Res 03-17

ANC 3F RESOLUTION ADOPTING REPORT RECOMMENDING DENIAL BY THE BOARD OF ZONING ADJUSTMENT OF A PENDING APPLICATION BY THE EDMUND BURKE SCHOOL FOR A SPECIAL EXCEPTION

Advisory Neighborhood Commission 3F
North Cleveland Park, Forest Hills, & Tenleytown
4401-A Connecticut Avenue, N.W., Box 244
Washington, D.C. 20008-2322

WHEREAS, the Edmund Burke School has filed an Application for a Special Exception with the Board of Zoning Adjustment (BZA) on April 15, 2003 (Application 17022); and

WHEREAS, for reasons detailed in the attached "ANC 3-F Report on Application of Edmund Burke School for BZA Approval of Special Exception (BZA Application No. 17022)" ANC 3-F has determined that the Application of Edmund Burke School for BZA Approval of a Special Exception should be denied by the Board of Zoning Adjustment because the application does not meet the requirements of Section 206.2 of the District of Columbia Municipal Regulations; and

WHEREAS ANC 3-F concludes that the Zoning Self-Certification Form submitted by Edmund Burke School as part of its BZA application does not state all forms of zoning relief that would be required;

THEREFORE BE IT RESOLVED THAT ANC 3F adopts the attached "ANC 3-F Report on Application of Edmund Burke School for BZA Approval of Special Exception (BZA Application No. 17022)" and incorporates that document into this resolution, and further that ANC 3-F recommends to the Board of Zoning Adjustment that the Board of Zoning Adjustment should find that the Application for a Special Exception filed by Edmund Burke School violates Section 206.2 of the District of Columbia Municipal Regulations; and

BE IT FURTHER RESOLVED THAT ANC 3-F authorizes Stephen Neal Dennis (ANC 3-F 07 Commissioner), and/or Carl Kessler (ANC 3-F 01 Commissioner), and/or Karen Perry (ANC 3-F 02 Commissioner), and/or Robert Maudlin (ANC 3-F 03 Commissioner) to represent ANC 3-F at the Board of Zoning Adjustment on the Burke School application.

Approved by a vote of 5 (favorable) - 0 (unfavorable) - 1 (abstention) at a duly noticed meeting on July 1, 2003, with a quorum present and one commissioner being recused.

Karen Lee Perry

Karen L. Perry
Acting Chair

David J. Bardin
Secretary

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BZA
Case No. 17022
Exhibit No. 58

Board of Zoning Adjustment
District of Columbia
CASE NO. 17022
EXHIBIT NO. 58

ANC 3-F Report on Application of Edmund Burke School for BZA Approval of a Special Exception (BZA Application No. 17022)

July 1, 2003

Procedural Background:

ANC 3-F has reviewed carefully the Edmund Burke School's application to the Board of Zoning Adjustment (Application No. 17022, submitted April 15, 2003 but supplemented on June 9, 2003; June 18, 2003; and June 23, 2003) for special exception permission to: (1) construct on Lot 68 of Square 2243 a new building to supplement the present Edmund Burke School ("Burke School") facilities now located on Lot 67 of Square 2243; (2) raise the cap on Burke School's permitted student population from 270 up to an eventual 320 on both Lot 67 and Lot 68 of Square 2243; and (3) raise the cap on Burke School's permitted faculty and staff by doubling the number of faculty and staff from 35 up to 70 on both Lot 67 and Lot 68 of Square 2243. The proposed new caps on student population and permitted faculty and staff would be the total allowable at Burke School's two Upton Street properties, which are separated by a public alley and are not "adjacent" as the BZA application states erroneously at page 3.

ANC 3-F specifically notes that Burke School has not requested any variance relief from applicable provisions of the District of Columbia Zoning Regulations currently in effect.

ANC 3-F duly advertised a public meeting on this application to hear both (1) pertinent testimony from Burke School and its representatives and (2) public comments on this application and all related issues from affected and/or interested persons. ANC 3-F held this public meeting on June 16, 2003. A quorum of ANC 3-F members was present for this meeting; in fact, all seven ANC 3-F Commissioners were present for this meeting, though Commissioner Bardin recused himself from direct participation in the review of the Burke School BZA application when ANC 3-F reached the Burke School application on its agenda. Nearly three hours of the June 16, 2003 meeting were devoted to lengthy testimony on the Burke School's BZA application by Burke School representatives and by affected and/or interested members of the public, and pertinent questions from ANC 3-F's remaining six Commissioners who participated in this portion of the public meeting.

After the June 16, 2003 public meeting, ANC 3-F permitted persons who wished to submit additional information for ANC 3-F's consideration to submit such information in writing by a deadline of 5:00 p.m. on June 23, 2003, one week after the initial ANC 3-F public meeting. This deadline was announced at the June 16, 2003 meeting, and was observed by all parties other than Burke School. ANC 3-F notes here that many adherents of Burke School continued to send comments obviously encouraged by Burke School or adapted from suggested form messages circulated by Burke School to members of this ANC well after that deadline, in violation of the stated deadline and after the record had theoretically been closed. ANC 3-F also notes here that many of these after-the-deadline messages contained misleading information about a past ANC 3-F action with regard to a previous Burke School BZA application, and appear to have been designed to influence the prospective votes of the three ANC 3-F Commissioners who were first elected to this ANC in 2002.

Although ANC 3-F had requested that the Burke School submit a detailed plan for its parking garage with pertinent measurements, Burke School failed to supply this information to ANC 3-F by the applicable deadline on June 23, 2003. Instead, enlarged sheets depicting the two floors of the proposed parking garage were circulated to ANC 3-F's members after that deadline.

Finally, ANC 3-F met for a second advertised public meeting on July 1, 2003 to discuss the Burke School BZA application in detail and to vote on this Report and a related Resolution. At this second ANC 3-F meeting on the Burke School BZA application, seven Commissioners were again present, constituting a quorum of ANC 3-F's seven members. As before, Commissioner Bardin recused himself on the Burke School application issue.

After a discussion of background issues, ANC 3-F discussed the language of this Report and adopted it on a vote of five in favor (Commissioners Dennis, Kessler, Maudlin, Perry, and Wiss), one opposed (Commissioner Bernardi), and one recusal (Commissioner Bardin). At the same meeting ANC 3-F adopted an accompanying Resolution on a vote of five in favor (Commissioners Dennis, Kessler, Maudlin, Perry, and Wiss), one abstention (Commissioner Bernardi), and one recusal (Commissioner Bardin).

At the same meeting, ANC 3-F authorized Stephen Neal Dennis (ANC 3-F 07 Commissioner), and/or Carl Kessler (ANC 3-F 01 Commissioner), and/or Karen Perry (ANC 3-F 02 Commissioner), and/or Robert Maudlin (ANC 3-F 03 Commissioner) to represent ANC 3-F at the Board of Zoning Adjustment on the Burke School application.

The Burke School Neighborhood:

ANC 3-F notes at the outset of this Report that all property owned by the Burke School is zoned either R-2 or R-5-D. No property owned by Burke School is outside a residential area in Ward Three, and Burke School's property is entirely within the boundaries of ANC 3-F.

ANC 3-F has received several petitions signed by residents in the neighborhood likely to be affected by any expansion of Burke School beyond its present permitted caps on student, faculty, and staff size or by expansion of the Burke School campus across a public alley and construction of the proposed new facility. ANC 3-F has considered carefully the informed testimony of long-time residents of the neighborhood within a three-block area of the present Burke School, as these residents have already experienced the effects of Burke School's unilateral and illegal decision to exceed the caps on student, faculty, and staff size imposed by the BZA in 1983 and will bear any additional burdens triggered by Burke School's proposed expansion.

This potentially-affected area extends from Veazey Terrace southward to Sedgwick Street, and runs from Connecticut Avenue eastward to Linnean Street in the area north of Tilden Street, but would include the Tilden Gardens complex south of Tilden Street. Van Ness Street and Tilden Street are major east-west routes within this neighborhood, and Connecticut Avenue is a busy

transportation corridor. Within this neighborhood, only the single strip of properties along Connecticut Avenue from Van Ness Street north to Veazey Terrace is not zoned residential. ANC 3-F estimates that 100 residences and 2,400 apartments exist within this neighborhood.

ANC 3-F Recommends BZA Denial of the Burke School Application:

For the following reasons, ANC 3-F believes the Board of Zoning Adjustment must disapprove this application and therefore formally and strongly recommends that the Board of Zoning Adjustment disapprove Application No. 17022 for special exception relief filed by the Edmund Burke School.

The Burke School Lobbying Campaign and Burke Neighborhood Advisory Committee:

We start our analysis by acknowledging an extensive lobbying campaign carried out by Burke School supporters. This deliberate and targeted lobbying campaign has been directed to ANC 3-F's member Commissioners, to the Office of Planning, and even to various members of the D. C. City Council. The letters in support of Burke School's application have tended to be form letters, obviously taken from several suggested templates distributed by Burke School itself. These letters consistently misstate the relationship between Burke School and its troubled neighbors, and overstate the role Burke School has chosen to permit the Burke School-selected members of the so-called Burke Neighborhood Advisory Committee (sometimes referred to as "BNAC") to play.

In truth, the Burke Neighborhood Advisory Committee has been merely another public relations gesture from Burke School, and because of its flawed composition has produced little that has been able to generate a broader neighborhood consensus. Burke School selected for membership on the Burke Neighborhood Advisory Committee supporters of Burke School and/or others unfamiliar with the prior BZA application and issues raised during that hearing or previously before this ANC. Initially, other interested neighbors who were deeply concerned about Burke School's rumored expansion plans were refused membership on BNAC. The ANC 3-F Commissioner for the neighborhood containing the Burke School property was also not invited to participate in early meetings of the Burke Neighborhood Advisory Committee. It became quite clear that Burke School did not wish to hear fresh questions or dissenting voices.

The Burke Neighborhood Advisory Committee began to collapse when Burke School chose to file its BZA application in April 2003 without notifying even Burke Neighborhood Advisory Committee members themselves that it was proceeding to file a BZA application before the completion of the draft traffic management plan whose concept was supposedly still under discussion, and well before the development of a proposed compliance plan and the ratification of these documents by even the Burke Neighborhood Advisory Committee, much less any submission of these key documents to neighbors for discussion and reaction.

ANC 3-F believes the failure of Burke School to listen to pertinent neighborhood comments has helped Burke School to ignore inherent problems with both the proposed traffic management plan and the proposed new school facility. Lacking valid neighborhood input, Burke School has then proceeded to misinform Burke parents and other supporters about the true nature of discussions with limited numbers of pre-selected residents of the neighborhood near Burke School. Burke School has also consistently ignored possible violations of applicable D.C. Zoning Regulations and, as we note below, has therefore submitted an application that fails to seek all necessary relief.

We note that more than one original member of the Burke Neighborhood Advisory Committee has now become an outspoken opponent of Burke School's BZA application precisely because of Burke School's decision to move forward with its BZA application prior to the successful conclusion of even the Burke-sponsored Burke Neighborhood Advisory Committee discussions.

Burke School Has Filed An Incomplete Application:

ANC 3-F agrees that Burke School has acted in a precipitate and irresponsible manner and has filed its BZA application prematurely. For reasons outlined within, we believe Burke School must re-post its property to identify correctly the several forms of relief it would need to seek from the Board of Zoning Adjustment in order to construct the proposed building, and must refile a new application with the Board of Zoning Adjustment if it intends to proceed with a valid BZA application.

Burke School and Its Students Ignore Private Property Rights of Others:

Were it content to remain a useful private school of 270 students and 35 faculty and staff in a residential neighborhood, as permitted by the 1983 BZA Order (No. 13986, October 4, 1983), Burke School would not be blatantly illegal in its institutional conduct and would not have needed to mount an elaborate public relations campaign designed to obscure the fact that already it has exacerbated traffic and parking conditions in its surrounding residential neighborhood in an unacceptable manner and now seeks to make daily life in this surrounding neighborhood even more difficult.

On most important institutional initiatives, Burke School simply ignores the surrounding neighborhood, which it redefines from time to time to suit its own convenience. Many residents within a three-block radius of Burke School have complained that Burke School students loiter and lurk in portions of this extended neighborhood, particularly in areas between Burke School and nearby food sources, as Burke School students are encouraged to leave the campus daily for a so-called "free" period, that Burke School students trespass on private property, that Burke School students add graffiti to nearby private property, and that Burke School students smoke behind nearby privately-owned garages. Burke School's response to this problem is to pretend that its surrounding neighborhood is smaller than the areas where some of these off-campus activities occur, and to ignore the possible impact of wandering Burke School students outside the Burke School-acknowledged neighborhood area.

In the T-shaped public alley that runs alongside and behind Burke School is a retaining wall across the alley from Burke School property that has been elaborately painted, apparently by Burke School students and apparently recently as there is a reference among the graffiti to the Class of 2003. This retaining wall is on private property along the side of and behind the property of the Consulate apartment building, and the graffiti are clearly visible to anyone walking or driving through the alley. The existence of this Burke School-generated graffiti on private property near Burke School is merely one indication of an overall indifference to Burke School's neighbors.

ANC 3-F has in its files a copy of a letter sent by the State Department's Office of Foreign Missions in February 2001 to note that although Burke School students had used without permission property of the Iranian government which is currently administered by the State Department, the State Department wished to discourage continued trespass on this property because of possible liability issues. This property is located directly across Upton Street from Burke School, and use of the property by Burke School students can hardly have been unknown to Burke faculty and staff. ANC 3-F believes this is also an example of an attitude at Burke School that the surrounding residential neighborhood exists for the convenience of Burke School and its students, faculty, staff and parents.

Currently Burke School Activities Spill Over Into the Surrounding Neighborhood:

The lack of suitable areas for athletic activity and practice on the Burke School campus, aside from the basketball court in the gymnasium area, has meant in the past that Burke School students use neighborhood streets and sidewalks for jogging, use a District of Columbia playground area five blocks north of the Burke School campus for other athletic purposes in the afternoon, and use a portion of the Howard University School of Law campus for additional athletic activities. Nothing in the current Burke School BZA application would cure this continuing problem, as only one rooftop play area too small in size to be suitable for exercise by athletic teams would be added to the school's facilities.

Although Burke School has developed "rules" for students to follow when they leave the Burke School campus at lunchtime, and these rules spell out which restaurants Burke School students may patronize and how far from the campus Burke School students may walk to obtain food and when they must travel through the surrounding neighborhood as "buddies" if they are patronizing the most distant allowable restaurants or fast-food locations, Burke School has thus far refused to develop similar rules to deal with the free-period wandering of its students, which remains aggressive and intrusive.

When neighbors along Upton Street have repeatedly raised the traffic and parking issues that Burke School generates daily during its school term, Burke School's response is to pretend that only the 2900 block of Upton Street is affected, and to seek window-dressing solutions for this block alone. Off-campus noise generated by Burke School students using the Howard University School of Law campus for athletic activities in the afternoon is beyond the 2900 block of Upton Street and thus disproves the artificial concept that Burke School's "neighborhood" stops at the eastern end of the 2900 block of Upton Street.

Existing Street Patterns Near Burke School Make Burke School's Expansion Plans Problematic:

As many have stated, Burke School now occupies a severely confined location entirely surrounded by a residential neighborhood. Burke School presently fronts on Upton Street, which lacks a traffic light at the intersection with Connecticut Avenue. Burke School exists within a neighborhood one block south of the southern edge of the extensive Van Ness apartments complex containing 1,524 apartments within three large buildings, an area of immense high-rise apartment structures with below-ground parking and dead-end streets that lead to building entrances and parking garages but do not connect with other neighborhood streets in a normal grid pattern. ANC 3-F specifically notes that Burke School appears to have one of the densest students populations on one of the smallest campuses in the District of Columbia.

It is the lack of a normal street grid pattern in much of the area around Burke School that first defines the difficulties Burke School creates for its surrounding neighborhood. There are few places where institutionally-generated parking can go in this neighborhood, and for Burke School that additional parking generated by students, faculty, staff and parents or by other visitors to school events must inevitably go onto nearby Upton Street, 29th Street, or Tilden Street. There are simply no other convenient nearby locations where early morning on-street parking during rush-hour will be permitted, and parking after dark in more distant locations raises immediate personal safety and security issues.

Within a four-block radius of Burke School more than 3,000 District of Columbia residents live in twelve high-rise apartment buildings. Many of these residents are two-car couples who park one car in a parking space connected to their apartment building and park a second car on a nearby street. Any action by Burke School or other nearby institutions that adds daytime or nighttime parking to this neighborhood makes residential life in this neighborhood more difficult, especially when homeowners must schedule deliveries and repairmen need to park nearby to service Internet, telephone, plumbing or electrical needs. Emergency vehicles are obviously a further challenge to the limited parking available in this very dense residential neighborhood. One apartment building immediately adjacent to Burke School's proposed expansion site must use a public alley frequently during the winter for necessary fuel deliveries for the building's heating system.

Burke School's consistent response to the obvious parking and traffic problems certain to be generated by its proposed new facility has been to focus on Connecticut Avenue as if a location near Connecticut Avenue is an excuse for conduct otherwise intolerable. In fact, the residential zoning along Connecticut Avenue is much higher than along side streets that emerge from Connecticut Avenue and flow eastward toward Rock Creek Park. Eight of the apartment buildings mentioned above front directly on Connecticut Avenue, three of them within one block of Burke School's property at the corner of Connecticut Avenue and Upton Street. Nothing in Burke School's present BZA application acknowledges either the existence of these apartment buildings or the special problems residents in these buildings encounter because of the lack of parking on streets to the north of these buildings, especially streets to the north of Upton Street.

Parking Near Burke School is Already Severely Restricted:

ANC 3-F starts its analysis by acknowledging the severe limitation on nearby commercial garage spaces created by Fannie Mae's decision to purchase a large building near the Van Ness Metro stop and Fannie Mae's promise to its employees to provide free parking to them. Fannie Mae effectively soaked up most of the nearby commercial parking spaces, forcing at least one long-time business to relocate because a commercial garage on which it was dependent became a satellite parking area for Fannie Mae.

For this reason, there is very little commercial parking available north of the Burke School site, and this fact also forces Burke School faculty, staff, students, and visiting parents to use on-street parking along Upton Street or to the south on Tilden Street. Other than a very short 29th Street, there is no other place for this parking to go. At the present time, Burke School has only 24 on-site parking spaces, eight of which are "stacked" parking spaces, whereas current zoning regulations would require at least 49 spaces for a school of the size permitted by Burke School's 1983 BZA Order (24 spaces for 35 faculty and staff and 25 spaces for the 250 seats in the school's gymnasium area). In flagrant defiance of the 1983 BZA Order, Burke School has unilaterally determined that it should be larger, and has engineered a campaign that appears intended to destroy the surrounding residential neighborhood.

Burke School's Past Expansion Efforts:

Burke School has explored to date several possible methods of expansion within its surrounding residential neighborhood. Burke School noted that four small townhouses front on Connecticut Avenue south of Upton Street, and purchased at least one of these, apparently hoping that over time it might purchase all four, demolish them, and replace them with a high-rise structure on Connecticut Avenue. This plan failed when it became clear that one of the houses was not for sale at any price.

Burke School then turned its attentions to the three-lot complex immediately west of Burke School and fronting on both Upton Street and Connecticut Avenue. Recorded deeds show that Burke School purchased these three properties in 2001, one in March 2001 and two in July 2001. It is this assembled and subdivided parcel of R-5-D properties where Burke School now seeks to construct a proposed high-rise structure immediately adjacent to a five-story apartment building with 37 units and only four on-site parking spaces. Ignoring the situation of this building and its residents, as well as the situation of a 62-unit apartment building located one block away at the corner of Tilden Street and Connecticut Avenue which lacks even one legal on-site parking space, Burke School and its traffic consultants have suggested a variety of schemes to improve traffic flow through the neighborhood for Burke School's convenience, but often at the expense of desperately needed nearby on-street parking.

Because of the configuration of the short dead-end streets leading to the various buildings of the Van Ness apartments complex, residents of two of the small apartment buildings near Burke School are forced to seek on-street parking south of Van Ness Street, in the same neighborhood

where Burke School generates through its illegal population of faculty, staff and students the most intrusive competition for on-street parking spaces.

Although other private schools in the District of Columbia have found it useful to split their operations and establish satellite campuses, Burke School refuses to consider this option.

The Proposed Drop-Off and Pick-Up Lanes Will Focus Burke School Traffic at Locations Where Traffic Hazards Will Increase:

In addition to the unacceptable parking situation which Burke School has already created, Burke School now proposes a wrap-around network of drop-off lanes and garage entrance and exit lanes that would surround the proposed new building on two sides and separate the proposed new building visually and functionally from the adjacent residential neighborhood. All traffic would enter this network of lanes from northbound lanes of Connecticut Avenue, and Burke School proposes that no southbound traffic would be permitted to enter these lanes. How Burke School proposes to deal with a southbound car that has already turned left during the morning rush-hour period intending to enter a possible new Burke School parking garage remains an interesting speculation for those concerned with traffic safety on Connecticut Avenue.

If we assume for the sake of analysis that all traffic would enter the Burke School property from a northbound lane of Connecticut Avenue, we must remember that during the morning rush-hour traffic period northbound Connecticut Avenue has only two traffic lanes, as four lanes are restricted to southbound traffic. The left-turn signal at Van Ness Street is located one short block north of the Burke School property and the Upton Street intersection with Connecticut Avenue, and cars routinely queue up to use that signal, effectively blocking the left northbound lane during the morning rush hour period when the left-turn signal has halted. Any difficulty cars experience in entering the proposed Burke School lanes from the right northbound lane would therefore immediately create gridlock on Connecticut Avenue, a primary north-south street that District of Columbia residents must rely on as an essential transportation corridor. Any Connecticut Avenue traffic problem created by Burke School thus has citywide implications rather than the painful neighborhood consequences created by additional parking that would certainly be generated by Burke School were it to grow beyond its present BZA-permitted cap of 270 students and 35 faculty and staff.

Burke School's self-serving solution to this problem is to suggest that drivers should avoid a queue that might block Connecticut Avenue but instead proceed north to Van Ness Street, turn right on Van Ness Street, and then enter a public alley to head south to Upton Street in order to exit onto Connecticut Avenue and rejoin the queue line. This circular route would simply spread unacceptable traffic congestion throughout the immediate neighborhood of Burke School in order to serve the convenience of Burke School and would exacerbate the impact of Burke School morning drop-off traffic on the affected neighborhood.

It is quite predictable that southbound cars on Connecticut Avenue that need to drop off Burke School students will have no choice but to turn left onto Veazey Terrace and then utilize the

Veazey Terrace-to-Van Ness Street public alley and secondly the Van Ness Street-to-Upton Street public alley in order to turn north from Upton Street to join the queue on Connecticut Avenue. Such a driving pattern is quite unrealistic and would certainly increase congestion in public alleys needed for other purposes by nearby residents attempting to leave their homes and apartments to travel to downtown office locations.

Burke School has designed the proposed new building so that all traffic from the wrap-around drop-off and pick-up lanes must exit onto Upton Street, where drivers may choose between a route turning to the left that wanders through a residential neighborhood in order to return to Connecticut Avenue or Tilden Street or a route turning to the right that seeks to reach Connecticut Avenue during either the morning rush-hour period or the afternoon rush-hour period. Without a light, this intersection at Upton Street is dangerous throughout the day, especially in light of the additional traffic generated by staff of the Royal Netherlands Embassy which use Upton Street to reach the Embassy's isolated location behind the Van Ness apartments complex, or traffic generated by nearby Howard University School of Law, Levine School of Music or Hillwood Museum.

The greatest problem with Burke School's proposed traffic routes is this intersection of Connecticut Avenue and Upton Street. Burke School proposes to forbid left-hand turns to the south by cars moving westward on Upton Street, but we fail to see how morning traffic monitors will be able to distinguish between Burke School-generated vehicles that may not make such a left-hand turn onto Connecticut Avenue and non-Burke School-generated vehicles that may still make such a left-hand turn legally.

Were Burke School to succeed in asking the Department of Transportation to institute a permanent ban on left-hand turns at this location, Burke School would have impacted in another way the daily life of long-time residents on Upton Street and in the secluded neighborhoods further east toward Rock Creek Park. The convenience of Burke School must not be allowed to erode further the daily life of this established and highly-desirable residential neighborhood.

If all cars exiting from Upton Street onto Connecticut Avenue are forced to turn right to the north, it strains credulity to believe that morning drivers attempting to reach downtown office destinations after dropping off Burke School students will willingly comply with such regulations. Cars would have to either circle to the north and then turn eastward at Van Ness Street to re-enter the public alley network near Burke School, or dart into Connecticut Avenue, immediately cross to the left-most lane, and then wait patiently in the left-hand queuing lane for the left-turn signal at Van Ness Street in order to drive through an embassy compound where political events can instantly increase security issues to Reno Road in order to head south to Tilden Street and reach Connecticut Avenue. Such a roundabout and inconvenient route would probably require an additional five to eight minutes because of waits for traffic signals at Van Ness Street, Reno Road, Tilden Street, and finally Connecticut Avenue.

These drivers will find almost irresistible the public alley across Upton Street from Burke School which leads southward to Tilden Street, where heavy westbound morning traffic crossing Rock Creek Park already queues as it nears Connecticut Avenue in order to make left-hand turns to

head south or right-hand turns to head north. We do not believe that Burke School-generated traffic exiting from this public alley will merge easily with a queue already in place. This narrow public alley is also during the morning rush-hour period the only location where a car might safely halt for pick-up purposes to pick up a resident of the 62-unit apartment building at the corner of Tilden Street and Connecticut Avenue as the normal drop-off and pick-up area in front of this apartment building disappears during rush-hour periods. Were a proposal under discussion to be implemented, a right-turn lane would be created near the intersection of Tilden Street and Connecticut Avenue for westbound traffic, and Burke School traffic exiting the public alley from Upton Street south to Tilden Street would thus need to cross two lanes of traffic in order to prepare to make a left-hand turn to head south from Connecticut Avenue. Such a casual traffic pattern would immediately exacerbate traffic safety issues at this busy intersection.

Burke School obviously assumes that additional modifications to traffic signals or on-street parking in the neighborhood near Burke School will be needed over time, and that the District of Columbia will silently develop these modifications and pay for their implementation and that nearby residents will as silently endure the diminution in greatly-needed on-street parking spaces or increased difficulties in traveling through their neighborhood. Burke School has offered nothing to the District of Columbia to offset these predictable future expenses, and offers nothing to neighbors likely to be affected by the proposed or predictably likely traffic and parking modifications. As usual, Burke School proceeds from an attitude of manifest destiny and believes it has an institutional mandate to expand, whatever the cost to the District of Columbia or the surrounding neighborhood may be on every issue that can be identified.

Geotechnical Problems at the Burke School Site Will Make Development Difficult:

We turn now to physical constraints to the proposed building site itself. It is no secret that rock underlies the proposed building site. Indeed, the BZA's 1983 Burke School Order (No.13986) specifically acknowledges that excavation beyond the seven-foot level for the addition Burke School then sought permission to build would have been difficult. The 1983 Order stated in its seventeenth finding of fact: "The gymnasium is located seven feet below grade in the basement to contain noise. Rock below the seven foot level prohibits the gymnasium from being any lower." That rock has not yet been relocated. In discussing requested variance relief, the Board of Zoning Adjustment stated also in its 1983 Burke School Order, "As to the variance relief sought, . . . [a] sub-soil condition of the site is such that extensive and costly excavations below the seven foot level would be required . . . ."

Architects and engineers who testified before ANC 3-F admitted that Burke School would need to excavate the proposed building site to a depth of at least thirty feet in order to put in necessary footings and foundations for the proposed two levels of below-grade parking. Burke School initially provided to ANC 3-F information about only seven of the twelve test borings known to have been carried out for Burke School at the proposed building site. Curiously, not one of these borings penetrated the site below the depth of nineteen feet. Two days after the June 16, 2003 ANC 3-F meeting, Burke School finally released to ANC 3-F a report analyzing the results of the other five test borings.

This earlier analysis of site conditions was carried out by Schnabel Engineering Associates, Inc. and their conclusions were summarized in a report dated May 5, 1999. This report states unequivocally on page 9: "Rock excavation methods, such as hoe ramming and blasting, are expected to excavate to the lowest floor grades." The Schnabel report estimated that hoeramming or blasting would be needed below elevation heights ranging from 259 to 244, a difference of fifteen feet. A full 30-foot excavation would extend to elevation 235, at least nine feet below the lowest level where blasting might begin to be required but obviously twenty-four feet below the highest level at which rock requiring blasting might first be encountered on the site. In other words, for an excavation to thirty feet, 80% of the depth of the excavation might in some areas require blasting to remove rock. This could be an intolerable intrusion into a settled residential neighborhood.

The Schnabel Engineering Associates report also notes at page 6 that it will be necessary to underpin the apartment house at 4107 Connecticut Avenue, which contains several apartments at the basement level. It is not clear whether such underpinning will require the permission of owners of that apartment building, or whether the permission could be forthcoming if tenants must be temporarily displaced. Once again, Burke School assumes that the neighborhood will bend to serve its convenience.

Without an absolute assurance that Burke School can excavate the site without undue risk to adjacent buildings and the personal property of residents in those properties while rock is being removed through methods other than unallowed blasting in a residential neighborhood, ANC 3-F cannot support the present application. Obviously the proposed Burke School expansion cannot begin to meet applicable zoning requirements for "ample parking" for a private school in a residential neighborhood without the proposed two levels of below-grade parking. A "theoretical" parking garage that can only be constructed through weeks or months of proposed blasting and rock removal with attendant risks that can only be estimated is further evidence that the site proposed for the new Burke School facility is, as neighbors have warned Burke School repeatedly, "unforgiving."

Subsurface Water Problems Near the Burke School Property:

The surrounding neighborhood has experienced subsurface water problems during the construction of new apartment buildings at 4025 Connecticut Avenue and 3883 Connecticut Avenue. Expensive de-watering systems are not always effective, and recently in front of 4025 Connecticut Avenue there was a constant heavy seepage of groundwater onto and across the sidewalk, evidence that a planned de-watering system for 4025 Connecticut Avenue did not work very long and might have already failed. The site Burke School proposes to excavate to a depth of at least thirty feet is likely to contain other subsurface waters, both groundwater and flowing, and ANC 3-F believes it is incumbent on Burke School to analyze these subsurface waters and propose a reasonable solution to the challenges they will present. No such solution has been prepared by Burke School at this time. Merely planning to make any new Burke School facility watertight does not solve other subsurface water problems that could affect a larger neighborhood around the Burke School property.

The Lack of Cafeteria Space at Burke School Forces Students into the Surrounding Neighborhood:

Normally this ANC 3-F would not comment on possible internal configurations of proposed new buildings that come before us for review. But because we take notice of the fact that neither the existing Burke School facilities nor the proposed expanded facilities would contain an area of a sufficient size to permit all Burke School students to eat lunches on the Burke School campus during the day (whether lunches brought from home, lunches purchased in the neighborhood and brought back to Burke School, or lunches ordered for delivery to Burke School), we cannot ignore the likelihood that Burke School students will continue to invade the surrounding neighborhood in large groups during their daily lunch breaks, as they have done in the past.

Unfortunately, past history suggests that at lunchtime Burke School students regard the public alley adjacent to Burke School as their primary pedestrian corridor when they walk north toward various restaurants and other food sources and return with or after their lunches, and Burke School has done nothing to attempt to keep this alley clear during lunch periods by requiring that Burke School students use sidewalks along Upton Street and Connecticut Avenue.

Residents to the east of Burke School have complained that the public alley behind the Burke School is now infested by rats, likely drawn by the Burke School trash receptacles located within this alley and behind the school. Large numbers of pizza boxes, discarded food wrappings, and uneaten food are daily deposited into these trash receptacles during the school term. The presence of rats in this public alley presents a public health concern that we note in passing. We would strongly encourage Burke School to relocate its trash receptacles to help reduce this problem even if BZA approval for the pending application is not forthcoming.

Technical Zoning Violations in Burke School's Proposed Scheme:

ANC 3-F further takes note of several technical violations of District of Columbia zoning regulations that would make construction of the proposed facility impossible without one or more variances, which Burke School has thus far failed to request. Burke School will need to repost its property to indicate the zoning relief it is seeking in order to submit a valid application.

Specifically, the proposed pedestrian alley bridge would violate the requirement in DCMR 2502.1 and 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" and "every part of a yard required under this title shall be open and unobstructed to the sky from the ground up." Obviously the proposed pedestrian alley bridge would be an impermissible obstruction. The inclusion of such a "fictitious" feature in the pending BZA application, however desirable it might be from a non-zoning perspective, has been misleading to the affected neighborhood, and misleading to this ANC 3-F. We have accordingly sought expert advice from a zoning attorney, who has advised ANC 3-F on several issues pertaining to the pending Burke School BZA application.

The Board of Zoning Adjustment is precluded in DCMR 3101.1 from granting a special exception waiver from rear yard setback requirements except in a C-3 or a C-4 District. The Burke School property is not located in either such district, and without a special exception or variance Burke School could not obtain a valid District of Columbia building permit for a project that assuredly would violate either DCMR 2502.1 or DCMR 2503.1 because of the proposed pedestrian alley bridge.

ANC 3-F takes note that the proposed Burke School facility appears to meet minimum lot coverage requirements for a structure in an R-5-D District. Although ANC 3-F has been presented several different numbers for gross square footage of the proposed structure, especially for its ground floor, the current number presented by architects for Burke School is 9,800 square feet. This is within the 10,729 square feet that a building could cover without violating the 75% lot coverage maximum permitted for a lot with 14,305 square feet in an R-5-D District.

ANC 3-F also takes note that the proposed Burke School facility appears to meet allowable FAR requirements for property zoned R-5-D, as a lot of 14,305 square feet could support a building with up to 50,068 square feet and the proposed new Burke School structure would apparently contain for zoning purposes 34,276 square feet. But as recently as ANC 3-F's June 16, 2003 meeting Burke school architects attempted to assert that the building would contain only 29,258 square feet.

Unfortunately, this now-admitted size for Burke Schools' proposed new building will trigger the requirement in DCMR 2200.1 for a "loading facility." DCMR 2201.1 specifically requires that for "Any Other Use In All Districts" there must be a loading facility whenever a structure exceeds 30,000 square feet in size. No such loading facility is shown for Burke School's proposed new facility, and therefore the new facility could not comply with applicable District of Columbia zoning requirements without a variance, which Burke School has not requested. DCMR 3104.1 makes it clear that the Board of Zoning Adjustment cannot grant a special exception from this requirement except in the Downtown Urban Renewal Area. ANC 3-F finds it troubling that Burke School has turned to architects who were not aware that the building they were designing was of a size sufficient to trigger this requirement.

ANC 3-F regrets that Burke School so obviously attempted to mislead its neighbors on the actual square footage of its proposed new structure until persistent questioning by ANC 3-F members triggered an admission of the actual square footage.

The Proposed Burke School Expansion Will Create "Objectionable Conditions":

ANC 3-F therefore concludes that expansion of the Edmund Burke School as proposed in the pending Application No. 17022 to the Board of Zoning Adjustment is unacceptable. Expansion of the Edmund Burke School would, under the provisions of DCMR 206.2, "become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions."

The rooftop play area would cause noise from students using this outdoor play area, as would large roof-mounted air conditioning equipment. Construction of the proposed facility without the pedestrian alley bridge, which itself would violate a key zoning requirement for an unobstructed rear yard setback, would mean that throughout each school day large numbers of Burke School students would cross and re-cross a public alley that is vital to the traffic needs of residents whose only access to their garages is through this alley and past Burke School property. Construction of the proposed Burke School facility would risk daily blockages of northbound traffic on Connecticut Avenue, a key transportation corridor for the District of Columbia, during morning rush hour.

The proposed Burke School facility would focus exiting traffic from the proposed drop-off lanes onto one location at Upton Street, from which cars would either penetrate a residential neighborhood or queue to attempt a turn from Upton Street onto Connecticut Avenue. Either way, traffic within what was once a quiet residential neighborhood would increase as Burke School parents would attempt to weave through the neighborhood. Finally, the proposed new structure lacks the loading facility so clearly required by District of Columbia zoning requirements for a building of its size.

The Compliance Plan put forward by Burke School is not satisfactory. It places much too heavy a burden on nearby residents for monitoring daily compliance with a complicated traffic management scheme, noting violations, reporting those violations to Burke School, and participating as members of a seven-member committee that would meet periodically to review traffic violations and "grade" Burke School. Neighbors would need to monitor daily eleven identified allowable drop-off locations, both during the morning and again during the afternoon.

In addition, Burke School has aggressively identified as permitted drop-off locations public streets where drop-off activities might create traffic jams or unacceptable traffic safety problems. The final draft report of the Connecticut Avenue Traffic Study, for instance, already rates the westbound portion of the west side of Van Ness Street north of the INTELSAT building a "C" during morning rush hour conditions, though Burke School has proposed this as an additional drop-off location and the Traffic Study suggests the morning rating could drop to "D."

The penalties Burke School has proposed for itself should the traffic management plan not work are minimal, as the proposed $40,000 penalty is a small price to pay for the ability to increase the allowable student cap immediately from 270 to 300 and thus obtain approximately $600,000 in additional school tuition revenue annually from this increase. Should Burke School succeed in making the traffic management plan work temporarily, long enough to trigger an increase in the student cap size from 300 further upward to 320, this additional increase would become permanent with an further $400,000 flowing to Burke School annually but no possible future relief for an affected neighborhood.

The damage to the surrounding neighborhood would be equally permanent, at a cost Burke School can easily afford should the proposed traffic management plan prove flawed in concept and impossible to implement. This is a limited gamble for Burke School, with an attendant risk any institution would gladly incur.

The Edmund Burke School refuses to implement reasonable school regulations to restrict student movement off campus during the school day. Any increase in the student size at Burke School will obviously and immediately add to present neighborhood irritations as Burke School students continue to wander through the neighborhood without supervision during both their "free" period and the lunch period. The only responsible way to solve this problem is to "close" the Burke School campus for students during the school day.

The blasting required to excavate the proposed Burke School construction site would be highly objectionable to nearby residents, if it is even legal under District of Columbia law, and would likely damage several of the structures closest to the construction site. It is not clear what the impact of proposed measures to remove rock from the Burke School property might be on a nearby WMATA air shaft or residents in the basement apartments of an adjacent building. Burke School architects and engineers have been vague about plans to de-water the site if necessary, so that the neighborhood is not forced to endure another groundwater seepage similar to one so recently in place flowing across and down the sidewalk in front of 4025 Connecticut Avenue.

Because of the obvious violation of applicable District of Columbia Zoning Regulations and the entirely predictable future consequences from construction of the proposed Burke School facility, ANC 3-F must reluctantly recommend, but recommends strongly and unreservedly, that the Board of Zoning Adjustment deny the present application with instructions to Burke School that the caps on student, faculty and staff sizes specified in the 1983 BZA Order remain in effect.

Additionally, it is clear that Burke School has failed to consider obvious options that might grant it relief and soften Burke School's impact on a neighborhood already affected by Burke School's illegal student and faculty/staff populations. Splitting the middle school from the high school and establishing one or the other at a satellite location would seem an obvious option for consideration. This may not be Burke School's preference, but Burke School's preference is clearly to continue to damage the neighborhood in which it is now located.

ANC 3-F believes that Burke School's board of trustees must engage in a more deliberate dialogue with both affected residents in Burke School's immediate neighborhood and Burke School parents in order to develop a long-range strategy that does not unrealistically project Burke School's intentions and assume that these can be accomplished entirely along Upton Street. Clearly there is little room for growth at Burke School's present location, for the reasons outlined above. If Burke School is determined to maintain some functions at the Upton Street location, then the search for a satellite location should be commenced quickly. Other private schools in the District of Columbia have discovered that larger campuses can be available in new locations.

This Report of ANC 3-F on the pending Application No. 17022 of the Edmund Burke School for a special exception was adopted by ANC 3-F during its July 1, 2003 meeting on a vote of five in favor (Commissioners Dennis, Kessler, Maudlin, Perry and Wiss), one in opposition (Commissioner Bernardi), and one recusal (Commissioner Bardin).