NEIGHBORS UNITED FOR LIVABLE STREETS (NULS)
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND PROPOSED ORDER

BZA Application No. 17022

Application of Edmund Burke School, pursuant to 11 DCMR 3104.1, for a special exception from the provisions of section 206 for an addition to an existing private school for 320 students and 70 faculty and staff at 2969 Upton Street and 4101-4103 Connecticut Avenue, N.W. (lots 27, 28 and 65, square 2243) in an R-5-D zone.

Hearing dates: July 15, 2003; October 14, 2003; and October 28, 2003

Decision date: December 2, 2003

NULS

Neighbors United for Livable Streets (NULS) is an ad hoc committee of neighbors representing Upton and Tilden streets and Connecticut Avenue, which was granted party status. The NULS group has 44 members, all of whom are homeowners or long-standing residents of the neighborhood. The NULS membership includes the majority of homeowners on the 2900 block of Upton Street (Exhibit 127, letter from Richard W. Richardson, with attachments, September 23, 2003).

FINDINGS OF FACT

Report of the Office of Planning

The Office of Planning (OP) has recommended approval of the application subject to a variety of conditions regarding traffic management, noise assessments and noise abatement measures, provision of additional information regarding use of Howard Law School's playing field, amendments to the school management plan regarding students' behavior within the neighborhood, removal of graffiti from the wall of the Consulate Apartments, provision of a bridge connecting the two buildings, applicant agreement to construct the required number of parking spaces, provision of off-street loading facilities, and several other measures (Exhibit 62, Office of Planning Report, Memorandum to the Board of Zoning Adjustment from Andrew Altman, July 8, 2003, pp. 17-18; hereafter referred to as the "OP Report").

BZA
Case No. 17022
Exhibit No. 199

Board of Zoning Adjustment
District of Columbia
CASE NO. 17022
EXHIBIT NO. 199

Report of the District Department of Transportation

The District Department of Transportation (DDOT) recommended approval of the application, subject to several conditions and "with the caveat that if, after full implementation, there are still adverse transportation issues, further adjustments to the TMP may be required, and that ultimately a reduction in the number of students may be required" (Exhibit 67, DDOT Report, Memorandum from Kenneth G. Laden to Andrew Altman, Director, Office of Planning, July 3, 2003, p. 5; hereafter referred to as the DDOT Report). The DDOT approval was also subject to several conditions imposed on the school, including increases in penalties for failure of students, parents or staff to comply with the traffic management plan; restrictions on membership of the proposed compliance committee; institution of more staggered arrival times in the morning rush hours; efforts to encourage increased use of mass transit by students, particularly during the morning rush hours; provisions to make off-street parking available for attendees of all events, including athletic, evening school activities, and public social events and/or classes; and other measures (Exhibit 67, DDOT Report, pp. 3-4).

Report of Neighborhood Advisory Committee 3-F

Advisory Neighborhood Commission 3F recommended against approval of the Burke School's application, citing traffic problems, an unworkable compliance plan, the school's failure to comply with previous BZA orders, and the school's unwillingness to come up with a plan that effectively manages the its traffic and other adverse impacts on the neighborhood.

In its resolution, report, and testimony before the BZA on October 14, 2003, ANC 3-F stated that the Burke School had failed to detail, apply for, properly notice, or provide evidence to support variances necessary for its application. Accordingly, the application improperly presumes approval of significant items critical to the standards under subsection 206. (See testimony of ANC 3-F Commissioner Stephen Dennis, Transcript of BZA Hearing, October 14, 2003, pages 313-320; the transcripts of BZA hearings in the instant case shall henceforth be referred to as "Transcript" and, unless otherwise indicated, hearing dates shall refer to calendar year 2003. See also Exhibit 58, ANC 3-F Report 03-01 on Application of the Edmund Burke School for BZA Approval of a Special Exception, July 1, 2003, pages 10-11; hereafter referred to as the "ANC 3-F Report.")

The Site

The existing Burke School is located on the northern side of the 2900 block of Upton Street in an R-2 zone. The site for the proposed new building is at the northeast corner of Connecticut Avenue and Upton Street, N.W. in an R-5-D zone. Immediately to the east of the site is a public alley, which runs parallel to Connecticut Avenue and separates the existing school from the proposed new building (Exhibit 62, OP Report, page 1).

The Surrounding Neighborhood

1. Zoning. The east side of Connecticut Avenue from Porter Street to Van Ness Street is zoned R-5-D and is developed with medium-to-high-density residential buildings and some scattered townhouses. The block between Upton and Van Ness streets consists of a five-story apartment building, which borders the north side of the site of the proposed new building, and townhouses.

   To the east of the school, the 2900 block of Upton Street, which extends from Connecticut Avenue to 29th Street, is zoned R-2. The remainder of Upton Street, running east from 29th Street to Linnean Avenue, is zoned R-1. Similarly, Tilden Street is zoned R-2 from Connecticut Avenue to 29th Street and R-1 east of 29th Street to Linnean Avenue (Exhibit 62, OP Report, page 2).

2. Residential Development. The north side of the 2900 block of Upton Street consists of six semi-detached dwellings and the campus of Howard University Law School. The south side of the street is entirely residential and consists of pre-World War I townhouses and semi-detached dwellings in the 2900 block and single-family homes east of 29th Street. The north side of Tilden Street consists of townhouses in the 2900 block and single-family residences to the east. The south side of Tilden Street houses embassies and single-family dwellings. Van Ness Street and Veazey Terrace are developed with medium-to-high-density apartment buildings (Exhibit 62, OP Report, page 2; also, Exhibit 150, Map of Site and Adjacent Institutional Facilities; hereafter referred to as "Map").

3. Characteristics of the Neighborhood. The residential neighborhood east of the site of the proposed new building is atypical in several respects:

   a.. The area, from Tilden Street to Van Ness Street, running east from Connecticut Avenue to Linnean Avenue, is a boot-shaped enclave, surrounded by several substantial institutions (testimony of ANC 3-F Commissioner Stephen Dennis, Transcript, October 14, pages 309-312; also, Exhibit 150, Map).

      (1) Apart from the Burke School (with 290 students), those institutions include the Howard University Law School (450 students) and the Levine School of Music (600 students) on Upton Street alone. Other institutions in the surrounding neighborhood include a nursing school (350 students), UDC (nearly 5,500 students), the Hillwood Museum, and several embassies, including the embassies of the Netherlands, Kuwait, and the Czech Republic (Exhibit 173, testimony of Pearl Richardson, page 1).

      (2) Howard University Law School and its library are open early morning to midnight, seven days a week (testimony of ANC 3-F Commissioner Karen

Perry, Transcript, October 14, page 326).

(3) The Levine School of Music is open from 9 a.m. to 9 p.m.; however, performances can extend until 10:30 p.m. Performances are held on weekends and during the work week (testimony of Ms. Perry, Transcript, October 14, page 327).

(4) The Hillwood Museum operates 325 days a year and averages 250 visitors a day (testimony of Ms. Perry, Transcript, October 14, page 327).

b. The street grid within the neighborhood is atypical and incomplete due to geography and land use patterns (Exhibit 150, Map, and testimony of John Dougherty, Transcript, October 14, pages 440-441). With the exception of Tilden Street, all of the streets in the neighborhood are narrow. Van Ness Street and Veazey Terrace are short, narrow, dead-end blocks running east of Connecticut Avenue. Their only egress from the neighborhood is Connecticut Avenue. Elsewhere, the only points of egress from the neighborhood are Upton Street to Connecticut Avenue and Tilden Street to Connecticut Avenue or to Beech Drive in Rock Creek Park.

c. A public alley runs parallel to Connecticut Avenue from Veazey Terrace to Tilden Street. Because of the neighborhood's atypical and incomplete street grid, that alley functions as a public street and is often congested.

d. The streets and alleys within the neighborhood were not designed to support the large volumes of traffic associated with current institutional uses and cannot support new institutional uses.

e. In the past 25 to 30 years, institutional expansions and special exceptions in the neighborhood have had a cumulative, adverse impact on traffic, parking, safety, noise, and the quality of residential life. The special exceptions and expansions have included the Levine School of Music, Hillwood Museum, Howard University Law School, the Netherlands Embassy, and the Burke School (Exhibit 183, testimony of Jaynie Simmons, October 28). **The neighborhood is past its tipping point** (see Exhibit 115, letter from City Councilman Phil Mendelson to the BZA, July 15, 2003).

Deficiencies in the Application

1. The self-certified application is incorrect in describing the proposed construction as an "addition," as is the OP Report (Exhibit 62, page 1). The new construction is a separate building (see testimony of Milton Shinberg, AIA, who was qualified as an expert witness, Transcript, October 14, page 449).

2. The Applicant failed to include the loading facility required by DCMR 2201.1 for a building of more than 30,000 square feet in the plans it submitted with its application.

3. The Applicant failed to file for the variance from 11 DCMR 2201.1, which requires a loading facility on its site.

4. The Applicant proposes to eliminate two or more of the parking spaces behind its existing building without securing a variance to permit excess parking on the new site to make up for the loss.

5. The proposed pedestrian bridge spanning the alley is not an accessory building because it is connected to, and is part of, the principal building.

6. The proposed pedestrian bridge violates the requirement in 11 DCMR 2502.1 and 11 DCMR 2503.1 that "every part of a required yard or court or other required open space shall be open and unobstructed to the sky."

7. The applicant failed to file for the variances from 11 DCMR 2502.1 and 11 DCMR 2503.1 that are needed to build the pedestrian bridge (Exhibit 58, ANC 3-F Report).

8. Parking spaces are required to meet regulation standards in all respects. "Stacked" or tandem parking spaces proposed by applicant do not comply. No relief from the standards have been requested.

Building Design: the Pedestrian Bridge

The construction of a pedestrian bridge that would span the alley and connect the existing school and the proposed new building is critical to the success of the project for several reasons:

1. The Applicant's traffic management plan is inadequate to improve traffic control and student safety without the bridge. Both OP (Exhibit 62) and DDOT (Exhibit 67) viewed the pedestrian bridge as important to "mitigate any possible adverse impacts from both the existing school and the proposed expanded school facility (Exhibit 62, OP Report, page 14).

2. The bridge serves to facilitate the pedestrian and traffic flow between the parcels. Without it, students being let off in the alley and exiting the cars west toward the new building would be forced to cross the alley in the middle or at the juncture with Upton Street to access their home rooms in the existing building. That would slow down the steady flow of cars through the alley and require students to dodge the traffic in the alley to cross it, thus creating a dangerous situation.

3. At times other than drop-off, students would be moving back and forth across the alley without adequate safeguards. If the lounges in the new building are expected to be used as much as the Applicant desires, every student would be crossing the alley at least twice a day after the traffic cop goes home. Trips to the administrative offices, travel between classes, rehearsals in the black box theater, and myriad other occasions would cause students to cross the alley without the protection of the connection at the second floor.

4. Applicants have not shown how such an unfortunate situation could be avoided absent a bridge at the second floor. Even with a bridge, a strong effort will have to be made by monitors to require the students to climb a flight of stairs to access the bridge, rather than cross over at ground level.

Building Design: Impact on the Neighborhood

1. The design of the proposed building has features that will adversely affect the residential quality of the neighborhood (testimony of Milton Shinberg, AIA, Transcript, October 14, pages 449-453).

2. The pedestrian bridge is essential to the feasibility of the project. Without it, congestion in the alley would increase, and the safety of the students would be compromised; however, construction of the bridge would come at a cost to the neighborhood. It would interject a commercial/industrial structure from Connecticut Avenue onto a residential street and would be wholly incompatible with the character of Upton Street (Transcript, October 14, pages 449-450).

3. The design of the proposed extension is rather like an office building perched over an array of service functions, with more perimeter for service than is typical for office or retail use (Transcript, page 450).

4. The drive-through faces a residential area; the traffic circulation around the building is visible from Upton Street and is objectionable because it violates the residential character of the neighborhood. Vehicles may enter the building on Connecticut Avenue, but they will exit onto Upton Street (Transcript, page 450).

5. Contrary to the applicant's assertions, the proposed building is not oriented toward Connecticut Avenue. It has one entrance at the corner of Connecticut Avenue and Upton Street and one on the alley that leads from Van Ness to Upton Street. The existing building's entrance is on Upton Street. Overall, the building's orientation would be much more toward Upton Street than toward Connecticut Avenue (Transcript, page 452).

6. Construction of a nonresidential building at the corner of Connecticut Avenue and

Upton Street will create a dark corridor in off hours, lead to less activity on the street, and potentially compromise safety in the neighborhood. The life of the residential neighborhood on the avenue and the side streets depends on character, activity, and not only the fact, but also the perception of safety (Transcript, page 452).

7. The plan provides no buffer space between the proposed new building and the apartment house to its north.

Parking Issues

Because the proposed construction is a stand-alone structure, not an addition, it must satisfy the parking requirements that apply to a new structure. The application does not provide the required parking, and the applicant has not sought relief from the parking requirements (testimony of Mr. Shinberg, Transcript, October 14, pages 453-454 also, Exhibit 139, pages 4-7).

1. The parking requirements include:

   a. The number of spaces for staff in excess of those currently accommodated by the applicant–or 23 spaces for 35 additional staff (two spaces for every three additional staff); and

   b. The number of spaces for seats in the largest assembly space–which is the proposed 150-seat black box theater. Regulation requires one parking space for every ten seats–15 seats in the present case.

   c. Thus, the new building must provide 38 spaces.

2. The number of legal spaces that the new building will accommodate is 28. The remaining spaces in the application are either tandem spaces or compact spaces that do not meet requirements for alignment under the zoning regulations. The school has not applied for relief from compact car standards in its self-certified application (Exhibit 139, page 5).

3. The applicant also proposes to remove three spaces from the rear of its current site at 2955 Upton Street. The applicant has not, however, requested relief from its prior BZA order to do so (Exhibit 139, page 4).

4. Thus, the school would have a deficiency of 13 spaces (Transcript, page 454).

5. Section 206.3 states the a private school must provide "ample parking space...to accommodate the students, teachers, and visitors likely to come to the site by automobile." Even if the application were to satisfy minimum parking

requirements, the question would arise regarding whether the minimum is appropriate in the current case (Transcript, page 454). If the percentage of Burke students and faculty who drive were to remain the same as it is today, 57 faculty and staff and 17 students will need parking spaces–a total of 74. The applicant states that the old and new sites combined will have 62 spaces (a number that includes spaces that do not comply with zoning requirements, as noted above.) Where will the overflow go? Where will visitors park? (Exhibit 185, testimony of Virginia Worthington, October 28).

6. Commercial lots in the neighborhood cannot accommodate the overflow. Fannie Mae has leased nearly all of the available commercial parking space in the area. NULS members have checked with all of the local parking garages and have determined that commercial parking would not be available to handle Burke's overflow (Exhibit 185, testimony of Virginia Worthington,October 28).

7. The absence of sufficient required parking and the unlikelihood that people will choose a constricted underground garage with tandem spaces when a surface space might be available, will impose an additional burden on a neighborhood that already lacks sufficient on-street parking. Substantially more parking space–which the BZA is entitled by regulation to require–would be needed to avoid an unacceptable impact on the neighborhood.

Geotechnical Issues

1. The owners of Sirius, Ltd. (4107 Connecticut Avenue, N.W.) submitted to the BZA an engineering report from Tate, Shahbaz & Associates, P.C., which reviewed the Burke School's geotechnical report. The firm's report detailed geotechnical probems at the proposed school site that will severely affect the structural integrity of the apartment building at 4107 Connecticut Avenue and other existing homes.

2. The report concludes that the building at 4107 Connecticut Avenue must have underpinning, which will be quite disruptive to residents.

3. Further, the report states, shallow ground water at the site will "complicate the underpinning effort and would jeopardize the structural integrity of existing surrounding structures."

4. The rock in places is only three feet below the surface, and the amount of rock to be excavated (up to 35 feet below grade) will be massive. That effort would subject neighbors to a prolonged, unpleasant situation and would disrupt area traffic.

5. Rock excavation would also complicate the underpinning effort.

6. The Tate, Shahbaz report concludes: "It is our professional opinion that the degree of possible complications during underpinning would render the task unreasonably risky to the structural stability of the existing buildings, no matter how well-designed, well-planned, and well-executed it may possibly get."

The Burke School, Its Facilities, and the Neighborhood

1. Section 206 of the zoning regulations states that a "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." The Burke School's proposed extension does not meet the standards of section 206.

2. The subject site is cramped. The existing and proposed sites, together, constitute three-quarters of an acre and are intended to accommodate some 320 students (testimony of Ms. Perry, Transcript, October 14, page 330).

3. The Burke School has a greater population density than any other private school in northwest Washington, D.C. Even with expansion, which would double the size of its property, the school would have a density level of 427 students per acre (320 students on three-fourths of an acre), which is nearly five times greater than that of the Georgetown Day School, which has the next highest density level with 90 students per acre. A few more comparisons: the Maret School has 85 students per acre; the Washington International School has around 70 students per acre; Sidwell Friends has less than 30 students per acre (Exhibit 176, testimony of Ruth McDiamid, October 28, page 4).

4. Although the Burke School has a smaller student population than other schools in the area, it imposes itself on the neighborhood in ways that other schools do not, largely because:

   a. The school lacks adequate facilities. It has no cafeteria and no outdoor recreational or sports facilities (Testimony of Pearl Richardson, Transcript, October 28, pages 287-288).

   b. It allows students a "free period" during which time students are permitted and, indeed, encouraged to leave the school's premises. The "free periods" extend throughout the day (testimony of Mary Jean DiPietro, Exhibit 178, page 1).

5. Lacking adequate facilities, the school's activities spill out into the neighborhood throughout the day and into the evening. Green space belonging to other institutions that would otherwise serve as a buffer between those institutions and the residential neighborhood is taken over by the activities of the Burke School (testimony of Ms.

Perry, Transcript, October 14, page 331). For example:

a. Burke students use a field at Howard Law School for baseball and soccer practice and other athletic activities. That field is directly across the street from homes in an R-1-A zone. Moreover, use of that field for athletic activities runs counter to Howard Law School's campus plan (testimony of Ms. Perry, Transcript, pages 331-332 and 338).

b. Burke students use the sidewalks of Connecticut Avenue, Upton, Tilden, and 29th streets and the alleys that connect them as jogging tracks. It's not unusual for people walking in the neighborhood to run into the Burke School's track team, particularly between the hours of 3 and 5:30 in the afternoon. The track team also uses the park created by Intelsat that was intended to serve as a buffer between it and the neighborhood (testimony of Ms. Richardson, Transcript, October 28, page 288; also of Ms. Perry, Transcript, October 14, pages 330- 331).

c. The Burke School has also used a vacant property across the street from its current site for volleyball and cheerleading practice. That property, which at one time had a house that belonged to the Iranian Embassy, is under the custody of the State Department. The fact that the property is immediately adjacent to a private home did not deter the school from using it; nor did the school think it necessary to obtain permission to use it. What stopped the practice was complaints from neighbors to the State Department, which, in turn, cautioned the school against use of the property (exchange between Board Member Etherly and Mr. Dennis, Transcript, October 14, pages 351-352; see also letter from Lynne E. Miller, Office of Foreign Missions, U.S. Department of State, to Robert Vricella, February 26, 2001).

d. At lunch time, the alleys are filled with students going to and from restaurants on Connecticut Avenue. The alley between Upton and Van Ness streets, in particular, is heavily congested with student pedestrian traffic (testimony of Mr. Dennis, Transcript, October 14, page 341).

6. The new building does not solve the problem of the school's encroachment into the neighborhood because it, too, lacks adequate indoor eating facilities and outdoor recreational facilities.

7. The school could have added facilities in its proposed new building that lessened its spillover into the neighborhood. It chose not to. Instead, it has added a black box theater, which is likely to increase congestion in the neighborhood (testimony of Ms. Richardson, Transcript page 288).

8. The applicant's and OP's statements to the contrary, the proposed new building does

not reorient the school toward Connecticut Avenue and away from the residential area to the east. The new building–with its main entrance on the corner of Connecticut Avenue and Upton Street–will have little effect on the current orientation of the school and no ameliorating effect on the school's use of the neighborhood to compensate for its lack of adequate facilities (testimony of Ms. Richardson, Exhibit 173, page 2; of Mr. Shinberg, Exhibit 139, page 8).

9. **The noise and congestion generated by the school outside its existing boundaries adversely affects the quality of residential life within the neighborhood. More students will lead to more spillover into the neighborhood, not less; more noise, not less. In short, the location of the new school will be objectionable to adjoining and nearby property because of noise and number of students–not to mention traffic** (testimony of Ms. Richardson, Exhibit 173, page 3).

10. The zoning regulations impose a higher standard on private schools than on public schools; hence, the need for a special exception to construct a private school in a residential neighborhood.

11. The standards for construction of a public school in the District of Columbia mandate provision of a cafeteria and outdoor recreational facilities. An expanded Burke School will not meet the standards that current regulations impose on public schools; hence, its adverse impacts on a neighborhood that is overrun with institutions (testimony of Ms. Richardson, Exhibit 173, pages 3; of Ms. McDiarmid, Exhibit 176, page 1).

12. **The Burke School imposes itself on the surrounding neighborhood in ways that public schools do not–and could not–and therefore its expansion would not be in harmony with the general purpose and intent of the zoning regulations and maps.**

Relationship of the Application to the Comprehensive Plan

1. The proposed new building is inconsistent with the land use map of the Comprehensive Plan. The Office of Planning (OP) makes extensive references to the Comprehensive Plan in its report. OP's conclusion that the proposed building is compatible with the Comprehensive Plan is inconsistent with the citations from the Plan that OP references in its report.

2. Section 1409.1 (f) of the Comprehensive Plan (10 DCMR 1409.1 (f)), which OP cites in its report, specifically states that "there are a large number of institutional uses in Ward 3" and that many of those facilities have structures that are in exception to the neighborhood's land use or do not conform to the underlying zoning. The Ward 3

Plan further states that "the compatibility of those uses must be maintained, expansion carefully controlled, changes to neighborhood-related uses encouraged, and conversion to other non-conforming uses prevented."

3. The approval of a special exception for expansion of the Burke School would be incompatible with the objectives of the Ward 3 Plan in that it would discourage changes to neighborhood-related uses.

4. The Comprehensive Plan states in 1409.4 (d) that "conversion of existing housing stock (such as moderate-rent multi-family buildings in or near commercial areas) should be aggressively discouraged." The Burke School tore down two townhouses, as part of its expansion in 1983. In its current move to expand, it tore down a six-unit apartment building and several houses.

5. The Comprehensive Plan further states that "a distinctive feature of Ward 3 is the clustering of retail nodes at regular intervals along major arteries...separated by long segments of residential development." That pattern is characteristic of development along Connecticut Avenue generally and of the blocks on the east side of the avenue, running north and south of the subject site from Porter to Van Ness streets. The west side of the avenue is also developed with apartment buildings as far north as Tilden Street. The Intelsat campus runs from Tilden to Van Ness Street, and a park that buffers the Intelsat buildings from the neighborhood extends from Tilden to Upton Street.

6. A school at the intersection of Connecticut Avenue and Upton Street will change the character of the corridor in a way that is inconsistent with the objectives outlined in the Comprehensive Plan. It would be the sole nonresidential building between Porter and Van Ness Street.

7. The Comprehensive Plan states that, in support of the streetscape policies, development should "reduce conflicts between pedestrians and vehicular traffic in order to increase pedestrian safety and comfort" (709.2) The design of the proposed building would increase conflicts for residents and students, specifically at the proposed driveway entrance on Connecticut Avenue, at the Upton Street discharge points and exits, and at the more remote drop-off locations in the blocks around the school.

8. In 102.2, the Comprehensive Plan states that "many city neighborhoods are historic or possess social, economic, and physical qualities that make them unique and desirable places in which to live. These qualities can also lead to development and redevelopment pressures that threaten the very qualities that make the neighborhoods desirable. These pressures and potential adverse impacts must be controlled to ensure that the character of our neighborhoods is preserved and enhanced." The

neighborhood has been and remains subject to those pressures because of its proximity to Connecticut Avenue and the Metro. OP errs by not mentioning the cumulative impact of those pressures on the neighborhood, as it relates to the objectives of the Comprehensive Plan.

Traffic Issues

1. Traffic is a significant problem that has not been adequately addressed by the Applicant. Despite the proximity of the school to the Van Ness Metro station, most of the students are still dropped off or picked up by automobile. In 1983, fewer than 30 percent of the students were driven to school. By 2002, more than half of the students who reported their means of transportation to school were driven by parents (15 percent did not report). That trend seems to follow the change in the geographical composition of the student body. In 1983, 73 percent of the student body came from D.C.; 27 percent came from the suburbs. By 2002, the size of the student body had nearly doubled, and percentage of students from D.C. had declined to slightly more than 50 percent (152 students live in D.C.; 145 live in the suburbs) (testimony of Ms. McDiarmid, Exhibit 176, pages 1-3).

2. Although the Applicant has proposed a traffic management plan (TMP) for the morning arrival time, it has not proposed a plan for the daytime pickup or for evening events at the school. The Levine School, Howard University Law School, and the embassies all have evening activities. The black box theater may be a good marketing tool to attract more students, but it will bring moe traffic and parking problems to a neighborhood already beset with insufficient space to move cars through and a lack of sufficient parking for residents and their guests.

3. The level of service (LOS) in the neighborhood is unacceptable. The Connecticut Avenue/Van Ness and Connecticut Avenue/Tilden Street intersections at morning street peak hours and the Upton Street/Connecticut Avenue intersection during evening peak hours are currently experiencing levels of service of E or F and are expected to worsen by the time proposed construction is completed to F and F (see the OP report, Exhibit 2, page 10). In addition to peak traffic hours, Connecticut Avenue and Upton Street experience congestion throughout much of the day.

4. DDOT's statement that the current application would not *significantly* increase traffic circulation problems is based on a faulty premise. DDOT erroneously compares the trial Traffic Management Plan (TMP), based on the current student/faculty population, with the traffic projected under the proposed TMP, based on the expanded enrollment of 300. It finds no significant increase in traffic because the proposed population limit is not that much greater than the current population. The correct comparison, however, is between what the population should be under the BZA ruling (270 students, 35 faculty) and the proposed population under the

application, which ultimately would increase to 320 students and 70 faculty. Using the correct comparison, the traffic will increase significantly, regardless of how finely tuned the TMP may be.

5. Upton Street is a narrow, two-way street with much institutional traffic. Burke school traffic makes up to one-third of the traffic on Upton Street (see the Wells Report, p. 30). The proposed TMP will not reduce traffic on Upton Street because all traffic entering the school's private driveway from Connecticut Avenue will exit onto Upton Street. In addition, a potential traffic conflict point will be created where both Burke's proposed private alley and the public Van Ness/Tilden alley exit onto Upton Street.

6. DDOT's proposed no-left turn from Upton to Conn will further exacerbate the traffic on Upton Street, Tilden Street, 29th Street, and in the Upton/Tilden alley. Drivers exiting Burke's driveway who wish to travel south on Connecticut Avenue after dropping off children in the morning will be forced to turn left onto Upton Street in order to gain access to Tilden Street by turning right either into the Upton/Tilden alley or onto 29th Street, and then right again into Tilden Street. In either case, cars will back up in the Tilden-Upton alley and on 29th Street, as they wait to turn right onto Tilden, and will add to congestion at the Connecticut Avenue/Tilden Street intersection.

7. The proposed TMP will have a detrimental effect on northbound Connecticut Avenue traffic during the morning drop-off period. There are only two northbound lanes on Connecticut Avenue between 7 and 9:30 a.m. The left northbound lane is frequently blocked by cars turning left onto Van Ness Street. Only the right northbound lane is freely available to accommodate northbound traffic. Mr. Mehra testified that this single lane cannot accommodate both normal northbound traffic and cars turning into the Burke driveway or bypassing it to return to the alley to exit from Upton Street, as proposed in the Burke Traffic Management Plan.

8. The circuitous route proposed in the TMP that must be used to approach the school by cars initially traveling south on Connecticut Avenue, which involves five turning movements and passing through several traffic lights, is unrealistic. The easier route is to turn left from southbound Connecticut Avenue onto Veazey Terrace (using a protected left turn green arrow), cut through the alley between Veazey Terrace and Van Ness Street and cut across to the Van Ness/ Upton Street alley, thereby increasing traffic in the alley system.

9. Mr. Mehra testified to several errors in the Wells and Associates report including an 11% underestimate of school vehicle trip generation, future traffic projections, significantly lower traffic volume counts than obtained by DDOT, and other errors (Exhibit 130, testimony of Joe Mehra of MVC Associates).

10. Mr. Mehra testified that a compliant Burke school with 270 students and a 35 faculty without a TMP will generate less vehicle traffic than the proposed 320 students and 70 faculty with a TMP (Transcript, October 14, page 439).

11. Mr. Mehra testified that he observed numerous violations of Burke's TMP and several instances in which the safety of student pedestrians was compromised (Transcript, October 14, page 436)..

Proposed Enforcement Mechanism for Traffic Compliance

1. The applicant has proposed a plan of enforcement of its traffic management plan. Several parties, including NULS, testified that the plan is incomplete, flawed in its design, and fails to address many neighborhood concerns about traffic. It is incomplete because it addresses only morning drop-off issues, with no plan for afternoon pickup problems, which are different but just as severe. The design flaws start with the lack of a realistic monitoring mechanism: violations must be monitored at eleven sites (only two of which will be monitored by Burke's own traffic officers) by neighborhood volunteers on a daily basis starting at 7:30 AM and again between 3:30 PM and 5:30 PM throughout the school year. Neighbors polled on this prospect have already made clear their inability and unwillingness to serve as a Burke enforcement agency, and consider the proposal little but window dressing. Only hard core Burke supporters would be willing to serve (testimony of John Dougherty, Transcript, October 14, pages 443-445).

2. The enforcement process is deficient, no matter how it would be staffed. Each violation reported by a neighbor must then be submitted to a proposed committee the membership of which is skewed in favor of the school: the committee would be evenly divided between neighbors and Burke representatives, with recourse to professional mediation and arbitration services (in the latter case with the neighborhood paying one half the arbitration expenses) in the event of unresolved disputes (testimony of Mr. Dougherty, Transcript, October 14, pages 445-446). The "violations" in question will be only minor ones, such as unauthorized student drop offs in the mornings only. They will not include issues of traffic congestion or pedestrian safety. Afternoon congestion is not addressed. No mechanism for dealing with broader neighborhood complaints is contemplated. No guidelines are provided as to what must be done for a neighbor to "prove" even a minor violation, or that a Burke student was involved. At every level, the plan is unworkable. The burden on neighbors and neighborhood is well out of proportion to the nature of the violation. For these and other reasons the number of infractions actually reported will be only a small fraction of those occurring daily. City government assistance in the monitoring process, suggested at one point by DDOT is impractical even if sincere: it could at most be realized only on a sampling basis, which would not effectively serve any enforcement purpose.

3. The proposed of fines for traffic/drop off violations would not have a deterrent effect and in any event only address minor violations, not traffic congestion. Moreover, the imposition of any sanctions for such violations is at the discretion of the committee, which may choose to view even hundreds of an any school year as only "poor", rather than "unsatisfactory". Moreoever, enforcement sanctions have a maximum penalty value in any school year of $40,000, which is insignificant when compared with the rewards to the school ($1 million) from the additional enrollment of fifty students (testimony of Mr. Dougherty, Transcript, October 14, page 446).

Likelihood of Compliance

1. Normally, the BZA would not investigate the character of an applicant or judge the feasibility of a traffic management plan on evidence of character. Here, however, the plan depends almost entirely on the willingness of the Applicant to abide by its promises. Thus, the BZA and the neighborhood would ultimately be relying on the good will of the Applicant. The evidence is strongly against such a presumption.

2. The Applicant has been out of compliance with BZA's 1983 order since 1997 with regard to number of students (299 versus the approved 270). It is also out of compliance with BZA's 1983 order with regard to number of faculty/staff (65 versus the approved 35), and number of parking places.

3. Only after the rejection of its prior application by the BZA did the Applicant make a belated effort to move towards compliance in student population (now 290 – 20 students over its cap). It has, however, not only failed to bring itself into compliance with regard to faculty/staff but has since increased the number of faculty/staff on site from 59 (the number cited by Mr. Shapiro at the 2001 BZA hearing) to 65 today.

4. The Applicant has been cited and fined by DCRA for non-compliance with BZA's 1983 order. The DRCR found "...the respondent made a knowing and informed decision *not* to bring its student enrollment within the limits of the BZA's 1983 Order." And, "...the respondent in subsequent years made a *conscious and obviously calculated* decision to continue enrollment at over-capacity levels" (DCRA Case No. 02-CAD-4422E Order).

5. The Applicant's Board of Trustees has voted unanimously in favor of continuing the school's over-enrollment policy (testimony of Susan Collins before the BZA, October 28, 2003, citing Burke's testimony at the 2001 BZA hearing).

6. The Applicant's Board of Trustees is in violation of the principles of good practices of the National Association of Independent Schools, which requires that its members "..

assure that the school operates in compliance with applicable laws and regulations, minimizing exposure to legal action"(testimony of Ms. Collins before the BZA, October 28, 2003).

7. The Applicant has misled the BZA and the ANC about its community outreach effort through citation of its Burke Neighborhood Advisory Committee (BNAC). BNAC members were picked by the Applicant and included initially only Burke parents and others who had not previously expressed concerns about the school's proposed expansion. It excluded both its own ANC commissioner, Stephen Neal Dennis, and residents of the 6 houses adjacent to its property (testimony of John Dougherty, Transcript, October 14, pages 442-443; and ANC 3-F Report 03-01, Exhibit 58).

8. The Applicant continued to use WMATA's kiss and ride facility at the Van Ness metro station after its use permit has been revoked (testimony of ANC Commissioner Karen Perry, October 14, 2003). The school's TMP proposes to continue using that facility as a drop-off point.

9. The Applicant has previously testified that a total enrollment of 360 students is necessary for a pedagogically sound middle school (testimony of David Shapiro at the 2001 BZA hearing) although it is currently requesting an enrollment of only 320.

10. The Applicant has shown continuous non-responsiveness to neighborhood complaints about intrusiveness into the neighborhood, noise, student behavior, traffic, students littering the streets and alleys and other objectionable activities (testimony of many neighbors at the BZA hearing, October 28, 2003).

11. The Applicant is in violation of the noise limits set forth in the BZA's 1983 Order. The noise emanating from the existing Burke School is 72 decibels at the property line. The allowable limit is 55 decibels.

12. Finally, the difficult traffic situation has existed for many years, exacerbated by the school's unlawful increase in the number of pupils and staff. It was incumbent on the school to implement a traffic management plan in 1997, if not before, to mitigate the effects of overenrollment. It thought to create such a plan only after it was denied zoning relief in 2001, not before. That behavior is at odds with the image of a school sincerely seeking to live in harmony with its neighbors. Nevertheless, several people testified that the plan made matters better, if not as good as they might have been at the student and staff levels mandated in the 1983 BZA Order. In a test of the school's bona fides, Mr. Gell asked Mr. Shapiro, the headmaster of the school, if he would continue the traffic management plan if the application were denied. His answer was that he did not know. He would have to consider that at a later time. The implication was clear: "Accept our proposal or you neighbors get nothing." That is a short step from "Accept our plan, and in a few years you neighbors may still get nothing."

CONCLUSIONS OF LAW AND OPINION

The Board is authorized under the Zoning Act of June 20, 1938 (52 Stat. 797, as amended, D.C. Code 6-641.07 (g)(2) (2001)), to grant special exceptions as provided in the Zoning Regulations. The applicant applied under 11 DCMR 3104.1 for a special exception pursuant to 11 DCMR 206 to allow a portion of the subject premises to be for a private school. The notice requirements of 11 DCMR 3113 for the public hearing on the application have been met.

To meet its burden of proof under Subsection 3104.1, the applicant must demonstrate that the proposed construction and operation is in harmony with the general purpose and intent of the zoning Regulations and mas, that it will not adversely affect the use of the neighboring property in accordance with the zoning regulations and maps, and that it meets the special conditions listed in Subsection 206 for private schools.

The Board's discretion in reviewing a special exception application is limited to a determination of whether an applicant has complied with the requirements of those subsections. If the applicant meets its burden, the Board ordinarily must grant the application (*First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment,* 432 A.2d 695, 698 (D.C. 1981).

Further, the Board is required under D.C. Code 10309.10(d) (2001) to give "great weight" to the affected ANC recommendation. The Board must "articulate why the particular ANC itself, given its vantage point, does–or does not–offer persuasive advice under the circumstances" (*Kopff v. District of Columbia Alcoholic Beverage ControlBd.,* 381 A.2d 1372, 1384 (D.C. 1981). The Board has carefully considered the ANC's report and, as discussed below, finds the ANC 3-F's recommendation persuasive.

The Pedestrian Bridge

The Board concludes as a matter of law that the plans submitted by the Applicant cannot be built without a variance for the pedestrian bridge across the alley between the Applicant's two lots.

1. The side of the subject lot adjacent to the ally from Upton Street north is a rear yard.

2. The lot on which the new building will sit is a corner lot under the definition of "corner lot" in 199.1, as follows: "a lot fronting on two or more streets at their junction, with the streets forming with each other an angle of forty-five degrees... up to and including one hundred and thirty-five degrees."

3. "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."

4. 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 Avenue as the front.

5. The Order in the Sunrise case (BZA Appeal No. 16716 A) upheld the decision by the Zoning Administrator to regard the line that was "running roughly parallel" to Connecticut Avenue 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," and the remainder is "roughly parallel."

6. To find that the slight bend in the alley has 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."

7. Accordingly, the placement of this bridge in the rear yard would need a variance, since the rear yard may not be occupied (see item 2, above).

8. 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, whereas others did. Secondly, the Sunrise building is itself is irregular, having some seven or eight sides. Finally, and most importantly, 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, page 13). Such a determination in the instant case would not render the building unbuildable, even for the use to which the Applicant seeks to put it.

9. In the hearing on Sunrise in August 2001, Toye Bello, who spoke for the Office of the Zoning Administrator, stated that determining the rear yard is a judgment call (Transcript, August 3, 2001, page 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, August 3, 2001, page 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 of whether the decision is correct or not is to look at the result and see if the result makes sense...if the results are natural or ...[lead to] some bizarre conclusion" (Transcript, August 3, 2001, page 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 be well 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).

Objectionable Conditions

The Board concludes under Subsection 206 that the proposed school expansion, in 14,305 square feet of the subject property, is likely to become objectionable to adjoining and nearby property because of noise, pedestrian and vehicular traffic, hours of operation, and other objectionable conditions.

ORDER

Based on the findings of fact, having given great weight to the ANC 3-F's recommendation, and having considered the Office of Planning and Department of Transportation reports, the Board concludes that the proposed project fails to meet the test for a special exception. Applicant has not met its burden of demonstrating that its proposed school expansion will not impact the surrounding neighborhood adversely in terms of noise, traffic, parking, and safety. Accordingly, it is hereby **ORDERED** that the application is **DENIED.**

CONDITIONS

If the Board decides to grant Burke the right to build the new building and increase the school population, we urge the Board to impose the following conditions.

1. Approval of plans for construction of the new building and bridge shall be conditioned on:

   a. Burke's coming into compliance with the enrollment cap of the 1983 BZA order before construction commences,.
   b. Construction of the 2-level parking garage described in the application,
   c. Construction of the bridge,
   d. Compliance with all zoning regulations, except as modified herein, including the loading requirements.

2. Approval of the application for construction shall not be granted until Applicant has obtained approval for construction of the bridge from the Zoning Administrator, the Zoning Commission, the Department of Transportation, and all other necessary agencies. In addition, Burke shall hire an engineering firm to submit a supplemental report to the BZA as to the extent to which recent proof of the high water table at the WMATA facility adjacent to its site will adversely impact the project. Depending on that report, BZA may wish to reconsider its decision.

3. Burke shall establish one traffic management plan that is acceptable to a neighborhood association (see below) for use before and during construction and another for use after construction is completed. The latter will be used to assess the new drop-off and parking conditions, and shall last indefinitely.

4. After completion of the new structure, student enrollment shall be permitted to increase to 300 for three (3) years. If the fully-implemented traffic management plan succeeds in reducing traffic and parking impact on the neighborhood during this three-year test period, student enrollment may be increased to 320. The standard for satisfactory performance of the traffic management plan is fewer than 10 weeks in a year of greater than 10 violations/week.

5. A non-profit neighborhood association is to be established, the members of which will be NULS , all resident parties in opposition, and Thomas P. Brown Management Co. Its purpose is to foster improved neighborhood relations with Burke School and other local institutions. It will collect any fines that may be assessed for non-compliance. The form of the organization shall be whatever is acceptable to the majority of the homeowners and long time residents of the 2900 block of Upton Street..

6. Student enrollment and faculty/staff level shall be reported to the neighborhood association, the Office of the Zoning Administrator and the Advisory Neighborhood Commission annually. If student enrollment or faculty/staff levels exceed the permitted caps for any two (2) consecutive years, or if the traffic management plan fails to reduce traffic and parking problems to the level of violations specified above, then the 1983 student level of 270 shall govern for a 5 year period. If the Applicant does not achieve this reduction in student enrollment, its Certificate of Occupancy shall be revoked.

~~7. For each student above the enrollment cap in any future year, Burke shall pay treble damages or three times ths amount of the tuition fee in the prevailing year~~.

8. Final approval shall be conditioned on Burke's demonstrating that it has executed a contract for compliance with the Neighborhood Association that contains the following elements:

a. a provision permitting court enforcement of the contract;
b. a provision that provides attorney's fees to any prevailing party in any dispute brought to the court.

9. Burke shall establish an escrow fund of $100,000 for payment of any fines and penalties for noncompliance. The sum of $50,000 shall be released from the account at the end of three years, provided that there have been no successful claims against the account in the three-year period.

10. Applicant will at the outset be fined the maximum assessable fine, $40,000/year, for each of the five years they have been out of compliance, a total of $200,000. The fine will be used to initially finance the TMP monitors and off-duty police officers. Burke will maintain an escrow fund of $60,000 for payment of monitors, funds to be used if Burke suspends payments out of its operating funds. Burke shall immediately replenish the escrow and will agree to enforcement in court by any neighbor.

11. The monitors will submit written reports to the neighborhood association, the Office of the Zoning Administrator, and the Advisory Neighborhood Commission weekly. Failure to abide by this requirement shall result in a reduction of the permitted enrollment to 1983 levels. If the Applicant does not achieve such reduction in student enrollment, its Certificate of Occupancy shall be revoked.

12. Fines assessed in conjunction with the traffic management plan shall be used to pay monitors. If excess funds exist they will be turned over to the neighborhood association, which shall decide how monies collected shall be used for the neighborhood's benefit.

13. Use of the existing building and the proposed site, including, but not limited to, the black box theater, gymnasium, parking garage, outdoor terrace, or other parts of the school, shall be limited solely to the Edmund Burke School and to interscholastic activities. Burke shall not rent, sublease, make available free of charge, or otherwise make available any space or facilities at the subject properties to any other persons or organizations for any purpose, other than voting for governmental elections and meetings of a neighborhood organization.

14. Bollards separating the Burke driveway/alley shall be made permanent.

15. Use of the alleys shall be forbidden to all students and for bus parking.

16. If a 55-decibel noise level is exceeded, a fine of $1000 per day shall be paid to the Neighborhood Association's fund.

17. The air handling system shall not be operated on weekends, nights, or evenings when the school is not in use.

18. The rooftop play area shall be enclosed on all four sides and have a roof. It shall be used only for passive recreation only. No rooftop activity is permitted after 5PM or on weekends.

19. NULS supports the Thomas P. Brown Management Company's request for a buffer zone to be provided between the new Burke structure and the Brown's building at 4107 Connecticut Avenue.

Operating Conditions

1. A report certifying compliance with the operating conditions below shall be delivered to the Office of the Zoning Administrator and ANC 3-F, with a copy available for inspection by neighbors. The report shall be made by the Board of Trustees on behalf of the school and shall be issued every August 1st and April 1st. Each report shalol include, in addition to the specific conditions below, the school's projected student enrollment and faculty/staff size for the next six-month period.

2. Use of the existing building and the proposed site shall be limited solely to the Edmund Burke School. Burke shall not rent, sublease, make available free of charge, or otherwise make available any space or facilities at the subject properties to any other persons or organizations for any purpose, other than voting for governmental elections.

3. The school's hours of operation shall be between 8:15 a.m. and 5:30 p.m., Monday through Friday.

4. Burke shall stagger hours of operation between the middle and upper school by at least 15 minutes, and preferable 30 minutes.

5. Burke shall host no more than three evening events at the subject properties per month. The term "event" is defined as all after-school activities including, but not limited to, sports events, theater performances, "back to school nights" and any other activity that includes six or more students. Evening events must be completed by 9 p.m., with the exception of proms. In no case, shall Burke hold two events simultaneously in the auditorium and the theater. The school shall pay a fine of $25,000 for each noncomplying event. The monies collected shall be turned over to the neighborhood association, which shall determine how the funds can be used for the public benefit.

6. Burke shall prohibit students, faculty, and staff from parking on Upton Street, Van Ness Street, 29th Street, Tilden Street, and Linnean Avenue, regardless of zoned parking stickers. All students', faculty, and parents' cars shall have Burke School decals so that they may be readily identified.

7. Burke shall develop and implement a circulation and parking policy for buses owned or chartered by the school, and for buses from visiting schools, which would prohibit them from parking on Upton Street, Van Ness Street, and the public alleys–or on Connecticut Avenue during rush hours.

8. Buses of any kind shall be prohibited from parking, embarking, or unloading students from behind the school in the public alley because this would eliminate four required parking spaces from the Burke plan. In addition, buses shall be prohibited from using the alley so as not to impede the transit of the residents of the six houses on the north side of Upton Street, east of the school. A fine of $250, payable to the neighborhood association, shall be levied for each infraction.

9. Burke shall be responsible for snow removal and salting of the public alley and the public streets abutting the subject properties–and any other public ways used by the school as part of its traffic management plan.

10. Burke shall pick up litter daily around the perimeter of the subject properties.

11. Load and delivery and refuse collection shall be restricted to the weekday hours of 9 a.m. to 2:30 p.m. and must not conflict with the morning arrival and afternoon pick-up of students.

The applicant may not operate any trash compactors on site between the hours of 6:30 p.m. and 8:30 a.m. or on weekends or holidays. All trash receptacles must be kept within the new building. Burke shall ensure that no delivery trucks or garbage trucks block the public alley and shall ensure that such trucks do not park on Upton Street or, during rush hours, on Connecticut.

12. Burke shall develop and implement a landscaping plan to minimize the school's impact on the residential neighborhood.

13. The HVAC system and all mechanical equipment at both the existing school site and the new site shall not exceed 60 decibels during the day and 55 decibels at night, as measured from the nearest property line. The school shall make available to the neighbors a certified report of those sound levels, prepared by qualified experts. The report shall be repeated every April 1st and the results made available by April 15th. The HVAC system shall not be used if these sound levels are exceeded.

14. Burke shall cease using the outdoor athletic fields at Howard University School of Law School as such use violates the Howard University Law School's campus plan approved by the BZA. Burke shall also refrain from using the property on Upton Street under the custody of the U.S. Department of State.

Construction Conditions

The following construction conditions shall be required:

- No construction trucks and/or construction machinery performing work on the existing Burke site or proposed site will be allowed to stand and/or park on Van Ness Street or Upton Street, N.W., or in the neighboring public alleys.

- All construction contracts will require that construction workers park at an off-site, commercial facility, and the contractor will provide shuttle service to the off-site facility.

- Burke will ensure that Upton Street, Van Ness Street, and the alleys are kept free from all construction debris and litter. All construction related debris would be contained in covered containers and/or dumpsters.

For violations of any items within the three provisions above, for the first violation, the school shall pay a fine of $5,000.00. The second shall be for $10,000.00, with each subsequent fine doubling the previous amount up to $20,000. The monies collected shall be deposited in the fund, to be used as above. In addition:

- Burke will be responsible for creating a 24-hour hotline number with a live on-call operator to respond to the caller's complaints. Burke will appoint a ranking staff member to mitigate and resolve neighborhood concerns about traffic and parking problems The name of the Burke and contractor liaison, along with a telephone and pager number, will be provided to the parties to the BZA case and the ANC prior to commencement of construction. Membership on the committee will be afforded to the parties of the BZA case and the ANC.

- All staging and construction storage will be contained within the construction zone. All staging for work will be from the temporary driveway and Connecticut Avenue. During morning and evening rush hours, Burke will keep Connecticut Avenue open and will not park construction vehicles on Connecticut or in the