Statement by Karen Perry, ANC 3F02
Before the Board of Zoning Adjustment
Application 17022, Edmund Burke School
October 14, 2003

Ms. Griffis, members of the Board.....

My name is Karen Perry and I am a co-commissioner appointed by our ANC to discuss the Burke School. My single member district includes Van Ness Street. Much of the testimony today from NULS and others will deal with traffic and parking, so I will deal with the Ward 3 Plan and some of the other issues and objectionable conditions raised by our constituents. However, in regard to traffic, I just want to clarify something I raised at the last hearing regarding the Van Ness Kiss and Ride. I spoke this morning with both Elisa Hill and Philip Scales. Burke does not have permission to use the Kiss and Ride as a parent drop-off site. Metro also has restrictions on the use of their sites and they consider this practice at Van Ness an inappropriate land use since the Kiss and Ride area is exclusively for persons arriving or departing via Metro.

I should also note that I attended the public meeting of the Ward 3 Private School Task Force setup by Councilman Kathy Patterson. All of the private schools that attended agreed they needed to work harder with their residential communities to become better neighbors. It was nice to hear from several private schools such as Sheridan that they postponed their BZA hearing in order to meet with neighbors and deal with their BZA violations, and to hear from Georgetown Day and the International School and others that are setting up or considering auxiliary campuses in order not to further burden the neighborhoods that are hosting them, and how Maret was designing a new building that would not look institutional and would fit in with the age and the surrounding residential community.

When the ANC decided to oppose this Burke School expansion, they knew they faced an up-hill climb at the BZA. First because it was a school, second because it was an existing institution. No one at the ANC meeting denied that Burke was a good school, no one denied that Burke gives scholarships, and no one denied that Burke does community work. But those were not the issues before the ANC, nor are they the issues before the Board today. The issue is whether Burke can truly contain the car traffic, buses, and parking problems associated with its daytime and evening events that have plagued the neighborhood for years, not just when an application is before the BZA and parents know a test is being conducted, and whether there are other objectionable conditions.

What residents have told the ANC is that Burke is not a good neighbor and that the neighborhood cannot take the expansion of another institution on small residential streets with a limited, if non-existent, grid system of streets. This residential neighborhood is truly at the breaking point for those residents who wanted an urban life, but bought their homes on residential side streets. One of the primary purposes of zoning is to ensure residents, whether they buy into R-1, R-2, or R-5 zones, stability and protection. Property owners rely on zoning to ensure that their property values will not plummet by projects that change the character of a neighborhood, and they need zoning to restrict noise, pollution, commuter traffic, and land use density to maintain their healthy, residential neighborhoods.

Through special exceptions and variances, residential properties on Upton Street became institutions. The institutions have grown, and are continuing to grow, within this residential neighborhood; the neighborhood has not grown around the institutions. Beginning in 1901 with the creation of the McMillan Commission, planners from all around the country looked more and more to Washington to set a high standard for the Nation. The recommendations of the McMillan Commission inspired the Washington Zoning Ordinance in 1920, one of the first in the country. These original regulations and the concerns they addressed; namely, the need to reduce the congestion of land use and to differentiate residential, commercial, and institutional areas gave city officials an effective mechanism for controlling inappropriate land uses and protecting neighborhoods. It has been said by some that the BZA can only deal with the Burke expansion and the special exception for the Connecticut Avenue building and cannot consider the full impact of the Burke School and its proposed expansion on the neighborhood. However,

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zoning cannot be done in a vacuum, and now our ANC is asking you not just to spot zone a building, but to exercise your authority and leadership as a Zoning Board to consider the full impact of the existing school and its expansion on the neighborhood in the context of the other institutions and to consider the impact of another institutional expansion into another section of a residentially zoned area and to determine how many institutions are acceptable on one or two blocks of local residential streets.

Howard Law operates from early a.m. to midnight, with 532 staff, faculty and students and over 200 events per year; the Levine School of Music is open from 9 a.m. to 9 p.m., except performances can end at 10:30 p.m., with 1,500 students and staff, a daily cap of 800, and Saturday and Sunday performances; the Hillwood Museum with 325 operating days at 250 visitors per day for a total of 81, 250 visitors a year, and 10 Sunday afternoons and 16 educational evenings; the Netherlands chancery and office complex with about 150 staff and unlimited events, and UDC with over 5,500 students and unlimited events. Burke currently has many after school, weekend, and evening events and the proposed new building will also add a theater that will increase institutional activity on weekends and in the evenings. While the Office of Planning has said this expansion will take place toward Connecticut Avenue, that section of Connecticut Avenue is zoned residential. The proposed Burke building might have footage on Connecticut Avenue, but its entrance is at the corner and partially fronting on Upton Street. This is not a mixed use or commercial area. According to the tax roles, the townhouses next to the subject site are mostly owner occupied, though some residents have home occupation certificates.

Residents in our ANC view Burke's purchase of 2969 Upton Street and 4101-4103 Connecticut Avenue following the BZA's rejection of their previous BZA application and their conversion to institutional use no differently than the residents that have expressed concerns about the expansions of many of the universities. I was surprised to read that the Court of Appeals took our Ward plans into effect in the George Washington case. The razing of these moderately priced residential properties has done just what the Ward 3 plan hoped to avoid -- the displacement of tax-paying residents – in order to expand institutional use into residentially-zoned areas.

. The Office of Planning report states that the Generalized Comprehensive Plan notes in Subsection 102.3, "Many city neighborhoods also include integral commercial and institutional uses that contribute to their character. Neighborhood businesses, schools, park and recreational facilities, churches and other public facilities all add to the livability of our communities. These uses must be protected, stabilized and improved." However, the Ward 3 Plan interprets the Comprehensive Plan's more general objectives and policies and is silent only when an omission means that the Comprehensive Plan statement is applicable without qualification to the Ward. In this case the Ward 3 Plan is not silent. It specifically states, "There are a large number of institutional uses in Ward 3. Many of these facilities have structures that are an exception to the neighborhoods land use or that do not conform to the underlying zoning. The compatability of these uses must be maintained, expansion carefully controlled, changes to neighborhood-related uses encouraged, and conversion to other nonconforming uses prevented."

The entire length of Connecticut Avenue is a designated Special Street in the Preservation and Historic Features Element of the Comprehensive Plan. The lower sections of Connecticut Avenue are an important component of the L'Enfant Plan for Washington while the portions outside the L'Enfant boundary make a significant contribution to the design framework of the national capital as a continuation of one of the city's original diagonal avenues. Seen as a whole Connecticut Avenue is essentially a grand, solidly residential avenue with "low scale" commerical enclaves at fairly regular intervals. The Ward 3 Plan also states, "A distinctive feature of Ward 3 is the clustering of retail nodes at regular intervals along major arteries and with the exception of a portion of Wisconsin Avenue, the commercial nodes are generally separated by long segments of residential development, primarily apartment buildings."

Placing a school at the intersection of Connecticut Avenue and Upton Street will insert a private school, institutional looking building, into a segment of Connecticut Avenue designated for housing thereby changing the character of a well laid-out corridor and splitting the residential neighborhood on two sides of a school.

Residents have indicated they cannot find any other residential streets in the City that host as many institutions. Because of the special exceptions and because Burke razed several townhouses in 1983 to create its gym, there will only be 6 townhouses left on the North side of Upton Street, in essence changing the underlying zoning of this R-2 street. Nor can residents find another residential neighborhood that already has three BZA instituted committees to deal with mitigating measures from activities at Hillwood, Howard, and the Levine School which, by a BZA condition, includes the Edmund Burke School. Residents jokingly say that when you purchase a house in this neighborhood, the realtor should assign you to an Institutional Coordinating Committee. Neighbors have become reticent to attend these meetings especially since they have been unable to get compliance from DCRA with any of the institutional BZA agreements. As we learned, once the BZA makes the special exception, it cannot be rescinded even if that institution does not comply with the terms of the BZA agreement. Now Burke is proposing residents take part in another committee – a compliance committee. Residents also cannot find another neighborhood in the city that has to consult an institutional event schedule before determining whether it is feasible to plan a birthday party, graduation party, or anniversary party. Part of the quality of residential life is also having time with your family after the work day and not having to attend evening or weekend meetings to see if an institution is in compliance or to see what the institutions have scheduled --- a schedule in which you have no voice --- and a schedule that is never accurate because something has always just come up or is not considered an event because it is a school activity, even though it might take place on a holiday, in the evening, or over a weekend. Residents request that you think how you would feel if this was your street and how your neighbors would feel if you approved another institutional expansion and setup another compliance committee for them to attend. Now, with the Burke plan residents are also supposed to become traffic police going to 12 different locations in the morning and in the afternoon to check for wayward parents and if they don't do this and find violations, Burke will automatically be able to expand.

The expansion of Edmund Burke will tip the fragile, delicate balance that already exists between residential and institutional uses and will further degrade the quality of life for residents in an area choked by traffic congestion and institutional activity.

The Burke site is small, even with the proposed expansion, it is ¾ of an acre. It is an unforgiving site with no room for error. I have a comparison that shows the acreage of other private schools in Northwest Washington and the density of students per acre as compared to Burke. That has added to the strain between the neighborhood and Burke. Many of Burke's activities cannot be contained on the site and the neighborhood has become an extension of Burke and Burke's campus with students in the neighborhood all day. What one person finds objectionable, another person might not, but the Board should take into consideration some of the stated objectionable conditions and whether Burke can mitigate these concerns. They include Burke's use of Upton Street, 29th Street, etc. for jogging and exercise class, students running past homes in gym attire to use the fields at Howard for athletic classes and baseball practice and other activities and the ensuing noise and activity to the homes opposite this field in the most restrictively zoned R-1 neighborhood. Even if Burke is granted the expansion, the site will not be able to contain Burke's activities and the students will still not have a cafeteria, or outdoor recreational facilities, and the neighborhood will still be part of Burke's open campus programming.

And contrary to what Burke has stated, use of the fields at Howard is a violation of Howard's campus plan. On page 8 of the Office of Planning Report, they refer to the fact that Burke's BZA order in 1983 allows Burke to use the Howard University for outdoor recreational activities. What OP fails to mention is that this was a Finding made based on testimony from Burke with no one from Howard or the neighborhood present at the hearing and that the use of this field is not one of the operating conditions. It should also be noted that in that same Finding, it states that with approval of the "proposed gymnasium, fewer trips are planned to the field since the gymnasium will accommodate additional activities." The OP report also mentions the Howard condition that precludes them from hosting "outdoor events that cause excessive noise with the exception of graduation." This condition flows from the Summary of Evidence in that same 1997 order and the Campus Plan that the BZA accepted into evidence. It states under "Evidence" in #8, that "No athletic or comparable facilities were planned" and in "Evidence" #16 that the "primary outdoor activity consists of people studying and meeting on the grounds of the law school." The campus

plan that was accepted into evidence shows the field in question as a landscaped lawn and on Page 18 of the Plan under a category entitled, Existing Campus Usage and Activities, it states, "There is no athletic program requirement for the School of Law and no athletic activities take place on the West Campus." OP is also requesting an assessment of the noise that would be generated by the use of this area after the requested increase to a 320 student population, but this request should be an assessment based on 320 students and not the difference in student numbers as if Burke has permission to use the fields.

All of the Howard campus plans and BZA orders going back to their first one in 1974 all say that Howard will not maintain or have any athletic fields and all letters from the administration of Howard to the ANC, including those in conjunction with their recent campus plan, state that the use of the site is solely for the Howard University School of Law and programs for those students and that the only outside activity, other than graduation, will be Howard students studying on the lawn. If the BZA wants, I will be pleased to provide them with all the documents related to the playing fields.

When Howard moved to this site, there was supposed to be a buffer from the residentially zoned R-1 neighborhood. Now that buffer has become the Burke gym during the day and is used for various Burke sports teams as practice fields. The landscaping plan Howard promised the BZA has gone by the wayside. When Intelsat was built on federally-owned land, the park across the street from the proposed Burke site was supposed to be a buffer between Intelsat, Tilden Gardens, and the residential community and now that buffer has become another Burke site mostly for their track team, depriving many residents quiet enjoyment of that park.

But none of this would be an issue if Burke had a site large enough to accommodate its activities.

There is an important saying in legal business, and that is when coming before a court or a government body to ask for something, an individual or an entity must have "Clean Hands." Credibility is also important. In this case Burke has the stigma of non-compliance with its previous BZA order. Even after being made aware of that fact, Burke continued to exceed the enrollment and staff and faculty caps and made no attempt at compliance or to reduce its population until they decided it was in their best interest when coming to the BZA with this application. David Shapiro has admitted that the school exceeded its enrollment in 1997, but blamed it on a one-year "blip" where more students accepted enrollment than anticipated. But this explanation does not coincide with the September 13, 2000, School Dispatches section of the Northwest Current, written by a Burke student, that reads "Ninth grade picks up the most new students of any grade in the school, with the class almost doubling in size to 54. I know it took me some time to adjust to Burke life, and it probably will for the new ninth-graders, as well as the rest of the 60-odd new students in the school." Burke was fined $500.00 by DCRA for exceeding its cap, with the DCRA law judge stating that Burke might have had a one-year jump in enrollment but that after that Burke made a conscious decision to exceed its enrollment cap and faculty and staff cap. Then the Burke School was fined $500.00 again by DCRA for knowingly creating a parking lot on the properties they purchased. Even with that fine Burke continues to park vehicles on that site and, even without BZA approval to use the land for school purposes, Burke has allowed outdoor classes and athletics to take place on the site.

And, some residents are asking if the BZA should reward an institution that has violated its BZA order. What message does that send a neighborhood about trust and compliance with BZA orders and what message does it send to other institutions about their need to comply with BZA orders.

When I had to vote at the ANC, one of my criteria was trust and credibility. The BZA and the ANC members have been flooded with form letters from Burke parents, supporters, teachers, former students, etc., many of which were prepared with assistance from the School administration. Many of these letters contained factual inaccuracies. This is not a mixed-use or commercial area of Connecticut Avenue - it is a residential area with some doctors offices or home occupancy certificates; the BZA at the last hearing did not say this was a good site for a school, and the ANC did not say conduct a one year test and we will approve your application - rather the ANC supported a test

under the auspices of DOT with criteria developed by DOT and the neighborhood and monitored by DOT -this was not done.

In closing I will say that there is a psychological precept that says, "the best prediction of what people are going to do is to look at what they have already done."