2502.1. Because the Bridge is an accessory building and because § 2502.1 does not apply to an accessory building, § 2502.1 does not apply to the Bridge.

Conclusion

The Bridge is not before the BZA because it occupies public space over a public alley. Nonetheless, it may be constructed in its shown location regardless of whether the portion of the Property abutting the Alley is designated the rear yard or the side yard. As demonstrated by the Sunrise Case, the proper rear yard is the area opposite the front. In the case of the New Building, the area immediately opposite the front is left open and unobstructed as the rear yard.. Moreover, even if the portion of the Property abutting the Alley is designated the rear yard, § 2502.1 does not apply because the Bridge is an accessory building.



FIRST FLOOR PLAN

ShawPittman LLP

Certificate of Service

I hereby certify that on September 23, 2003, a copy of the foregoing material was sent via first class mail to the following:

Ms. Catherine J. Wiss
Chairperson
Advisory Neighborhood Commission 3F
3810 Albermarle Street, NW
Washington, D.C. 20016

ANC 3F
4401-A Connecticut Avenue, N.W.
Box 244
Washington, D.C. 20008

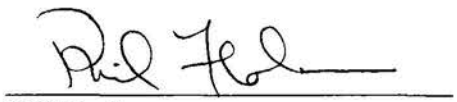
NULS
c/o Cornish Hitchcock, Esquire
1100 17th Street, NW, 10th Floor
Washington, DC 20036

Ms. Linda Jay
2951 Upton Street, NW
Washington, DC 20008

Van Ness South Tenants Association
and Consulate Tenants Association
c/o Pat Brown, Esquire
Greenstein, DeLorme & Luchs
1620 L Street, NW, Suite 900
Washington, DC 20036

Sirius LLC
c/o Thomas P. Brown Management, Inc
4545 42nd Street, NW, #301.
Washington, D.C. 20016

NARDS
c/o Diedre Karambelas
2938 Upton Street, N.W.
Washington, D.C. 20008



Phil Feola

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