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November 13, 2003

VIA HAND DELIVERY

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

Re: BZA Application No. 17022, Edmund Burke School
Motion to Strike

Dear Chairperson Griffis and Members of the Board:

Enclosed please find the original and 15 copies of a Motion To Strike Burke And The District Department of Transportation Traffic Studies As Irrelevant.

Respectfully submitted,

Sirius LLC by THOMAS P. BROWN, III, Member

BZA
Case No. 17022
Exhibit No. 189

Board of Zoning Adjustment
District of Columbia
CASE NO. 17022
EXHIBIT NO. 189

Board Of Zoning Appeals
Application No. 17022
Edmund Burke School

MOTION TO STRIKE BURKE AND THE DISTRICT DEPARTMENT OF TRANSPORTATION TRAFFIC STUDIES AS IRRELEVANT

Sirius LLC hereby moves to strike from the record the Edmund Burke School Transportation Management Plan prepared by Wells & Associates, LLC, ("Wells Plan"),and the District Department of Transportation Traffic Survey ,("DDOT Survey") because both are irrelevant. A proper traffic study needed to support the Edmund Burke School Application ("Application") was never done.

A. Wrong Study Period - Twenty Years Too Late

The Wells Plan represented to this Board that the proper starting point for its traffic analysis is January 2003. DDOT selected the years 2002/2003 as the starting point for its analysis. Both starting points reflect traffic conditions existing after the Burke enrollment had been illegaly increased to approximately 299 students and approximately 60 faculty. This is approximately 20 years after the correct starting point which should be 1983 when Burkes legal limit of enrollment was 270 students and 35 faculty.

B. Study Period Starting Point Not "Today"

Carrying this erroneous procedure further, Mr. Martin Wells himself testified that the Traffic Management Program (TMP) which he and Burke proposed, will make traffic conditions in the neighborhood "better than today".

The true question is not whether or not Burke's TMP will make the traffic situation better tan it is "today" at the unauthorized student level of 299 students and 60 faculty members, but whether or not it will make the traffic situation better than it was at the time of the

legal student level of 270 students and 35 faculty, 20 years ago.

C. Wrongdoer Does Not Merit Bonus

To allow Mr. Wells to support his erroneous conclusions by using as a starting point in his analysis a time when traffic density would be at its highest level due to the unauthorized increased enrollment at Burke, rather than using the correct starting point when the Burke enrollment was within authorized levels, would be to reward Burke for non-compliance with the Boards enrollment cap set in October 1983, in BZA Application No. 13986.

Accepting DDOT's 2002/2003 starting point would be equally mistaken.

D. No Relevant Evidence For Board To Act On

There is no evidence in the record, properly supportd, from either the Applicant or DDOT, that the local traffic situation projected under Applicant's plan would be the same, or better than it was in 1983 when Burke was authorized to have only 270 students and 30 faculty.

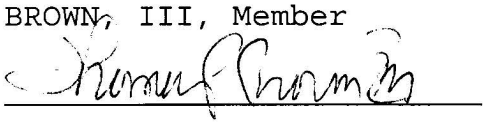
E. Too Late For Wells To Attempt To Correct His Flawed Plan

It would be unfair to the other parties to allow Wells to attempt to correct and amend his report now, should he attempt to do so, because the record is now closed. The fact that Mr. Wells, on cross examination, referred for the first time to changing his report to encompass an earlier study period, does not give him the right to do so, since he never presented such a report earlier, in either his direct case or his rebuttal case.

CONCLUSION

The traffic study needed to support the Application was never done. The studies that were done by Wells and DDOT are both fatally flawed because they both used the wrong years as starting points. Accordingly, both the Wells and DDOT traffic studies should be stricken from the record because they are irrelevant.

Respectfully submitted,
Sirius LLC by THOMAS P.
BROWN, III, Member



CERTIFICATE OF SERVICE
BZA CASE No. 17022

I hereby certify that I have this 13th day of November 2003,served a copy of this Motion to Strike Burke and the Department of Transportation Traffic Studies As Irrelevant, by hand or by first class mail, postage prepaid, to the following parties to this proceeding:

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November 13, 2003

Sirius LLC by
THOMAS P. BROWN, III
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