Presentations in by NULS in opposition to the application by Burke school, BZA Application No. 17022, Oct 14, 2002.

1. Map of institutions in Burke neighborhood.
2. DCRA ruling on Case No. 02-CAD-4422E, DCRA and Petitioner vs. Edmund Burke School, Inc.
3. Diagram of traffic on driveway on proposed Burke alley.
4. Morning drop off plan.
5. Impact of Burke Expansion
6. Burke's Application
7. Enforcement plan
8. Comparison of private school population densities in NW Washington DC.
9. Change in demographics of Burke student population, 1982 – 2002.
10. Change in transportation pattern of Burke students, 1982 – 2002.
11. Testimony of Julie Weisman.
12. Testimony of Carol Rogers.
13. "Burke's Credibility"
14. DCRA findings.
15. DCRA penalty.

BZA
Case No. 17022
Exhibit No. 141

Board of Zoning Adjustment
District of Columbia
CASE NO. 17022
EXHIBIT NO. 141

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF ADJUDICATION
941 NORTH CAPITOL STREET, N.E., SUITE #9100
P.O. BOX 37140
WASHINGTON, D.C. 20013-7200
Tel. No. (202) 442-8167

Department of Consumer and Regulatory Affairs,	:	**Case No. 02-CAD-4422E**
Petitioner,	:	
vs.	:	
	:	Location of Infraction:
Edmund Burke School, Inc.,	:	2955 Upton Street, NW
2955 Upton Street, NW	:	Washington, D.C.
Washington, D.C.	:	
Respondent.	:	

Parties present:
[x] Respondent Edmund Burke School, Inc.
Appearing through legal counsel, Phil T. Feola
[x] Government, by Zoning Inspector Allen James

Hearing Date: 7-10-02 Infraction Date: 4-19-02 Service Dated: 4-19-02

NOI: 046797 SNOI Service Date: _____ [ ] Served [ ] Posted

INFRACTIONS ALLEGED:

1) 11 DCMR §3205.4 Owning, controlling, using building, structure or land
D.C. Code _____ without complying with certificate of occupancy

Fine: $500.00 Answer: [ ] Deny [x] Admit with Explanation

ORDER
(ADMIT WITH EXPLANATION)

This matter came before E. Cooper Brown, Administrative Law Judge, D.C. Department of Consumer and Regulatory Affairs (DCRA), Office of Adjudication

(OAD) on July 10, 2002. The respondent, Edmund Burke School, appearing through legal counsel, Phil T. Feola, Esq., admitted with explanation the charge set forth in Notice of Infraction No. 046797.

CONSIDERATION OF MITIGATING AND/OR EXTENUATING CIRCUMSTANCES

On April 19, 2002, in response to a complaint received from neighbors in the area of the Edmund Burke School, a Zoning Inspector investigated the school's premises at 2955 Upton Street, NW (the "subject property"). The Inspector found, and cited the respondent for having an over-enrolled population of 293 students, in violation of a previous order of the Board of Zoning Adjustment ("BZA") that limited enrollment to 270 students.

In support of its claim of mitigating and/or extenuating circumstances warranting a reduction in the imposed civil fine, the respondent, through legal counsel, testified that it is currently attempting to correct the violation by obtaining a Zoning special exception from the BZA that would permit an enrollment of up to 300 students. Moreover, the respondent argues, it has moved expeditiously to correct the violation, citing the approximate one week period between a BZA decision denying an earlier request to expand the school's enrollment to 360 students and the filing of its currently-pending request.

The respondent is a private, co-educational school for grades six through twelve. Established in 1968, it has been located since 1973 at 2955 Upton Street, N.W. The subject property is zoned R-2. Pursuant to a Board of Zoning Adjustment ("BZA") Order issued October 4, 1983, the respondent was authorized to expand its school facilities and operations subject to specified limitations, including, *inter alia*, a maximum student enrollment of 270 students and a maximum thirty-five person faculty/staff.

Through June of 1997 the respondent was in compliance with the BZA-imposed occupancy limits. However, in September of 1997 the respondent experienced an unanticipated (and unprecedented) increase in enrollment which brought its total student body to 298 for the 1997-'98 school year. The respondent did nothing at the time to rectify the matter. The explanation given at hearing was that the respondent at the time perceived the over-enrollment as a one-time occurrence, and that enrollment levels would

ultimately return to pre-1997 levels (although how soon this was expected to occur is unclear from testimony provided at the hearing). In September of 1998, the respondent again experienced an over-enrollment of students, again bringing the entire number of students to just under 300 enrollees. At this point, the respondent made a knowing and informed decision *not* to bring its student enrollment within the limits of the BZA's 1983 Order. Instead, in January of 1999 the respondent initiated efforts to expand the school's physical facilities to include immediately adjacent properties, and to increase its student body to 360 students and its faculty and staff to 70. Accordingly, the respondent applied to the BZA in July of 2000 for a special exception from applicable zoning requirements and the limitations of the BZA's previous order.

During the ensuing period, while the respondent awaited the outcome of its application before the BZA, the respondent purposefully continued to over-enroll its student body -- to between 295 and 300 students each year for school years 1999-2000, 2000-'01, and 2001-'02.[1] *Only when* this application was denied by the BZA, in February of 2002, did the respondent, on February 25, 2002, file an application with the BZA for a special exception that would permit a student enrollment and the employment of faculty/staff at now-current levels, *i.e.* up to 300 students, and an increase in the faculty/staff to 60 persons.

Based on the entirety of the facts of the instant case, I am not persuaded that a reduction in the imposed fine is warranted.[2] The overcrowding condition for which the Edmund Burke School was cited has existed at the school for five years, since September of 1997. While the initial overcrowding was unplanned and unexpected, the respondent in subsequent years made a *conscious* and *obviously calculated* decision to continue enrollment at over-capacity levels. Given the considerable length of time that the respondent has been in violation of the zoning occupancy limits, and the fact that the

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[1] In addition, it appears that the respondent has also had an excess number of faculty/staff employed at the school. Whereas a maximum of 35 was allowed under the BZA's 1983 Order, the respondent actually has in recent years had 59 faculty/staff employed at the school. *See* BZA Decision and Order of Feb. 8, 2002 (Exhibit "R-3") at page 7.

[2] Under D.C. Code §2-1801.03(a)(6), the ALJ may suspend all or part of any imposed fine "on grounds of past compliance or past good faith attempts to comply with applicable laws and regulations, or upon condition that the respondent correct the infraction by a date certain."

violation, although initially inadvertent, was intentionally continued over an ensuing four year period which, to this date, remains unabated,[3] the Court finds that the respondent has not demonstrated that there are mitigating and/or extenuating circumstances that warrant a reduction of the fine.

ORDER

Upon consideration that the respondent has admitted with explanation the charge set forth in the above-captioned case; and the Court having advised the respondent of the nature of the charge, the maximum fine that may be imposed, the respondent's right to an administrative hearing, the right to be represented by an attorney and the right to confront and cross-examine witnesses at such hearing; and the Court being satisfied that the respondent's answer, through its authorized representative, of admit with explanation to the charge is willful and voluntary, and that the respondent understands the legal consequences of its answer of admit with explanation; and the Court having reviewed the entire record in this matter, including the various exhibits introduced into evidence by the respondent,[4] and determined that mitigation of the fine is not warranted, it is this 21st day of August, 2002, hereby:

ORDERED: That the respondent shall pay a fine in the amount of Five Hundred Dollars ($500.00) for owning, controlling and using buildings, structures and/or land without complying with the applicable certificate of occupancy; and it is

FURTHER ORDERED: That the respondent shall pay Court costs in the amount of forty dollars ($40.00); and it is

FURTHER ORDERED: That the **total amount** that is due and owing the District of Columbia in the above-captioned case is **Five Hundred and Forty Dollars ($540.00)**; and it is

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[3] The respondent's counsel candidly acknowledged at hearing that enrollment for the upcoming 2002-'03 school year was expected to be again just shy of 300 students.

[4] Documents accepted into evidence at the time of hearing, pursuant to motion by the respondent, included: Excerpted transcript of May 15, 2001 hearing before Board of Zoning Adjustment (Exhibit "R-1"); Application for Special Exception filed with Board of Zoning Adjustment, July 7, 2000 (Exhibit "R-2"); BZA Denial of the respondent's Special Exception application, Feb. 8, 2002 (Exhibit "R-3"); Application for Special Exception to BZA, Feb. 25, 2002 (Exhibit "R-4"); and Chronology of events pertaining to over-enrollment at Burke School (Exhibit "R-5").

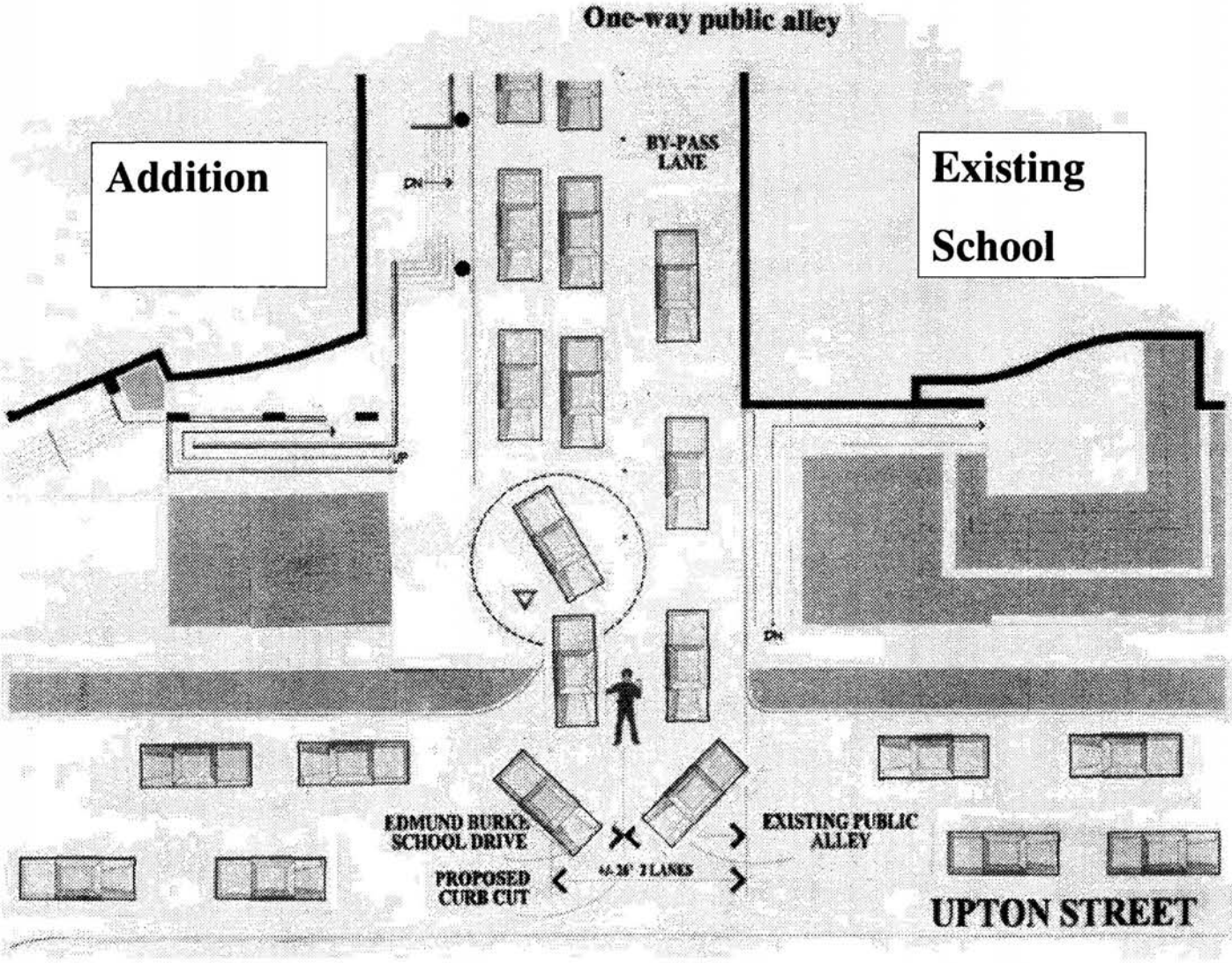
FURTHER ORDERED: That all payments of fines, penalties and costs shall be submitted either in person to the DCRA, Office of the Controller, Suite 9600, 941 North Capitol Street, N.E., Washington, D.C., or mailed via first class mail, postage prepaid, to DCRA, Office of the Controller, Attn: Dwight Lofton, 941 North Capitol Street, N.E., Suite 9600, P.O. Box 37140, Washington, D.C. 20002. Additionally, all checks shall be made payable to the D.C. Treasurer; and it is

FURTHER ORDERED: That the respondent shall have fifteen (15) days from the receipt of this Order to file an appeal with the Board of Zoning Adjustment; and it is

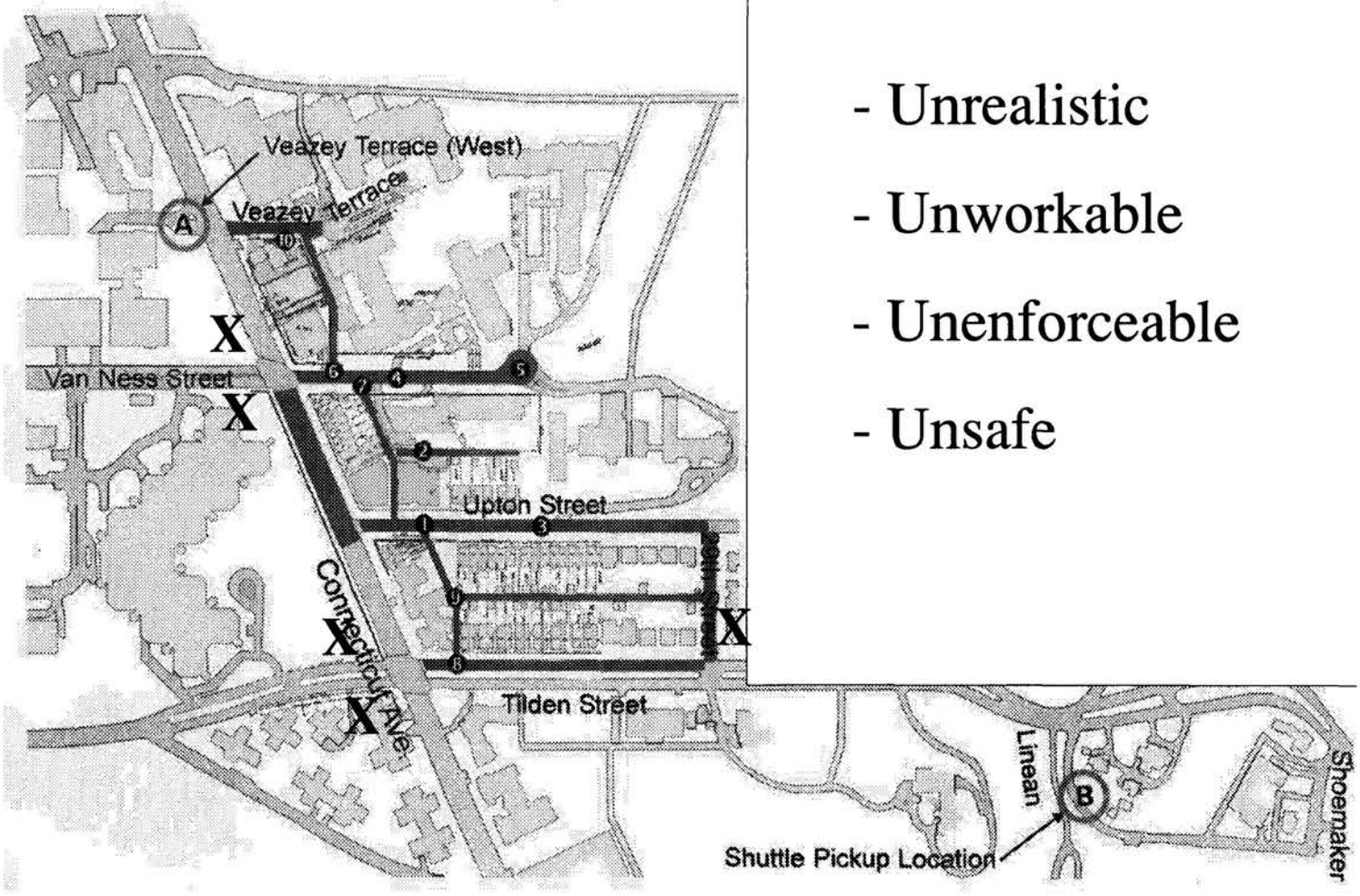
FURTHER ORDERED: That, if no timely appeal has been noted and no motion to stay the imposition of sanctions imposed has been granted pending an appeal, a failure to pay this infraction within fifteen (15) days from receipt of this Order may result in an additional 25% collection charge.

FINES: $ 500.00
PENALTY: $ ____
COSTS: $ 40.00
TOTAL: **$ 540.00**

: : :
: Seal : By: _____ [ ] Order Served
: : **E. COOPER BROWN** [X] Order Forwarded
ADMINISTRATIVE LAW JUDGE to AVPD for Service


One-way public alley
Addition
BY-PASS LANE
Existing School
EDMUND BURKE SCHOOL DRIVE
EXISTING PUBLIC ALLEY
PROPOSED CURB CUT
UPTON STREET

Edmund Burke School **Morning Drop Off Plan**



- Unrealistic
- Unworkable
- Unenforceable
- Unsafe

Impact of Burke Expansion

- Burke is not typical school
- Neighborhood east of Burke is not typical neighborhood
- Neighborhood west of Burke is not typical neighborhood
- Proposed building is not typical school building
- Burke can not be trusted

Burke's Application

- Community Outreach:

  Burke has exaggerated its community outreach efforts.

- Enforcement plan:

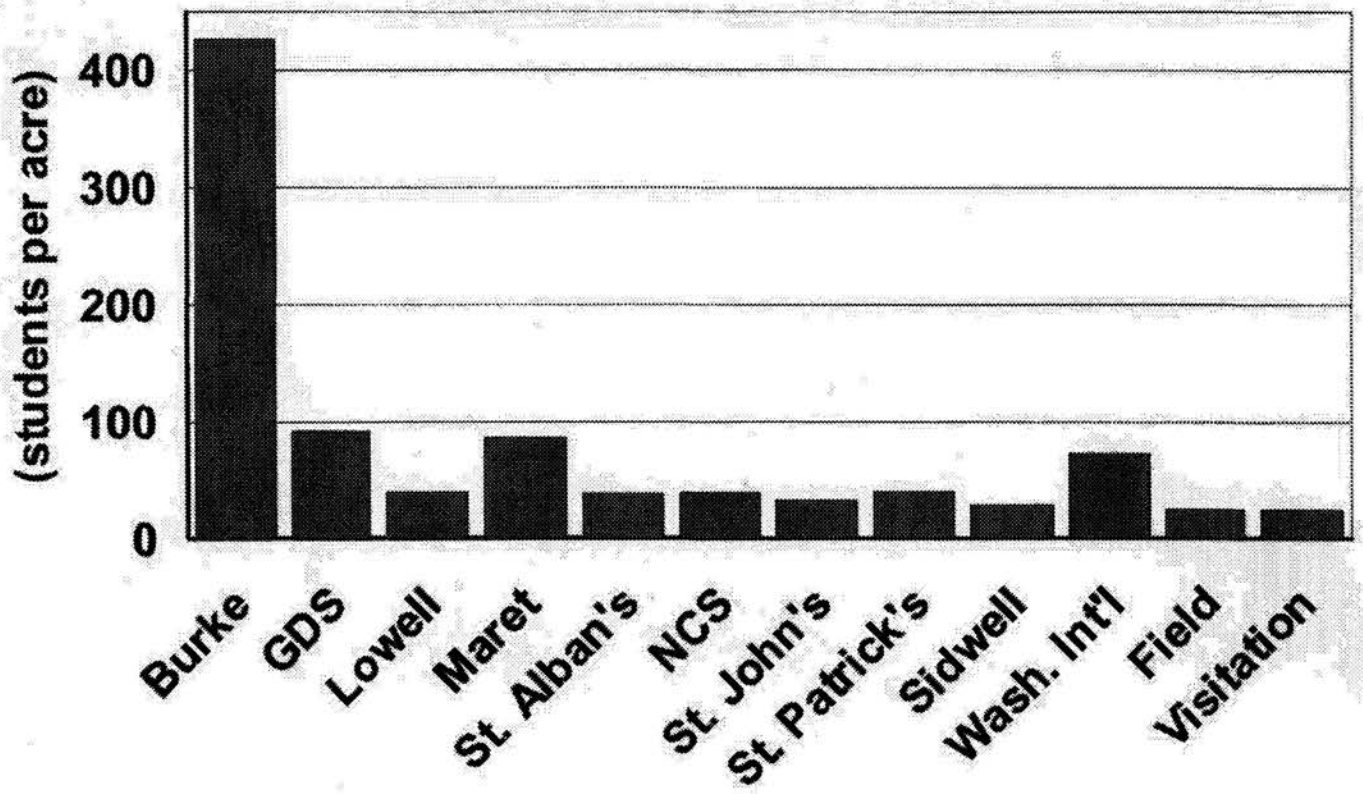
  Required for implementation of traffic plan.

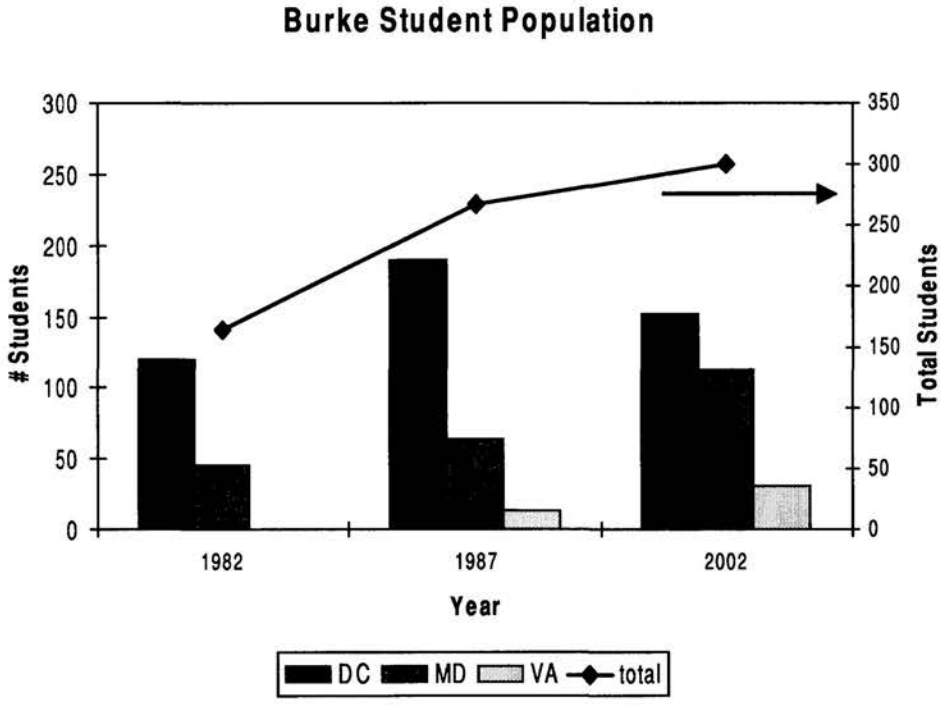
  Unbelievable

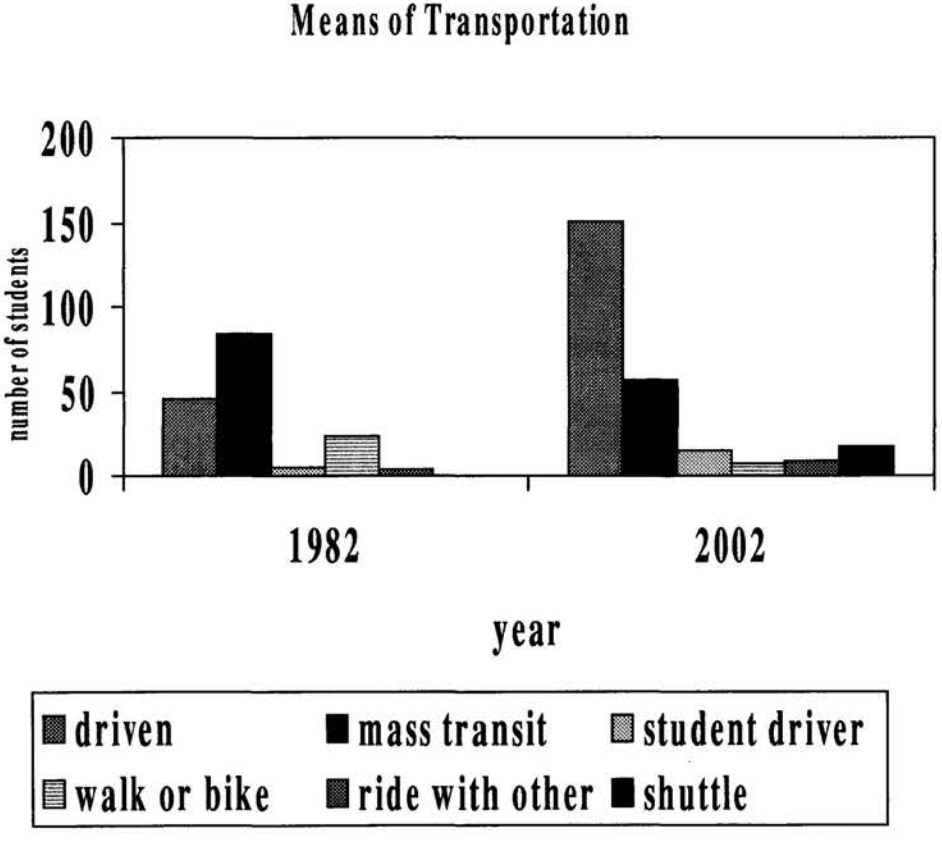
Enforcement Plan

- Composition of Committee
- Criteria for Sanctions
- Number of Permitted Infractions
- Neighborhood Policing
- Inadequate Sanctions
- Destination of Imposed Penalties
- Untried Traffic and Enforcement Plans

Private School Population Densities in N.W. Washington D.C.




Burke Student Population
300
250
200
150
100
50
0
Students
350
300
250
200
150
100
50
0
Total Students
1982
1987
2002
Year
DC
MD
VA
total


Means of Transportation
200
150
100
50
0
number of students
1982
2002
year
driven
mass transit
student driver
walk or bike
ride with other
shuttle

Application for expansion of Edmund Burke School
Testimony before BZA – October 14, 2003

TESTIMONY OF JULIE WEISMAN

My name is Julie Weisman and I live at 2932 Upton Street. I am unable to testify here today due to health reasons. In March 2000, I sent a letter to Edmund Burke School advising the School that it was out of compliance with its 1983 BZA Order in a number of respects. These areas included, among others, student enrollment, faculty and staff numbers and number of parking spaces. In my letter, I recognized that Burke would not be able to rectify the violations during that current school year but asked that Burke come into compliance the following fall. I also requested that in the interim, Burke take steps to ameliorate the effects of noncompliance on the neighborhood, particularly with respect to parking during the many events sponsored by Burke. It is now 2003 and Burke still has not come into compliance. In some years past, enrollment actually has increased. Moreover, despite extensive discussions with Burke officials over the years, Burke has refused to provide any relief to the neighbors with respect to parking issues during events. In spite of the fact that the School was collecting additional revenues as a result of its non-compliant over-enrollment, Burke's response was that it would be too expensive.

Compliance was an issue during Burke's first application to expand. Although the school was handed a negative decision, it still has not come into compliance. Some time after the first BZA decision, I received a telephone call from a Mr. Donovan who identified himself as the head of the Board of Trustees at Burke. The purpose of his call was to see whether there was any possibility of negotiating with the neighbors concerning Burke's expansion. I replied that I was not opposed to the school, just the school's bad conduct and the adverse effects which resulted from that conduct. I told Mr. Donovan that in order to negotiate, I felt I needed a good faith gesture from the school which at a minimum would include the school's forthcoming compliance with its operative BZA Order. Mr. Donovan's response to me was: that would never happen. It has not.

Burke's proposals to mitigate the future effects of any expansion rely on complicated plans to control traffic and parking. In other words, Burke would have to comply with a complex set of rules and operating procedures, not just for a short time period in anticipation of a BZA hearing, but for the entire period that the School intends to operate. Burke's track record speaks for itself. The School has neither the will nor the credibility to undertake such an endeavor. For those reasons, and all the others related to parking, traffic, noise, building design, et al., Burke's application must be denied.

13 October 2003

Board of Zoning Adjustment
District of Columbia

To Whom It May Concern:

I have been a resident of the District of Columbia for more than 37 years and, with my husband, have owned and lived in a house at 2908 Upton Street, NW, since September 1984. Although I am a strong supporter of education and am myself an educator, I oppose the proposed expansion of the Burke School for the reasons outlined by NULS. I regret that my own teaching responsibilities make it impossible for me to appear in person at the BZA hearing to discuss my own experiences with students, parents, and faculty of the school, some of which have been particularly unpleasant. Of course, primary concerns surround issues of safety and congestion. I believe these are not only problems themselves but also part of a larger pattern in which persons connected with the school consistently act with disregard for the people and property in the neighborhood. As one example of the latter, I have looked out my front window and found my lawn and front steps covered with 10-12 members of what appeared to be one of the male athletic teams, or possibly physical education classes, along with an adult faculty member. They apparently were resting on the trip between the athletic field at the Howard Law School and the Burke School, a distance of approximately two city blocks, and simply appropriated our yard. What one might call an insignificant event unfortunately represents a much larger problem.

I sincerely hope the BZA also will oppose the expansion of the Burke School in the best interests of the surrounding neighborhood.

Sincerely,

Carol L. Rogers

Carol L. Rogers
2908 Upton Street, NW
Washington, D.C. 20008
202-966-6904
cr46@umail.umd.edu

Burke's Credibility

- **Burke added 30 students and 35 faculty in violation of their 1983 BZA Order.**
- **Burke ignored inquiries from neighbors about over enrollment.**
- **Burke failed to provide material requested by ANC both for its 2001 BZA application and for the current.**
- **BNZC was never given power or attention.**
- **DCRA found Burke out of compliance.**

DCRA Finding

"While the initial overcrowding was unplanned and unexpected, the respondent in subsequent years made a ***conscious*** and ***obviously calculated*** decision to continue enrollment at over-capacity levels."

Effectiveness of DCRA Ruling

- **DCRA Penalty -- $500.**
- **Burke gain from 30 students x 7 years x tuition – approximately $4 MILLION!**
- **Burke free to apply to BZA for increase in enrollment while still out of compliance.**

Outline of NULS testimony

Burke has not met its burden of showing that their expansion will not have an adverse effect on the neighborhood. (Jodi Smolik, Joe Mehra)

The traffic management plan will not relieve the congestion.

a. Morning congestion will not be relieved by the Burke plan.
b. Midday, afternoon and evening congestion was not addressed.
c. Adding 50 more students and retaining the full 70 staff will hurt.
d. The Conn. Ave Study conflicts with Mr. Wells' testimony.
e. Burke's traffic management plan will not solve the problem in any meaningful way.
    A. The enforcement plan is insufficient
    B. No monitoring of most of the prohibited drop-off locations.
    C. Fines and sanctions on the school and on parents are inadequate.
    D. Burke unwilling to share information with neighbors.
    E. Enforcement committee proposal has serious flaws.
f. The plan depends on the bridge
    A. Pedestrian flow
    B. Students crossing the alley while cars are dropping off
    C. Cars held up and students endangered
g. Noise from students walking between buildings
h. Parking will be scarce during the school day and at school events.
i. Parking competition with events at Levine, Howard Law School and the embassy.

The traffic management plan requires sincere attempts to monitor and enforce. Burke has shown it cannot provide proper enforcement. (John Dougherty)

j. History of non-compliance
k. Burke added 30 students and 35 faculty in violation of their 1983 BZA Order which permitted only 270 students and 35 staff.
l. Burke went out of compliance in 1997. It could have returned to compliance immediately but chose not to take any action until 2001, and then only in anticipation of the expansion.
m. Burke's purported outreach to the neighborhood was never a serious endeavor. BNAC was never given power or attention.
n. Burke has a history of ignoring neighborhood complaints

The building suffers from poor design. (Milt Shinberg)
Parking and loading are insufficient and will require a special exception or variance

BZA
Case No. 17022
Exhibit No. 141-A