

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



Application No. 20472-A of The River School, pursuant to 11 DCMR Subtitle X § 901, for special exceptions under the daytime care use provisions of Subtitle U § 203.1(h), under the private school use provisions of Subtitle X § 104 and Subtitle U § 203.1(m), and under Subtitle C § 703.2 from the minimum parking requirements of Subtitle C § 701.5 to allow a new child development center and private school in the R-1-B Zone at 4220 Nebraska Avenue, N.W. (Square 1727, Lots 4, 5).¹

INITIAL ORDER DATE: September 22, 2022

DECISION DATE ON REMAND PROCEDURE: May 15, 2024

PROCEDURAL ORDER ON REMAND

By order issued September 22, 2022, the Board granted, subject to conditions, a self-certified application submitted on behalf of The River School (the “Applicant”).² The application sought special exceptions to allow a private school and a child development center, as well as relief from vehicle parking requirements, in the R-1-B zone at 4220 Nebraska Avenue, N.W. (Square 1727, Lots 4, 5).

Parties in this proceeding are the Applicant, the Advisory Neighborhood Commission (“ANC”) 3E, and a party in opposition to the application, the Tenleytown Preservation Association. The party in opposition appealed the Board’s order to the District of Columbia Court of Appeals, arguing that the Board acted arbitrarily and capriciously in finding that the proposed site would not become objectionable because of traffic and the number of students and that the Board failed to give “great weight” to the opposition filed by ANC 3E. The Court “affirmed most of the Board’s conclusions but remand[ed] for further proceedings to address an issue relating to both traffic and student enrollment that was not adequately considered by the Board.” *See, Tenleytown Preservation Association v. District of Columbia Bd. of Zoning Adjustment*, No. 22-AA-0806 (D.C.; decided December 18, 2023).

At a public meeting on May 15, 2024, the Board voted to issue this procedural order to request specific submissions and to schedule a continued public hearing on July 3, 2024 for further

¹ By orders issued August 25, 2023, the Zoning Commission approved text amendments that established new zone names and amended some of the regulations applicable in this proceeding. (See Zoning Commission Orders No. 18-16 and 19-27.) This order reflects the zoning provisions in effect at the time of the Board’s vote at the conclusion of the public hearing.

² The River School is the contract purchaser of the subject property. The owner, the Ruth H. Buchanan Revocable Trust, authorized the filing of the application. (Exhibit 5.)

proceedings on remand. By this procedural order, the Board invites submissions from the parties, the Office of Planning, and the District Department of Transportation addressing the matters specified by the Court of Appeals and in this procedural order. Submissions are due by June 21, 2024³ and must be served on all parties at the time of filing. The submissions must be based solely on the record in this case and shall not include any materials not before the Board in the original proceeding. All factual assertions must be followed by citations to the transcript page(s) or exhibit(s) that support the contention. No responses will be accepted.

The initial order in this proceeding stated the Board's conclusion that objectionable conditions related to traffic and the number of students were unlikely to occur as a result of the Board's approval of the requested zoning relief. The Court noted that the Board's conclusion was based in part on the Applicant's transportation study, which projected a 45-percent decrease in morning drop-off traffic (compared to the volume of traffic that would be expected absent any mitigation measures) on the assumption that students in kindergarten through grade six would utilize a school-provided shuttle bus. However, the Board's order did not make the shuttle a required component of the Applicant's transportation management plan. The Court held that the failure to recognize the significance of the shuttle bus in the Applicant's projections undermined the basis for approving the special exception by overlooking the traffic study's assumption about shuttle usage, leading to an insufficient assessment of whether adverse traffic impacts were likely to become objectionable.

Accordingly, the case was remanded to the Board for additional proceedings to "explicitly address the shuttle's role in achieving the 45% reduction, the likelihood of full compliance by K-6 students, [and] whether it was possible to achieve the reduction without full compliance by using other tools in the School's 'toolbox.'" *Tenleytown Preservation Association* at 6. The Court noted that "whether the School would actually require use of the shuttle was unclear, even though its traffic figures assumed 100% compliance to achieve its goal, and the School had provided no evidence that it could reach its goal without 100% compliance." *Tenleytown Preservation Association* at 10.

Questions on remand: On remand, the parties and agencies should address the role of the shuttle bus in achieving the Applicant's reduction goal and whether 100-percent compliance is required to meet the goal. If shuttle use will be required, how will the Applicant enforce the requirement?

This procedural order on remand is not a final order of the Board and is therefore not the proper subject of a motion for reconsideration. Accordingly, it is **ORDERED** that the Board **APPROVES** the issuance of this procedural order on remand.

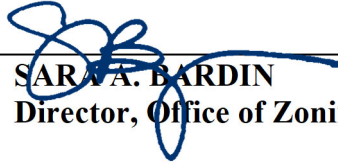
VOTE: 4-0-1 (Frederick L. Hill, Lorna L. John, Carl H. Blake, and Robert E. Miller to APPROVE; Chrishaun S. Smith not participating)

³ At the Public Meeting, the Board stated June 19, 2024 as the submission deadline; however, due to the Juneteenth holiday, the deadline has been extended until Friday, June 21, 2024.

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

A majority of the Board members approved the issuance of this order.

ATTESTED BY:



SARVA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: May 20, 2024

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, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.