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November 25, 2003

VIA HAND DELIVERY

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

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Re: BZA Application No. 17022

Dear Chairman Griffis and Members of the Board:

Enclosed please find the Edmund Burke School's Proposed Findings of Fact and Conclusions of Law in the above-captioned application.

Sincerely,

Phil Feola

Ashleigh Dale Horne /PF.

cc: Office of Planning – Jennifer Steingasser
Office of Planning – Steve Cochran

BZA
Case No. 17022
Exhibit No. 197

Board of Zoning Adjustment
District of Columbia
CASE NO.17022
EXHIBIT NO.197

APPLICANT'S PROPOSED FINDINGS OF FACT

AND CONCLUSIONS OF LAW

GOVERNMENT OF THE DISTRICT OF COLUMBIA

BOARD OF ZONING ADJUSTMENT

Application No. 17022 of Edmund Burke School, pursuant to 11 DCMR § 3104.1 for a special exception to allow an addition to an existing private school and to increase the enrollment from 270 to 320 students and faculty/staff to 70, under Section 206, in the R-2 and R-5-D Zone Districts at premises 2955 Upton Street, N.W. and 4101 Connecticut Avenue, N.W. (Lots 67 and 68, Square 2243).

HEARING DATES: July 15, 2003; October 14, 2003; October 28, 2003

DECISION DATE: December 2, 2003

DECISION AND ORDER

The Applicant in this case is the Edmund Burke School ("Burke" or the "School"). The School filed an application with the Board of Zoning Adjustment on April 14, 2003, for a special exception under 11 DCMR § 3104.1, to allow the expansion and renovation of an existing private school under 11 DCMR § 206 (1995) in the R-2 and R-5-D Zone Districts at 2955 Upton Street, N.W. and 4101 Connecticut Avenue, N.W. (Lots 67 and

68, Square 2243). The zoning relief requested in this application is self-certified pursuant to 11 DCMR § 3113.2.

Following a public hearing, the Board voted _____ on December 2, 2003 to approve the application subject to conditions.

PRELIMINARY MATTERS

Application. The application requests a special exception under 11 DCMR § 3104.4, to allow the expansion and renovation of an existing private school under 11 DCMR § 206 (1995) in the R-2 and R-5-D Zone Districts at 2955 Upton Street, N.W. and 4101 Connecticut Avenue, N.W. (Lots 67 and 68, Square 2243). The zoning relief requested in this application is self-certified pursuant to 11 DCMR § 3113.2.

Notice of Application and Notice of Hearing. By memoranda dated April 21, 2003, the Office of Zoning advised the D.C. Office of Planning, the Zoning Administrator, the Department of Public Works, the Department of Health, the Councilmember for Ward 3, and the Advisory Neighborhood Commission (ANC) 3F, the ANC for the area within which the subject property is located, of the application.

The Board scheduled a public hearing on the application for June 24, 2003. Following a request by the Applicant, this Board postponed the hearing to July 15, 2003. Pursuant to 11 DCMR § 3113.13, the Office of Zoning, on May 12, 2003, mailed the applicant, the

owners of all property within 200 feet of the subject property, and ANC 3F notice of the July 15th hearing.

Notice was also published in the D.C. Register. The School's affidavits of posting and maintenance indicate that three zoning posters were posted beginning on June 26, 2003, in plain view of the public.

Requests for Party Status. ANC 3F was automatically a party in this proceeding. The Board granted party status to: (i) Neighborhoods United for Livable Streets ("NULS"), some of whose members live on Upton Street, N.W., within the same block as the existing School and the proposed expansion; (ii) Linda Jay, who lives at 2951 Upton street, directly east of the existing School building; (iii) Van Ness South Tenants Association, members of which live at Van Ness South, 3003 Van Ness Street, N.W. and the Consulate Tenants Association, members of which live at the Consulate, 2950 Van Ness Street, N.W. (the "Tenant's Associations"); (iv) Sirius LLC, the owner of a rental apartment building located at 4107 Connecticut Avenue; and (v) Neighbors Allied for the Reasonable Development of Schools ("NARDS"), some of whose members of whom live on Upton Street, N.W. on the same block as the School.

Applicant's Case. The Applicant requested a special exception for an addition to an existing private school in the R-2 and R-5-D Zone Districts. The Applicant presented testimony and evidence from David Shapiro, Head-of-School; Steve Pruitt, Chairman of the School's Board of Trustees; William Gridley, a principal in Bowie Gridley

Architects, recognized by the Board as an expert in architecture; Martin Wells of Wells & Associates, recognized by the Board as an expert in transportation and traffic engineering; and Officers Michael Boyd and Michael Auls of the District of Columbia Metropolitan Police Department. Mr. Pruitt testified that the School had made several changes to the current application in response to BZA and neighborhood concerns. One example he cited was that the School was requesting forty fewer additional students than in the prior application. He also testified that the School has voluntarily implemented a traffic management plan ("TMP") that includes: (a) a shuttle bus program; (b) Metrorail benefits for students, faculty and staff; (c) a prohibition against parents from dropping-off students in alley and on Upton Street; (d) a car pool program; and (e) a compliance code and enforcement plan. Mr. Pruitt also testified that the School had been working to improve communication with the neighborhood by informing them of events and special activities that have the potential to cause additional impacts. He further testified that the School had reduced student enrollment in response to community and government concerns.

Mr. Gridley presented testimony regarding the location of the institutional, commercial and residential uses in the area. He also described the important points regarding the Plans. He stated that the building was designed to facilitate moving cars and people into, and around, it. It will comprise four-stories above grade and with two stories of parking underneath. It has a Floor Area Ratio ("FAR") of 2.4 and a lot occupancy of thirty-three percent. The parking garage will provide forty-seven spaces, including thirty-six zoning compliant spaces. Mr. Gridley indicated that the mechanical units, electrical generator, and air conditioning units would be relocated so as to be either inside of the building or

on the roof. He described a proposed pedestrian bridge, which would connect the existing School building to the new addition, as a benefit to the School, but emphasized that it was not necessary for the project or the School's program to function efficiently. The facilities inside the new building would include offices for administration, common spaces, an assembly room, a black box theatre, some classrooms, and an outdoor terrace located on the fourth floor. Mr. Gridley testified that the School had eliminated the loading dock, which is not necessary due to the size of the building, so that the School could park its vans in that area. He indicated that the change was made in response to neighborhood concerns, but submitted an alternate plan that could incorporate a loading dock, if required.

Martin Wells of Wells and Associates, LLC, testified about transportation issues. He stated that the additional students and faculty/staff that the School requests would generate only eleven morning peak hour trips and fourteen afternoon peak hour trips according to his estimates, which he testified was negligible. Mr. Wells testified that the morning drop-off plan would include the utilization of a designated drop-off lane that would be reserved exclusively for carpools with two or more students. The capacity of the lane would be fifteen cars, which is an increase of ten cars over the existing conditions, which has a capacity of only five cars and it is entirely on the public space in the Upton Street roadway. The drop-off lane would enable the school to move all drop-off from the public right-of-way to School property. He explained that the School proposes an extensive, and effective, Transportation Management Plan ("TMP") as part of this application. The TMP would include the use of a shuttle bus; traffic flow would be controlled by off-duty, uniformed police officers to be stationed at the intersection of

Upton Street and the alley and at the intersection of Connecticut Avenue and the Burke driveway; driveway traffic would yield to alley traffic; drivers who do not qualify as a carpool would be required to utilize one of several drop-off locations removed from the School; parents would be prohibited from dropping students off on Upton Street in front of the existing school, on westbound Tilden Street, and on Connecticut Avenue; parents also be prohibited from utilizing or parking on Van Ness Street east of Connecticut Avenue and from utilizing the alley system to access the School; the Metrorail benefit will be provided to all students and faculty who use Metrorail; and the School would provide off-site parking, shuttle bus service, and traffic management personnel during special events.

Mr. Shapiro testified about the School's Compliance and Enforcement plans. First, he testified that the compliance and enforcement provisions of the TMP would be included in the student's enrollment contracts. Parent violating the TMP would receive a verbal warning from the head of the School for the first violation, a $100 fine for the second violation, and a $250 fine for the third violation. Following a fourth violation, the family would be denied an enrollment contract for the following year. Mr. Shapiro testified that the School's Compliance Plan would be assessed by a seven-member committee (the "Committee") comprising three representatives of the School, three members of the community, and a non-voting member skilled in mediation of neighborhood disputes involving schools. Mr. Shapiro testified that the Committee will judge the School based on number of infractions, student enrollment and faculty/staff numbers, and whether any extenuating circumstances are involved. Mr. Shapiro explained that if the Committee determines that the School has had "unsatisfactory" performance for more than two

consecutive reporting periods, or "poor" performance for more than three consecutive reporting periods, then the School would be required to pay a fine equal to two student tuitions, which currently is approximately $40,000. He further testified that the School would be required to pay a fine equal to the number of tuitions for exceeding the student cap, and equal to one tuition for exceeding the faculty cap. Finally, Mr. Shapiro testified about the School's attempts to improve relations with the neighborhood. He listed the School's efforts as including: issuing monthly calendars, school program notes, and special announcements; providing information regarding the building plans; offering a summer fitness course to the community; use of the School library; weekly litter pick-up on Upton Street; complimentary tickets to Burke performances; cleanup of the neighbors' dead end alley and plantings; and monthly meetings with a neighborhood advisory committee. Finally, Officers Michael Boyd and Michael Auls of the District of Columbia Metropolitan Police Department testified that they ensure that Burke students do not loiter or misbehave in the neighborhood and that traffic is flowing smoothly. Officers Boyd and Auls also testified that they have investigated several complaints by neighbors, which they have determined did not involve Burke students and that their presence in the neighborhood is a benefit to the entire neighborhood not just the School.

Government Reports. The District of Columbia Office of Planning ("OP") reviewed the application with respect to number of students; noise, traffic; and other objectionable conditions. In report dated July 8, 2003, OP recommended approval of the application, subject to conditions derived from community concerns, the Applicant's proposed mitigation measures, and recommendations of the District Department of Transportation

("DDOT"). OP observed that the expansion would allow the School to improve its arts programs, provide more parking, improve transportation issues, and allow an eventual increase in students and faculty. OP determined that the proposed expansion would be in harmony with the general purpose and intent of the Zoning Regulations and Maps because it would be located on Connecticut Avenue (a major arterial street), would be adjacent to the existing School, and is in close proximity to a Metrorail station. OP found that the noise levels generated by the School would be acceptable. OP determined that the Applicant's proposed TMP, would "result in better traffic flow than would a return to the student and employee population levels approved by the BZA in 1983, but without the currently proposed TMP." OP further recommended that the neighborhood component of the proposed Compliance Committee exclude anyone with a child who attends, or has attended, Burke. OP expressed concern that Burke has been out of compliance with BZA Order No. 13986 for several years. However, OP found the proposed new facilities would "increase the occupiable space of the Burke facilities to a significantly greater degree than the application would increase actual student population, the construction of the new facilities will actually decrease the density of students per square foot of occupiable space." Thus, the approval of the application would "likely reduce the impacts of both the current population, as well as the requested increase." In response to neighborhood concerns that Burke students loiter, vandalize, and trespass in the neighborhood, OP found that the location of other schools in the area make it difficult to verify that Burke students are responsible for these objectionable activities. Nevertheless, the new facility would provide more indoor space, which would encourage the students to remain indoors. In response to requests by OP, Burke has agreed to

remove graffiti from the retaining wall of the Consulate apartments, pay for the installation of a fence separating the alley from Howard Law School, amend the Compliance Plan to provide penalties for trespassing, include a code of conduct instructing students on appropriate community relations in the student handbooks, and ensure that its vending food machine service is equal to that of comparable private schools in the District. With regard to the proposed pedestrian bridge, OP found that it would be a benefit to the School and would help mitigate the opponents concerns related to student behavior in the public rights-of-way. OP suggested limiting special events to no more than six events per year that bring no more than fifty cars per site and that Burke attempt to re-institute a scheduling committee with the other institutional uses in the area. Finally, OP noted the Board's finding in BZA Order No. 16611 that seventy-one parking spaces is ample parking for an increase of ninety students and thirty-five staff, and concluded that seventy-one spaces would provide ample parking for the School's current request for fifty additional students and thirty-five additional staff. Accordingly, OP recommended that the Board approve the application subject to conditions.

DDOT provided testimony based on its review of the application, meetings with ANC 3F and members of the community, and visits to the site of the proposed addition and existing School. DDOT submitted a report dated July 3, 2003, and provided testimony of Ken Laden, the Associate Director for Transportation Policy and Planning. DDOT determined that the application would not have adverse traffic or parking impact, provided certain conditions were met by the Applicant. DDOT reviewed the application with respect to transportation issues. In a report dated July 3, 2003, DDOT observed that

it had expressed concern about several issues in Burke's prior application (BZA Application No. 16611), including: (1) marketing transit subsidies; (2) location of shuttle bus pickup; (3) the special event management plan; (4) the Van Ness Metro Kiss and Ride; (5) carpool operations; and (6) disciplinary sanctions. DDOT observed, however, that since the denial of its request in BZA Application No. 16611, Burke had voluntarily implemented the TMP, which has had a positive effect on traffic patterns that are "substantial enough to improve the traffic situation over pre-existing conditions." The TMP established a shuttle bus system, required any drop-off or pick-up on Upton Street to be a part of a carpool system, encouraged the expanded use of public transportation, and addressed parking issues. DDOT stated that it had conducted field tests to evaluate the TMP. Specifically, DDOT found the location for the drop-off lane exit on Upton Street and queue line was "properly designed and will be a safe situation, especially with uniformed police present to help direct traffic." DDOT concluded that the School "has demonstrated an ability to reduce transportation impacts from their facility through the implementation of various transportation management programs." However, DDOT recommended some modifications to the TMP, such as (1) further staggering arrival times to the School; (2) educating parents and students to use the underground Metro walkway to cross Connecticut Avenue or safely use signalized intersections; (3) avoiding parking visiting busses on Upton or Van Ness Streets; (4) and increasing penalties for parent or student infractions of the TMP. DDOT concluded by recommending approval of the expansion of the School with conditions, and with the caveat that the School should adjust the TMP as required to remedy any remaining adverse transportation issues.

ANC 3F Report. The ANC voted on July 1, 2003 to oppose the School's expansion by a vote of 5-0-1. The ANC report, adopted by a vote of 5-1-1, cited concerns with the number of students, graffiti in the neighborhood, loitering and trespassing of students, lack of facilities, use of Howard Law School property as athletic fields, traffic congestion, inadequate parking, "geotechnical problems" and "subsurface water problems" at the site, and the institutional appearance of the proposed new building. ANC 3F also expressed concern regarding the rear yard requirement, the loading dock requirement, the pedestrian bridge, and Burke's failure to comply with BZA Order No. 13986.

Parties and Persons in Support of Application. NARDS, the membership of which consists of residents of Upton Street and nearby streets, was granted party status and supported the application. In addition, many students and parents testified as "persons" in support of the application. These persons indicated that the Traffic Management Plan implemented by the School would improve the existing traffic situation and lauded Burke for its commitment to responding to community concerns. These witnesses also emphasized the quality education available at Edmund Burke and the important contribution past and current Edmund Burke Students make to the community. Many of these witnesses indicated that having the option of sending their child to Edmund Burke was central in their decision to continue residing in the District. A petition signed by residents in the immediate area was submitted in support.

Parties and Persons in Opposition to the Application. NULS, the membership of which consists of residents of Upton Street, N.W. where the School is located, was granted party status and opposed the application due to concerns that the addition will lead to an exacerbation of exiting traffic problems. NULS submitted a traffic analysis prepared by Jawahar Mehra, P.E., questioning the accuracy of the traffic report submitted by the School. NULS also questioned whether the School will have sufficient loading once the addition is built and whether adequate parking and parking spaces will be provided.

Sirius LLC, owner of the apartment building located at 4107 Connecticut Avenue, N.W., which abuts on the north side of the site of the proposed expansion, requested and was granted party status. Sirrus LLC opposed the School's application on the grounds that the mechanical equipment on the proposed building would generate objectionable noise. The proposed building will compromise the services of the apartment building by increasing use of the alley. Sirius also contends that the garage entrance to the addition would travel over a public sidewalk, creating unsafe conditions for pedestrians. Finally, Sirius expressed concern that the proposed new building would change the residential nature of the neighborhood.

Linda Jay, who lives directly to the east of the existing School building, requested and was granted party status. Ms. Jay opposed the expansion of the School based on her concerns about the noise of an existing compressor/air conditioning unit. She also expressed concern that the expansion would generate greater traffic and noise.

The Tenants' Associations also provided testimony in opposition due to general congestion in the area and moved to dismiss the application for non-compliance with BZA Order No. 13986. The Board denied the motion on the grounds it does not have jurisdiction to enforce the Zoning Regulations and that dismissing applications for non-compliance with the Zoning Regulations or prior BZA orders would, in many cases, render it impossible for property owners to obtain relief.

In addition, several individuals testified in opposition to the application. They generally testified that approval of the application would cause adverse parking and traffic impacts. They also expressed complaints regarding the presence of students in the neighborhood.

FINDINGS OF FACT:

A. The Prior Application, The Subject Property, and the Surrounding Area

1. Burke is a private, coeducational school for grades six through twelve located in the Van Ness neighborhood of Ward 3. It was established in 1968 and moved to its present location at 2955 Upton Street, N.W. following approval by the BZA in Application No. 11428 in 1973. The School currently operates pursuant to BZA Order No. 13986, which approved the construction of an addition to the School and a corresponding increase in enrollment to 270 students and 35 faculty and staff.

2. On July 7, 2000, Burke submitted an application for a special exception to expand the School to an adjacent property located at 4101 Connecticut Avenue N.W. (Square

2243, Lot 68). Burke sought to increase enrollment to 360 students and to increase faculty/staff to 70. This Board denied the application in BZA Order No. 16611 because the proposed expansion was likely to become objectionable to adjoining and nearby property because of traffic impacts associated with the proposed increase in the number of students and staff.

3. Since the Board denied the application, Burke has aggressively implemented suggestions offered by the Board, DDOT, and the community in order to improve traffic conditions and the School's impact in the neighborhood. This includes:

- Creating a team on the Board of Trustees to re-examine the relationship between Burke's mission and its location, reduce the student population for school year 2002 - 03 to 295; and budgeted a further reduction in the student population for school year 2003 – 04 to 290;

- Implementing a TMP, which limits drop-offs on Upton Street to carpools with three or more students; prohibits drop-offs in the public alley; provides shuttle bus service from Shoemaker Street; provides for student drop-off at the Kiss N Ride; and provides Metro benefits to families in Maryland and Virginia;

- Responding to the Board's concerns by reducing the requested enrollment to 320; increasing the requested faculty to 70; reducing the square footage of the new building; providing a pedestrian bridge linking the existing and new buildings; introducing an afternoon pick-up plan that moves Burke traffic from Upton to School property; and establishing a strict and enforceable compliance plan;

- Working with the community by meeting monthly with a neighborhood committee to exchange ideas and investigate ways for Burke to mitigate any adverse affects on the neighborhood and by publishing monthly neighborhood updates;

- Introducing compliance measures for the TMP by adding an additional traffic monitor in the morning, including a commitment to the TMP in the enrollment contract for the school year with a published set of consequences for breaches; and

- Offering services to the community, including a summer fitness course, use of the School's library; weekly litter pick – up on Upton Street; complimentary tickets to performances; and plowing of the alleys during snowstorms.

4. Burke filed the current application on April 15, 2003, requesting a special exception for an addition and renovation to an existing private school in the R-2 and R-5-D Zone Districts pursuant to Section 206 of the Zoning Regulations. The Applicant proposes to construct the addition on the same site as in the prior application – the corner of Connecticut Avenue and Upton Street, N.W. at 4101 Connecticut Avenue, N.W., adjacent and to the west of the existing School. The subject property, an irregularly shaped parcel with an area of 14,305 square feet, is separated from the existing School building by a public alley. It is unimproved and has approximately 105 feet of street frontage on Connecticut Avenue. Burke seeks authorization to construct an additional school building, renovate its existing campus, and to increase enrollment capacity up to 320 students and a faculty and staff of 70.

5. The property which is the location of the proposed addition is located in the R-5-D Zone District at the northeast corner of Connecticut Avenue, N.W. and Upton Street, N.W., where it is separated from the existing School building by a public alley. The existing School building is located in the R-2 Zone District.

6. The area surrounding the Property is characterized by intense mixed-use and institutional development. The Intelsat building and the federally owned "chancery" campus is across Connecticut Avenue from the site. There are many commercial and high density residential uses to the north along the adjacent portion of Connecticut Avenue, N.W. There is a six-story apartment building adjacent to the Property to the north. North of the site at Connecticut Avenue and Van Ness Street, N.W. is a C-3-A Zone District which is characterized by intense mixed-use development along Connecticut Avenue. This district contains the Van Ness Center and other commercial developments. In the northwest quadrant of the intersection of Connecticut Avenue and Van Ness Street is the campus of the University of the District of Columbia. Directly behind the existing school building is The Consulate, a 90 foot tall apartment building with over 250 units. South of the subject Property on Connecticut Avenue, the land uses consist of single family houses and large apartment buildings.

7. To the east of the existing School building, on the north side of Upton Street, are six single family (duplex) houses, Howard University School of Law and the Selma M. Levine School of Music. To the east of the existing School, on the south side of Upton Street, are a series of single family row dwellings.

B. The Proposed Expansion of the Private School Use

8. The School currently has 290 students in grades sixth through twelfth and employs 59 faculty and staff. It is a co-educational institution, founded on the belief that the best education is possible through the careful development of imagination, reason and knowledge, with a special emphasis on the abilities and needs of the individual student.

9. This application proposes expanding the School to the property to the west of its existing building at 2955 Upton Street, N.W. The School seeks to undertake this addition so that it may better serve its student body by providing more classroom and academic space, thereby allowing a wider breadth of educational activities. The proposed new building will contain classrooms for the middle school population, a library, computer rooms, photography labs, music rooms, art studios and administrative space. It will also have a black box auditorium and outdoor terrace space for recreation.

10. The proposed new building will be in complete conformance with the requirements for the R-5-D Zone District. The building addition will have a height of fifty-three feet, well below the ninety-foot height permitted in the R-5-D Zone District. The gross floor area of the building 2.1, well below the 3.5 FAR permitted as a matter-of-right in this zone. The rear yard is approximately seventeen feet six inches, and the lot occupancy will be thirty-three percent. Based on the private school use of the Property, the Zoning Regulations require additional twenty-three parking spaces. In direct response to community concerns, Burke will provide new parking for forty-seven vehicles in the garage below the proposed building, in addition to the twenty-four spaces

currently provided by the School. Thus, the School will provide a total of seventy-one parking spaces.

11. ANC 3F contends that the plans for the proposed new building fail to comply with the Zoning Regulations. It argue that the proposed pedestrian bridge will require a variance because is located in the rear yard in violation of 11 DCMR §§ 2502.1 and 2503.1. ANC 3F also contends that the proposed new building requires a loading facility pursuant to 11 DCMR § 2200.1, which requires a loading facility for any structure that exceeds 30,000 square feet in size.

12. The Board finds that the ANC's arguments are not persuasive. The Board credits the testimony of architect William Gridley that the total gross floor area of the proposed new building is 34,276 square feet, but that 4,370 square feet of that number is dedicated to parking, loading and unloading, a garage ramp, and drive aisles, thus is not counted towards the area required to determine loading facilities. 11 DCMR 2205.2. Accordingly, the Board finds the gross floor area of the proposed new building, for evaluating loading requirements, is 29,906 square feet.

13. The Board likewise finds the ANC's argument that the proposed new building fails to meet the rear yard requirements must fail. In BZA Order No. 16716A, the Board determined that a property owner may choose the front when a property is irregularly shaped and located on a corner lot. The Board further held that the rear yard will be designated as the yard opposite the chosen front. In the present application, the Board finds that the entrance for the proposed building is located at the intersection of Connecticut Avenue and Upton Street. Because of the lot's irregular shape, the property

line located immediately opposite the front (Connecticut Avenue) is the rear yard as shown on the plans submitted by the Applicant.

C. Noise Impacts

14. Noise emanating from the Proposed Addition will not adversely impact neighboring property in this active and densely populated part of the District. The existing School building and the proposed addition are large enough to satisfy the many academic and extra-curricular program needs of the School, the vast majority of which will take place indoors. Also, by locating the addition on property fronting on Connecticut Avenue, the School's expansion will not bring institutional use further into the residential neighborhood and will not adversely affect the character of Upton Street.

15. The School has submitted a proposed Operations Plan, which will establish policies to assure that the School's operations will minimize noise and not create an adverse impact on neighboring properties. The Operations Plan will prohibit the School's assembly spaces from being rented by outside groups, and permit only one special event to be held at any one time. It will limit noise emanating from the School to 60 decibels during the day and 55 decibels during the evening. It will require that all deliveries shall be done during the Schools operation hours and in the designated loading zones.

16. Opponents complained that the existing air conditioning unit, transformer and generator located near the School's eastern property line, produces excessive noise, that the School's students were noisy when walking on the public rights-of-way and that students using the rooftop terrace would be noisy. The Board notes that, if the addition is

constructed, the existing air conditioner and other mechanical units will be relocated away from the residential properties. The Board finds no evidence, including the videotape provided by NULS, that the Burke students use of the public sidewalks and public space is unduly noisy or otherwise objectionable.

17. The Board finds that by expanding toward Connecticut Avenue, the intensity of use of the existing School building will be lessened, and, as a result, any noise impacts on neighbors to the east of the existing School building will likewise be lessened. The Board credits the findings of the Office of Planning that the terrace and atrium lounge will provide students with more space for indoor activities, that likely will decrease the amount of noise in the neighborhood.

18. In response to neighborhood concerns, the proposed outdoor terrace has been relocated to the west side of the building, on the fourth floor. It will be oriented towards Connecticut Avenue and buffered by occupied interior space on the north and east, and partially on the south.

19. The ANC also complained that the noise associated with the students' use of the Howard University Law School field for physical education and practice was objectionable. The Board credits the testimony of the Office of Planning that the noise from this use of the Howard University field would not be objectionable.

20. The Board finds that there is no restriction in the Howard University Law School Campus Plan, BZA Order No. 16110, to prohibit Edmund Burke students from using the field at the Howard University Law School for physical education. Further, the Board notes its finding in the School's 1983 BZA Order (Order No. 13986) that Burke uses the

field for physical education and the Board did not remove this permission in the subsequent 1998 Howard University Law School Campus Plan. The Board finds that continued use of the Howard field by the School will not have a negative impact on neighboring properties and negates the need for additional vehicle trips to, and from, more remote outdoor recreational facilities.

21. The Board finds that with the proposed improvements and implementation of the Operations Plan, made a condition of this Order, there is not likely to be objectionable conditions due to the noise emanating from the property.

D. Traffic Impacts

22. The transportation consulting firm of Wells and Associates, LLC, performed a traffic study of the area in which the subject property is located and generated a Traffic Impact Analysis of the existing and future conditions and a Traffic Management Plan (TMP) for the School. The Traffic Impact Analysis and TMP were submitted as part of the School's application.

23. The Traffic Impact Analysis, together with the TMP, demonstrate that the proposed changes to the School will not adversely affect traffic patterns in the vicinity of the site or have an adverse impact on the road network. Mr. Martin Wells of Wells and Associates testified that the additional students and staff requested by the application will generate only eleven morning peak hour trips and fourteen afternoon peak hour trips. Mr. Wells also observed that DDOT estimated that the expansion would generate only 18 morning peak hour trips and 13 afternoon peak hour trips according to the final

Connecticut Avenue Transportation Study. Both Mr. Wells and DDOT agreed that this amount of traffic is negligible.

24. The Traffic Management Plan develops a strategic plan for handling the burden of drop-off and pick-up traffic on Upton and Van Ness Streets, as well as in the public alley. Ingress and egress to the underground parking garage will be via a driveway and ramp from Connecticut Avenue only. Vehicles dropping off students will access the same driveway off of Connecticut Avenue, bear to the right to enter the on-site traffic loop, drop off or pick up students and then turn left or right onto Upton Street. In the alternative, vehicles dropping off students will turn right and continue on a driveway wholly on the School's property to Upton Street. During drop-off and pick-up, all queuing, along Connecticut Avenue and to the east of the new building, will be strictly limited and regulated. All stacking and carpool operations for the School will occur entirely on School property or at the proposed lay-bys, allowing all present lanes of traffic to continue normal flow.

25. Through oral testimony at the public hearing and the report dated July 3, 2003, DDOT testified that Burke had addressed many of the concerns of DDOT and the community in the prior application and that the current TMP would benefit the surrounding neighborhood. DDOT concluded that the School has demonstrated an ability to reduce transportation impacts, and that the application should be approved with conditions. The Board credits the testimony of Mr. Wells and DDOT that the TMP that will reduce negative traffic conditions in the vicinity of the School and the site.

26. NULS, through expert testimony provided by Mr. Mehra, disputed the findings of the School's traffic experts. NULS traffic expert testified that the data offered by Mr. Wells was incorrect because it conflicted with the Connecticut Avenue Traffic Study performed by DDOT, that existing conditions in the area are unsafe and congested, and that any additional traffic on the adjacent roadways will add to the existing traffic problems. NULS testified that currently, cars dropping off and picking up students from the School queue up in the public alley and in front of the existing School building on Upton, making ingress and egress difficult for residents on Upton. NULS testified that it believes the TMP, including the significant traffic mitigation measures, proposed by the School will not work and will not be enforced.

27. The Board credits the testimony of DDOT and Mr. Wells over that of Mr. Mehra. Mr. Wells personally performed the traffic analysis submitted by the Applicant. Mr. Mehra offered none of his own data and conducted no original research or analysis. His entire analysis was based on perceived differences between the data collected by Mr. Wells and DDOT. Mr. Wells indicated that the differences between the data occur because they collected data on different days and times. In addition, the Connecticut Avenue Traffic Study did not focus on Burke, but, rather, studied all of the traffic in the area. Even so, the conclusions of both Mr. Wells and the Connecticut Avenue study were the same – that the traffic generated by the proposed expansion will be "negligible."

28. The Board credits testimony of Mr. Wells and DDOT that the expansion, with the proposed TMP, Enforcement Plan, and Compliance Plan, will not create adverse traffic impacts for the neighborhood.

E. Number of Students and Faculty/Staff

29. The Board finds that the existing School building and the planned addition together are large enough to accommodate the needs and demands of a private school for grades 6 through 12, with a maximum of 320 students and 70 faculty and staff.

30. The School is requesting a maximum increase of fifty students and thirty-five faculty and staff. The Board finds the proposed new facilities will increase the occupiable space of the School to a significantly greater degree than the application would increase student, faculty, and staff population. Thus, the new facilities will distribute the student body among the two buildings, thereby reducing the impact on the neighboring properties.

F. Ample Parking

31. This application will permit the increase of on-site parking to 71 parking spaces. The 1983 BZA approval for the School, BZA Order No. 13986 requires the existing School provide 24 spaces. The Order permitted the School to build an addition to its original facility, which included the existing gymnasium, which is, and will remain, its largest assembly space, accommodating 250 students. BZA Order No. 13986 permits the School to have a student population of 270 students with a faculty/staff of 35 persons. Through this application the School will increase enrollment and the size of its faculty and staff to 320 and 70 respectively.

32. Section 2101.1 of the Zoning Regulations, requires that parking be provided at a ratio of 2 for every 3 faculty and staff and 1 for every 10 seats in the largest assembly

space for high schools. Since the largest assembly space (the gym) was approved by the BZA with 24 parking spaces, parking for the new building is based on the increase in faculty and staff from the 35 permitted by BZA Order No. 13986 to the 70 requested in this application. Thus, the additional 35 faculty and staff, multiplied by two-thirds equals a new parking requirement of 23 additional spaces. This new requirement, added to the 24 required by the BZA in Order No. 13986, brings the parking requirement to 47. The building plans show 28 full sized, fully accessible parking spaces in the proposed new building. These 28 spaces added to the 24 provided behind the existing School equal a total of 52 parking spaces in compliance with the Zoning Regulations. This analysis was confirmed by the District of Columbia Zoning Administrator submitted into the record and marked as Exhibit No. 162. As shown on the architectural plans, the School plans with the provision of additional compact spaces and stacked parking spaces to provide a total of 71 parking spaces when the addition is complete.

33. The Board finds that DDOT and the OP support the Zoning Administrator's rationale with regard to parking and that the School's proposed parking is sufficient.

34. The Board finds that the size of the parking spaces provided by the School is satisfactory to meet the requirements of Section 2115 of the Zoning Regulations. Forty-seven of the parking spaces provided by the School must be at least 9 feet by 19 feet. At least 56 of the parking spaces provided for by the School will be 9 feet by 19 feet. The Board finds that any parking spaces that are not a minimum of 9 feet by 19 feet are excess spaces not required to be provided by the School, pursuant to the Zoning Regulations, and thus, not subject to the requirements of the Zoning Regulations.

35. Students will be strongly discouraged from driving to school. To the extent that students drive, the School will implement specific parking policies that will be strictly enforced. Those students who need to drive will park in the underground garage and will not be permitted to park in front of nearby residences. In order to ensure compliance, student vehicles will be registered and required to have an Edmund Burke Identification Sticker, so that any violations can be easily reported to the School. A specific staff person will be tasked with monitoring student compliance and responding promptly to any community complaints. The School will work closely with the community to accommodate successfully the traffic and parking needs generated by the School.

36. The Board finds that the School provides more than the required number of on-site parking spaces and that its planned parking monitoring will be effective to ensure that resident parking will not be impacted by Edmund Burke students

G. Harmony with the Zoning Regulations and Map and the Comprehensive Plan

37. The proposed School building is well within the height, lot occupancy and bulk requirements for the R-5-D Zone District.

38. The Comprehensive Plan Generalized Land Use Map designates the site as high-density residential. Schools are considered to be part of the fabric of a residential community. As the Comprehensive Plan notes, many residential neighborhoods also include commercial and institutional uses, such as schools, which contribute to the character and enhance the livability of the communities. 10 DCMR § 102.3

39. Private schools are considered to be uses that are compatible with residential neighborhoods, provided conditions are met with respect to minimizing possible negative impacts.

40. Given the site's location on one of the District's principal arterial streets, adjacency to the existing School, and proximity to Metrorail, the Board finds the proposed site is in harmony with the Zoning Regulations and Map and is not inconsistent with the Compliance Plan.

H. Impacts on Use of Neighboring Property

41. The TMP, Operations Plan and Compliance Plan, proffered by the School, and the conditions contained herein will significantly lessen the impact of the School on neighboring property.

42. The above findings largely pertain to impacts on the use of neighboring property and will not be repeated in this section of the Decision and Order.

I. The Proposed Pedestrian Bridge

43. The ANC and NULS contend that the application contains "technical zoning violations" and that it is "incomplete" because Burke will be required to obtain variance relief for the proposed pedestrian bridge. Specifically, as noted above, they contend it violates the rear yard requirements of 11 DCMR § 2502.1 and 2503.1. As set forth above, the Board credits the expert testimony of architect William Gridley that the pedestrian bridge is located in the side yard rather than the rear yard.

44. The Board finds that the determination of whether the proposed pedestrian bridge violates the rear yard requirements is in the jurisdiction of the Zoning Administrator. In addition, the School will be required to obtain additional approvals for the proposed bridge from the Department of Public Works.

45. The Applicant presented testimony regarding the role of the pedestrian bridge in the design for the addition. Mr. Wells testified that the area is safe for pedestrians and the proposed project, without the construction of the bridge, will not create pedestrian safety problems. Mr. Gridley testified that the bridge was included in the design for convenience, but he emphasized that it was not designed to be a safety factor. Mr. Gridley further testified that other schools in the District operate with buildings that are separated by a public street or alley, such as the National Cathedral School and St. Patrick's, as approved by the Board, and have not experienced any safety issues or concerns.

46. The Board credits the testimony of Mr. Wells and Mr. Gridley and finds that, although the pedestrian bridge is desirable, it is not integral to the Board's determination that the application will not create objectionable or unsafe conditions.

CONCLUSIONS OF LAW AND OPINION

The Board of Zoning Adjustment is authorized under the Zoning Act of 1938, approved June 20, 1938 (52 Stat.797, as amended; D.C. Code § 5-424(g)(2)), to grant special exceptions as provided in the Zoning Regulations. Edmund Burke School applied under 11 DCMR § 3104.1 for a special exception pursuant to 11 DCMR § 206 to

renovate and expand an existing private school. The notice requirements of 11 DCMR § 3113 for a public hearing on the application have been met.

Edmund Burke School is a private school as that term is used in the Zoning Regulations. To meet its burden of proof under Subsection 3104.1, the applicant must demonstrate that the proposed private school use would meet the special conditions listed in Section 206; that it would be in harmony with the general purpose and intent of the Zoning Regulations and Maps; and that it would not adversely affect the lawful use of the neighboring property. Under 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." Under Subsection 206.3, "Ample parking space, but not less than that required in chapter 21 of this title, shall be provided to accommodate the students, teachers and visitors likely to comet to the site by automobile."

The Board's discretion in reviewing an application for a special exception for a private school is limited to a determination of whether an applicant has complied with the requirements of Sections 206 and 3104.1. If the applicant meets its burden, the Board must ordinarily grant the application. See The Washington Ethical Society v. District of Columbia Board of Zoning Adjustment, 421 A.2d 14, 18 (D.C. 1980). As stated in French v. District of Columbia Board of Zoning Adjustment, 658 A.2d 1023 (D.C. 1995), "The Board's limited function [in a special exception case] is to assure that the regulations adopted by the Zoning Commission are followed. . . ." Id. at 1034, quoting Tenley & Cleveland Park Emergency Committee v. District of Columbia Board of Zoning Adjustment, 550 A.2d 331, 341 (D.C. 1988), cert. denied, 489 U.S. 1082 (1989).

Further, the Board is required under D.C. Code §412.4 to give "great weight" to OP recommendations. The Board is also required under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21, as amended; D.C. Code §1-261(d)) to give great weight to the resolution of the ANC for the area within which the subject property is located.

ANC 3F opposed the application based on the following concerns: Burke students loitering and trespassing in the neighborhood; the proposed drop-off and pick-up lanes are unsafe; the limited availability of parking in the neighborhood; the lack of a loading facility and the permissibility of the pedestrian bridge; noise from the rooftop terrace and from students walking in the neighborhood; the burden of the Compliance Plan; their desire for the School to locate its expansion in another neighborhood; and the use of the Howard University Law School field for physical education and athletic practice.

The Board has carefully considered the recommendations and reports of the ANC regarding traffic and parking impacts. However, as discussed above in the Findings of Fact relating to traffic impacts, the Board has credited the opinion of the DDOT and the School's traffic expert that the School can be expanded onto the subject property in a manner that would not create objectionable traffic conditions. It also agrees with DDOT and OP that the proposed mitigation measures will improve existing conditions. In addition, the School has agreed to the imposition of a stringent set of conditions, many of which were proposed by OP and the ANC. The Board has incorporated many of these conditions in its Order. The Board further credits the testimony of Mr. Wells, Mr. Gridley, OP, and DDOT that the proposed TMP will not cause any unsafe situations for

vehicles or pedestrians. The Board also has considered the ANC's concerns regarding the noise and behavior of students. As stated in the Findings of Fact, the Board credits the testimony of Mr. Gridley and OP that the outdoor terrace would be adequately buffered from the residential properties and that the students will be less likely to loiter in the neighborhood because the new building will provide additional space in much greater proportion to the requested number of students. The Board also found the testimony of Officers Boyd and Auls to be extremely persuasive. The Board credits their testimony that Burke disturbances in the neighborhood are rarely, if ever, caused by Burke students and that they patrol the neighborhood to monitor any potential misbehavior. The Board further credits the testimony of OP that Burke's use of the fields at Howard University Law School is not objectionable, given its environment, so long as the fields do not involve spectators. As stated in the Findings of Fact, the Board has determined that Mr. Gridley correctly interpreted the Zoning Regulations, that no loading dock is required, and that the proposed pedestrian bridge does not require a variance. In any event, the Board had determined that the ANC's arguments are moot because the School has provided an alternate plan incorporating a loading dock and because the pedestrian bridge is not integral to the feasibility and safety of the plans. The ANC also opposed the application on the grounds that the School had attempted to communicate with ANC members regarding the application because noise from the construction would cause objectionable noise, and because they would prefer that the School locate its expansion in another neighborhood. The ANC also opposed the application based upon assertions that "geotechnical problems" would prevent the construction of the parking garage and "subsurface water problems" would cause seepage. The Board finds the ANC is not

entitled to great weight with regard to these concerns because they are not relevant to the burden of proof for a special exception for a private school in a residence zone district.

Based upon the Findings of Fact and having given great weight to the OP and ANC recommendations, the Board concludes that the proposed private school, as conditioned by the Board, can be located at the subject property so that it is not be likely to become objectionable to adjoining nearby property. The Board has imposed numerous, stringent conditions in this order in response to the OP, ANC, DDOT and neighborhood concerns, which particular emphasis on traffic and public safety.

The Board also concludes that the proposed private school would provide ample parking. Under 11 DCMR §2101.1, the School is required by the Zoning Regulations to provide at least 47 parking spaces. The Board concludes the School's provision of 71 parking spaces will meet the needs of its faculty and staff, students and visitors. Further, the Board notes that it determined that the parking would be ample in BZA Order No. 16611 which proposed a larger population than the current application.

The R-5-D District is a high-density residential district that allows for all types of urban residential development and also permits those institutional and semi-public buildings that would be compatible with adjoining residential uses and which are excluded from the more restrictive residence districts. The Board concludes that the use of the subject property for the expansion of a private school, as conditioned by the Board, is in harmony with the Zoning Regulations and Map and the use is not inconsistent with the Comprehensive Plan of the District of Columbia.

As discussed above with respect to the requirements of Subsection 206.2 and 206.3, the Board concludes that the proposed private school use, as conditioned by the Board, would not adversely affect the use of neighboring property.

For the reasons stated above, the Board concludes that the applicant has met its burden of proof. It is hereby ORDERED that the application is GRANTED, subject to the following CONDITIONS:

1. The addition shall be constructed in accordance with the plans prepared by Bowie Gridley Architects and marked in the record as Exhibits No. 4 and 117.

2. The maximum student enrollment shall be 290 students until the new building is complete. Following completion of the new building, the maximum enrollment shall be automatically increased to 300 students. Following four satisfactory reporting periods pursuant to the Enforcement Plan, the maximum enrollment may automatically be increased to 320 students.

3. The maximum number of faculty and staff shall be 60 until the new building is complete. Following completion of the new building, the maximum number of faculty and staff may be automatically increased to 70.

4. The School shall fully implement and comply with the School Management Plan, Exhibit 1 to the Applicant's pre-hearing submission, marked in the record as Exhibit 31.

5. The School shall fully implement and comply with the Enforcement Plan, which is Exhibit 2 to the Applicant's pre-hearing submission, marked in the record as Exhibit No. 31, amended herewith to: (a) increased the fines for family infractions to $250 for the second violation and $500 for the third violation, (b) include trespass by students on private property as an infraction; (c) limit the permitted infractions to a total no more than ten per week; and (d) exclude from the Compliance Committee former or current Burke students or parents from the neighborhood component of the Committee.

6. The School shall fully implement and comply with the Traffic Management Plan, which is contained in the Applicant's pre-hearing submission, marked in the record as Exhibit No. 31 including but not limited as follows:

a. School employees shall be trained at the beginning of each semester to implement and enforce the TMP.

b. Access to the parking structure in the new building shall be provided only from Connecticut Avenue.

c. Students who drive to School shall be required to register their vehicles and display School permits to identify vehicles associated with School students.

d. Students, even with Zone 3 permits, and faculty shall be strictly prohibited from parking on the 2900 block of Upton Street, N.W. and in front of residences.

e. The School shall maintain a phone log of traffic and parking-related comments received from parents and neighbors.

f. The School shall implement a shuttle service allowing parents to drop children off at designated shuttle stops and taken to the School by shuttle vans. The shuttle service shall operate on normal school days between 7:30 and 8:15 a.m.

g. All Edmund Burke School parents, as part of their Enrollment Contract, shall be bound to the Compliance Plan and its fines and punishments.

h. For evening events at the School, parents shall be required to use the School's parking garage. The School shall make available off-site parking and shuttle service for the evening events at which attendance is expected to exceed the School garage's capacity.

i. The School shall work with DDOT to establish parking locations for visiting athletic team buses.

7. The School shall use its best efforts to secure approval, and subsequently build, a pedestrian bridge over the public alley in order to connect the existing building with the new building as shown on the plans marked as Exhibit 4 of the record.

8. The School make every reasonable effort to eliminate or reduce non-school hour noise, including but not limited to, arranging for delivery of milk and other supplies to occur during normal working hours, having trash pickups occur only during normal working hours, and reducing bus engine noise.

9. The School will re-initiate the scheduling committee between Howard Law School, Levine School of Music, Hillwood Museum, the Royal Netherlands Embassy and the ANC to reduce overlapping special events and the difficulties such coincident scheduling may impose on the neighborhood.

10. The School shall provide (a) an enrollment and employment report each fall, by October 1, and (b) an annual report of the TMP and School Management Plan Compliance Committee reports to the BZA and ANC.

11. The School shall maintain a noise level, as measured at the property line, of no more than 55 dba at all times.

12. The existing air conditioning and mechanical units on the School's eastern property line shall be relocated in accordance with the plans marked as Exhibit 4 of the record.

VOTE:

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY: _____

JERRILY R. KRESS, FAIA

Director, Office of Zoning

FINAL DATE OF ORDER:_____

UNDER 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6 OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE AND UPON ITS FILING IN THE RECORD AND SERVICE ON THE PARTIES.

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN

APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

PURSUANT TO D.C. CODE § 1-2531 (1999), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANTS ARE REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. TITLE 1, CHAPTER 25(1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF THE APPLICANTS TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

Document #: 1365352 v.1

ShawPittman LLP

Certificate of Service

I hereby certify that on November 25, 2003, a copy of the foregoing material was sent via first class mail to the following:

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Document #: 1365400 v.1