LAW OFFICES
THOMAS P. BROWN III
5247 WISCONSIN AVENUE NW
UNIT 2
WASHINGTON, DC 20015

TELEPHONE
(202) 966-9772

FACSIMILE
(202) 966-9774

November 24, 2003

D.C. ... 2003 NOV 24 AM 10:20

VIA HAND DELIVERY

Mr. Geoffrey Griffis, Chairperson
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
Proposed Findings of Fact And Conclusions of Law

Dear Chairperson Griffis and Members of the Board:

Enclosed please find the original and 15 copies of Proposed Findings of Fact And Conclusions of Law.

Respectfully submitted,

Sirius LLC by THOMAS P. BROWN, III, Member

BZA
Case No. 17022
Exhibit No. 195

Board of Zoning Adjustment
District of Columbia
CASE NO. 17022
EXHIBIT NO. 195

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
APPLICATION NO. 17022
EDMUND BURKE SCHOOL

SIRIUS LLC
PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

D.C. OFFICE OF ZONING
2003 NOV 24 AM 10: 23

THE SUBJECT PROPERTY AND SURROUNDING AREA

1. The Burke School ("Applicant"), a private coeducational school for grades six through twelve, has been located since 1973 in its existing building at 2955 Upton Street, N.W. (Square 2243, Lot 67).

   A proposed new school building for Applicant would be located at 2969 Upton Street, N.W. and 4101-4103 Connecticut Avenue N.W. (Square 2243, Lots 27,28 and 65). The ground is zoned R-5-D.

2. The existing school site is zoned R-2. The southern side of Upton Street to 29th Street is developed with rowhouses.

   The north side of Upton Street going east contains six semidetached homes, The Levine School of Music, Howard University Law School, and several large detached residential houses.

   On the west side of Connecticut Avenue, across from the Applicant's site are the Van Ness campus of the University of the District of Columbia and the Intelsat office building.

3. There is a 37 unit, five story, apartment building (4701 Connecticut Avenue) immediately adjoining the North boundary of Applicant's property. The South wall of the apartment building would adjoin and abut the North wall of

Applicant's proposed new school building. The apartment building is owned by Sirius LLC.

THE PROPOSED PRIVATE SCHOOL USE

4. Burke School proposes to construct a new four story building, with a two level underground garage, on Square 2243, Lots 27,28 and 65. The proposed building will contain classrooms, computer rooms, photography labs, music rooms, art studios and administrative space, a black box auditorium, and roof top terrace space for recreation.

NOISE IMPACTS

5. The noise generated from the rooftop terrace for recreation during the day and at night, and the heating, ventilating and air conditioning equipment on the roof of the proposed building will adversely effect the quiet enjoyment of the residents of the adjoining apartment building.

PARKING GARAGE CONSTRUCTION

6. According to the report from structural engineers Tate, Shahbaz & Associates of October 13, 2003, construction of the proposed garage will cause the following problems:

a) Underpinning of the adjoining apartment building will be required to the lowest level of the proposed garage, about 20-30 feet, the construction of which will severely disturb the approximately 50 people residing in the 37 unit apartment building adjoining the northern boundary of the Burke site.

b) Geotechnical explorations revealed ground-water level as shallow as 9 feet below grade. It is reasonable to assume that the new school building would be a submerged building. Shallow ground water would complicate underpinning efforts and might even jeopardize the structural integrity of the apartment building to the north.

c) Rock is at depths as shallow as 3 feet below the surface. The amount of rock to be excavated appears to be massive. Substantial jackhammering and blasting appears to be inevitable.

BUFFER ZONE

7. Applicant has provided a buffer zone between its original school building and its residential neighbors to the east, yet it has failed to provide a buffer zone between itself and the apartment building to the north. Such a buffer zone is needed to somewhat shield the apartment house residents from the noise of the garage construction, as well as the noise of the heating and air conditioning equipment, and the outdoor play areas on the roof of the proposed building. When there is a change from residential to institutional use, residential owners should not have to be adversely effected.

The desirability of providing buffer zones between institutional and residential parties was recognized by this Board in its Order No. 13986 in 1983, regarding the Burke school.

TRAFFIC IMPACTS

8. Under the Burke proposed Transportation Management Plan (TMP) all of the cars dropping off students or entering the proposed garage will now be directed onto Connecticut Avenue (at least 140 trips in the morning and 74 trips in the afternoon) into the north bound lane, during rush hour. The cars will attempt entrance to the school through the driveway to be constructed on Connecticut Avenue, between Upton and Van Ness Streets.

9. The Board of Zoning Adjustment (BZA) ACCEPTS THE following information contained in the Connecticut Avenue Transportation Study prepared by DMJM=Harris, Inc., for the District Department of Transportation in August 2003:

a. Connecticut Avenue is used by approximately 40,000 vehicles per day.

b. The highest turning movement on Connecticut Avenue is at the intersection of Connecticut Avenue and Van Ness Streets.

c. The intersection of Connecticut Avenue and Upton Streets has a high number of accidents.

d. The Level of Service (LOS) at the intersection of Connecticut Avenue and Van Ness Streets is "F"

(failing condition with long delays) during peak hours, and is "E" (undesirable) at the intersection of Connecticut Avenue and Tilden Streets during PM peak hours.

e. The Study Team observed AM and PM peak hour queues for each of the approaches of all the critical intersections including Connecticut Avenue at Tilden and Van Ness Streets.

10. Queues are bound to develop on Connecticut Avenue, blocking the right northbound lane, because of the inevitable delays and stoppages that occur in a carpool drop-off lane. For example, when children, after exiting their car, leave something in the car and have to return to the car, when there are mechanical failures of cars, and when carpool drivers delay to converse with school personnel or others.

11. Cars approaching the school driveway will have to slow in order to make a 90 degree right hand turn into the Burke driveway on Connecticut Avenue.

12. The fact that the Burke driveway can accommodate up to 15 cars will not prevent such blockages and queues during peak rush hour times because of the volume of cars seeking entry to the driveway either to drop off students or to enter the garage.

13. Since Applicant cannot control the non-school traffic on Upton Street, where the Burke school traffic must exit, it is obvious that when the Upton Street traffic is blocking the driveway and alley exits, the Burke driveway traffic will also be blocked.

14. Such blockages will cause the pedestrian sidewalk at the entrance to the driveway on Connecticut Avenue to be blocked, causing danger to pedestrians.

15. Ordinary experience has taught us that whenever a policeman or guard is directing traffic, stoppages will occur. The Burke guard at the driveway entrance will not be able to remedy the situation when a blockage occurs. He will have to order cars to back out into Connecticut Avenue to clear the sidewalk, and/or try to wave off Burke cars from queuing up, waiting to enter the driveway. He may direct cars to circle around using already congested Van

Ness Street, or some other equally congested street or alley. All of this activity by the guard, will, in and of itself, create disruption of traffic on Connecticut Avenue.

16. The Burke and the District Department of Transportation traffic studies are flawed since they do not cover the period when Burke had 270 students and 35 faculty, and do not compare data from this period with the expected traffic under the Burke TMP.

The only valid traffic analysis in the record is that of Mr. Joe Mehra. Mr. Mehra compared traffic conditions at the time when Burke was in compliance with this Board's Order No. 13986, and traffic conditions projected using Burke's TMP. He found that traffic conditions under the Burke TMP would be worse than existed at the time Order No. 13986 was issued.

17. Applicant is not now, and has not been for many years, in compliance with the enrollment and faculty caps set forth in Board of Zoning Adjustment Order No. 13986.

PROPOSED CONCLUSIONS OF LAW

Pursuant to 11 DCMR 3104.1, subsection 206.2, "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". Applicant cannot meet the test of the law. If the Application were to be granted the results would adversely effect the adjoining and nearby property owners for the following reasons:

1. Traffic Congestion - Safety

Traffic generated by Applicant will adversely effect the neighborhood by causing stoppages on Connecticut Avenue, and congestion on Upton and Van Ness Streets and in the north-south alley between Van Ness and Upton Sreets. It will also cause safety hazards for pedestrians in the proposed Connecticut Avenue driveway and in the north-south alley between Van Ness and Upton Streets.

2. Noise From Rooftop Play Area
And Mechanical Equipment

Noise generated from the rooftop play area and from the heating, generating and air conditioning equipment to be located on the roof of the proposed new building will adversely effect the neighborhood residents, and particularly the residents of the 37 unit apartment building north of Applicant's site.

3. Parking Garage Construction

Noise from construction of the new building, with its garage, due to the massive shallow rock under the site requiring blasting and jack hammering, the extensive underpinning required for the apartment building to the north and the shallow groundwater level, will all adversely effect the neighbors, particularly the residents of the apartment building north of Applicant's site.

In addition to the noise, there would probably be damage to the structural integrity of the above-mentioned apartment building.

4. Buffer Zone

Lack of a suitable buffer zone between the new building and the adjoining apartment house to the North, will adversely effect the approximately 50 residents of the 37 unit apartment building to the North, and diminish their quality of life, particularly in the evening when the rooftop play area is in use.

5. Pedestrian Bridge

The proposed pedestrian bridge would destroy the aesthetics peculiar to the character of a residential neighborhood such as exists in the subject area.

6. ANC Report

The ANC Report opposes the Burke application.

7. TMP Report

The most important part of the Burke Traffic Management Plan (TMP), namely the directing of all Burke cars that are picking up and dropping off students, as well as faculty and others trying to enter the Burke garage, into the north bound lanes of Connecticut Avenue, during rush hours, and then requiring a right hand turn into the proposed Burke driveway on Connecticut Avenue, has never been tested.

Granted, until the driveway and new building are built, there cannot be a precise test. However, there is no evidence in the record that such a scheme is likely to work. The Wells and DDOT studies are flawed and not relevant for reasons stated above. The only valid traffic study in the record is the Mehra study which concludes that Applicant's TMP cannot work.

For the foregoing reasons the Burke Application should be denied.

DUTY OF BOARD

The Board of Zoning Adjustment, when it approves of changes to the residential character of a neighborhood through the Special Exception process, has a duty, which is in the nature of a fiduciary duty, to the residential residents, to attempt to ameliorate their damages to the extent possible, by imposing certain conditions on the successful applicant. Accordingly, the following conditions are respectfully requested, in the event of the grant of the Burke application.

PROPOSED CONDITIONS SHOULD THE APPLICATION BE APROVED

1. BUFFER ZONE - MOST IMPORANT CONDITION

There will be a buffer zone at least 16 feet wide, between Applicant's new building and the northern boundary of Applicant's lot, extending from the eastern to the western boundaries of Applicant's lot. Nothing can be constructed on, over or under this buffer zone

2. Rooftop Terrace Play Area

There will be no rooftop terrace play area, or any other area for outdoor play, games, etc. on the roof of the new Burke building.

3. Mechanical Equipment

Any heating, ventilating, air conditioning or other types of mechanical equipment, if it is to be on the roof of the new Burke building, will be located on the extreme southern perimeter of the roof, and be fully soundproofed.

4. Trash Area

Any trash area for trash cans, dumpsters, and the like, will be located at least 100 feet south of the southern boundary of the buffer zone.

5. Construction

Applicant will fully indemnify neighbors, and particularly the residents and owner of the adjoining apartment building north of Applicant's site, from any and all damages (including both personal injury and property damages) suffered as a result of the proposed construction.

Respectfully submitted,

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

CERTIFICATE OF SERVICE
BZA CASE No. 17022

I hereby certify that I have this 24th day of November 2003, served a copy of these Proposed Findings of Fact And Conclusions of Law, by hand or by first class mail, postage prepaid, to the following parties to this proceeding:

Mr. Stephen Cochran
DC Office of Planning
801 North Capitol St. NW
4th Floor
Washington, DC 20002

Mr. Ken Laden
Ms. Colleen Smith
Department of Transportation
2000 14th Street, NW, 7th Fl.
Washington, DC 20009

ANF 3F
c/o Mr. Stephen Dennis
3901 Connecticut Avenue, NW
Washington, DC 20008

Edmund Burke School
c/o Phil Fiola, Esq.
Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037

Tenants Association
c/o John Patrick Brown, Jr., Esq.
Greenstein, DeLorme and Luchs
1620 L Street, NW, Suite 900
Washington, DC 20036

Ms. Linda Jay
2851 Upton Street, NW

Washington, DC 20008

NULS
c/o Ms. Jodie Smolik
2945 Upton Street, NW
Washington DC 20008

NARDS
c/o Ms. D. Karambelis
2938 Upton Street, NW
Washington, DC 20008

November 24, 2003

Sirius LLC by
THOMAS P. BROWN, III
Member