

EXECUTIVE OFFICE OF THE MAYOR
Serve DC

PUBLIC NOTICE

NOTICE OF FUNDING AVAILABILITY

DISTRICT OF COLUMBIA
COMMISSION ON NATIONAL AND COMMUNITY SERVICE

"Safe Schools, Safe Students" in the District of Columbia

K-12 Learn and Serve America School-Based Grants

Summary: Serve DC announces the availability of \$250,000 of the K-12 Learn and Serve School-Based funds for the **Safe Schools, Safe Students Initiative for grants up to \$50,000**. Awards will be made to organizations addressing school security concerns through the active participation of students in District of Columbia middle schools/junior high or high schools. Learn and Serve America creates opportunities for youth to serve and help their communities through volunteerism while increasing their academic achievement in one or more academic subjects. The initiative will support a wide range of program activities that fall under the rubric of school-based crisis planning that includes 1) mitigation/prevention, 2) preparedness, 3) response, and 4) recovery. Applicants may be eligible for funding if they work in any one or more of these phases and propose to address issues that include: school violence, bullying; intolerance, natural disasters, severe weather, fires, chemical or hazardous spills; medical emergencies; student/staff deaths; school shootings; bomb threats or other acts of terror. Applicants must propose to implement service-learning projects that connect school and student safety to one or more core curriculum standards.

Criteria for eligible applicants: Eligible applicants are public middle/junior and high schools including public charter schools in partnership with at least one additional organization. Public school partners may include private/independent schools, for-profit business, institutions of higher education and other non-profits including faith-based organizations. The partnerships are responsible for implementation, replication, and/or expansion of service-learning activities in their school and local community. All projects must operate a program within the District of Columbia. Projects that operate in designated Hot Spots will receive extra points. For Hot Spot locations, please visit www.serve.dc.gov

An organization described in Section 501 (c) (4) of the Internal Revenue Code, 26 U.S.C. 501 (c) (4), that engages in lobbying activities is not eligible to apply, serve as a host site for members, or act in any type of supervisory role in the program. **Individuals are not eligible to apply.**

All eligible applicants must meet all of the applicable requirements contained in the application guidelines and instructions. The Request for Application (RFA) will be released on September 10, 2004 at 9:00 a.m. **The deadline for submission is October 11, 2004 at 5:00 pm.**

Required technical assistance sessions schedule is as follows: September 16, 2004; September 21, 2004; September 27, 2004; and October 4, 2004. **All interested applicants must register and attend the technical assistance session in order to apply for funds.** Please call John Savage, National Service Coordinator at (202)-727-7925 to RSVP for a training session and more information. Technical Assistance session date and times are posted on our website at www.serve.dc.gov.

Serve DC anticipates awarding grants of up to \$50,000 for Safe Schools, Safe Students grants. Applicants must provide a total of 30% match in cash or in-kind Federal or non-Federal sources. The actual number and dollar amount of the awards will depend on the number of approved applications received.

Applications can be obtained starting at 9:00 AM on September 10, 2004 from 441 4th Street NW, Suite 1040S, Washington, DC 20001 or downloaded and printed from our website at www.serve.dc.gov. For additional information please call Lucila Lagace, Director of National Service, at (202)-727-7925.

Jerome A. Duval

Jerome A. Duval, Interim Executive Director
Serve DC

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 16959-A of 575 7th Street, LLC, pursuant to 11 DCMR § 3103.2, for a variance from the area requirements for arts and entertainment-related uses under subsection 1704.3(a), to allow a contribution to the Shakespeare Theatre in lieu of providing arts uses on-site in the DD/C-4 District at premises 625-27 E Street, N.W., 620 and 626 F Street, N.W., and 501-07 and 511-17 7th Street, N.W. (Square 456, Lots 41, 880, and 878).

HEARING DATE:	December 17, 2002
DECISION DATE:	January 7, 2003
MODIFICATION DECISION DATE:	August 3, 2004

MINOR MODIFICATION ORDER

Note: On June 29, 2004, the Board received a motion from the Applicant requesting a minor modification of plans and Condition No. 1 of BZA Order No. 16959, dated January 29, 2003. On August 3, 2004, the Board, at its regularly scheduled public meeting, granted the motion pursuant to the provisions of § 3129, including a requested waiver of the six-month filing requirement under § 3129.3. The minor modification will allow the escrow account for the Shakespeare Theater project to be created and funded, allowing the last phase of the project to move forward. The modification proposes to limit the location of the required preferred arts uses to lots 7000, 7004, 7009, 7010 and 7012 (part of Lot 41), which are part of the lots included in the original BZA approval.

SELF-CERTIFIED

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2C and to owners of property within 200 feet of the site.

The site of this application is located within the jurisdiction of ANC 2C, which is automatically a party to this application. The Board waived the requirements of section 3115.1 and accepted out of time the report of the ANC in support of the application. The D.C. Office of Planning (OP) generally testified in support of the application as presented by the Applicant and recommended conditional approval of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements which are necessary to establish the case pursuant to § 3103.2 for an area variance pursuant to § 1704.3(a). No persons or entities appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, as set forth in the provisions and conditions below, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property which creates a practical difficulty for the owner in complying with the Zoning Regulations, and

that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6 the Board has determined to waive the requirement of 11 DCMR § 3125.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

It is therefore **ORDERED** that this application be **GRANTED**, subject to the following **CONDITIONS**:

1. The applicant shall provide the zoning equivalent of 7,000 square feet of floor area for arts and entertainment-related uses in the Terrell Place development on Lots 7000, 7004, 7009, 7010 and 7012 (part of Lot 41) in Square 456.
2. To satisfy the balance of the arts requirement allocated to Lots 880, 878 and 41, the applicant will place \$1.5 million in escrow for the benefit of The Shakespeare Theatre and consistent with Condition No. 5.
3. Upon issuance of a building permit for the shell space of the Shakespeare Theater facility on Lot 878, the \$1.5 million will be released to the Shakespeare Theater. On or before the date the payment is transferred to the theater, the Combined Lot Development Covenant shall be amended to reflect that the arts requirements for Lots 41, 880 and 878 shall be satisfied entirely on Lot 878.
4. The applicant may replace with retail uses any ground-level street front spaces previously planned for arts uses, as reflected on the plans submitted with the BZA application (the "Designated Arts Space"). Until such time as the arts requirements are satisfied consistent with Condition No. 3 of this order or are otherwise satisfied consistent with Condition No. 5 of this order, the applicant shall limit the retail lease terms for the Designated Arts Space to ten years with a maximum of two 5-year extensions.
5. If the arts requirements are not satisfied consistent with Condition No.3 of this order by December 31, 2004, the Office of Planning will direct the \$1.5 million escrow to be paid in one of the following manners in satisfaction of the arts requirement for Lots 880, 878 and 41:
 - a) to a specific potential arts user in an alternative location in the Downtown Development District for tenant improvements or other expenses to close funding gaps necessary to enable the arts user to proceed; or
 - b) to the Cultural Development Corporation for use in the development of different arts space in the Downtown Development District; or
 - c) to the Applicant, as specified herein. The balance of the arts requirement will revert back to the Terrell Place development on Lots 880 and 41. Within twelve months after notification from the Office of Planning that

this option has been selected, the applicant will restore 30% of the total required arts space, or the zoning equivalent of approximately 15,000 square feet on Lots 41 and 880. Thereafter, the applicant will return the balance of the Designated Arts Space to required arts uses as the retail leases for the Designated Arts Space expire. The \$1.5 million escrow will be disbursed to the Applicant in pro rata installments upon receipt of Applicant's certification that a stated portion of the arts space is then available for or has been occupied by an arts user.

VOTE (January 7, 2003): 4-0-1 (Geoffrey H. Griffis, David A. Zaidain, and Curtis L. Etherly, Jr. to approve with conditions; Peter G. May to approve with conditions by absentee vote; Anne M. Renshaw not voting not having participated in the case)

VOTE on Waiver of Time Limit and Minor Modification (August 3, 2004): 3-0-2

(Geoffrey H. Griffis, Curtis L. Etherly, Jr. to approve, David A. Zaidain to approve by proxy, Ruthanne G. Miller and the Zoning Commission member not voting, not having heard the case)

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: July 5, 2004

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL

BZA APPLICATION NO. 16959-A

PAGE NO. 4

APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No 16974 of Tudor Place Foundation, Inc., pursuant to 11 DCMR § 3104.1, for a special exception to continue the operation of a museum by a non-profit organization (last approved by BZA Order No. 16477, dated January 14, 2000), under § 217, at premises 1644 31st Street, N.W. and 1670 31st Street, N.W.

HEARING DATES: April 15, 22 and 29, 2003, September 16, 2003

DECISION DATES: June 3, 2003, July 1, 2003, August 5, 2003, November 4, 2003

DECISION AND ORDER

On November 27, 2002, the applicant, Tudor Place Foundation, Inc. ("Applicant"), filed an application with the Board of Zoning Adjustment ("Board") requesting a special exception under § 217 of the zoning regulations (Title 11 of the District of Columbia Municipal Regulations ("DCMR")), to continue its previously-approved museum use of the Tudor Place estate and grounds, including the house on the property known as Dower House (the subject property). This Board had approved the special exception museum use in three previous orders -- No. 14729 (1988), No.15744 (1994) and No. 16477 (2000). Order No. 16477, dated January 14, 2000, was challenged on appeal and upheld by the District of Columbia Court of Appeals in the case of *Georgetown Residents Alliance v. District of Columbia Board of Zoning Adjustment*, 802 A.2d 359 (D.C. 2002). Order No. 16477 conditioned the special exception with a term of 3 years, therefore on November 27, 2002, the Applicant filed this special exception application with the Board.

The Board held two hearings on the application, the second one limited to discussion of the Applicant's Vehicle Management Plan and the use of Dower House. After several preliminary decision meetings, the Board voted, at its final decision meeting on November 4, 2003, to approve the application, subject to a term of 5 years and 15 other conditions.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memorandum dated December 2, 2002, the Office of Zoning ("OZ") gave notice of the application to the D.C. Office of Planning ("OP"), the D.C. Department of Transportation ("DDOT"), the State Historic Preservation Officer, the Councilmember for Ward 2, Advisory Neighborhood Commission 2E ("ANC"), the ANC in which the subject property is located, and the ANC member for Single Member District ANC 2E07. Pursuant to 11 DCMR 3113.13, OZ published notice of the hearing on the application in the District of Columbia Register and on December 19, 2002, mailed notices to the ANC, the Applicant, and to all owners of property within 200 feet of the subject property, advising them of the date of the hearing. Further, the Applicant's affidavit of posting indicates that on January 24, 2003, it placed three zoning placards on the property, on the 32nd Street, N.W. frontage, the Q Street, N.W. frontage, and the 31st Street, N.W. frontage, in plain view of the public.

The public hearing, scheduled for February 18, 2003, was postponed to April 15, 2003, due to a major snow event which closed the District government. On February 19, 2003, OZ notified the Applicant and the ANC of the new hearing date. The date was also posted in the Office of Zoning and placed on the OZ website. The Applicant filed two further affidavits of posting. They show that 7 zoning placards were posted on the Tudor Place main house on March 31, 2003, and another 3 placards were posted on Dower House on April 2, 2003, all in plain view of the public.

Requests for Party Status. ANC 2E was automatically a party in this proceeding. The Board granted opposition party status to three groups of neighbors: the "31st Street Neighbors," represented by Mr. Ronald Snider, the "32nd Street Neighbors," represented by Mr. Norton Katz, and the "Q Street Neighbors," represented by Mr. Don Crockett.

Applicant's Case. The Applicant's Executive Director, Ms. Leslie Buhler, testified as to the operation of the Tudor Place main house and Dower House. She explained that Tudor Place functions as a house museum and holds fundraising events to further its mission. Ms. Buhler indicated that Tudor Place utilizes a valet parking services contractor for large events and has complied with the conditions in the Board's 2000 order. She also noted that when complaints from neighbors were received, Tudor Place responded quickly to redress any problems. The Applicant also submitted a Vehicle Management Plan¹ ("Plan") and O.R. George, who was qualified as an expert in traffic matters, testified in its behalf.

With its application, the Applicant submitted a list of 16 conditions to which it proposed to be bound. The proposed conditions were taken from the Board's Order No. 16477, and were modified slightly, after extensive review by the ANC and members of the community. During the course of these proceedings, the proposed conditions remained essentially the same, but were altered somewhat by the Applicant in response to concerns voiced by the opposition and to provide more specificity.

Government Reports. The Office of Planning filed a report with the Board on February 14, 2003, and found that the application met all the requirements of 11 DCMR §§ 217 and 3104.1. OP, therefore, in its report and in its oral testimony, recommended approval of the application, subject to the 16 conditions proposed by the Applicant.

The District Department of Transportation, in its report dated April 28, 2003, stated that it supported the position of OP, including the 16 conditions, with one exception. DDOT recommended that the hours for tours specified in proposed condition number 3 be modified as follows: daytime tours between 9:30 and 4:00 (rather than between 9:00 and 4:30) and evening tours between 6:30 and 8:30 (rather than between 5:30 and 8:30), in both cases to avoid conflict with rush hour. In its second report, dated July 31, 2003, DDOT voiced concerns as to the timing and scope of the data collection on which the Vehicle Management Plan was based, but generally supported the Plan and opined that it will minimize traffic impacts to the neighborhood.

¹Also referred to as the "Traffic and Parking Management Plan" or "TPMP" in the record.

The National Park Service (NPS) submitted a letter endorsing the Applicant's request for a special exception. The NPS stated that the Applicant maintains the Tudor Place main house in accordance with the U.S. Department of the Interior Standards for Historic Preservation. NPS pointed out that successful maintenance of the site requires the Applicant to employ a professional staff knowledgeable in these Historic Preservation Standards, and that funding the requisite staff is a challenge which the Applicant has endeavored to meet through house tours and the hosting of special events.

ANC Report. The ANC submitted two letters in this case. The first, dated February 11, 2003, indicated that ANC 2E, at a regularly scheduled and properly noticed meeting on February 4, 2003, voted unanimously to support the application, including the 16 conditions proposed by the Applicant. The second, dated July 16, 2003, reiterated the ANC's unanimous support.

At the hearing, the ANC representative stated that, in approving the application, the ANC supports the premise that the Applicant should have the flexibility to develop funding from a variety of sources. He also stated that the ANC was satisfied that the Applicant had consulted with neighbors in addressing issues of noise, traffic, and parking and that, accordingly, the ANC did not make any further recommendations with respect to these issues.

FINDINGS OF FACT

The Subject Property and the Application

1. The Tudor Place Foundation, Inc., Applicant herein, owns both Tudor Place (1644 31st Street, N.W.) and Dower House (1670 31st Street, N.W.). The lot on which these buildings sit is located in an R-1-B zone district and is bounded by 31st, 32nd, Q, and R Streets, N.W. The property, including the Tudor Place main house, its grounds, and Dower House, ("subject property") comprises approximately 5 and 1/2 acres (215,048 square feet), the majority of Square 1281.
2. Dower House, built in 1867, is located directly north of the Tudor Place main house. The Dower House site originally became part of the Tudor Place grounds in 1805. It was later sold and eventually repurchased by Armistead Peter, III, then-owner of Tudor Place, in the 1960's.
3. In 1966, Armistead Peter, III, granted a scenic easement to the U.S. Department of the Interior permitting the use of the main house as a residence or museum and preventing the land from being subdivided, inappropriately developed, or otherwise used in an unsuitable way.
4. Tudor Place and Dower House are linked visually and through a common history of use and ownership. They are located on a single tax lot, No. 835, which was created in 2000 by combining two previously-existing adjoining tax lots.
5. As the Applicant's previous special exception for non-profit museum use was to expire in early 2003, on November 27, 2002, it filed with the Board the instant application and the

accompanying self-certification form certifying its need for the special exception relief requested.

Special Exception Requirements

Subsections 217.1 and 217.4²

6. Subsection 217.1 permits, as a special exception, the use by a nonprofit organization of existing residential buildings for the purposes of the nonprofit organization if the building is listed in the District of Columbia's Inventory of Historic Sites or is located within a district which is so listed and if the gross floor area of the building is greater than 10,000 square feet.
7. Since 1988, the Applicant, a nonprofit organization, has been operating the Tudor Place main house as a nonprofit house museum pursuant to 11 DCMR § 217. See, Board Orders No's. 14729, 15744 and 16477. The main house is used for the purposes of the nonprofit organization, which include education of the public about American history and culture, cultural resource management, and research.
8. Order No. 16477 permitted continuation of the use and extended it to include the hosting of special events and the use of Dower House. Dower House is used for the purposes of the nonprofit organization, including education of the public about American history and culture.
9. Neither the Applicant nor its use of the subject property has changed in any significant way since the Board's 2000 Order, No. 16477, except that, sometime subsequent to June, 2000, the Applicant voluntarily placed a moratorium on the holding of large weddings and rental functions.
10. The Board finds that, pursuant to § 217.1, the Applicant is a nonprofit organization that is using Tudor Place and Dower House for the purposes of the nonprofit organization.
11. The subject property, not including Dower House, is listed both on the National Register and the District of Columbia Inventory of Historic Sites. The subject property, including Dower House, is located in the Georgetown Historic District, which is listed in the District of Columbia Inventory of Historic Sites.
12. The Board finds that both the Tudor Place main house and Dower House satisfy the historic listing requirement set forth in § 217.1(a).
13. The Board found in Orders No's. 14729 and 15744, and confirmed in Order No. 16477, that the main house contains more than 10,000 square feet of floor area. Based on the evidence in the current proceedings, the Board again finds that the 10,000 square foot requirement set forth in § 217.1(b) is satisfied.

²Subsections 217.2 and 217.3, the most contentious herein, will be discussed *infra*.

14. Subsection 217.4 prohibits the commercial creation, exchange or sale of merchandise in the residential buildings except for items related to the purposes of the nonprofit organization.
15. Tudor Place operates under constraints placed upon it by its status as a National Historic Landmark and the 1966 deed of easement with the U.S. Department of the Interior. Maintaining Tudor Place in accordance with the Department of the Interior's Standards for Historic Preservation requires the use and funding of a staff knowledgeable in implementing these Standards. Exhibit No. 62.
16. The endowment of Tudor Place, as of 2002, supplied only 51% of the revenues needed to fund its operations. Exhibit No. 8, at 5. The Applicant derives its remaining needed revenue by offering tours of the main house, hosting educational lectures and workshops, developing individual and organizational donors, and hosting special events, such as its annual Garden Party fundraiser. None of these activities result in the commercial creation, exchange, or sale of goods, chattel, wares, or merchandise.
17. In the main house, the Applicant operates a small museum shop which sells items related to the purposes of the nonprofit organization as permitted by § 217.4.
18. The Board finds that the Applicant does not create, exchange or sell any goods, chattel, wares or merchandise on the subject property, except as permitted under § 217.4.

Section 3104 and subsections 217.2 and 217.3 -- impacts on neighboring properties

19. Section 3104.1 states that the Board may grant a special exception where the use will not "affect adversely the use of neighboring properties."
20. Subsection 217.2 states that the use of the subject property "shall not adversely affect the use of the neighboring properties."
21. Subsection 217.3 states that the "amount and arrangement of parking spaces shall be adequate and located to minimize traffic impact on the adjacent neighborhood."

Usual day-to-day use of the subject property

22. The grounds and gardens of the subject property provide a park-like setting for the neighborhood. The extensive and historically-protected open space on the subject property is an amenity to the community.
23. Visually, the subject property is buffered from the surrounding residential neighborhood by fencing and large mature old growth trees and gardens.
24. Tudor Place is a low-density use and there are approximately 28 on-street parking spaces along its street frontages. The subject property itself can accommodate 40 "stacked" vehicles, and 25 vehicles without resorting to "stacked" parking. See, Exhibit No. 117.

25. Tudor Place employs 7 staffpeople. *See*, April 15, 2003 hearing transcript at 102. Therefore, all of the parking needs of the Tudor Place staff can be met on the subject property itself.
26. General tours of the Tudor Place main house are scheduled for one-hour periods at 10:00 a.m., 11:30 a.m., 1:00 p.m., and 2:30 p.m. on Tuesday through Friday, on the hour between 10:00 a.m. and 3:00 p.m. on Saturday, and between noon and 3:00 p.m. on Sunday. Attendance is limited to a maximum of 20 people, but typically totals under 10 people. Each tour usually generates a maximum of five vehicles. *See*, Exhibit No. 117.
27. Reserved tours typically occur during the same time periods as general tours, however attendees usually arrive by bus or van, generating little traffic or demand for parking.
28. Tour buses do not arrive at Tudor Place on a regular basis. One or two buses a week arrive during the busiest months of April, May, September, and October. *See*, April 15, 2003 transcript at 60. When tour buses do arrive, the drivers are not permitted to park on the subject property, but are given specific instructions as to where to park. *Id.* at 64.
29. Food is not served to tour groups, but such groups occasionally bring their own lunches and are permitted to eat on the grounds of the subject property or, in the case of inclement weather, inside Dower House.
30. The Applicant also hosts smaller educational, public service, and fundraising events, including lectures, walking tours, workshops, and children's programs. Attendance at these events is usually between 5 and 50 persons and they are generally scheduled on weekdays in the early evening hours, at 7:00 or 7:30 p.m., and on Saturdays, from 10:00 a.m. to 3:00 p.m. Many of these events are held in Dower House and parking for those attendees who arrive by car is provided on the subject property.
31. During 2002, the Applicant held approximately 35 educational and fundraising functions at Dower House, all of which involved fewer than 50 people.
32. The majority of functions held at Dower House were held during the day on weekdays and on weekends, with a few such functions being held on weekday evenings.
33. Dower House is also used for meetings, including weekly volunteer meetings and quarterly meetings of the Applicant's Board of Trustees and Board of Trustees' committees.
34. The Applicant proposes to use Dower House to house administrative offices of no more than 7 staff members who do not utilize on-street parking.
35. Donor cultivation activities, including occasional serving of lunch or dinner to a small group of from 2 to 24 people, also occur in Dower House. In 2002, the Applicant hosted 2 lunches and 2 dinners. Dower House has the only appropriate air-conditioned space and the only working kitchen on the subject property. The kitchen is not used for regular

or extensive cooking, but rather is used to heat and prepare pre-cooked meals and snacks, to brew tea and coffee, and for the necessary attendant clean-up.

36. The Board credits the Applicant's statement that the Tudor Place main house does not have a working kitchen or a multipurpose heated and air-conditioned room and finds that constraints such as these on the Applicant's use of the main house make the current uses of Dower House important to furthering the purposes of the nonprofit organization.
37. The Board credits the testimony of the Applicant's Director, Ms. Leslie Buhler, that the current and proposed uses of Dower House are necessary in order to minimize the use of the main house for any purpose other than appreciation as a museum.
38. The Board finds that the current and proposed uses of Dower House are customarily incidental and subordinate to those of the main house.

Special events

39. The most significant issues associated with this application -- traffic, parking, and to a lesser extent, noise -- arise only with respect to the special events held on the subject property, particularly those held in the evening.
40. In order to mitigate any possible adverse impacts from Tudor Place activities, particularly special events, the Applicant worked with the community and the affected ANC and came up with a list of 16 conditions restricting its use of the subject property. The conditions address, among other things, noise, traffic, and parking impacts on the neighborhood caused by the Applicant's use of the subject property. The conditions were based on the conditions in Order No. 16477, with certain modifications, and were supported by ANC 2E and OP. See, Exhibit No. 48, OP Report, at 9-11.
41. Throughout the course of these proceedings, the 16 conditions were refined and strengthened to further restrict the Applicant's use of the subject property and to include a Vehicle Management Plan.
42. The Board credits DDOT's statement in its second, more detailed report, that the Plan "will minimize impacts to the neighborhood" of Tudor Place. Exhibit No. 124, at 3.
43. A typical 100-guest special event at the subject property will bring approximately 30 to 35 vehicles to the property and a typical special event for 200 to 350 guests will result in approximately 80 to 110 vehicles. A larger special event, for about 500 guests, will result in the arrival of approximately 160 vehicles. See, Exhibit No. 109, Attachment.
44. The Board credits the written statement of the Applicant's traffic expert which states that parking and traffic issues will arise only with respect to evening special events with 75 or more attendees and notes that the Vehicle Management Plan requires the use of a valet parking services contractor for all such events. See, Exhibit No. 109.

45. The Applicant has, for more than 10 years, engaged the services of a valet parking services contractor to park special events vehicles. There are four parking areas whose owners currently permit valet parking of special events vehicles: the Tudor Place property (driveways and garage), accommodating 40 vehicles, and the parking lot(s) of the Chevy Chase Bank branch at Wisconsin Avenue and Q Streets, N.W., with parking for 16 vehicles, the Jeleff Branch of the Girls and Boys Clubs of Greater Washington at Wisconsin Avenue and S Street, N.W., with parking for 60 vehicles, and the Hardy Middle School at Wisconsin Avenue and 35th Street, N.W., with parking for 50 vehicles. Exhibits No's. 85 & 109.
46. The current valet parking services contractor also has the ability to park special events vehicles in a 175-space parking lot and garage located at 2233 Wisconsin Avenue, N.W., but has not needed to do so in the past. Exhibits No's. 85 & 109.
47. The Applicant has secured written commitments from both the Jeleff Branch of the Boys and Girls Clubs and the Chevy Chase Bank to permit the parking of special events vehicles. The commitment from the Jeleff Branch of the Boys and Girls Clubs does not have a time limit and the commitment from Chevy Chase Bank appears to run from April, 2003 to April, 2004,³ with automatic one-year extensions unless terminated in writing. Exhibits No's. 85 & 109.

CONCLUSIONS OF LAW

Procedural Issues

Notice with respect to Dower House

The hearing on this application was originally scheduled for February 18, 2003 and three zoning placards, notifying the public of the hearing date, were posted on the main house on January 24, 2003. Exhibit No. 38. Due to a snow emergency, the hearing was not held on the scheduled date, but was re-scheduled to April 15, 2003. Seven zoning placards were posted on the main house on March 31, 2003, notifying the public of the new hearing date, at least two of which referred to both the address of the main house and that of Dower House. Exhibit No. 58. The March 31st posting was more than 15 days in advance of the hearing, as required by § 3113.14. Dower House, however, was not separately posted until April 2, 2003, less than 15 days in advance of the hearing. Exhibit No. 59. Dower House, therefore, was arguably not posted as required by § 3113.14 and one opposition party moved to dismiss the application on this ground. Exhibit No. 72.

The Board concludes that even if Dower House were not posted at least 15 days before the hearing, that requirement may be waived. Section 3100.5 of the zoning regulations permits the Board, for good cause shown, to waive all but a few of its procedural regulations if the waiver

³The license agreement with Chevy Chase Bank states that the agreement runs from "April 22, 2003" until "April 30, 2003," only 8 days, but then goes on to state that the term "shall be automatically extended for successive one-year periods." The unreasonably short 8-day duration of the license and the latter language lead the Board to conclude that the date "April 30, 2003" is in error, and should read "April 30, 2004."

does not prejudice any party and is not contrary to law. Section 3113.14 can be waived and should be with respect to Dower House.

Although the Applicant did not at first separately post Dower House, at least two of the zoning placards placed on the main house on March 31, 2003, stated the address of Dower House as well as the address of the main house. The fact that both addresses were referenced on the placards may have served to afford notice as to both. More importantly, however, Dower House was separately posted for 13 of the required 15 days, and the Applicant, at the direction of the Board, left the zoning placards in place on Dower House until April 22, 2003, to make up for the possible 2-day defect in notice. There were several hearing dates on this application, all on or after April 22, 2003, and it would have been easily possible for an interested person to fully participate in these proceedings after that date. With the 20 days' worth of notice actually given and the other notice safeguards in place, including the mailing of notice to all property owners within 200 feet of the subject property, publication of the hearing notice in the *D.C. Register*, notification of the ANC, and finally, the posting of the hearing notice at the Office of Zoning and on its website, the Board concludes that waiving the 15-day notice requirement with respect to Dower House will not prejudice the rights of any party nor be contrary to law.

Out-of-date lot numbers

Until 2000, the Tudor Place main house and Dower House were on two different tax lots, numbers 827 and 830. In 2000, these two tax lots were combined into a single tax lot, number 835. The application and its advertisements erroneously named the two previously existing lot numbers, 827 and 830. A party opponent filed a Motion to Dismiss based on this error, but the Board denied the Motion, concluding that the error did not cause any misunderstanding or prejudice and did not alter the material facts of the case.

The Merits of the Special Exception

The Board is authorized to grant a special exception where, in its judgment, the special exception will be "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property." 11 DCMR § 3104.1. Certain special exceptions must also meet the conditions enumerated in the particular section pertaining to them. In this case, the Applicant had to meet both the requirements of § 3104.1 and § 217 of the zoning regulations. Although the opposition argues that §§ 200 and 201 of the zoning regulations also apply here, this idea was conclusively rejected by the Court of Appeals in *Georgetown Residents Alliance*, which agreed with the Board that these sections "are merely precatory and do not contain the standards by which the ... application should be judged." *Id.* at 364, n. 6. As this issue has been decided by the Court, the Board will not, indeed is precluded from, re-examining it. See, *Rhema Christian Center v. District of Columbia Board of Zoning Adjustment*, 515 A.2d 189, 193 (D.C. 1986). (Issue preclusion "prevents the same parties⁴ from relitigating an issue actually decided in a previous final adjudication whether on the same or a different claim.")

⁴In this regard, the Board notes that Mr. Snider, Mr. Crockett, and Mr. Katz, leaders of the Opposition Parties in this proceeding, all testified on behalf of the opposition party in the last Board proceeding, the *Georgetown Residents*

Subsection 217.1 -- use of historic property by a nonprofit organization

Section 217 sets forth the specific requirements that the Applicant must meet. Subsection 217.1 permits the use of existing residential buildings by a nonprofit organization for the purposes of the organization if the buildings are either listed on the District of Columbia's Inventory of Historic Sites or are located within a district which is so listed (§ 217.1(a)) and if the gross floor area of the building in question is 10,000 square feet or more (§ 217.1(b)). The Applicant is a nonprofit organization using the Tudor Place main house and Dower House for the purposes of the organization. The subject property, including both the main house and Dower House, is located within a district listed on the District of Columbia's Inventory of Historic Sites. The first prong of § 217.1 is met.

With regard to the second prong, the Tudor Place main house has a square footage of over 10,000 square feet, but Dower House does not. The opposition contends that Dower House must also have an area of at least 10,000 square feet to satisfy § 217.1(b). *See, e.g.*, Exhibit No. 96, at 4-5. The Board disagrees. The regulation clearly contemplates that a site may contain more than one building and states that "the building in question, not including other buildings on the lot" must have an area of at least 10,000 square feet. The Board concludes that under § 217.1(b), only the main house, not every building on the subject property or every building associated with the principal use, must meet the 10,000 square foot threshold. The main house contains the principal museum use and is the "building in question" for purposes of § 217.1(b).. Dower House contains only uses accessory to the principal museum use and is "another building on the lot" for purposes of § 217.1(b). The area requirement does not apply to it pursuant to the plain wording of the regulation. The Board advanced this same interpretation of § 217.1(b) in Order No. 16477 (at 9), and the Court referred to it without comment in *Georgetown Residents Alliance* (at 366).

Subsections 217.2 and 217.3 -- impacts on the surrounding neighborhood

Subsections 217.2 and 217.3 both deal with potential objectionable impacts on the area surrounding the subject property. Subsection 217.2 mandates that the Applicant's use of the property shall not adversely affect the use of neighboring properties. Similarly, § 217.3 mandates that the amount and arrangement of parking spaces shall be adequate and located to minimize traffic impact on the adjacent neighborhood. The usual day-to-day use of the subject property has limited parking needs and neighborhood impacts. Special events held at the property have significantly greater parking needs and neighborhood impacts. Therefore, the two categories of use will be discussed separately.

1. Usual day-to-day use

The Applicant's usual day-to-day use of the subject property does not run afoul of either § 217.2 or § 217.3. Tudor Place employs 7 staff people, for whom daily parking is provided on the

Alliance. Further, Messrs. Crockett and Snider represented the Georgetown Residents Alliance in its appeal of Order No. 16477 to the Court of Appeals.

subject property. General daytime tours are limited to 20 people and usually generate a maximum of 5 vehicles. Reserved tours usually arrive by bus, but only one or two buses arrive even during the busiest months, and tour bus drivers are directed to park elsewhere. Small fundraisers, workshops, lectures, and children's programs are also held on the subject property, and parking for attendees who arrive by car is provided on the property. None of these activities cause any adverse impacts with regard to traffic, parking, noise, lighting, or the like.

Subsection 217.3 requires that the amount and arrangement of parking spaces be adequate and located to minimize traffic impact on the adjacent neighborhood. The subject property provides 25 un-stacked parking spaces. With 7 taken by staff, 18 are left for visitors. As general tours of Tudor Place are limited to 20 persons, these 18 spaces are adequate parking for everyday use, and, because they are on the subject property, traffic impact on the adjacent neighborhood is minimized. After discharging passengers, reserved tour buses are directed elsewhere to park, neither taking up neighborhood parking nor causing any particular traffic impact on the neighborhood. Further, due to the extensive street frontage of the subject property and its low density use, parking spaces along its 3 perimeter streets are also available for the use of neighbors.

The opposition does not dispute that the Applicant's usual day-to-day use of the subject property does not adversely affect neighboring properties. Indeed, the "Final Submission of the Q Street Parties" states:

The opposing residents all agree that the basic Tudor Place Special Exception for daytime tours has not adversely affected the neighboring properties. With the exception of idling tour busses (sic) that must be strictly controlled as provided in the prior orders, these daytime tours have not generally disturbed the peace and quite (sic) of the neighborhood nor created parking and traffic problems.

Since 1993, the residents have objected only to the "special events," attended largely by non residents on weekends and evenings....

Exhibit No. 143, at 3. This sentiment is echoed in a letter to the editor of the *Georgetown Current* written by Mr. Ronald Snider, the leader of the "31st Street Neighbors" opposition party. See, Exhibit No. 127, Attachment No. 2. The Board concludes that the usual day-to-day use of the subject property satisfies both the no adverse effects requirement of § 217.2 and the adequate parking requirement of § 217.3.

2. Special events

Special events held by the Applicant on the subject property, particularly those held in the evening, fall outside the ambit of usual day-to-day use, and unrestricted, have the potential to cause adverse impacts on the neighboring properties and traffic impacts on the adjacent neighborhood. The special events held by the Applicant are not, however, unrestricted. They have been controlled by specific and detailed conditions since the inception of the special exception in 1988, which will be continued by this Order. See, Orders Nos. 14729, 15744, and 16477.

a. Adverse impacts

These conditions have been refined and strengthened over the years and are specifically targeted at special events to reduce any possible adverse effects on the neighborhood. The conditions limit the hours of operation of the subject property and the operation itself, for both daily use and special event use. They restrict the occurrence and timing of special events for various numbers of attendees. They address concerns of noise from special events and related clean up. They also address the issues of communication with, and notice to, the community, particularly with respect to special events. The conditions include a comprehensive Vehicle Management Plan proffered by the Applicant specifically addressing parking and traffic issues which may arise due to special events. With these conditions in place and adhered to by the Applicant, the Board concludes, pursuant to § 217.2, that the use of the subject property for special events will not adversely impact the use of neighboring properties.

b. Adequacy of parking

With respect to § 217.3 and special event parking, the Applicant, for more than 10 years, has engaged a valet parking services contractor to valet park special events vehicles on-site and at three off-site locations which it has permission to use. The valet parking staff can stack 40 vehicles on the subject property and the three off-site locations can accommodate, cumulatively, approximately 126 vehicles. The current contractor also has the ability to park special events vehicles in a 175-space lot and garage in the area. This amount of parking is adequate given that a 500-person special event, the maximum permitted, will generate approximately 160 vehicles. Such a valet system minimizes traffic impact on the adjacent neighborhood by eliminating, or greatly reducing the number of, vehicles hunting for parking spaces within the neighborhood.

Further, the Applicant's traffic expert noted that parking and traffic issues would first arise with respect to functions for at least 75 persons, and mainly in the evening. The Vehicle Management Plan therefore requires the use of valet parking for all special events of at least 75 attendees. For special events of at least 200 people, the Applicant will direct attendees to park at satellite lots and will provide a shuttle bus from these lots to the subject property. The shuttle bus system further minimizes traffic impacts on the neighborhood by eliminating the need for valet attendants to move vehicles from the subject property to the satellite lots. The valet parking provisions, in conjunction with the other provisions of the Vehicle Management Plan, and the conditions restricting Applicant's use of the subject property, ensure adequate parking for special events and minimize traffic impacts to the neighborhood. The Board therefore concludes that the use of the subject property for special events satisfies § 217.3.

Subsection 217.4 -- restricted commercial activity

Pursuant to § 217.4, the Board concludes that there will be no goods, chattel, wares or merchandise commercially created, exchanged or sold at Tudor Place except for the sale of publications, materials, or other items related to the purpose of the nonprofit organization, which are sold in the small museum shop in the Tudor Place main house. Special events do not result in any commercial creation, exchange, or sale of merchandise. The Board concludes that the special events held by the Applicant are not commercial in nature and do not result in a

prohibited commercial use of the subject property. They are accessory to the museum use and important to its financial viability. As stated in Order No. 16477, the use of house museums as venues for special events is a common practice in the District of Columbia and accordingly, is customarily incidental and subordinate to the principal use. This interpretation of § 217.4 was upheld in *Georgetown Residents Alliance* and the Board will not re-visit it here. See, *Rhema Christian Center, supra*.

The last subsection of § 217, § 217.5, applies only if an applicant plans an addition or a major modification to the exterior of its historic building, and so is not applicable here.

Section 3104 -- harmony with zoning regulations and zoning maps

As a special exception, the Applicant's use of the subject property is deemed compatible with its R-1-B zone district. Even so, there was opposition to the use. The Board has considered the opposition and has balanced the benefits to the community of the Applicant's use with the impacts of the special events, as ameliorated by the agreed-upon conditions. The Board concludes that "a reasonable accommodation has been made between the Applicant and the neighbors, which does not interfere with the 'legitimate interests' of the latter." *Georgetown Residents Alliance*, at 363, (quoting *Glenbrook Road Ass'n. v. District of Columbia Board of Zoning Adjustment*, 605 A.2d 22, 32 (D.C. 1992)). Therefore, the Board concludes that the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, as required by § 3104.1

Issues Particular to Dower House

Dower House need not be on the same record lot as the main house to serve as an accessory use.

The opposition claims that Dower House cannot be used for uses accessory to the main house because, notwithstanding its location on the same tax lot as the main house, it is arguably not on the same "real property lot" as the main house. Exhibit No. 97, at 7. The definition of "accessory use" states that such a use must be located on the same "lot" as the principal use. The definition does not state that the accessory use must be located on the same "record lot" as the principal use. A "lot" and a "record lot" are not the same thing. A "lot" "may or may not be" a "record lot." See, definition of "lot" in 11 DCMR § 199.1. When the Zoning Regulations mean "record lot," they so specify. See, e.g., 11 DCMR § 3202.3. .

The opposition's argument was previously rejected by the Board in Order No. 16477, which quotes the definition of "lot" in the Zoning Regulations and states that the term "lot" includes assessment and taxation lots. Order No. 16477, at 9. In *Georgetown Residents Alliance*, the Court agreed with the Board's interpretation and stated: "while Dower House, an adjacent property, must be located on the same 'lot' as the principal property, it need not be located on the same 'lot of record.'" 802 A.2d at 366.

Because the Court stated that the Board's interpretation was within its authority, but not required, at least one opposition party urges the Board to change its interpretation of "lot" so as not to

include "tax lot," thereby precluding the accessory use of Dower House. *See*, Exhibit No. 143, at n. 1. The Board declines to do so and concludes that Dower House is on the same lot as the Tudor Place main house as that term is meant in the definition of accessory use.

The current and proposed uses of Dower House are appropriate accessory uses.

The opposition argues that the Applicant's current and proposed uses of Dower House are not appropriate accessory uses to those of the main house. The Board disagrees. Dower House is used for donor cultivation activities, volunteer and Board of Trustees' meetings, and small educational and fundraising functions, such as lectures and workshops. One way nonprofit organizations raise funds is through cultivating donors. The volunteers and Board of Trustees of a nonprofit organization need an appropriate place to meet. Both of these uses are customarily incidental and subordinate to the Applicant's nonprofit use of the main house as a museum. One of the purposes of the Tudor Place house museum, indeed of any museum, is to educate the public. The offering of lectures and workshops furthers this purpose and is customarily incidental and subordinate to the nonprofit museum use.

The Applicant is also proposing a new use for Dower House -- the location of administrative offices for no more than 7 staff members who do not use on-street parking. A nonprofit organization or museum needs offices for its support staff. From these offices, support personnel conduct the "business end" of such a museum use. Mr. Peter's will envisioned Dower House as the "eventual administrative headquarters of Tudor Place." *See*, Exhibit No. 92B, at 11. Clearly, administrative office use is customarily incidental and subordinate to the principal museum use.

Whether Dower House is an Accessory Building is Irrelevant to the Board's Consideration of this Special Exception Application.

The opposition contends that Dower House cannot be an accessory building because it is more than 15 feet high, is not located in the rear yard, and has, in the past, been used as a single-family dwelling. *See*, 11 DCMR §§ 2500 and 2500.2. It is not clear why this question is of any importance. Even if Dower House were a principal building it could still serve as a location for accessory uses, provided all other prerequisites were met.

Assuming that the opposition is correct, and that Dower House is in noncompliance with the Zoning Regulations, the most that can be said is that the applicant will need variance relief. That fact alone does not require the Board to deny a special exception. This application was self certified. The applicant did not, at any time, seek any variance relief. Thus, the grant of special exception relief by this Board only resolves issues of use. DCRA must still ascertain Dower House's compliance with all other applicable Zoning requirements before it may issue a new certificate of occupancy. The Board shares no similar responsibility⁵. Our inquiry is limited to the narrow question of whether the Applicant met its burden under the general and specific special exception criteria that apply to the requested use. Having concluded that it has done so,

⁵ In rare circumstances, not present here, the Board, in its discretion, may require an applicant to seek needed variance relief along with special exception.

the Board must grant the application. *See, Georgetown Residents Alliance*, at 363, n.4, and cases cited therein.

Great Weight

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. ANC 2E supported the application for a period of five years, but proposed no other conditions. The Board agrees with the ANC's recommendation of a five-year period for the special exception. OP also recommended approval of the application, subject to the 16 conditions proposed by the Applicant. The Board agrees with OP's recommendation and agrees, in substance, with the conditions proposed.

Based on the record before the Board and for the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a special exception to continue the operation of a museum by a nonprofit organization, pursuant to 11 DCMR §§ 3104 and 217, which was last approved by the Board in Order No. 16477, dated January 14, 2000. It is therefore **ORDERED** that the application be **GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS.**⁶

For the purposes of these conditions, the definition of "special event" is any single function or program on the subject property at which 50 or more attendees are expected. The definition of "special event" does not include any regularly scheduled tours of the subject property occurring during the hours of 9:00 a.m. and 4:30 p.m., Monday through Saturday, and between 12:00 noon and 4:30 Sunday, including group tours for 50 or more attendees.

Also for the purposes of these conditions, the number of attendees of any use of Dower House (excluding the number of the Applicant's staff whose offices are located in Dower House) shall be added to the number of attendees of any use of the main house taking place at the same time, in order to determine whether the total number of attendees reaches the threshold number at which valet parking and/or shuttle bus service must be provided, as set forth in Conditions No's. 9(b) and 9(c). If such threshold number is reached, Conditions 9(b) and 9(c) must be implemented, regardless of whether or not a "special event" is involved.

1. Approval shall be for five years from the effective date of this order.
2. The Applicant shall convene a Liaison Committee, to include two representatives of the Tudor Place Foundation, two representatives of ANC 2E, and two representatives of the

⁶The Board has eliminated the distinction between rental and non-rental events in the Applicant's proffered conditions. It appears that this distinction was made because of a greater financial incentive for the Applicant to host rental events, but from a zoning standpoint, adverse impacts on the neighborhood, if any, would not differ based on whether an event was a rental or non-rental event.

- community at large. The Applicant shall convene the Liaison Committee semi-annually. The Liaison Committee shall address any issues that arise relating to the operations of Tudor Place. Not less than 30 days in advance of Liaison Committee meetings, notice of such meetings shall be (i) posted on the subject property, (ii) mailed or delivered to all households within 200 feet of the subject property, and (iii) published on the Applicant's website.
3. The number of regularly scheduled tours shall not exceed ten per day. Non-group tours shall be limited to a maximum of twenty persons. Admission for group tours shall be by appointment only.
 4. The hours of operation for tours shall be limited to between 9:00 a.m. and 4:30 p.m., Monday through Saturday, and between 12:00 noon and 4:30 p.m. on Sunday. In addition, tours shall be permitted between 5:30 p.m. and 8:30 p.m. on Mondays, Tuesdays, or Wednesdays, but not more than one day per week. To the extent such evening tours are offered, they shall take place on the same day of each week, which day shall initially be determined by the Applicant, with any changes to be made in consultation with the Liaison Committee.
 5. The Applicant shall instruct the drivers of all buses and vans, which pick up and/or drop off passengers at the subject property, not to idle the engines of their vehicles longer than is necessary to allow passengers to embark or disembark. Buses bringing passengers to the subject property shall park in legal bus parking areas within the District of Columbia. There shall be no bus parking on the subject property.
 6. Special events at the subject property shall be limited to a maximum of 500 attendees at any one event.
 7. The number of special events involving 200 to 500 attendees at the subject property shall be limited to 6 per year, with no more than one such event taking place at the property in any one calendar month. The number of special events involving 100 to 199 attendees shall be limited to 10 per year, and those involving 50 to 99 attendees shall be limited to 15 per year. In no event, shall functions or special events for the purpose of weddings and/or wedding receptions be permitted for more than 75 attendees.
 8. All functions, including special events, taking place at the main house, shall end no later than 10:30 p.m. All functions taking place at Dower House shall end no later than 10:00 p.m.
 9. The Applicant shall minimize traffic and noise impacts by employing the following measures:
 - (a) (i) Provide advance information to attendees of regularly scheduled tours regarding parking on the subject property, (ii) Provide advance information to attendees of special events regarding applicable parking policies as set forth in these Conditions, (iii) Provide advance information

to bus companies and bus drivers of scheduled group tours, regarding parking/idling policies as set forth in these Conditions, (iv) Provide monitoring and oversight of visitor arrival modes and parking patterns, (v) Hold semi-annual discussions with DDOT Policy and Planning Staff, ANC 2-E and Liaison Committee to review parking and traffic issues and concerns, and take appropriate corrective measures, as necessary; (vi) Provide notification to, and coordinate with, other area institutions to avoid scheduling of simultaneous special events; and (vii) Maximize the use of the rear entrance to the subject property on 32nd Street for service and related functions.

- (b) For Special Events Involving 75 to 200 Persons: (i) Provide valet parking service using satellite lots for parking and using the Chevy Chase Bank lot (at Wisconsin Avenue and Q Street) for stacking of vehicles as necessary during peak arrival times (with the Tudor Place driveway serving as a backup location if necessary); (ii) Provide reasonable prior notice to DDOT Policy and Planning Administration Staff, ANC 2-E and the District of Columbia Emergency Management Agency regarding event for monitoring and feedback; and (iii) Request from Emergency Management Agency or other appropriate authorities emergency parking restriction within a 4 to 6 vehicle space area adjacent to the 31st Street entrance to the main house.
- (c) For Special Events Involving More than 200 Persons: Same measures as in Paragraph b, except that (i) Instead of items (i) and (iii) described in Paragraph b, provide attendees with advance instructions to bring vehicles directly to a satellite parking location from which the Applicant will arrange for shuttle bus service to the subject property and (ii) The Applicant will work with DDOT and/or other appropriate authorities to arrange for one or two uniformed personnel to help direct traffic and parking during the event.

10. The Applicant shall notify affected area residents not less than 60 days in advance of any scheduled special events of 75 or more attendees by mailing or delivering a calendar of such events to all households within 200 feet of the subject property.
11. The Applicant shall appoint a staff member as a community liaison person who will be responsible for addressing any issues and concerns raised by neighbors with respect to the usual day-to-day operation of the subject property.
12. For each special event, the Applicant shall designate a "Tudor Place Duty Officer" to be in charge of that special event. The Tudor Place Duty Officer will be responsible for addressing any issues and concerns raised by neighbors with respect to that special event and for handling any problems that may arise during the course of that special event. The staff member appointed as a community liaison person pursuant to Condition No. 11 may also serve as the Tudor Place Duty Officer for a particular special event.

- 13. No amplified music or amplified voices shall be permitted on the grounds of the subject property, including during any outdoor function or special event. During an indoor function or special event, amplified music or voices are permitted indoors with all doors and windows closed. The Applicant shall adhere to the District of Columbia noise regulations.
- 14. Following a function or special event at the main house that ends at 10:30 p.m., or a function at Dower House that ends at 10:00 p.m., there shall be no noisy clean-up that night. All noisy clean-up shall be done the next morning, but not commencing earlier than 7:30 a.m.
- 15. In addition to matter-of-right uses, Dower House may be used for purposes accessory to the nonprofit museum use of Tudor Place. These uses shall be limited to:
 - (1) a location for the following functions and programs involving not more than 49 people: (a) administrative functions (including Board of Trustees' meetings, volunteer meetings, etc.), (b) educational programs (lectures, workshops, etc.), (c) small fundraising functions, including donor cultivation activities involving the heating and serving of food, but not involving heavy cooking; and
 - (2) a location for offices for not more than 7 members of the Tudor Place staff who do not utilize on-street parking.
- 16. Substantial action shall be taken by the Applicant to improve the management and efficiency of the delivery and pick up of goods and services at the 32nd Street entrance to the subject property prior to returning to the Board for any further review of the special exception.

VOTE: 4-0-1 (Geoffrey H. Griffis, David A. Zaidain, Curtis L. Etherly, and Zoning Commission Member Carol J. Mitten, to grant, the fifth member not sitting, not voting.)

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

Each voting Board member has approved the issuance of this Order granting the application.

FINAL DATE OF ORDER: JUL 29 2004

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE

APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17022 of Edmund Burke School, pursuant to 11 DCMR § 3104, for a special exception to allow an addition to an existing private school and to increase the enrollment from 270 to 320 students and faculty/staff to 70, under § 206, in the R-2 and R-5-D Districts at premises 4101 Connecticut Avenue, N.W. and 2955 Upton Street N.W. (Square 2243, Lots 67 and 68).

HEARING DATES: July 15, 2003, October 14, 2003, and October 28, 2003
DECISION DATES: December 2, 2003 and August 3, 2004

DECISION AND ORDER

This application was submitted April 14, 2003 by the Edmund Burke School, the owner of the property that is the subject of the application. Following a public hearing, the Board voted 5-0-0 on December 2, 2003 to grant the application subject to conditions.

Procedural Matters

Application. The Edmund Burke School ("Burke School" or "Applicant") filed an application pursuant to 11 DCMR § 3104 for a special exception under 11 DCMR § 206 to construct a new school building next to its existing building and to expand the private school use to both buildings, with an increase in enrollment from 270 to 320 students and an increase in faculty/staff from 35 to 70, in the R-2 and R-5-D zones at 4101 Connecticut Avenue, N.W. and 2955 Upton Street, N.W. The zoning relief requested in this application was self-certified pursuant to 11 DCMR § 3113.2.

Notice of Application and Notice of Public Hearing. By memoranda dated April 21, 2003, the Office of Zoning sent notice of the application to the Office of Planning; the Department of Transportation; the Councilmember for Ward 3; Advisory Neighborhood Commission ("ANC") 3F, the ANC for the area within which the subject property is located; and the single-member district ANC 3F07.

The Board originally scheduled a public hearing on the application for June 24, 2003. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on April 29, 2003 mailed notice of the hearing to the Applicant, the owners of property within 200 feet of the subject property, and ANC 3F. Notice was also published in the D.C. Register (50 *D.C.R.* 3687). The hearing was postponed at the Applicant's request until July 15, 2003. Notice of the rescheduled hearing was sent by letter dated May 12, 2003 to the Applicant, the owners of property within 200 feet, and ANC 3F, and was published in the D.C. Register (50 *D.C.R.* 4152).

Requests for Party Status. ANC 3F was automatically a party in this proceeding. The Board granted a request for party status in support of the application submitted by Neighbors Allied for the Reasonable Development of Schools ("NARDS"), a group of residents of 28th Place, Upton and Tilden Streets, and Connecticut Avenue in the vicinity of the subject property represented by Deirdre Karambelas. The Board granted timely requests for party status in opposition to the application by (1) Neighbors United for Livable Streets ("NULS"), a coalition of residents of Upton and Tilden Streets, N.W. in the vicinity of Burke School; (2) Sirius LLC ("Sirius"), the owner of a 37-unit apartment building located at 4107 Connecticut Avenue, N.W., abutting the site of the proposed expansion; (3) Linda Jay, a resident of Upton Street in a house immediately east of the existing Burke School building; and (4) 2950 Van Ness Tenants' Association and Van Ness South Tenants' Association, organizations representing residents of large apartment buildings (269 and 625 units, respectively) at 2950 and 3003 Van Ness Street, N.W. (collectively, "Van Ness Tenants"). The Board denied a request for party status in opposition submitted by Virginia Wilson Worthington, a resident of the 2800 block of Upton Street N.W.

Applicant's Case. The Applicant provided testimony and evidence from David Shapiro, Burke School's Head of School; Steve Pruitt, chairman of its Board of Trustees; William Gridley, a principal in Bowie Gridley Architects, recognized by the Board as an expert in architecture; Martin Wells of Wells & Associates, recognized by the Board as an expert in transportation and traffic engineering; and Officers Michael Boyd and Michael Auls of the District of Columbia Metropolitan Police Department.

Government Reports. By report dated July 8, 2003 and through testimony at the public hearing, the Office of Planning ("OP") recommended approval of the application subject to certain conditions pertaining generally to transportation, school management, sound levels, and student conduct. OP concluded that the Applicant's proposed new building – which would expand the school's occupiable space and provide a parking garage, a queuing ramp for student drop-offs and pick-ups, and a pedestrian bridge connection to the existing building – would allow the Applicant to make operational changes and implement new traffic and parking management plans that would lessen the current impacts of the private school use and accommodate the requested increases in number of students and employees without creating additional adverse impacts.

The Department of Transportation ("DDOT") noted that the Applicant's proposed expansion would add traffic to an already congested area, and that the number of institutional land uses in the vicinity of the subject property presented unique transportation challenges, but concluded that the Applicant demonstrated an ability to reduce the traffic impacts of Burke School through the implementation of various transportation management programs. By report dated July 3, 2003 and through

testimony at the public hearing, DDOT indicated its support for the proposed expansion "linked with successful implementation" of the Applicant's proposed expanded traffic management plan, which could reduce or contain traffic impacts from a limited expansion of student population. Based on field visits to the subject property, DDOT concluded that the Applicant's current traffic management plan has had a positive effect on traffic patterns in the immediate area of Burke School, and that the compliance rate, although less than 100 percent, was substantial enough to improve the traffic situation over pre-existing conditions. DDOT indicated its willingness to continue working with the Applicant to revise the traffic management plan, if necessary, in response to future changes in traffic conditions in the vicinity of the subject property.

DDOT's analysis of the requested special exception was undertaken in the context of a larger study commissioned by DDOT to examine existing and projected transportation conditions along relevant segments of Connecticut Avenue. The DDOT study of Connecticut Avenue traffic was completed in 2003.

ANC Report. At a duly noticed public meeting held July 1, 2003 with a quorum present, ANC 3F passed a resolution, by a vote of 5-0-1, recommending denial of the application. By a vote of 5-1-1, the ANC adopted a report, also dated July 1, 2003, that identified issues and concerns relating to the application; they were: (a) the Applicant's "lobbying campaign" and neighborhood advisory committee, which was unable to generate neighborhood consensus due to its "flawed composition"; (b) adverse conditions in the surrounding neighborhood associated with the existing Burke School operation pertaining to traffic, parking, and student conduct that would be exacerbated by the Applicant's proposed expansion; (c) the potential risk to neighboring buildings, and to subsurface water in the surrounding neighborhood, during construction of the proposed addition due to the need for excavation and blasting at the subject property; and (d) the incomplete nature of the application, which failed to request necessary variance relief with respect to loading requirements and to court and yard setback requirements affected by the Applicant's proposed pedestrian bridge.

The ANC concluded that approval of the proposed expansion of the Burke School would violate 11 DCMR § 206.2 primarily because of noise caused by students and air-conditioning equipment, traffic congestion, student misconduct, and construction issues. ANC 3F recommended denial of the application with instructions to Burke School that the caps on the number of students and faculty/staff previously adopted by the Board remain in effect.

Party in Support. The representative for Neighbors Allied for the Reasonable Development of Schools testified that Burke School has made a stronger, more consistent effort to be a good neighbor in the community; for example, through implementing successful measures to reduce school-related traffic, providing information to residents of

the neighborhood, and cleaning litter from Upton Street. According to NARDS, many persons in the community support or are neutral about the Applicant's proposed expansion.

Persons in Support. The Board received numerous letters and heard testimony from many persons interested in the application. Persons in support generally described the many attributes of Burke School, the success of its recent efforts to reduce the volume and improve the flow of school-related traffic, the suitability of the subject property as a location for a school, the desire to have the Applicant's proposed building on the site rather than a larger apartment building that would create additional traffic and parking demands without benefit of a traffic management plan, and the need for private schools and more school options in the District.

Parties in Opposition. Neighbors United for Livable Streets presented evidence and testimony from several witnesses, including expert testimony from Milton Shinberg, an architect, and from Joe Mehra, a traffic consultant. The traffic consultant did not perform an independent study of traffic in the vicinity of the subject property, but commented on the results of the Applicant's transportation study.

NULS's opposition to the application cited especially traffic and parking concerns; safety concerns related to the presence of students outdoors in the neighborhood near the subject property, particularly in the alley behind the existing school building; deficiencies in the Applicant's proposed school management plan and traffic management plan; the commercial or institutional appearance of the proposed new building; and the erosion of the residential fabric of the neighborhood caused by the expansion of an institutional use. NULS's traffic expert testified that the Applicant's plan to create a new curb cut on Connecticut Avenue, a major arterial, would affect the flow of traffic, especially northbound. NULS also contended that the driveway exit onto Upton Street, next to the public alley exit, would create points of conflict between vehicles and between vehicles and pedestrians.

Sirius opposed the application on grounds that the requested special exception would (a) create objectionable noise impacts for residents of the apartment building abutting the subject property as a result of the placement of mechanical equipment and an outdoor recreation space on the roof of the proposed new building, (b) compromise the operational efficiency of the apartment building by creating additional traffic in the rear alley, (c) create objectionable visual impacts due to the institutional appearance of the pedestrian bridge, (d) create traffic-related safety concerns, especially with respect to the entrance to the garage from Connecticut Avenue directly south of the pedestrian entrance to the abutting apartment building, and (e) erode the residential character of the neighborhood through the expansion of an institutional use in an area already saturated with institutional uses.

The Van Ness Tenants argued that the Applicant should not be permitted to expand in light of its failure to comply with prior Board orders.

Persons in Opposition. The Board received letters and heard testimony from more than a dozen persons opposed to the application. Persons in opposition generally cited adverse traffic and parking impacts that would not be mitigated by the Applicant's proposed traffic management plan, Burke School's alleged noncompliance with prior orders, the proliferation of institutional uses in a residential area, and concerns about students' behavior while in the neighborhood outside the school.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. Burke School, a private, coeducational school for students in grades 6 through 12, was established in 1968 and has been located since 1973 at its current location at 2955 Upton Street, N.W. pursuant to a special exception granted in BZA Application No. 11428. The original school building has been used almost exclusively as a school since 1911. In 1983, Burke School was granted a special exception to allow construction of an addition to the original school building and to increase enrollment to a maximum of 270 students, with a faculty/staff cap of 35 (BZA Application No. 13986).
2. By order dated February 8, 2002 in BZA Application No. 16611, the Board denied the Applicant's request to expand the private school use by constructing a new building on a lot adjoining the existing building, and by increasing student enrollment to 360 and the faculty/staff cap to 70.
3. The subject property, 4101 Connecticut Avenue, N.W., where the Applicant again proposes to construct a new building, is located at the northeast corner of the intersection of Connecticut Avenue and Upton Street, N.W. The subject property (Square 2243, Lot 67) is separated by a public alley from the existing Burke School building (Square 2243, Lot 68). The site is unimproved and has a land area of approximately 14,305 square feet.
4. The subject property is located in an R-5-D zone district that also encompasses the area north of the subject property on the east side of Connecticut Avenue, which contains medium- and high-density residential development. A commercial area, zoned C-3-A, is located on the north side of Van Ness Street at Connecticut Avenue, one block from the subject property. The campuses of Intelsat Corporation and the University of the District of Columbia are located on the west

side of Connecticut Avenue across the street from and to the north of the subject property.

5. The existing school building is located in an R-2 district that encompasses the neighborhood to the east of the subject property. Upton Street is predominantly residential in the vicinity of Burke School, although the Levine School of Music and Howard University law school are also nearby.
6. A five-story apartment building (owned by Sirius, LLC, a party in opposition) abuts the subject property to the north along Connecticut Avenue. The remainder of Connecticut Avenue frontage on Square 2243 is occupied by townhouses, some of which are used for commercial purposes.
7. Connecticut Avenue in the vicinity of the subject property is characterized by a pattern of medium- and high-density residential uses alternating with moderate- and medium-density commercial centers, with lower-density residential areas typically located behind the higher density uses along the avenue.

The Proposed Private School Use

8. The Applicant proposes to construct a new building on the subject property that will be used, along with the existing Burke School building, to expand the Applicant's private school operation. The proposed new building will contain classrooms, computer rooms, photography labs, music rooms, art studios, and administrative space, and will also have a black-box auditorium. An outdoor terrace space of approximately 1,500 square feet will be provided for recreational purposes at the Connecticut Avenue corner, buffered by walls on the north and east sides.
9. The entrance to the new building will be at the corner of Connecticut Avenue and Upton Street. The new building will incorporate a curved driveway, entered from Connecticut Avenue north of the pedestrian entrance, that will lead to the new underground garage and exit onto Upton Street.

Loading facilities

10. The Applicant asserted that the new building would not require loading facilities because its size, as measured consistent with 11 DCMR § 2205.2, would be less than 30,000 square feet of gross floor area, the threshold size for a loading berth requirement pursuant to 11 DCMR § 2201.1. Alternatively, the Applicant stated that, if loading facilities were required under the Zoning Regulations, the new building could provide a loading berth, 30 feet by 12 feet, at the rear of the

property accessible by the driveway leading to Upton Street. The loading facility would include a 100-square-foot loading platform and a service/delivery loading space.

11. DDOT testified that a loading dock would not be necessary for use of the subject property as a private school, provided that occasional loading or unloading activities could be accomplished using a portion of the garage parking area.
12. The ANC and parties in opposition contended that the Applicant's proposed new building would require a loading facility under the Zoning Regulations, and that the Applicant misapplied § 2205.2 in asserting that no loading berth was needed.
13. The Board makes no finding with respect to whether the proposed new building will require loading facilities pursuant to chapter 22 of the Zoning Regulations. Rather, the Zoning Administrator will make that determination upon review of the Applicant's plans submitted as part of its application for a building permit. The Board credits DDOT's conclusion that a loading berth is not necessary to avoid any adverse traffic impacts associated with the proposed private school use of the subject property, and notes that the Applicant has indicated that a loading berth and platform could be provided at the site with access from the public alley at the rear (Exhibit 126, Attachment B-2).

Pedestrian bridge

14. The Applicant proposes to construct a pedestrian bridge to connect the new and existing buildings at the second-floor level. The bridge, approximately 33 feet long and 15 feet above ground, would cross the public alley between the existing and proposed buildings near Upton Street.
15. The Applicant testified that the front of the subject property is the property line facing Connecticut Avenue, so that the rear yard is the rectangular area (approximately 17 by 30 feet) located immediately opposite the front, where the property line bends, parallel to Connecticut Avenue, at the corner adjacent to the alley. The property line parallel to the alley separating the new building from the existing building would therefore constitute a side, and – but for the presence of the proposed pedestrian bridge – the area between the new building and the alley would constitute a side yard. (That area would be large enough to satisfy the applicable minimum width requirement.) According to the Applicant, because no side yard is required, the pedestrian bridge could be constructed as proposed, and would constitute an extension of the new building that would create two courts – the open areas to the north and south of the pedestrian bridge – that would exceed the minimum size requirements for courts.

16. The ANC and parties in opposition asserted that the pedestrian bridge would violate zoning provisions that require unobstructed yards or courts. They argued that the rear of the subject property should be defined by the entire property line running from the Upton Street frontage to the corner of the side abutting the Sirius apartment building.
17. The Board finds that the Applicant has properly designated the rear yard of the subject property – a five-sided, irregularly shaped corner lot – as a result of its selection of the Connecticut Avenue property line as the front. Therefore, the proposed pedestrian bridge would be located where a side yard would be required, and would not violate the zoning provision requiring an unobstructed rear yard. The Board finds that the pedestrian bridge would create two open courts consistent with the minimum size required under the Zoning Regulations.

School operations

18. Trash will be removed from Burke School through the Van Ness-Upton alley, and not from the east-west alley serving residents to the east of the school. Trash removal will occur between 9:00 a.m. and 3:00 p.m.
19. Most deliveries to Burke School will continue to occur through the front door of the existing school building during school hours.
20. The Applicant proposed a “school management plan” that was made mandatory for all students as an element of their enrollment contract with Burke School. Highlights of the school management plan include:
 - (a) regular operation of the private school use is limited to programs and activities of Burke School;
 - (b) all non-school-related use of the buildings will be limited to no more than three events per month;
 - (c) the Applicant will not lease or rent its new theater or existing gym to any outside organization, although the Applicant will, from time to time, donate the use of the theater or gym as a public service; for example, to serve as a polling place or meeting space for public bodies;
 - (d) an annual report of student enrollment will be made available to an enforcement committee (described below in Finding of Fact No. 22) and to ANC 3F each September;

- (e) noise emanating from the Applicant's buildings will not exceed 60 dba during the day and 55 dba during the night, as measured at the property line; and
 - (f) trespass by Burke School students on private property is identified as an infraction of the enrollment contract.
21. The school management plan includes guidelines for monitoring and assessing the Applicant's compliance with the student enrollment and faculty/staff limits adopted by the Board, with institutional sanctions if Burke School fails to comply. The plan also addresses the monitoring and assessment of the Applicant's traffic operations and the creation of institutional sanctions if the Applicant fails to achieve an acceptable standard.
22. The Applicant proposed to establish a seven-member enforcement committee to assess the success of its school management plan, including the traffic management plan (described in Findings of Fact No. 35-37). Three members of the committee would be appointed by Burke School; three members would be residents of the surrounding neighborhood; and the seventh member would be a nonvoting mediator, skilled in mediation of neighborhood, school, and community disputes, selected by the committee from a list provided by the Federal Mediation and Conciliation Service or other neutral agency. Any dispute about which the committee cannot reach agreement could be submitted to binding arbitration. Burke School would pay the full cost of the first arbitration, and the committee could decide how to apportion costs for any additional arbitrations in the same year. The Applicant indicated a willingness to pay all mediation and arbitration costs.
23. The enforcement committee will evaluate the Applicant's performance with respect to (a) the number of violations of restrictions on student pick-ups and drop-offs (the Applicant is allowed a maximum of 10 violations per week); (b) measures taken by the Applicant to ensure successful implementation of the school management plan; and (c) the number of students and faculty/staff, as reported by the Applicant by sworn affidavit every September and January.
24. The enforcement committee may assess fines against the Applicant under certain circumstances, and will have the choice of using the fines to support improvements in traffic management or as a donation to an agreed-upon charitable organization.

- (a) The committee will issue three management evaluation reports each academic year. Two consecutive grades of unsatisfactory or three consecutive grades of poor or unsatisfactory will trigger a management sanction in the form of a fine in the dollar amount of two tuitions (currently approximately \$40,000).
- (b) The committee will issue enrollment evaluation reports each year in September and January. If Burke School is out of compliance with enrollment, it will pay a fine equal to the tuition paid by the number of students over-enrolled. If Burke School is out of compliance with faculty/staff, it will pay a fine equal to one tuition.
25. The Applicant will establish and maintain an escrow fund with a minimum balance of \$40,000 to pay any fines imposed by the enforcement committee. The escrow fund will be held, managed, and administered by an independent trustee selected by the committee. The trust agreement will require the trustee to issue a check upon notification of a decision by the enforcement committee or an arbitrator requiring sanctions.
26. The ANC objected that the Applicant's compliance plan was not satisfactory and would place too heavy a burden on nearby residents, who would be required to monitor daily compliance with a complicated traffic management scheme, note violations, report violations to Burke School, and participate as members of the enforcement committee. The ANC also asserted that the Applicant's proposed \$40,000 penalty was too small in light of the requested increase in enrollment from 270 to 300 and ultimately 320 students.
27. The Board finds that the Applicant's school management plan, together with the other conditions imposed by this order, is adequate to mitigate any adverse impacts potentially arising from operation of the proposed private school use on the subject property. The Applicant has proposed adequate measures to ensure compliance with the school management plan, including formation of the enforcement committee, designation of a contact person to receive complaints pertaining to school-related traffic and parking, and enforcement action by traffic monitors (as discussed in Finding of Fact No. 39). The Board does not agree with the ANC that the plan would require residents of the surrounding neighborhood to monitor compliance with the traffic management plan or other components of the school management plan. Rather, the Applicant's effort to ensure compliance by students and their families allows for input from neighborhood residents but is not dependent on their participation.

Noise Impacts

28. The Applicant proposed to relocate the air conditioning and emergency electric generator now used by Burke School, currently located between the eastern wall of the existing building and the adjacent residence on Upton Street, to the center of the roof of the new building. The mechanical equipment will be located away from the neighboring apartment building, and sound-baffling will be installed to minimize noise impacts. Additional equipment also located on the roof of the new building will be surrounded by 10-foot masonry walls.
29. The Board credits the testimony of the Office of Planning that noise generated by the proposed private school use within the perimeter of the subject property will be acceptable. OP concluded that approval of the application would likely lessen the noise impacts of the private school use, in part because the expanded space available in the new building and the pedestrian bridge, which would provide enclosed access between the Burke School buildings, would encourage students to remain inside the school when not in class. In particular, the outdoor area on the roof of the new building will provide outdoor recreation space buffered by walls on two sides and will channel any noise away from the nearby residences and toward Connecticut Avenue.
30. The private school use in the existing building and in the proposed new building on the subject property will occur principally indoors or in the rooftop terrace. The new addition will be oriented toward Connecticut Avenue, away from the residential area.
31. The mechanical equipment located on the roof will be constructed so as to minimize any noise impacts. The roof structure and penthouse will be higher than the adjacent apartment building, and will comply with the requirements of § 411 of the Zoning Regulations, including with respect to setbacks from the roofline and enclosure behind walls.
32. Based on the above findings, the Board concludes that the requested special exception will not create adverse noise impacts on neighboring property.

Traffic Impacts

33. Connecticut Avenue is a major arterial street radiating from downtown Washington. The Board credits the testimony of the Applicant's traffic expert that Connecticut Avenue presently carries approximately 3,000 to 3,700 peak-hour trips.

34. The public alley system in the vicinity of the subject property includes an alley (approximately 16 feet wide) between Upton and Van Ness Streets generally parallel to Connecticut Avenue and separating the subject property from the existing school building. This alley intersects with another alley that runs parallel to Upton Street and provides access to the six dwellings on the north side of Upton Street before dead-ending in the eastern part of Square 2243.
35. Burke School is located one block south of the Van Ness/UDC Metrorail station and is served by Connecticut Avenue Metrobus lines. The Metrorail station provides an underground pedestrian connection between the east and west sides of Connecticut Avenue that can be used by the general public without having to pay to enter the Metrorail system.
36. The Applicant's new building will contain a curved driveway crossing the subject property. Upon entering the driveway from Connecticut Avenue, drivers will choose to enter the ramp to the underground garage or to join a queue for student drop-offs and pick-ups; as many as 15 vehicles could be queued in the driveway at one time. The 10-foot-wide driveway will exit onto Upton Street and will be separated from the alley it parallels by a series of removable bollards along the eastern property line.
37. In March 2002, the Applicant implemented a morning drop-off plan in effect between 7:30 and 8:30 a.m. The morning plan was designed to reduce school-related traffic on Upton Street without burdening other residential streets and alleys. The Applicant proposed to expand the morning plan after construction of the new building so as to:
 - (a) prohibit school-related traffic traveling west on Upton Street toward Burke School;
 - (b) prohibit student drop-offs in front of the existing school building or in the public alley between Upton and Van Ness Streets;
 - (c) prohibit access to the driveway on the subject property via any public alley between Veazey Terrace and Van Ness Street, between Van Ness and Upton Streets, or between Upton and Tilden Streets;
 - (d) allow use of the driveway by vehicles dropping off two or more students, with vehicles permitted to turn east or west onto Upton Street when exiting, after yielding to traffic in the adjacent public alley;

- (e) allow student drop-offs from vehicles traveling south on Connecticut Avenue at the "Kiss & Ride" located outside the Van Ness/UDC Metrorail station as well as on Van Ness Street west of Connecticut Avenue and on Tilden Street either east of 29th Street or west of Connecticut Avenue; and
 - (f) employ two uniformed traffic monitors – stationed at the entrance to and exit from the driveway from 7:00 until 10:30 a.m. – who will help to maintain the flow of traffic from Upton Street to Connecticut Avenue and to identify families who do not adhere to traffic requirements.
38. The Applicant also proposed an afternoon pick-up plan, in effect between 3:30 and 4:30 p.m., that would move school-related traffic off Upton Street and onto pick-up lanes on the subject property. The Applicant proposed to implement the afternoon plan after construction of the new building so that:
- (a) all student pick-ups will occur on the driveway and not in front of the existing building on Upton Street;
 - (b) vehicles arriving to pick up students will be prohibited from using Upton Street to approach the driveway;
 - (c) vehicles leaving the driveway will be permitted to turn east or west onto Upton Street, but may not use the alley between Upton and Tilden Streets;
 - (d) vehicles will leave the driveway in a single lane, yielding to alley traffic; and
 - (e) two uniformed traffic monitors will be stationed at the entrance to and exit from the driveway between 2:30 and 6:30 p.m.
39. In addition to the drop-off and pick-up plans, other elements of the Applicant's traffic management plan include:
- (a) a Metro benefit, providing a 50-percent rebate, for all students using public transportation, where previously only students living in the District of Columbia were eligible;
 - (b) a Metro benefit for all faculty and staff;
 - (c) a shuttle van service, operating on normal school days between shuttle stops designated by the Applicant and the subject property, from 7:30 to 8:15 a.m.;

- (d) a requirement that faculty, staff, and students who drive to Burke School must register their vehicles with the Applicant and display Burke School identification stickers on the vehicles;
 - (f) enforcement action by two uniformed traffic monitors who will monitor Upton Street for school-related vehicles parked in any restricted space in the 2900 block of Upton Street in violation of the traffic management plan;
 - (g) training for Burke School employees, at the beginning of each semester, on the implementation and enforcement of the traffic management plan; and
 - (h) designation of a contact person who will receive, and maintain a telephone log of, comments and complaints with respect to traffic and parking.
40. The Applicant's implementation of its traffic management plan – initially voluntary but subsequently made mandatory – has decreased the number of vehicles that travel to the existing Burke School for student drop-offs and pickups. Metro benefits are used by 157 students (up 24 percent from the prior year), while between 30 and 40 students ride the shuttle bus on average (double the number of the prior year).
41. The Applicant's enrollment contract obligates students and their parents to comply with the traffic management plan and imposes penalties for noncompliance. After the first violation, the parents would be required to meet with the head of school, who would explain again that each student's enrollment is contingent upon compliance and remind the parents of penalties imposed in case of future violations. A \$250 fine would be imposed after a second violation by the same family, and a \$500 fine after a third violation. In case of a fourth violation, the student's enrollment contract would not be renewed for the following year; or, if the student was a senior or non-returning student, disciplinary action would be taken.
42. To supplement enforcement measures, the Applicant anticipates installation of video surveillance cameras that would capture the front of the existing school building on Upton Street and the Van Ness-Upton Street alley. Additional video surveillance is possible to monitor the entrance to the driveway across the subject property.
43. The Board credits the conclusion of the Applicant's traffic expert that the additional students and employees attendant to the Applicant's proposal will have a negligible impact on traffic on Connecticut Avenue in the vicinity of Burke

School. The Applicant's traffic expert estimated that traffic related to Burke School would increase by 11 morning peak-hour trips and 14 afternoon peak-hour trips. Similar estimates were made by DDOT in its study of Connecticut Avenue, which concluded that the Applicant's proposed expansion and several other new developments (residential and institutional) anticipated in the same vicinity along Connecticut Avenue would have a negligible impact on traffic, and would increase only slightly the peak-hour traffic at the intersections of Connecticut Avenue and Tilden, Upton, and Van Ness Streets.

44. The Board credits the testimony of DDOT that approval of the application would improve existing traffic conditions in the neighborhood, considering especially the Applicant's additional focus on carpools and public transportation, the shuttle bus service, and the circulation pattern associated with the new building, all of which would reduce traffic on local streets adjacent to the school. DDOT recognized that school-related traffic will likely use some residential streets during student drop-offs, but did not believe that a more dangerous situation would result; rather, DDOT concluded that the Applicant's proposed traffic routes presented the best possible solution available. The Board also credits DDOT's conclusion that the Applicant's plans for the drop-off lane exit on Upton Street and its proximity to the alley exit was proper and safe, especially with uniformed monitors present to help direct traffic.
45. The Board finds that the proposed expansion of the private school use is not likely to become objectionable to adjoining and nearby property because of traffic. The Applicant's traffic management plan is sufficient to mitigate any adverse impacts arising from an increase in school-related traffic associated with the requested special exception. Based on the findings above, the Board is not persuaded by the arguments of the ANC or parties in opposition that the Applicant's proposed drop-off locations would create congestion or unacceptable traffic safety problems in those locations.

Adequate Parking

46. Burke School currently provides 24 parking spaces on-site behind the existing building pursuant to BZA Order in Application No. 13986. Under the Applicant's proposal, three of those spaces would be reserved for the school's vans, leaving 21 parking spaces for students, employees, and visitors.
47. The proposed new building will provide parking for 47 vehicles in a two-level parking garage below grade, for a total of 68 parking spaces provided by Burke School (21 spaces behind the existing school building, after reserving three spaces for school vans; and 36 self-park and 11 tandem spaces in the new garage). The

- new garage will contain at least 56 full-size parking spaces (nine feet by 19 feet) as well as smaller spaces (eight feet by 16 feet) for compact cars.
48. The Applicant calculated its parking requirement on the basis that the requested increase of 35 additional faculty/staff would be allocated to the new building, creating a new parking requirement of 23 spaces on the subject property (two spaces for every three employees, pursuant to § 2101.1). The largest assembly space at the Burke School will remain the gymnasium in the existing building, for which the Board previously established a parking requirement of 24 spaces. The Applicant's parking requirement is therefore a minimum of 47 spaces.
49. Students are discouraged from driving to Burke School. Approximately 12 students drive to school during the school year. The Applicant will attempt to assign each student vehicle a parking space in the new garage or elsewhere on the school grounds. Pursuant to the Applicant's traffic management plan, students and faculty are prohibited from parking in the 2900 block of Upton Street N.W. during school hours.
50. Three 14-passenger vans, used for school activities, may be parked in the driveway. Loading and unloading will take place either in the driveway or in front of the existing building on Upton Street. Vans or buses from visiting schools will park in front of the existing building or on Connecticut Avenue when parking regulations permit, or at other locations identified with the concurrence of DDOT.
51. With respect to school-related events held in the evening, the Applicant proposed that:
- (a) Burke School will host no more than six events per year that will generate 50 or more vehicles;
 - (b) special events will be scheduled to begin at 6:30 p.m. (the end of the peak period on Connecticut Avenue) or later;
 - (c) an annual calendar, with monthly updates, will inform the community as to when events are scheduled;
 - (d) persons attending evening events will be required to park in the underground garage at the subject property, with personnel from Burke School assisting to manage traffic on Upton Street and to maximize the capacity and safety of the garage, including the use of stacked spaces; and

- (e) during events likely to generate parking demand in excess of the capacity of the garage, the Applicant will make available off-street parking in other locations and provide shuttle service to Burke School.
52. The Board credits the conclusions of OP and DDOT that the Applicant's proposal will provide adequate parking for employees of Burke School and will be sufficient to mitigate any adverse parking impacts resulting from proposed increases in student enrollment and staff population.
53. The Board finds that the proposed expansion of the private school use is not likely to become objectionable to adjoining and nearby property because of parking, and that the Applicant's proposal – which provides for construction of a new underground garage as well as parking elements of the traffic management plan applicable to the regular operation of the private school use and to special events – will provide for ample parking space to accommodate the students, teachers, and visitors likely to come to the site by automobile.

Number of Students

54. Burke School is currently authorized to enroll a maximum of 270 students. However, the Applicant's actual student population was 299 in academic year 2001-2002 and 295 in 2002-2003. The Applicant anticipated a student population of 290 during the 2003-2004 school year.
55. The Applicant proposed to increase its authorized student enrollment initially to 300 students, with an incremental increase to 320 after four consecutive trimesters in compliance with its traffic management plan.
56. The Applicant also proposed to increase the number of faculty and staff on-site to a total of 70. Burke School currently employs 55 faculty and staff at the existing school (59 total).
57. The Office of Planning noted that the Applicant's proposed increase in enrollment – to 300 and ultimately to 320 – would represent an increase of five to 25 students over Burke School's actual enrollment in the 2002 academic year. OP concluded that the Applicant's proposed new building would provide additional facilities and allow operational changes that would likely reduce impacts of the larger student enrollment requested by the Applicant.
58. DDOT supported the proposed expansion of the student population linked with successful implementation of the Applicant's traffic management plan. DDOT noted that further adjustments of the traffic management plan and possibly a

reduction in the number of students might be required if adverse traffic impacts remained after full implementation of the traffic management plan.

59. ANC 3F opposed any increase in student enrollment, and instead indicated that the enrollment cap of 270, adopted in 1983, should remain in effect.
60. The Board finds that no objectionable conditions are likely to result from an increase in enrollment to 320 students. The Board concludes that the proposed new building and attendant operational changes would mitigate any adverse impacts of the relatively small increase requested by the Applicant.

Harmony with Zoning

61. The R-5 district is a general Residence district designed to permit flexibility of design by permitting all types of urban residential development that conform to applicable height, density, and area requirements. The R-5 district also permits the construction of institutional and semi-public buildings compatible with adjoining residential uses. 11 DCMR § 350.1. The R-5-D zone permits a relatively high height and density. 11 DCMR § 350.2.
62. The Applicant's proposed new building, with four stories above grade and a two-level below-grade parking garage, will contain 34,247 square feet of gross floor area, with a height of 53 feet, floor area ratio ("FAR") of 2.1, 33 percent lot occupancy, and a rear yard of approximately 17 feet, 6 inches. The building will conform to building restrictions of the R-5-D zone, which permits maximums of 90 feet in height, 3.5 FAR, and 75 percent lot occupancy, with rear yards of at least 15 feet. 11 DCMR §§ 400.1, 402.4, 403.2, 404.1.
63. The Board credits the testimony of the Office of Planning that a 55-unit apartment building could be built on the subject property as a matter of right, given the lot size, 3.5 FAR, and 75 percent lot occupancy, and assuming that the size of a typical apartment would be 900 square feet and that 15 percent of the building would be devoted to common areas. The Board is not persuaded by the parties in opposition that the subject property is too small and "unforgiving" to serve as the location of a private school.
64. The Generalized Land Use Map of the Comprehensive Plan designates the subject property and adjacent land to the north as suitable for high-density residential use. The Board credits the testimony of the Office of Planning that schools are generally considered part of the fabric of a residential community.

65. The Board also credits the testimony of the Office of Planning that the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Maps. OP based its conclusion in part on (a) the location of the subject property on a principal arterial street, adjacent to the existing Burke School, convenient to public transportation, and (b) the design of the proposed new building, which will reorient the private school use toward the high-density activity of Connecticut Avenue and away from the lower-density residential neighborhood to the east.
66. The Board does not find that the design or appearance of the Applicant's new building, including the proposed pedestrian bridge, would be objectionable as having an inappropriately commercial or industrial quality in a residential neighborhood.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2001) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. See 11 DCMR § 3104.1. The Applicant seeks a special exception pursuant to 11 DCMR § 3104.1 to construct a new building in an expansion of an existing private school use, under the conditions specified in § 206, with an increase in enrollment from 270 to 320 students in grades 6 through 12, and an increase in the maximum of faculty and staff from 55 to 70 in the R-5-D district at 4101 Connecticut Avenue, N.W. and 2955 Upton Street, N.W. (Square 2243, Lots 67 and 68).

In accordance with § 206, a private school must 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. 11 DCMR § 206.2. Ample parking space must be provided "to accommodate the students, teachers, and visitors likely to come to the site by automobile." 11 DCMR § 206.3. The Applicant must also demonstrate that the proposed private school use will be in harmony with the general purpose and intent of the Zoning Regulations and Map. 11 DCMR § 3104.1.

The Board's discretion in reviewing an application for a special exception is limited to a determination of whether an applicant has complied with the requirements of §§ 206 and 3104.1 of the Zoning Regulations. If an 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). The scope of the Board's

authority is defined by statute. See D.C. Official Code § 6-641.07 (2001 ed.). Where permitted by the Zoning Regulations, the Board may grant a special exception "subject to appropriate principles, standards, rules, conditions, and safeguards *set forth in the regulations.*" D.C. Official Code § 6-641.07(d) (emphasis added). Contrary to the argument asserted by the parties in opposition, the Board lacks the legal authority to deny an application for a special exception solely on the ground that the applicant has failed to comply with provisions of a prior grant of zoning approval.

Based on the findings of fact, and having given great weight to the recommendations of the Office of Planning and to the issues and concerns of ANC 3F, the Board concludes that the proposed expansion of the existing private school use, as conditioned by the Board, can be located at the subject property so that it is not likely to become objectionable to adjoining and nearby property. The Board has imposed conditions in this order in response to the Applicant's proposal, recommendations of OP and DDOT, and concerns raised by ANC 3F and the parties in opposition.

The Applicant's school management plan and traffic management plan adequately address adverse impacts potentially arising from the private school use. The subject property is located in an area where higher density uses are appropriate, and the Applicant's proposal, particularly the traffic management plan, offers more mitigation of the impacts of development on the subject property than would likely occur with a matter-of-right project permitted in the R-5-D zone. The new building will greatly increase Burke School's supply of parking, while the increases in enrollment and faculty/staff are not likely to create a substantial increase in demand for parking attendant to the private school use. The traffic impacts on nearby streets will likely be diminished as a result of the Applicant's proposal, especially the emphasis on public transportation and carpools, and the construction of the driveway in conjunction with the new building, which will allow student drop-offs and pick-ups to occur entirely on the subject property.

The Board accorded ANC 3F the "great weight" to which it is entitled. In doing so, the Board fully credited the unique vantage point that ANC 3F holds with respect to the impact of the proposed expansion of the existing private school use on the ANC's constituents. However, the Board concludes that the ANC has not offered persuasive advice that would cause the Board to find that the proposed new building and increases in student enrollment and in number of faculty/staff at Burke School would be contrary to the Zoning Regulations or would adversely affect the use of neighboring property, particularly in light of the conditions imposed on approval of the Applicant's proposal.

Specifically, the ANC raised concerns principally pertaining to noise generated by students and the Burke School's mechanical equipment, traffic congestion, student conduct, and construction. The Board accepts the expert testimony offered by the Applicant and the testimony of OP and DDOT on issues pertaining to noise and traffic,

and concludes that the proposed private school use will not adversely affect the use of neighboring property. The Board is not persuaded by the ANC or parties in opposition that student behavior in the vicinity of the subject property is an objectionable condition related to the Burke School. With regard to construction of the new building, the Board notes that the issues and concerns raised by the ANC are not within the purview of the Zoning Regulations.¹

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

1. The new building shall be constructed in accordance with the plans prepared by Bowie Gridley Architects and marked in the record as Exhibits No. 4 and 117.
2. Upon issuance of a certificate of occupancy for the new building, the maximum enrollment shall be 320 students, phased in from an initial increase to 300 students.
3. Upon issuance of a certificate of occupancy for the new building, the maximum number of faculty and staff shall be 70.
4. The Applicant shall fully implement and comply with the school management plan (Exhibit 1 to the Applicant's pre-hearing submission, Exhibit No. 31; as modified by Finding of Fact No. 20).
5. The School shall fully implement and comply with the enforcement plan (Exhibit 2 to the Applicant's pre-hearing submission, Exhibit No. 31; as revised by Findings of Fact No. 22 and 23).
6. The School shall fully implement and comply with the traffic management plan (Applicant's pre-hearing submission, Exhibit No. 31; as revised by Findings of Fact 37-39), with flexibility to modify its elements with the concurrence of DDOT in response to changes in traffic conditions in the vicinity of the subject property.

¹ The Board notes that the Applicant agreed to implement a construction management plan (Exhibit 3 to the Applicant's prehearing submission, Exhibit No. 31) that will help minimize adverse impacts during construction of the new building.

7. The Applicant shall resume participation in the scheduling committee with the Howard University law school, the Levine School of Music, the Hillwood Museum, the Royal Netherlands Embassy, and ANC 3F to reduce the frequency of overlapping special events held at the participating entities and to minimize the difficulties that coincident scheduling of events might impose on the surrounding neighborhood.
8. By October 1 each year, the Applicant shall provide to the Board and to ANC 3F: (a) a report indicating current student enrollment and the number of faculty/staff; and (b) an annual report by the enforcement committee reflecting its evaluation of the Applicant's performance in implementing the school management plan and traffic management plan.

VOTE: 5-0-0 (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., Anthony J. Hood, and David A. Zaidain voting to approve)

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

Each concurring member has approved the issuance of this Order.

FINAL DATE OF ORDER: AUG 04 2004

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C.

OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. MN/RSN

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