LAW OFFICES
GREENSTEIN DELORME & LUCHS, P.C.

WILLIAM H. HARRIS, JR.
RICHARD G. WISE
ABRAHAM J. GREENSTEIN
GILBERT E. DELORME
VINCENT MARK J. POLICY
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M. RYAN JENNESS
MIRIAM HELLEN JONES
ISABEL P. RUIZ DE GAMBOA*
JAMES D. SADOWSKI

*ADMITTED IN VA ONLY
#ADMITTED IN TX ONLY

1620 L STREET, N.W., SUITE 900

WASHINGTON, D.C. 20036-5605

TELEPHONE (202) 452-1400
FACSIMILE (202) 452-1410
www.gdllaw.com

OF COUNSEL
MARK J. ZWEIFLER

ADMITTED IN NEW YORK
AND NEW JERSEY ONLY

JPB@GDLLAW.COM

October 7, 2003

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**BY HAND DELIVERY**

Mr. Geoffrey H. Griffis
Chairperson
Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210
Washington, D.C. 20001

Re: BZA Application No. 17022

Dear Chairperson Griffis and Members of the Board:

This firm is counsel for the Van Ness South Tenants Association ("Tenants Association") which was recognized as a party in opposition by the Board in the above-referenced application.

At the July 15, 2003 public hearing, several parties in opposition introduced or supported a Motion to Dismiss this application based upon the Applicant's continuing and longstanding noncompliance with its current Board approval. The Board entertained this Motion, but took no final action while expressing grave concerns about the continued noncompliance of the Applicant.

Given the critical nature of this issue, its impact on the Board's authority and the enforcement of future approvals, the Tenants Association wishes to briefly and formally support the Motion to Dismiss.

The facts are clear and the Applicant does not dispute its longstanding and continued substantial noncompliance. In October 1983, the Board approved the expansion of the Applicant's private secondary school for grades 7 - 12 subject to a limit of 270 students and faculty and staff of not more than 35. See BZA Order No. 13986, enclosed. According to the Office of Planning report dated July 8, 2003, the Applicant exceeded the population cap beginning at least in 1997 and has remained in noncompliance to this date. In 1997, the Applicants admitted having 299 students and an on-site faculty of 59. While the Applicant has

BZA
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Exhibit No. 132

Board of Zoning Adjustment
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EXHIBIT NO. 132

offered numerous explanations for events beyond its control, the sudden increase in students and faculty appears more directly related to the unauthorized addition of a 6th grade class beginning for the 1995-1996 school year. It is also undisputed that Applicant has enjoyed and will continue to enjoy a substantial financial benefit related to the tuition payments from the unauthorized students.

Under these circumstances, the Board is faced with an Applicant seeking a major expansion of its operations and facilities while at the same time is unwilling or unable to comply with its existing obligations to the Board and the community. While the Board is keenly aware and sensitive to its inability to enforce its own orders, the current Application provides the opportunity and responsibility to the Board to enforce its own orders and ensure compliance with the Zoning Regulations. Having been in noncompliance for at least the last six years and with no demonstrated intention of bringing itself into compliance, the Applicant should not now be entitled to seek further discretionary approvals from the Board.

Faced with the Applicant's unclean hands and disregard for the Board's authority, fundamental fairness and equity require the Board to dismiss this Application until such time as the Applicant has demonstrated compliance with the existing BZA approval. Failure to take this reasonable step will not only further undermine the Board's authority in this case and others, but actually reward the Applicant for its noncompliance.

Thank you for your continued cooperation into this matter.

Very truly yours,

GREENSTEIN DELORME & LUCHS, P.C.

John Patrick Brown Jr.

JPB:sp
Enclosure
cc: Tenants Association
ANC 3F
Phil Feola, Esq.
Mr.Stephen Cochran, Office of Planning
Ms. Linda Jay
NARDS
NULS
Mr. Thomas P. Brown

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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

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

FINDINGS OF FACT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW AND OPINION:

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

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

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

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

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

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

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

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

4. The number of students shall not exceed 270 and

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

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

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

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

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

FINAL DATE OF ORDER: OCT - 4 1983

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

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

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