

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY

NOVEMBER 3, 2021

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The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice at 9:30 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

- FREDERICK L. HILL, Chairperson
- LORNA JOHN, Vice Chairperson
- CARL BLAKE, Board Member
- CHRISHAUN SMITH, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

- ROBERT MILLER, Vice Chairman

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary
- PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

- MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from the Regular Public Meeting held on November 3, 2021.

P-R-O-C-E-E-D-I-N-G-S

9:39 a.m.

1
2
3 CHAIRPERSON HILL: Good morning, ladies and
4 gentleman, the Board of Zoning Adjustment. Today's date is
5 11/3/2021. Public hearing will please come forward. My name
6 is Fred Hill. I'm Chairperson of the District of Columbia
7 Board of Zoning Adjustment. Joining me today is Lorna John,
8 Vice Chair, Board Members Carl Blake, Chrishaun Smith, and
9 Zoning Commissioners Rob Miller, Peter May, and Anthony Hood.
10 Today's meeting and hearing agenda are available to you at
11 the Office of Zoning website.

12 Please be advised that this proceeding is being
13 recorded by a court reporter and is also webcast live via
14 Webex and YouTube Live. The video webcast will be available
15 on the Office of Zoning's website after today's hearing.
16 Accordingly, everyone who is listening on Webex or a
17 telephone will be muted during the hearing. Also, please be
18 advised that we do not take any public testimony at our
19 decision meeting session.

20 If you're experiencing difficulty accessing Webex
21 or with your telephone call-in, then please call our OZ
22 hotline number 202-727-5471 to receive Webex log-in or call-
23 in instructions.

24 At the conclusion of a decision meeting session,
25 I shall, in consultation with the Office of Zoning, determine

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1 whether a full or summary order may be issued. A full order
2 is required when the decision it contains is adverse to a
3 party, including an affected ANC. A full order may also be
4 needed if the Board's decision differs from the Office of
5 Planning's recommendation. Although the Board favors the use
6 of summary orders whenever possible, an applicant may not
7 request the Board to issue such an order.

8 In today's hearing session, everyone who is
9 listening on Webex or on telephone will be muted during the
10 hearing, and only persons who have signed up to participate
11 or testify will be unmuted at the appropriate time. Please
12 state your name and home address before providing oral
13 testimony or your presentation. Oral presentation should be
14 limited to a summary of your most important points. When
15 you're finished speaking, please mute your audio so that you
16 might cause no longer picking up sound or background noise.
17 Once again, if you're experiencing difficulty, please call
18 our OZ hotline number at 202-727-5471. It's also listed on
19 the screen in front of you.

20 All persons planning to testify either in favor
21 or in opposition should have signed up in advance. They'll
22 be called by name to testify. If this is an appeal, only
23 parties are allowed to testify by signing up to testify. All
24 participants completed the oath or affirmation as required
25 by Subtitle Y 408.7.

1 Requests to enter evidence at the time of an
2 online virtual hearing, such as written testimony or
3 additional supporting documents other than live video, which
4 may not be presented as part of the testimony, may be allowed
5 pursuant to Subtitle Y 103.13, provided that the persons
6 making the request to enter an exhibit explain how the
7 proposed exhibit is relevant; the good cause that justifies
8 allowing the exhibit into the record, including an
9 explanation of why the requester did not file the exhibit
10 prior to the hearing pursuant to Y 206, and how the proposed
11 exhibit would not unreasonably prejudice any parties.

12 The order of procedures of special exceptions and
13 variances are pursuant to Y 409. The order of the appeals
14 is pursuant to Y 507.

15 At the conclusion of each case, an individual who
16 was unable to testify because of technical issues may file
17 a request for leave to file a written version of the planned
18 testimony to the record within 24 hours following the
19 conclusion of public testimony in the hearing. If additional
20 written testimony is accepted, then parties will be allowed
21 a reasonable time to respond as determined by the Board. The
22 Board then will make its decision at its next meeting
23 session, but no earlier than 48 hours after the hearing.
24 Moreover, the Board may request additional specific
25 information to complete the record. The Board and the staff

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1 will specify at the end of the hearing exactly what is
2 expected and the date when persons must submit the evidence
3 to the Office of Zoning. No other information shall be
4 accepted by the Board.

5 Finally, the District of Columbia Administrative
6 Procedures Act requires that a public hearing on each case
7 be held in the open before the public. However, pursuant to
8 Section 405(b) and 406 of the Act, the Board may, consistent
9 with its rules and procedures and the Act, enter into a
10 closed meeting on a case for purposes of seeking legal
11 counsel on a case pursuant to D.C. Official Code, Section
12 2-575(b)(4) and/or deliberate on a case pursuant to D.C.
13 Official Code, Section 2-575(b)(13), but only after filing
14 the necessary public notice in the case for an emergency
15 closed meeting after taking a roll call vote.

16 Mr. Secretary, do you have any preliminary
17 matters?

18 MR. MOY: Welcome. Good morning, Mr. Chairman,
19 Members of the Board. It's the first week in November. Yes.
20 I do have a brief announcement related to cases on or
21 actually off of today's docket if you can bear with me.
22 First, we have Case Application -- I believe it's 20280. I
23 think that's the Case Number, VBS Community Builders, LLC.
24 That application has been continued to November 17, 2021.

25 Application Number 20537 of Margaret McCulloch has

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1 been continued to December 8, 2021.

2 The Application Number 20354 of Cambridge
3 Holdings, LLC continued to December 15, 2021.

4 We have two -- the next two cases have been
5 continued to February 16, 2022. These two cases are 20380
6 of Polygon Holdings, LLC, and 20555 of Odessa Ford. These
7 two cases to February 16, 2022.

8 Finally, the Appeal Number 20252 of Citizens
9 Against Developers Greatly Obfuscating has been withdrawn by
10 the appellant.

11 Other than that, Mr. Chairman, there are
12 preliminary matters on some of the cases today, but as has
13 been customary, so the Board finds it more efficient to
14 address those when I call the case. That's it for me, Mr.
15 Chairman.

16 CHAIRPERSON HILL: Okay. Thanks, Mr. Moy. Good
17 morning, everyone. Let's see, I know we have a bunch of
18 different commissioners today, so if you'll just, as
19 efficiently as possible, if Mr. Moy, you could call our one
20 and only decision case today?

21 MR. MOY: Yes. Thank you, Mr. Chairman. This
22 would be Application Number 20472 of the River School, and
23 this application is before the Board for special exceptions
24 under the daytime care use provisions -- or rather
25 permissions of Subtitle U Section 203.1(h) under the private

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1 school use permissions of Subtitle U 203.1(m), minimum
2 parking requirements, Subtitle C Section 701.5. This would
3 construct a child development center and private school
4 campus in the R-1-B Zone, and the property is located at 4220
5 Nebraska Avenue, NW. As you will recall, this was last heard
6 by the Board at its hearing on October 27th, and
7 participating on this application for the Zoning Commission
8 is Rob Miller.

9 CHAIRPERSON HILL: Okay. All right, everybody,
10 let's see. So I can go ahead and, I guess, start this
11 discussion. As I -- as you recall, as everyone recalls, it
12 was a very long hearing that we had last week, and we took
13 a lot of testimony from the public as well as the applicant
14 as well as the party in opposition. And there was, you know,
15 strong opinions both in favor and in opposition. I don't
16 think that, again, there's opposition to what the mission of
17 the school is per se. I mean I think that everyone is --
18 it's not so much why the school is trying to be there as to
19 whether or not this application should be approved as to
20 whether the effects on -- whether it's meeting the standards,
21 right, of how we're supposed to determine whether or not this
22 should be approved. So I mean I went back and looked at all
23 of the material as well as the record as well as new
24 testimony -- not new testimony -- you know, other filings
25 from the testimony that was in the record, went back to the

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1 requirements of U 206.1(h) as well as U 203.1(m); also went
2 and looked at the special exception general standards of X
3 901.2, and I came down to again, you know, what are they
4 proposing there, and what is the relief that they are
5 requesting.

6 So in terms of the parking, I mean, you know, 52
7 spaces required. They're providing 42. And then there's
8 also 12 tandem parking spaces, 6 parking spaces to the pick
9 up and the drop off loop. Even though those are not zoning
10 compliant, I did at least take that into account as I was
11 thinking about it and that they're -- the parking
12 requirements that they're asking relief from, to me, don't
13 seem that extreme, right. You know, they're almost providing
14 all the parking that they needed, and then, you know, the --
15 in one way or another even though, again, they're not zoning
16 compliant.

17 And then it comes down to the adverse effect for
18 the traffic, right, in my opinion, in terms of the pick
19 up/drop off, the amount of activity that's going to happen
20 in that area with the school. I suppose -- you know, I go
21 back to the ANC and their opposition and their discussion
22 that this is kind of just, you know, things piling on top of
23 each other, right, like one school, another school, another
24 school. And I was a little bit conflicted as to, you know,
25 we're supposed to look at this as one particular application,

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1 not how this application affect -- I'm sorry -- not how other
2 applications affect this application. However, the truth of
3 the matter is there will be more traffic in there because of
4 this school, right.

5 I also went to the -- as I was thinking -- I mean
6 we all -- most of us know the area, and kind of know that
7 like -- I mean, you know, if you're going to avoid traffic
8 in the pick up/drop off times, you're going to avoid traffic
9 in the pick up/drop off times. Like those -- that traffic
10 is there anyway now, right. So, you know, you're not -- I
11 don't know whether there's going to be any more traffic. I
12 mean I don't think it's going to necessarily be any more
13 inconvenient than it already is, because all those other
14 schools are already there doing their pick up and drop off
15 as well, right.

16 So then I went back to the Office of Planning's
17 report and looked at their analysis as to how they met the
18 criteria. I mean I guess I would agree with the Office of
19 Planning's analysis as to how they believe this one
20 application is meeting the criteria for us to grant this --
21 approve this application.

22 The thing again it just keeps circling back to is
23 the traffic, right, and whether or not those traffic
24 situations are going to be mitigated enough that I feel
25 comfortable approving the project. Again, no one is saying

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1 this isn't a good -- I think, you know, the school, the
2 mission, you know, the parents that had, you know, testimony
3 very much so about, you know, they had their own children
4 that had -- that would benefit from this school or could have
5 benefitted or do benefit, right, and then also the parents
6 that were opposed that were more concerned about, you know,
7 additional traffic and then being, you know, concerned about
8 more, you know, people walking around. I guess I was, again,
9 conflicted in that that's part of what makes that
10 neighborhood so great is that you can walk to your schools,
11 right, I mean if you're in one of these schools obviously but
12 also that it is a walkable area.

13 I did go back and look at again some of the
14 testimony in terms of how they're handling the situation at
15 their MacArthur Boulevard school, and it seems as though they
16 are compliant with what they had -- what they've been trying
17 to do. You know, they're a good neighbor, you know, to use
18 some other commissioner's terminology, and that they seem to
19 be doing a good job there at MacArthur. And I don't think
20 that they wouldn't do their best to do a good job here at
21 this school. So what it comes down to again or what it came
22 down to again for me is going back through the TDM plan and
23 the measures that they had proposed as to how they're going
24 to deal with the traffic and deal with the pick up and drop
25 offs and what the ramifications are if they don't hit their

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1 numbers, right.

2 I think that the fact that -- I thought it was a
3 good argument that they made, that it wasn't just a dollar
4 figure. Like they're -- you know, they're not just going to
5 have to pay a penalty. They're going to have to fix the
6 numbers if the numbers don't get to where they're saying the
7 numbers will get in terms of the TDM plan and manage area.
8 I mean I thought the TDM plan was extremely expensive, more
9 so than actually we see in a lot of cases. I mean this is
10 not, again, a campus plan, but I think that they proposed a
11 lot of measures as though it was a campus plan.

12 And then another thing that we can discuss again
13 is the money that they've offered forward to pay for things
14 that would really kind of come forward more in a PUD that
15 really aren't zoning-related -- I shouldn't say that -- BZA
16 items is more kind of Zoning Commission things when like
17 there's a PUD and whether or not the community's going to get
18 more benefit after this -- if this went through. And again,
19 then that's another discussion as to how that may or may not
20 be put forth in an order if we were to move forward with
21 this.

22 I guess I'd like to hear what everybody has to
23 say. I'm, again, you know, disappointed that the community
24 is very much concerned about this additional school causing
25 more problems. But again, I'm just kind of conflicted. I

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1 mean I think the way that that neighborhood is now and the
2 way that the timing in the morning already is difficult,
3 dense, hard to move around, I don't think this school
4 necessarily is going to add so much to that. It's already
5 a situation where pick up and drop offs in that area are
6 difficult for, you know, the neighborhood to kind of like get
7 around. But again, that's what makes that neighborhood a
8 good neighborhood to live in, or at least some one item as
9 to why that is a good area to live in.

10 So that all being said, I guess I'm leaning
11 towards approving this with all of the measures that were put
12 forward because of -- the last thing, I guess, is I remember
13 talking to the applicant about going back to the ANC and that
14 there was a comment that was more of a philosophical
15 difference in that, you know, people should be trying to use
16 public transportation more than using their cars. And so
17 that kind of, unfortunately, goes to a bigger issue than is
18 really kind of this application, which is how do you get
19 people to use public transportation. And also, then they
20 went to the discussion about how the smaller children, you
21 know, would need to be driven in a certain way rather than
22 just taking the Metro and the buses. And then also, you
23 know, as a single parent, you know, to think that you're
24 going to -- well, you're -- they're going to encourage the
25 people, the parents to use public transportation as much as

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1 possible, and I think that that is something that they've
2 shown in their measures. So yes -- so I guess, you know, I'm
3 going to lean forward -- lean towards voting in favor, but
4 I'm interested in hearing what other people have to say. I
5 don't really have a particular order in this. I guess we'll
6 go round and round for a while, but I am going to start with
7 Mr. Smith. If you don't mind, Mr. Smith, if you would like
8 to give us your thoughts?

9 MEMBER SMITH: Sure. So, I agree with many of
10 your points, Mr. Chair. You know, I am -- it is
11 disappointing that the neighborhood is, you know, against
12 this project, but I understand their concerns relate to
13 traffic -- mostly traffic coming to the site. And I can say
14 I am familiar with this location and the traffic along
15 Nebraska and the amount of institutional uses on Nebraska
16 that create -- that may create this traffic headache to
17 Tenleytown.

18 This is a very tight site. It's a two-acre site.
19 They're attempting for program (phonetic) build additional
20 structures around the existing historic community that's
21 located on the property which does present some constraints
22 on the applicant regarding how they can address traffic and
23 parking. And I think they've attempted to, given the site
24 constraints, attempted to address those concerns.

25 My concern -- well, when I look at the -- what

1 they're requesting, it is a multitude of special exceptions,
2 so special exceptions for minimum parking requirements and
3 special exceptions to be able to operate a private school use
4 and daytime care use permissions. So when it comes down to
5 the heart, I do, you know, recognize given the tight site
6 constraints, given the very extensive TDM that was presented
7 and the conditions that they are holding themselves to, I
8 think that the request for the reduction in the parking
9 requirements is (audio interference).

10 But, you know, my concerns lie in some of the
11 other special exception criteria that we're tasked with
12 looking at in U 203.1(h) and U 203.1(m), and the particular
13 criteria that I'm looking at inside the 203.1(h)(1), the
14 facility shall be located and design, create no objectionable
15 traffic condition and no unsafe condition when picking up and
16 dropping off persons in attendance. And U 203.1(m), the
17 first one, shall be located so that it's not likely to become
18 objectionable to adjoining or nearby property because of
19 noise, traffic, and the students or otherwise objectionable
20 conditions and 3, after hearing all evidence, the BZA may
21 require additional parking to be required by this title.

22 I agree with you, Mr. Chair, that this, as long
23 as I've been on the Board at least and just the research that
24 I've done in previous cases before I was on the Board, this
25 is a very expensive list of conditions and a very robust TDM.

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1 My concern with what has been presented -- you know, thank
2 you to the applicant for being as robust and attempting to
3 meet the concerns the ANC and, you know, the civic groups
4 that are out there that right now are opposed to this
5 particular project -- but given the site constraints here,
6 I do believe that the pick up and drop off concerns with the
7 neighborhood are valid. There's a lot of traffic on
8 Nebraska. There are a lot of institutions along Nebraska
9 that are -- that have pick up and drop off issues on their
10 own. So I wouldn't want this project to exacerbate that
11 issue. The TDM does attempt to rectify that by having a
12 study occur for that first year, but I do believe that as far
13 as I can see, that there is still a blind spot in how do you
14 protect, strongly protect against pick up and drop off
15 concerns at the school.

16 I recognize that there is a condition that says
17 that no passenger vehicle pick up and drop off of students
18 shall occur on the streets immediately adjacent to the
19 campus, but I'm still concerned with how you can enforce that
20 specifically if there -- if we -- if the school doesn't have
21 enough site that these parents can go to to either queue or
22 potentially drop off their children. So I am concerned that
23 based on at least what I see that that doesn't exist within
24 that first year, especially given this project -- these
25 conditions really don't kick in until after the project has

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1 been built and they're at their full occupancy. At that
2 point, you know, all the remedies have been back-loaded. The
3 building has been built. The occupancy is already there.
4 You're trying to address it after the fact, and I have a
5 concern with that. Noble as it is, I do have some concern
6 with that.

7 So as of right now, I'm conflicted and I would
8 like to see -- before I can get to an approval, I would like
9 to see that we -- the applicant has addressed that in some
10 way, shape, or form. That means contracting with one of
11 these offsite -- for offsite parking for this first year just
12 in case. I think that would move me a little closer to a yes
13 than where I am now with this particular project. So
14 reaching out to some of the sites that they listed in their
15 TDM that they may potentially contact with -- enter into a
16 contract with them for their first year for any overflow pick
17 up and drop off, and with that and continue to study during
18 year one and year two as stated within their conditions and
19 in the TDM and change as needed after that first year. So
20 that's where I'm at right now.

21 CHAIRPERSON HILL: Okay. Commissioner Miller?

22 COMMISSIONER MILLER: Thank you, Mr. Chairman.
23 This -- I mean I generally agree with most of the comments
24 that both you, Mr. Chairman, and Mr. Smith have made thus
25 far. I mean this hearing -- this long -- very long hearing

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1 that we had last week which I went back and looked at parts
2 of it again yesterday, because I'm a glutton for punishment.
3 You know, it was all about the traffic impact, and we have
4 the Office of Planning and the District Department of
5 Transportation saying that the traffic impacts, that they can
6 recommend approval on the condition that the transportation
7 demand that has been planned, that has been developed between
8 the applicant and the DDOT would be a condition of the order,
9 and that includes all of the traffic mitigation and
10 minimization strategies that are in the TDM plan and the
11 performance monitoring plan and the in comprehensive traffic
12 report that was prepared for this case. And the applicant
13 has agreed to all of the TDM measures that DDOT has
14 recommended. They actually were even willing to do more if
15 DDOT wasn't prepared to recommend at this time because my
16 impression was they thought some of the signalization
17 improvements, for example, at 42nd Street, Nebraska and Van
18 Ness that the applicant was willing to do and pay for.

19 And so ahead of time, DDOT wanted to monitor that,
20 the operations, and I think got the impression from not just
21 DDOT's testimony but almost everybody's testimony that the
22 existing conditions -- as my colleagues have said, the
23 existing traffic conditions, particularly at the morning drop
24 off and the afternoon pick up times, are bad. And -- but the
25 applicant was willing to do more than their share of the

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1 burden of addressing not just their potential exacerbation
2 of those traffic conditions but also to do more than their
3 share of burden of addressing the existing traffic measures.
4 And I would hope, actually, if we -- if this goes forward,
5 that DDOT would allow the applicant to make those
6 improvements that they offered to do for this neighborhood.

7 They are -- that TDM plan does include a lot of
8 things that will happen -- have to happen before the
9 certificate of occupancy, including that long sidewalk
10 construction along 42nd Street that doesn't exist today,
11 other signalization improvements, signage improvements, flex
12 post pavement markings. I would want as many of those front-
13 loaded as possible before the C of O, but I understand why
14 DDOT wants to see how this performance monitoring goes and
15 kick in the remedies that are in the plan if the targets, the
16 traffic mitigation targets aren't met. The TDM plan includes
17 this 45 percent trip production target, which is pretty high
18 in this type of case, and that's pretty stringent, and there
19 are remedies if they don't meet it.

20 It is disappointing that ANC 3 could not get to
21 a point of supporting this project. They wanted the -- as
22 I understand it, they wanted the applicant -- well, they said
23 enough is enough basically. We allowed all this other growth
24 in this neighborhood, not just the schools but a lot of
25 development up and down various corridors, and they basically

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1 said enough is enough. They wanted 75 percent trip -- 75 to
2 80 percent trip reduction, which I think both DDOT and the
3 applicant thought was totally unrealistic and has never been
4 accomplished, and it would just be setting up for failure
5 that kind of a goal. But it is disappointing because that
6 ANC has worked with any number of applicants in the
7 neighborhood to try to get to a point where they can say yes
8 if certain things happen.

9 So I think a lot of the things that are in the --
10 a lot of mitigation measures that are in the TDM and
11 performance monitoring plan are important. As many of them
12 that can be front loaded before the C of O as possible, I
13 think is important. I think it's important that it be part
14 of our order that the TDM plan -- that the applicant has
15 agreed to, they've proffered it -- that it be part of our
16 order. That's not unusual in my experience in private school
17 special exception cases such as this where traffic often is
18 the issue -- is the main issue and certainly not uncommon,
19 as the Chairman has alluded to, in college/university campus
20 plans and in planned unit developments that the Zoning
21 Commission considers. So I think that this is a -- you know,
22 it's -- it's a very -- nobody was contesting that this is a
23 very worthwhile project providing an inclusive educational
24 experience for hearing impaired kids. I think it's 20
25 percent of the student population. That's what makes it

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1 inclusive. They're immersed with non-hearing impaired kids
2 as well and provided a good education for everybody. They
3 have the clinic. They'll -- they have the hearing clinic
4 onsite and, you know, it is -- and obviously, it's going to
5 be a more intense use. This was a -- had a single-family
6 home on this lot. I think they have an adjacent lot. So the
7 two lots are -- school use, obviously, is going to be more
8 intensive use and with more impacts than a single-family
9 home. But it is 2.3 acres. It still will only be 0.6 FAR,
10 the structures on those two lots, 2.3 acres. Only -- I think
11 it's only 31 percent lot occupancy, so there's still a lot
12 of open space.

13 And that reminds me of the driveway, the driveway
14 for the pick up and drop off and off of Nebraska, which is
15 only -- which is required to be right in and right out. They
16 don't have a driveway on MacArthur. I think they're dropped
17 off right at MacArthur at the existing school right now, so
18 they will have -- it will have a driveway. There is the
19 concern about the queuing that will occur on -- backing up
20 for Nebraska. They do have shuttle buses that they are --
21 and that was part of the TDM plan -- at offsite locations for
22 the K through 6 kids, I guess. The younger kids aren't going
23 to be on the shuttle bus. And so, you know, there's a lot
24 of measures in here to try to mitigate -- they're going to
25 have the traffic control aids out on Nebraska in the morning

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1 and in evening, not presumably allowing people to drop off
2 in the neighborhood.

3 So I think it is a robust TDM plan. If it's part
4 of the order, with the performance monitoring plan as well,
5 I am prepared to support this project today. Thank you.

6 CHAIRPERSON HILL: Thank you, Commissioner. Vice
7 Chair John?

8 VICE CHAIRPERSON JOHN: Thank you, Mr. Chairman.
9 So I might repeat some of what has been said, but I'll just
10 add my thoughts. So this is a special exception request to
11 operate a child development center and a private school in
12 the R-1-B Zone at 4220 Nebraska Avenue, NW. The applicant
13 also seeks relief to provide less than the required number
14 of compliant parking spaces. And as mitigation, the
15 applicant proposes noncompliant spaces with total capacity
16 at 65 spaces, which is more spaces than would really be
17 required.

18 The school's current enrollment is 222 students from
19 birth to 3rd grade. School would eventually enroll 350
20 children with 90 employees, and the children would be from
21 birth through 6th grade. The school would also operate an
22 accessory clinic for students and alumni and children from
23 different neighborhoods across the city are currently
24 enrolled in the school as well as some from other
25 jurisdictions. As noted previously, the school is relocating

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1 from its present location to better meet the needs of its
2 students.

3 The three new buildings for additional -- will be
4 provided for additional classroom space and a gym as well as
5 the clinic, and I would also note that the project meets all
6 the developmental standards.

7 So this is a full record and I believe the
8 application meets the criteria for the need under Subtitle
9 U 203.1(h), 203.1(m), the minimum parking requirements under
10 Subtitle C 701.5 as well as the general special exception
11 criteria under X 901.2.

12 The parties in opposition concerns are related to
13 the size of the building, traffic volume, and pedestrian
14 safety for seniors and children. There was significant
15 neighborhood opposition as well as support for the project.
16 Neighbors are very concerned about traffic impacts on
17 neighboring streets, and most of the testimony at the hearing
18 involved traffic impacts. The ANC's report opposed the
19 project stating that the specific issue preventing approval
20 was traffic volume at Nebraska Avenue and Van Ness and
21 Nebraska Avenue and Warren Street. And the ANC also required
22 the applicant to have a 70 to 80 percent trip reduction.

23 There's general consensus that there will be
24 increased traffic impacts at this location. To mitigate
25 those impacts, the school has proposed a robust mitigation

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1 strategy in its transportation management plan that includes
2 a TDM plan, an operations management plan, and a monitoring
3 plan, and this is described at Exhibit 100B. I believe that
4 the strategies outlined in those plans will mitigate the
5 opposition's traffic concerns in connection with any added
6 impacts caused by this particular school. It will not and
7 should not be expected to solve all of the existing traffic
8 concerns.

9 The ANC's insistence that the school reduce trip
10 generation to 70 percent -- by 70 to 80 percent as opposed
11 to the 45 percent reduction proposed by the school is clearly
12 unreasonable given the ages of the children involved at this
13 school.

14 I would also note that OP is in support, and I give
15 great weight to OP's analysis and the recommendations of how
16 the application meets all of the requirements for approval.

17 DDOT does not oppose the application and in
18 comprehensive testimony at the hearing demonstrated why the
19 applicant's mitigation strategies are sufficient to meet
20 anticipated traffic created by the school. And why DDOT's
21 approach to evaluate all the impacted intersections in a more
22 strategic manner is the better approach.

23 However, I would not adopt the school's proposed
24 voluntary contributions which are described on page 11 of
25 Exhibit 100B, because in my view, the BZA could not -- and

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1 I believe it lacks the jurisdiction to order a private party
2 to fund public space improvements no matter how good they
3 are. It's just not in the role of a private party to do that
4 in this setting, and it might be appropriate where there's
5 a campus plan or there's a PUD. But in this setting, we're
6 looking at the typical special exception for a school. It's
7 not a campus plan. And so I would not recommend we set a
8 precedent of requiring private parties to fund public space
9 improvements.

10 The school is proposing draft conditions at
11 Exhibit 51F, which I recommend that the Board adopt as well
12 as the request for design flexibility in Exhibit 51E.

13 Finally, I appreciate the testimony and concerns
14 of all of the witnesses and the residents. They're not
15 opposing this school. They're only opposed to traffic --
16 well, not only opposed to traffic, but they're concerned
17 about traffic, which I might add is just -- it's a condition
18 of living in the city. And as residents, we like the
19 benefits of city life and traffic is one part of it, but I
20 recognize that in this neighborhood, there are particular
21 concerns to particular traffic intersections which DDOT has
22 noted. And I believe that this is something that the
23 residents can work together to pressure DDOT to look at those
24 traffic signals, as DDOT suggested, in a more comprehensive
25 and strategic fashion as they promised.

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1 But I believe this is a unique school serving
2 children with hearing loss in a regular setting. It caters
3 to all income levels and is a greatly-needed resource as the
4 President and CEO of Children's National Hospital stated in
5 his letter, Exhibit 85.

6 And so because this is a request for special
7 exceptions -- it's not a request for any variance -- and the
8 applicant meets the regulatory criteria, this Board
9 ordinarily would grant relief. I agree there will be traffic
10 impacts. Based on the traffic mitigation study as amplified
11 by DDOT and the full record, I am in support of this
12 application. Thank you, Mr. Chairman.

13 CHAIRPERSON HILL: Thank you, Vice Chair John.
14 Mr. Blake?

15 MEMBER BLAKE: I would like to thank everyone for
16 making those very thorough and detailed comments, which I
17 would agree with almost everything, every comment made by the
18 members of the Board. As Chairman Hill pointed out, this is
19 a worthwhile project, and there's no opposition to the
20 mission of the school. As each of the other Board members
21 pointed out, this is an extensive, robust, and I think
22 importantly, a dynamic plan that can be adjusted as the
23 situation evolves. And there are no traffic issues that are
24 beyond the -- there are traffic issues that are beyond the
25 control of the school, and to a large extent, that ultimately

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1 rests on the shoulders of DDOT. I would agree with Vice
2 Chair John's thorough assessment of the situation, and I
3 certainly was disappointed with the ANC's view. And while
4 I can appreciate the ANC's view on incrementalism and their
5 perspective that this is their shot to manage the impacts of
6 previous, current, and future development projects, it's
7 unrealistic to expect the mitigation efforts on The River
8 School to solve all the current and perspective traffic
9 problems.

10 That said, I did have some concern with the
11 project was a U 203.1(h). I struggled a bit with the fourth
12 specific condition which focuses on the cumulative impact on
13 the neighborhood due to traffic, noise, operations, or other
14 similar factors of the existing daycare centers within 1,000
15 feet of the applicant. In this case, there are three and
16 there are a number of issues discussed by the ANC regarding
17 at least one of those facilities. But again, I cite the
18 robust mitigation packet proposed by the applicant which I
19 believe the S&D actually pointed out that a number of the
20 mitigations proposed were actually remedies for the effects
21 of the other nearby institution who lacked a robust TDM and
22 PM plan.

23 So I think that overall, this certainly meets the
24 specific conditions of U 203.1(h) and as well as 203.1(m),
25 and it also meets the criteria for parking relief. I would

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1 also be in support of providing the design flexibility
2 requested by the applicant and supported by the Office of
3 Planning. I'm prepared to support it.

4 CHAIRPERSON HILL: Okay. Well, then I guess some
5 of the discussion or a little part of it, as I was looking
6 through the conditions, Mr. Smith, the very part that says
7 like during year one where year one is defined as the first
8 school year commencing upon the initial opening of the
9 school, the monitoring study shall be conducted two times per
10 semester. The first monitoring study shall be completed no
11 later than October 15th. I mean I guess, you know, of that
12 first year is what I might add to that so that basically,
13 it's -- they're not waiting until the beginning of the second
14 year. They're -- I think they're clearly saying that they're
15 doing it by October 15th of the first year. And if not, then
16 I would add that into the condition so that right away they
17 are going to have to, as you say contract out, you know, try
18 to start mitigating some of these impacts if this TDM plan
19 is not working the way they think it should by October 15th.
20 That's the only thing that I think maybe -- and I see you
21 nodding, Mr. Smith. I guess that would at least address some
22 of your thoughts?

23 Okay. Then, Commissioner Miller, in terms of the
24 front-loading, I don't know -- before the C of O, I don't --
25 I think that is all kind of taking place. I don't know how

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1 to address that in any other way than it's already been
2 addressed. Isn't that kind of what they are proposing to do?

3 COMMISSIONER MILLER: Yes. I just was -- I wasn't
4 proposing any changes to the Transportation Demand Management
5 plan which includes the performance monitoring and operation
6 plan. I wasn't proposing any changes that haven't already
7 been agreed to by both DDOT and the applicant and recommended
8 by Office of Planning. So I mean I just was just expressing
9 my personal viewpoint that such plans should have, just
10 generally going forward, as much front-loading as possible
11 so that they -- so that those -- all those mitigation
12 measures are in place prior to operations, although I see the
13 value of and the dynamism, as somebody described it, of
14 having the flexibility to adjust to meet the problems that
15 occur over time. So I wasn't proposing any changes. I just
16 was expressing a personal preference about these TDM plans
17 generally, that they have as much in them that gets
18 accomplished before C of O, if that's clearly -- a clear
19 enforceable way to know that those mitigation measures are
20 in place. But I understand why you need to -- why they have
21 a performance monitoring plan in this case and why they want
22 to adjust things as they go forward.

23 So I wasn't proposing any changes at all to the
24 TDM plan. The applicant has agreed to everything, Vice Chair
25 John, the proffering of money to pay for certain public space

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1 improvements. I know -- I understand your discomfort level
2 with that. It is just not uncommon at all in my 9-1/2 years
3 of experience on the Zoning Commission and sitting on BZA
4 cases for private school cases to have that -- to make that
5 proffer to -- that they're willing to pay for certain things
6 that mitigate an adverse impact, an adverse traffic impact,
7 in this case that the special exception review process is
8 designed to develop mitigation measures for. So they've
9 agreed to it. It's in there. We don't have to -- I don't
10 think we need to reference any of the specific TDM measures
11 in our order except to make reference to the fact that the
12 TDM is a condition of the order. That's what OP has
13 recommended. That's what DDOT's recommended, and that's what
14 mitigates all those, the measures mitigate the traffic impact
15 and the applicant has proffered them and agrees to them. So
16 that's where -- that's what gives me the comfort level to
17 move forward.

18 But I do appreciate Ms. John's thorough and
19 everybody's thorough analysis. It's been very helpful and
20 filled in a lot of gaps that I left in my analysis. So thank
21 you.

22 CHAIRPERSON HILL: Okay. Now I mean we've kind
23 of come back now to this -- the proffering of the money. Ms.
24 Nagelhout, can you hear me?

25 MS. NAGELHOUT: I can.

1 CHAIRPERSON HILL: I can't remember. We did --
2 there was an order that I was on a long time ago with Sidwell
3 Friends where they proffered some funds to help mitigate
4 potential traffic impacts, and I wasn't sure whether that was
5 actually a condition of the order or if that was something
6 that the applicant and the -- and, you know, the applicant
7 had agreed to. So in other words, it's kind of like -- and
8 I'm on the fence on this one, so that's why I'm kind of
9 talking this through a little bit with -- and then you all
10 can decide. I see Mr. -- Commissioner's on one side. Vice
11 Chair John is on the other side.

12 My question to you, Ms. Nagelhout is A, you
13 know, are we setting a bit of a precedent, or did we do
14 something like that in the Sidwell Friends order? I guess
15 that's question number one. And then two, to my fellow Board
16 members, is that -- what are your thoughts about that one
17 condition about proffering the money and pulling it out;
18 however, since the applicant had agreed to it, it's just like
19 in prior cases when it's something that is not necessarily
20 that the Board feels is something that should be in the
21 order, but the applicant has proffered it? You know, the
22 applicant would, I would imagine, honor that condition that
23 they had offered. So that's something for the Board to just
24 kind of chew on for a second. Ms. Nagelhout, do you have any
25 thoughts?

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1 MS. NAGELHOUT: Well, unfortunately, I'm not
2 familiar with that Sidwell order off the top of my head. I
3 do know there was one where the summary order was like five
4 pages of conditions that the parties had worked out among
5 themselves, and the Board just sort of adopted it wholesale.
6 The fact that an applicant's -- applicants are not required
7 to agree to conditions. The Board can adopt conditions with
8 or without applicant's agreement when the Board finds that
9 the condition is necessary to mitigate an adverse impact.

10 And the Board has jurisdiction set by statute and
11 generally, it doesn't extend to the public space, so -- and
12 once the Board adopts a condition, it becomes a condition of
13 the Board that is supposed to be enforced as a condition of
14 the approval. And I think you -- you know, you create
15 potential enforcement issues when conditions are imposed that
16 exceed the Board's jurisdiction or extend to the public space
17 or require the payment of money, which has not been typical
18 at the Board as far as I remember. I mean I'm sure it's
19 happened, but it's not typical even in private school cases
20 except very recently perhaps.

21 You do see situations where applicants do promise
22 to do certain things, and the Board takes note of those but
23 doesn't make them conditions of approval. Typically, it's
24 things like requiring landscaping improvements in the public
25 space or things like that where the Board just notes that,

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1 you know, the applicant proposes to do that, that's a good
2 thing. We hope it happens.

3 But again, you know, I think the Board's
4 jurisdiction is set by statute and you can't extend it even
5 when an applicant agrees to do something.

6 CHAIRPERSON HILL: Okay. So that seemed to
7 indicate, again -- and I guess we'll continue to talk this
8 through a little bit, Commissioner Miller, also. And then
9 I'm going to first go to Mr. Smith and Mr. Blake after I make
10 this comment, which is that in the past, we've noted things
11 in the order that the applicant has agreed to. So we can
12 make a note in the order that the applicant has agreed to
13 item number two about the \$250,000.00 and leave it at that
14 and not put in a condition, because it goes to public space
15 that we don't necessarily have authority over. That seems
16 to me what the discussion is right now. Mr. Smith, do you
17 have a thought?

18 MEMBER SMITH: I share Ms. John's concerns about
19 the legality of putting in as a condition a monetary proffer
20 in an area that the Board typically doesn't regulate, as in
21 public space. So I agree with your approach, putting it as
22 a note within the order but not explicitly as a condition.
23 I recognize Commissioner Miller's extensive knowledge with
24 these matters but, you know, my concern is the Zoning
25 Commission had additional authority within the public realm

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1 to be able to mitigate these defects within the public realm.
2 So our counsel, I believe, is saying that the BZA does not
3 typically historically have the authority to exercise that
4 authority, so I do not want to set a precedent. So I'd
5 rather put it in as a note.

6 CHAIRPERSON HILL: Mr. Blake?

7 MEMBER BLAKE: Yes. I agree with Ms. John's
8 concerns and the comments made by Board Member Smith. I
9 believe, and as you recommended, I do think it's best to note
10 the applicant's commitment to item number 2. I mean they've
11 committed to do it and I suspect they will. This is just an
12 issue of the Board's jurisdiction and its power. So I think
13 to separate the two is appropriate in this instant, and I
14 would support that approach.

15 CHAIRPERSON HILL: Okay. All right. Then I'll
16 make a motion and see what we get. I'm going to go ahead and
17 make a motion to approve Application Number 20472 as
18 captioned and read by the secretary, including the proposed
19 conditions in Exhibit 51F, including design flexibility to
20 the five respected issues with the building permit -- sorry
21 -- the building and then also the DDOT TDM plan and all of
22 the conditions that were set forth in the transportation
23 mitigation package noting, however -- removing the condition
24 about the proffered funds; however, noting that condition --
25 I'm sorry -- noting that proffering in our summary order and

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1 ask for a second. Ms. John?

2 VICE CHAIRPERSON JOHN: Second.

3 CHAIRPERSON HILL: The motion has been made and
4 seconded. Mr. Moy, could you take a roll call?

5 MR. MOY: When I call your names, if you could
6 please respond with a "yes," "no," or "abstain" to the motion
7 made by Chairman Hill? The motion was seconded by Vice Chair
8 John and -- yes, Zoning Commissioner Rob Miller?

9 COMMISSIONER MILLER: Yes.

10 CHAIRPERSON HILL: Mr. Smith?

11 MEMBER SMITH: Yes.

12 MR. MOY: Mr. Blake?

13 MEMBER BLAKE: Yes.

14 MR. MOY: Vice Chair John?

15 VICE CHAIRPERSON JOHN: Yes.

16 MR. MOY: Chairman Hill?

17 CHAIRPERSON HILL: Yes.

18 MR. MOY: Staff will record the five as 5 to 0 to
19 0, and this is on the motion made by Chairman Hill to approve
20 the application for the relief requested including the
21 proposed conditions which also includes the items in
22 reference to design flexibility, the TDM plan, and also
23 noting in the order about removing the item in regards to
24 proffering of funds. The motion was seconded by Vice Chair
25 John. Also on the motion to approve, it was supported by

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1 Zoning Commissioner Rob Miller, Mr. Smith, Mr. Blake, Vice
2 Chair John, Chairman Hill. The motion carries, sir, on a
3 vote of 5 to 0 to 0.

4 CHAIRPERSON HILL: All right. Thank you, Mr. Moy.
5 Ms. Nagelhout, you got everything you needed form us, right,
6 for the order?

7 MS. NAGELHOUT: Yes, I did. Small correction in
8 your motion said a summary order. Of course, it will be a
9 full order. Yes, I have --

10 CHAIRPERSON HILL: I meant -- I'm sorry, I meant
11 a summary of the proffered condition --

12 MS. NAGELHOUT: Oh, okay.

13 CHAIRPERSON HILL: -- mentioning it in the order.
14 I'm sorry if I said summary.

15 MS. NAGELHOUT: Well, I'm fine.

16 CHAIRPERSON HILL: Commissioner Miller, is that
17 it for you?

18 COMMISSIONER MILLER: Have a great day.

19 CHAIRPERSON HILL: Thank you, Commissioner.

20 (Whereupon, the above-entitled matter went off the
21 record at 10:38 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DC BZA

Date: 11-03-21

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was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



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