District of Columbia

Board of Zoning Adjustment

Burke School Application for a Special Exception (No. 17022)

October 14, 2003

Good afternoon. My name is Stephen Dennis, and I am the Advisory Neighborhood Commissioner for 3F-07, the sub-district which contains both the existing Edmund Burke School property and the currently-vacant property for which the Burke School now seeks a special exception in order to expand its student population and construct a new additional school building.

The ANC's Report on the present Burke School application is lengthy and intentionally detailed, as the Burke School application raises a number of troubling or complicated issues. Rather than repeat to you the key provisions of a document I am confident you have read, I would prefer to respond to some of the submissions that have been received for the record in this case since your first hearing on July 15th.

The loading dock question is highly technical, and there may be applicable precedents that will ultimately control your discretion on this issue. Counsel for the Burke School are forced to rely on 11 DCMR 2205.2 in seeking to exclude from the gross floor area calculation enough square feet to bring the proposed new building below 30,000 gross square feet. Unfortunately, 11 DCMR 2205.2 contemplates either a gasoline service station, designated parking spaces, or other loading facilities and none of these exist at the ground floor level of the proposed Burke School

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building. There is no proposal that Burke School might operate a gasoline service station, the so-called parking spaces are not really parking spaces (or any driveway in the District of Columbia could be composed of a series of parking spaces), and no other loading facility is contemplated. This forces a logical conclusion that Burke School must provide a loading facility for its proposed new building because the building is larger than 30,000 gross square feet in size.

The September 22, 1903 memorandum from Bowie Gridley Architects is inadequate, as it fails to separate out the gross square feet assigned by the architects to each of the four asserted permissible exclusions. This makes it impossible for the BZA to conclude that any one of the exclusions might be permissible, even though others are not. But it would appear that all of the claimed exclusions are in fact invalid.

Despite this inherent defect in Burke School's presentation of the information requested by the BZA on July 15th, the definition of "Parking space" found in 11 DCMR 199.1 makes it virtually impossible that Burke School could validly exclude any claimed area for parking on the ground floor level of the proposed project:

> "Parking space - an off-street area accessible and of appropriate dimensions to be used ***exclusively*** for the temporary parking of a motor vehicle [emphasis added]."

The Zoning Regulations to not define the term "queuing lane," a term used in Chapter 23 of the Zoning Regulations ("Garages, Carports, Parking Lots and Gasoline Service Stations") in 11 DCMR 2304.1, but logically a queuing lane and a parking space are functionally different as otherwise the definition of a "parking space" would not contain the word "exclusively." Part of

what the Burke School architects attempt to exclude from their calculation of gross square feet are queuing lanes, not parking spaces. Queuing lanes, whatever their size may be, are not within the list of items in 11 DCMR 2205.2. There is simply no wiggle room on this issue.

Unfortunately, in order to do create a loading facility at the only location where Burke School has proposed to locate one, Burke School would forego three otherwise-required parking spaces, which would require a special exception from "Parking spaces, nonresidential" under 11 DCMR 3104.1. You have the power to grant such a special exception under 11 DCMR 2108. But in order to do so you must make a careful analysis of parking conditions in the neighborhood of Burke School under 11 DCMR 2108.3(d). Nothing submitted into the record to date by Burke School would support such an analysis.

Eliminating the three parking spaces where the loading facility might go behind the proposed new building would also force the relocation of the three Burke School vans, and it is likely that they would again become intrusive along the public alley behind the present Burke School building. The planned location of these vans may itself be a zoning issue if they cannot fit within parking spaces 9 feet by 19 feet and would thus require the configuration of the parking area behind the existing Burke School building to create three slightly larger spaces reserved for the van parking.

Finally, I would like to direct your attention to several provisions in the Zoning Regulations that I believe suggest how an answer to the "rear yard" issue can be most logically arrived at. We should perhaps start by determining how many corners the Burke School's vacant

lot fronting on Connecticut Avenue has under the Zoning Regulations. 11 DCMR 199.1 does contain a definition of "Lot, corner" which suggests that a corner should be a point where two streets or alleys come together at an angle of between forty-five (45) degrees and one hundred thirty-five (135) degrees. If this definition is applied to the Burke School property, that lot has four corners, not five as counsel for Burke School have argued. The slight bend in the public alley creates an angle significantly greater than one hundred thirty-five degrees. If the BZA disagrees with this approach, I believe it will be useful for you to spell out with some specificity which other provision in the Zoning Regulations you rely on in reaching a different conclusion.

Your earlier Sunrise Order (No. 16716A) does not compel a different result. That Order states on page 13, "The Board notes that the subject lot has more than the usual four sides and hence its shape is highly irregular." Only after making this determination did you conclude that the Zoning Administrator could properly have found that one of the five sides of the Sunrise property directly parallel to Connecticut Avenue might be viewed as the rear yard.

If the Burke School lot has four sides, which is the maximum number of sides you can have if there are only four corners, then your Sunrise Order is simply inapplicable and Burke School's vacant lot must still have a rear yard somewhere. And there are only two possibilities for the location of such a rear yard, either next to the Brown Brothers apartment building, which would force an unanticipated set-back along that property line, or along the public alley, which is where many of us have believed all along the rear yard will really be. If that is where the highly-mobile rear yard settles down and decides to be, then we get to the equally interesting question of the proposed pedestrian bridge and whether it creates an impermissible obstruction.

Counsel for the Burke School have suggested that the pedestrian bridge might be viewed as an accessory structure. Within certain quite specific parameters, it is possible to have an accessory building in a rear yard under 11 DCMR 2500.2, except that under 11 DCMR 2500.4 it may not be more than one story or fifteen feet in height and under 11 DCMR 2500.7 that height must be measured "from the finished grade at the middle of the side of the accessory building that faces the main building to the highest point of the roof of the building." An accessory building must not have a roof more than fifteen feet from the finished grade. In other words, a pedestrian bridge designed to leave a space sixteen feet high underneath it and designed to be several feet higher is per se in violation of 11 DCMR 2500.4 because it cannot quality as an accessory structure. There is no other logical way to read these provisions in tandem.

If the proposed pedestrian bridge is not an accessory structure, and I believe we have shown that it cannot be, then it becomes an obstruction within a required rear yard on a lot with no more than four corners.

As the ANC noted in its original Report, the BZA may not grant a special exception waiver from the rear yard requirement except in a C-3 or C-4 district, and the Burke School's vacant lot is in neither zoning category. The relief that Burke School would need can only be given as a variance, and Burke School has not requested such relief or made any arguments that would justify the granting of such relief. There is no "extraordinary or exceptional situation or condition of a specific piece of property" which would result in "peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property" as required by 11 DCMR 3103.2.

One way or another, I submit, this BZA must comment on the pedestrian bridge, especially under the theory of ***Levy v. District of Columbia Board of Zoning Adjustment***, 570 A.2d 739 (D.C.App. 1990), which appears to have been the only case to date involving a pedestrian bridge and the authority of the BZA and was a case in which the court stated:

> "We conclude that the BZA mistook its lack of authority to approve the proposals for a lack of jurisdiction to assess the impact of the proposals on the surrounding neighborhood in its review . . . . We hold that the Board's failure to consider the effects of proposed street closings, pedestrian bridges and relief from height restrictions rendered its findings inadequate, and legally insufficient . . . . The Board's exclusion of these considerations from its analysis owing to an erroneous interpretation of its jurisdiction left unaddressed material issues contested by the ANC . . . and other neighborhood residents." 570 A.2d at 750-751, 752.

The ***Levy*** case arose in the context of a campus plan approval decision by the BZA, but the broad test this BZA must use to justify a special exception for a college or university is virtually identical to the broad test this BZA must use to justify a special exception for a private school.

11 DCMR 206.2 for private schools reads: "The private school shall be located so that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions."

11 DCMR 210.2 for college and universities reads: "Use as a college or university shall be located so that it is not likely to become objectionable to neighboring property because of noise, traffic, number of students, or otherwise objectionable conditions."

The only real difference in wording is that the regulation applicable to private schools speaks

of "adjoining and nearby property" but the regulation applicable to colleges and universities speaks of "neighboring property."

Others will speak to you in more detail about traffic issues and the various "objectionable conditions" which residents in the neighborhood around Burke School believe the proposed expansion and granting of a special exception would create. ANC 3-F has retained outside counsel to assist in our analysis of the several violations of the zoning regulations that the proposed building would create, and nothing submitted by counsel for Burke School since July 15th requires any revision of our conclusion that several zoning violations would exist were the building to be built as presently designed.