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Geoffrey H. Griffis, Chairman
Board of Zoning Adjustment
Room 210
441 4th Street, N.W.
Washington, DC 20001

Re: Edmund Burke School, BZA Case No., 17022

Legal Memorandum

In Exhibit C-4 of its September 23, 2003 memorandum to the Board, Applicant argues that the bridge is permitted because it is in a side yard, not a rear yard, and that as an accessory building it is permitted to obstruct the sky. Even assuming the bridge is in a side yard, the contention fails for a number of reasons:

A. The bridge is not a separate "accessory" building because it is connected to and part of the principal building. The definition of building provides that, to be a separate building, the structure must be separated from an adjacent building from the ground or lowest floor. This bridge is attached 15.5 feet above the ground. §199.1 "Building" and, indeed, is required to be at least 15 feet above the alley. DC Code, 2001 Ed. §10-1121.03(2)

B. Since the bridge is an extension of the principal building, it renders the principal building too close to the lot line. §405.6 provides that if a side yard is provided, it must be at least 8 feet.

C. Since the bridge is <u>not</u> an accessory building it violates the rule that every part of the "yard required by this title shall be open and unobstructed to the sky from the gound up." §2503.1 Although no side yard is required, once Applicant chooses to have a side yard,

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§405.6 of the regulations which imposes a minimum 8 feet, makes it a "required side yard." and the "non-obstruction" language applies.

D. Even if the bridge were considered an accessory building, it would run afoul of the requirement that it be no higher than one story or 15 feet. §2500.7 provides that the height of an accessory building is 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. The bridge starts at or above 15 feet from the ground.

E. Finally, even if the bridge were considered an accessory building, it would violate §2500.2, which provides that all accessory buildings must be placed in rear yards. There are exceptions for private garages and pump island canopies, not for bridges.

F. If this were indeed a side yard, Applicant would be better off asserting that the bridge is not in the side yard but has created, in effect, two courts.

The above is moot, however, since the bridge is in the rear yard:

A. The lot on which the expansion building will sit is a corner lot under the definition of "corner lot" in §199.1: "a lot fronting on two or more streets at their junction, with the streets forming with each other an angle of forty-five degrees (45°) up to and including one hundred and thirty-five degrees (135°)."

B. "Rear yard" is defined in §199.1 as "a yard between the rear line of a building or other structure and the rear lot line except as provided elsewhere in this title. The rear yard shall be for the full width of the lot and shall be unoccupied, except as specifically authorized in this title."

C. Traditionally, the rear lot line is considered the line opposite the front of the building. Since the building in question is on a corner lot, applicant has the option of deciding which street shall be considered the front. (See definitions §199.1 "Street Frontage") Applicant has chosen Connecticut Ave as the front.

D. The Order in the Sunrise Case (BZA Appeal No. 16716A) upheld the decision by the Zoning Administrator to regard the line that was "running roughly parallel" to Connecticut Ave as the rear lot line. In the instant case, the rear lot line follows the line of the alley which has a 10-15 degree bend. Using the language of the Sunrise case, part of the rear line is "parallel" while the remainder is "roughly parallel".

E. To find that this slight bend has instead created a new side yard would ignore the standards set down in the definition of "corner lot" (§199.1) where an angle of 45 to 135 degrees was considered necessary to make the intersection of the two streets a "corner". In the absence of other definitions, this language should be a guide in determining that an angle of approximately 160 degrees is not sufficient to render the adjacent property a side yard. An interesting comparison can be made to the alleys between Tilden and Upton, as well as Van Ness and Veazey. (See the map in Applicant's Exhibit 126, the Morning Drop Off Plan.) Each of those alleys takes a similar bend to the one adjacent to Burke. We doubt that the Zoning Administrator would regard those bends as corners or as creating side yards for the Connecticut Avenue properties adjacent to them?

F. Accordingly, the placement of this bridge in the rear yard would need a variance since the rear yard may not be occupied. (See B above)

G. Applicant cites the Sunrise case, BZA Appeal No. 16716A, as authority for designating most of the land adjacent to the North-South alley a side yard. However, this situation is not analogous to the Sunrise case where the argument for a five-sided lot was much clearer. First, the lot was split between two zones, R-2 and R-5-D, which meant that part of the building did not have to have a side yard, while others did. Second, the building itself is irregular having some seven or eight sides. Finally, and most important, the Board concluded, "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." (BZA Order in Appeal No. 16716A, October 12, 2001, p. 13) Such a determination in this case does not render the building unbuildable, even for the use to which Applicant seeks to put it.

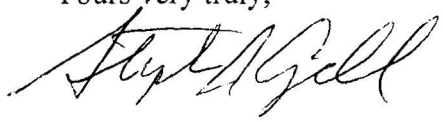
H. In the hearing on Sunrise, August 3, 2001, Toye Bello, who spoke for the Office of the Zoning Administrator, stated that determining the rear yard is a judgment call. (Transcript, p. 148). In the same hearing, Armando Lourenco, speaking for Sunrise, but formerly chief of the Building and Land Regulation Administration which supervised the Zoning Administrator, stressed the lot's unusual configuration. "I do not recall having seen another lot with a shape as odd as this one..." he said (Transcript, p. 237) He further stated "In his daily decisions, the Zoning Administrator is called upon to make some determinations that are essentially based on common sense as this Board is, too, and I think that the ultimate test on whether the decision is correct or not is look at the result and see if the result makes sense. If the results are natural or result in some bizarre conclusion." (p. 237) See also, *Construction of zoning regulations requiring side or rear yards*, 94

ALR2d 419, where the commentators said, "... the rear line of a lot cannot well be described by a hard and fast rule of law applicable to all cases but that determination of the question is largely one of fact." At 430.

I. Applicant has stated that the bridge will need only approval by the Public Space Committee. However, that ignores DC Code, 2001 Ed. §10-1121.04(2) which details the Zoning Commission's role in the approval of bridges over public alleys and 11 DCMR §3010.2(c) which describes it as a contested case procedure.

Accordingly, we urge the Board to find that Applicant may not build its bridge without a variance.

Yours very truly,



Stephen N. Gell