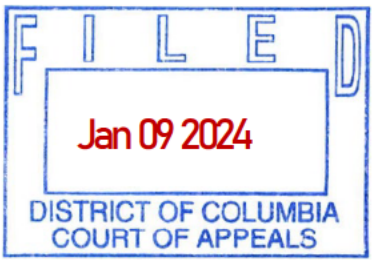
DISTRICT OF COLUMBIA COURT OF APPEALS



No. 22-AA-0806

TENLEYTOWN PRESERVATION ASSOCIATION, PETITIONER,

v.

DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT, RESPONDENT,

and

THE RIVER SCHOOL, INTERVENOR.

Petition for Review of an Order
of the District of Columbia Board of Zoning Adjustment
(BZA Case No. 20472)

(Argued October 24, 2023 Decided December 18, 2023*)

Before EASTERLY, MCLEESE, and SHANKER, *Associate Judges*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: The District of Columbia Board of Zoning Adjustment granted an application for special exceptions filed by intervenor The River School, permitting it to establish a private school and child development center on property located in a residential zone. Petitioner Tenleytown Preservation Association ("Tenleytown"), a coalition of property owners residing near the property, opposed the School's application and seeks review of the Board's order. Tenleytown contends, in summary, (1) 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 (2) that the Board failed to give "great weight" to the opposition filed by Advisory Neighborhood Commission 3E ("ANC"). We affirm

* This Memorandum Opinion and Judgment was originally issued on December 18, 2023. Due to an issue with e-service, it is being re-issued and distributed today, January 9, 2024.

most of the Board's conclusions but remand for further proceedings to address an issue relating to both traffic and student enrollment that was not adequately considered by the Board.

I. Background

A.

The Board of Zoning Adjustment made the following findings. The property at issue is located at 4220 Nebraska Avenue, NW, in a residential zone. The River School, a private institution dedicated to fostering an inclusive educational environment for children with hearing loss, seeks to relocate to this property from its current location on MacArthur Boulevard, where it has been since 1999. Currently, the School serves 222 students, from birth through the third grade. Its expansion plan for the property consists of building a school, a child development center, and an accessory clinic to accommodate a maximum enrollment of 350 students, from birth through sixth grade.

The property comprises a triangular land area spanning 98,935 square feet that is bounded by Warren Street, Nebraska Avenue, Van Ness Street, and 42nd Street. The existing structures on the property include a house and various accessory structures, including a guesthouse, small garage, and pool house. Surrounding properties in the vicinity include the American University Washington College of Law campus, a public library, a church, various daycare centers, single-family residences, and undeveloped reservations. The property is located one-third of a mile from the Tenleytown-AU Metrorail station and within a quarter-mile of at least nine Metrobus routes.

B.

The School submitted an application to the Board requesting special exceptions pursuant to (1) 11-U D.C.M.R. § 203.1(m) and 11-X D.C.M.R. § 104, to permit a private school in a residential zone; (2) 11-U D.C.M.R. § 203.1(h), to permit a child development center in a residential zone; and (3) 11-C D.C.M.R. § 703.2, to reduce the number of required parking spaces. In its application, the School claimed that it met all regulatory conditions for special exception relief and that its operations would mitigate objectionable impacts on the surrounding neighborhood.

As part of its proposed relocation plan, the School submitted a Comprehensive Transportation Report ("the traffic study") to the Board. The traffic study predicted the number of vehicle trips generated by the School's development and identified potential traffic impacts at nearby intersections. To manage traffic flow and minimize potential impacts, the School developed a Transportation Management Plan, which included a transportation demand management plan, an operations management plan, a monitoring plan, and a set of proposed physical transportation improvements.

The District of Columbia Office of Planning recommended approval of the School's application, subject to the conditions proposed by the School and the modifications recommended by the District Department of Transportation ("DDOT"). DDOT expressed no objections to approving the application, provided that the School incorporated additional conditions to prevent the creation of adverse traffic impacts. Although the Board did not expressly make a finding on this fact, it appears that the School incorporated these conditions into an updated Transportation Management Plan submitted to the Board.

The ANC—an automatic party to the proceeding, *see* 11-Y D.C.M.R. § 403.5(b)—submitted a resolution to the Board opposing the application. The ANC raised various concerns about the School's proposed use, including the traffic volume, level of service at nearby intersections, and potential consequences for noncompliance with the commitments outlined by the School. Tenleytown also opposed the School's application.

The Board held a hearing with testimony from the School's leadership, traffic expert, and others who supported its proposal; the ANC; and Tenleytown's representatives, traffic expert, and community members in opposition to the application. The Board unanimously approved the School's requests for zoning relief, subject to numerous conditions—including a mandate that the School implement its Transportation Management Plan. The Board found that the ANC had not "offered persuasive advice that would require denial of the application" and concluded that the School had satisfied its burden of proof for the special exceptions.

This petition for review followed.

II. Standard of Review

"Our review of the Board's factual determinations is deferential." *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 931 (D.C. 2003).

This court must "consider whether the findings made by the [Board] are sufficiently detailed and comprehensive to permit meaningful judicial review of its decision." *Sheridan Kalorama Hist. Ass'n v. D.C. Bd. of Zoning Adjustment*, 229 A.3d 1246, 1255 (D.C. 2020) (internal quotation marks omitted). "We will not reverse the [Board's] decision unless its findings and conclusions are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; in excess of its jurisdiction or authority; or unsupported by substantial evidence in the record . . . ." *McDonald v. D.C. Bd. of Zoning Adjustment*, 291 A.3d 1109, 1115 (D.C. 2023) (alterations in original) (internal quotation marks omitted).

"If the agency makes no finding of fact on a material contested issue, this court on review may not fill the gap by making its own determinations from the record, but must remand the case." *Levy v. D.C. Bd. of Zoning Adjustment*, 570 A.2d 739, 746 (D.C. 1990) (internal quotation marks omitted).

III. Analysis

Tenleytown raises two claims on appeal: (1) the Board's conclusion that the School's proposed site was not likely to become objectionable given the projected traffic volume and number of students was arbitrary and capricious; and (2) the Board failed to give "great weight" to the ANC's concerns as required by D.C. Code § 1-309.10(d)(3)(A). We hold that the Board did not adequately address an assumption pivotal to its conclusion that objectionable conditions resulting from traffic and the number of students were unlikely to occur and we therefore remand for further fact-finding. We also hold that the Board gave the requisite "great weight" to the ANC's concerns.

A. Objectionable Traffic Conditions

Because private schools ordinarily cannot be constructed in residential zones, the School needed, and the Board granted, a special exception under 11-U D.C.M.R. § 203.1(m) (2019) (providing that "[p]rivate schools . . . [s]hall be located so that [they are] not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions").[1] On appeal, Tenleytown maintains that the Board acted arbitrarily and

[1] We cite the 2019 version of the municipal regulations because that version was in force at the time of the Board's decision. The zoning regulations were amended in 2023, but the substance of this provision was unchanged.

capriciously in granting this special exception because the School failed to meet its burden of demonstrating that the traffic caused by its development and the number of students would not create objectionable traffic conditions. Tenleytown also argues that the proposed enrollment was objectionably high given the size of the lot. We disagree with most of Tenleytown's arguments but agree that the Board did not adequately justify its conclusion regarding objectionable traffic conditions.

1. Additional Background

a. Shuttle Bus

In its application to the Board, the School stated that, in response to concerns raised by the community and the ANC, it had set a goal to reduce the number of morning peak-hour vehicular drop-offs by 45%. The School's traffic study forecasted a corresponding 45% decrease in vehicle trips through its Transportation Management Plan, projecting a reduction from 408 to 224 trips. To achieve this reduction, the study factored in zero morning trips for all kindergarten through sixth-grade students on the assumption that they would utilize a school-provided shuttle bus. Neither the traffic study nor the Transportation Management Plan, however, mandated the shuttle as a required component of the School's plan. Rather, the study and Transportation Management Plan referred to the School's "flexibility in determining which strategies to use to remain at or below the trip thresholds." Despite the proposed reduction to reduce pick-up and drop-off volumes, the traffic study anticipated adverse traffic impacts at nearby intersections. The traffic study recommended—and the School incorporated into its multi-pronged transportation package—additional traffic mitigation measures to alleviate the anticipated adverse impacts. Additionally, the School incorporated further improvements and strategies for affected intersections into its revised Transportation Management Plan at DDOT's recommendation.

During the Board hearing, the School presented the shuttle bus as a potential strategy within its Transportation Management Plan. When questioned about consequences for students declining to use the shuttle, the School testified that the shuttle "will be a requirement" for K-6 students as "a condition of their enrollment." The School acknowledged that noncompliance would not result in expulsion but expressed confidence that its "very community-minded" parents would comply with the shuttling request. Tenleytown observed in response that a reduction goal of 45% was "a big, big number" and argued that "if [the School is] going to claim a reduction of some 45 percent and part of that reduction is based on buses, [it had] better know more than [it] know[s] now." The School acknowledged that it had "a hard trip

count . . . problem to solve" but did not elaborate on the shuttle's logistics. Rather, the School emphasized that it was "committing to a trip count" and had "many tools in [its] toolbox" to achieve its reduction goal, explaining that this approach was consistent with other transportation demand management plans used in the District of Columbia.

In its findings of fact, the Board found that the School "will provide a shuttle bus" for K-6 students and establish the 45% reduction goal as part of the Transportation Management Plan. It determined that the plan "was intended to be flexible" and identified the shuttle bus as one of the School's "general strategies." The Board did not explicitly address the shuttle's role in achieving the 45% reduction, the likelihood of full compliance by K-6 students, or whether it was possible to achieve the reduction without full compliance by using other tools in the School's "toolbox."

Ultimately, the Board concluded that the School "will not create objectionable conditions with respect to traffic," and granted the special exception application. It justified this decision by deeming the Transportation Management Plan "adequate to avoid the creation of adverse impacts related to traffic" because it "is intended to reduce the number of vehicle trips to the subject property" and will require the School to assess whether its mitigation measures are effective or require modification. Additionally, the Board found that a reduction goal greater than 45% was unnecessary, considering the School's existing approach as "a reasonable and feasible means to achieve a safe and efficient [pick-up and drop-off] operation that will avoid the creation of adverse impacts."

b. Proposed Enrollment

In its application for a special exception, the School proposed a maximum enrollment of 350 students and 90 faculty and staff and claimed that the property is an "unusually large site [that] can easily accommodate the School population without negatively impacting neighboring properties." This proposed enrollment number served as the basis for the School's traffic study and the Transportation Management Plan mitigation strategies.

The Board received letters from neighbors opposing the School's proposal who were concerned that the proposed number of students was too large for the size of the lot and that the additional student traffic would cause adverse effects. Tenleytown's witnesses at the Board hearing argued that the School's proposal "is simply not compatible with the size of this residential lot," noted that the expansion

would be "on the equivalent of two house lots," and asserted that the sheer increase of car trips would cause objectionable traffic and safety issues.

In its order, the Board acknowledged opposing testimony but concluded that the site was appropriate. The Board found that (1) the School was going to renovate and redevelop the site to accommodate its proposed enrollment; (2) the lot is "suitably large" for the proposed use at "almost 100,000" square feet; (3) the buildings "will be located at a sufficient distance from nearby residences so as to avoid the creation of any objectionable conditions for those properties related to noise, privacy, or similar concerns"; and (4) "[e]nrollment will be limited in terms of the number and ages of the students."

The Board further justified its decision by noting the School's compliance with applicable development standards. It credited favorable comments from DDOT "on the site layout and circulation and on the Applicant's plans to accomplish all [pick-up and drop-off] operations, vehicle parking, and loading on private property consistent with DDOT standards." The Board also disagreed with the description of the property as "the equivalent of two house lots," observing that the minimum lot area for a single dwelling in the zone is 5,000 square feet while the property comprised almost 100,000 square feet. Consequently, the Board concluded that the School's proposal "is not likely to become objectionable to adjoining and nearby property because of noise or other objectionable conditions." Although the Board did not explicitly state that the proposed enrollment would not create objectionable traffic conditions, this implication is evident in its conclusion. The School's application and Transportation Management Plan were based on a 350-student enrollment, and the Board approved the School's application, concluding that the School "will not create objectionable conditions with respect to traffic."

2. Discussion

A private school seeking to locate in a residential neighborhood is required to obtain a special exception. *Neighbors Against Foxhall Gridlock v. D.C. Bd. of Zoning Adjustment*, 792 A.2d 246, 250 (D.C. 2002). Before approving a special exception permit, the Board must find that the school is 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-U D.C.M.R. § 203.1(m)(1). A proposed development is likely to become objectionable if it will "significantly increase objectionable qualities over their current levels in the area." *Draude v. D.C. Bd. of Zoning Adjustment*, 527 A.2d 1242, 1253 (D.C. 1987); *see Glenbrook Rd. Ass'n v. D.C. Bd. of Zoning Adjustment*, 605 A.2d 22, 34 (D.C. 1992)

(affirming Board's application of *Draude* standard in discussing impact of new law school on American University campus). If the Board's conclusion that an applicant's proposal is not likely to become objectionable lacks adequate findings or is unsupported by substantial evidence in the record, then this court must remand. *See Draude*, 527 A.2d at 1250-51 (remanding for additional record findings where Board relied on traffic studies and expert testimony that failed to evaluate the existing building's traffic impact, which was essential to determine impact of proposed addition); *Levy v. D.C. Bd. of Zoning Adjustment*, 570 A.2d 739, 751-52 (D.C. 1990) (remanding because Board's failure to evaluate and make findings about significant factors affecting traffic and parking, such as street closures and relief from height restrictions, rendered suspect its conclusion that university plan would not result in objectionable conditions).

Tenleytown argues that the Board acted arbitrarily and capriciously in concluding that the School's development was not likely to become objectionable because of traffic and the number of students. First, concerning traffic, Tenleytown contends that the Board overlooked evidence about adverse impacts and argues that representations about use of a shuttle bus were insufficient to conclude that the School would meet its traffic-reduction commitments. Second, regarding the number of students, Tenleytown asserts that the Board ignored evidence that the proposed enrollment number was unmanageable given the property's size and would cause objectionable traffic conditions.

We find most of Tenleytown's arguments unpersuasive. We agree, however, that the Board did not adequately address the role of the shuttle bus before concluding that objectionable traffic conditions were not likely to occur. We therefore remand for additional fact-finding on this specific issue.

a. Shuttle Bus

On appeal, Tenleytown claims that the Board underestimated the traffic impact of the School, primarily because the traffic study assumed 100% use of the morning shuttle by K-6 students but the School never committed to ensuring

compliance.[2] Additionally, Tenleytown argues that the Board acted arbitrarily and capriciously by overlooking evidence about adverse impacts in the traffic study, leading to an unsubstantiated conclusion that traffic conditions were not likely to become objectionable. We hold that the Board overlooked the traffic study's assumption about shuttle usage and thus failed to sufficiently assess whether adverse traffic impacts were likely to become objectionable. On remand, the Board must address this assumption and reevaluate its conclusion in light of any new findings.

The Board's failure to recognize the significance of the shuttle bus in the School's projections undermines the basis for approving the special exception. *See Spring Valley-Wesley Heights Citizens Ass'n v. D.C. Zoning Comm'n*, 88 A.3d 697, 706-07 (D.C. 2013) (holding that Zoning Commission's approval to increase school's enrollment was arbitrary and capricious where it disregarded the fact that university was relocating off-campus law school with 1,770 students onto campus, thus underestimating significance of raising enrollment cap). The Board concluded that the School's planned use was not likely to become objectionable, relying on the School's 45% reduction goal and traffic reduction strategies in the Transportation Management Plan to avoid the creation of adverse traffic impacts. As in *Spring Valley-Wesley Heights Citizens Association v. District of Columbia Zoning Commission*, however, the Board disregarded a critical factor in its analysis. *See id.* Here, the Board failed to recognize that the School's goal and strategies depended on the hefty assumption that no K-6 students would arrive by car and 100% of K-6 students would utilize the morning shuttle. Without an explicit discussion regarding the likelihood of full compliance, the School and Board likely underestimated the projected traffic impacts. *See id.*

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[2] Tenleytown raised two main arguments on appeal: (1) the Board acted arbitrarily and capriciously in concluding that the School would not create objectionable conditions; and (2) the Board failed to give "great weight" to the ANC's concerns as required by statute. Tenleytown did not raise the shuttle issue in its arbitrary-and-capricious claim, but rather in its "great weight" claim. The Board was not required to give this specific shuttle issue "great weight," however, because the ANC did not voice it in its resolution or during the hearing. Nevertheless, because Tenleytown alleges that the Board's evaluation of the traffic study—which was predicated on the shuttle service—was arbitrary and capricious, we examine this deficiency under the lens of arbitrary-and-capricious review.

The imprecise role of the shuttle in the Board's findings can be attributed, at least in part, to the School's irresolute commitment to it as part of its Transportation Management Plan. Although the School submitted that it could meet its 45% reduction goal based on the assumption that all K-6 students would use the shuttle bus, both the traffic study and the Transportation Management Plan were less firm in incorporating the shuttle into the plan. The School maintained that its plan was "flexible" and that the shuttle was just one of many options it could choose to meet its 45% reduction goal.

Although the School represented at the Board hearing—for the first time—that it would require the shuttle bus as a condition of the students' enrollment, the School failed to elaborate when pressed for details. Instead it pivoted, stating that it was "committing to a trip count" and emphasizing that it had "many tools in [its] toolbox" to meet its goals. Consequently, 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. The School's failure to commit to the shuttle is especially problematic because even with 100% compliance by K-6 students, the traffic study predicted that the School would cause adverse impacts at various intersections. While the School offered detailed proposals and solutions to alleviate those adverse impacts, the effectiveness of those measures depended on full compliance with the shuttle. As Tenleytown argues, the mere provision of a shuttle does not ensure that all K-6 students will use it.

The Board's order was similarly unclear about the precise role of the shuttle. The Board found that the School would provide a shuttle, but, in tension with that finding, also found that the shuttle was just one of the School's "general strategies" that could potentially be swapped out for other such strategies in its "flexible" plan. The failure to discuss the shuttle created a deficiency in the Board's logic. The Board credited the reduction goal and other measures in the Transportation Management Plan in concluding that traffic was not likely to become objectionable, but both the reduction goal and the Transportation Management Plan relied on a fundamental assumption that the Board never explicitly acknowledged. An adequate discussion may have included findings on whether the shuttle was necessary to the reduction goal and whether 100% compliance was required. Additionally, if shuttle use will be required, the Board should consider whether the School will adequately enforce that requirement. Without this discussion, the Board's conclusion that the School's development is not likely to cause objectionable traffic effects lacks sufficient findings. *See Draude*, 527 A.2d at 1250-51; *Levy*, 570 A.2d at 751-52.

On remand, the Board should make additional findings about the shuttle's precise role consistent with this analysis. If 100% use of the shuttle is necessary, the Board should determine whether it would require the School to meet that level as a condition in granting its application.

b. Proposed Enrollment

Tenleytown argues that the Board acted arbitrarily and capriciously because it (1) failed to make findings whether the development is objectionable given the proposed number of students and property size; and (2) ignored evidence that the high enrollment will lead to traffic problems. First, we disagree that the Board made inadequate findings to support its conclusion that the proposed enrollment will not be objectionable given the size of the lot and that it ignored contrary evidence. *See Glenbrook Rd. Ass'n*, 605 A.2d at 32-33 (affirming Board's conclusion even with its failure to make a specific finding required for special exception where other findings about the school's size, siting, massing, design, and reasonableness of proposal led to logical conclusion that there would be no unreasonable expansion into low-density districts). Second, we disagree that the Board ignored evidence that the proposed enrollment will lead to objectionable traffic conditions. Rather, it credited the Transportation Management Plan's proposal to mitigate effectively the adverse traffic conditions that would otherwise occur. As explained above, however, this plan relied on a critical assumption about shuttle usage that the Board did not sufficiently discuss. Accordingly, additional findings on the shuttle's precise role, necessity, and enforcement by the School are necessary to support the Board's conclusion that the proposed enrollment is not likely to cause objectionable traffic effects.

B. Great Weight to the ANC's Concerns

Tenleytown claims that the Board failed to give the requisite "great weight" to the ANC's concerns about the School's proposal. Tenleytown focuses on the Board's response to two concerns: (1) that the School faced inadequate consequences for noncompliance with requirements imposed as part of the approval; and (2) that, given the expected traffic volume, the School should reduce morning trips by 70-80% to prevent impacts at nearby intersections. We disagree and hold that the Board afforded great weight to both issues.

1. Additional Background

a. Consequences for Noncompliance

In its written resolution submitted to the Board, the ANC expressed concern about the need for consequences for the School, not just the parents, to ensure that the School adheres to its plan. The ANC highlighted that it was interested in consequences "short of revoking the Certificate of Occupancy," which it considered a highly unlikely penalty, and stressed the importance of stricter penalties for queuing violations.

During the public hearing, Tenleytown inquired about the "real repercussions" that the School would face for failing to meet its commitments. The School explained that in the event it exceeded the trip count, the plan required the School to implement at least one of its "enhanced strategies"—such as leasing offsite parking spaces, converting the garage for pick-up and drop-offs, or implementing a remote pick-up and drop-off operation. The School noted that these strategies would constitute "a significant cost to the school" and thus function as a "financial deterrent."

In its findings of fact, the Board incorporated the Transportation Management Plan's performance monitoring plan, which explicitly required the School to "address trip thresholds and on-site queuing" issues. The Board determined that if trip thresholds or on-site queuing requirements were not met, then the School would be obligated to "implement remedial measures within 30 days" following discussions with DDOT and the ANC. The remedial measures "could include one or more of the following enhanced strategies": (1) acquiring off-site, off-street parking for pick-up and drop-offs; (2) converting its garage for pick-up and drop-off purposes; or (3) increasing mandatory carpool requirements.

The Board concluded that it "was not persuaded by assertions" made by the ANC, which had claimed that the School's plan "failed to provide adequate consequences for non-compliance." The Board emphasized the role of the School's performance monitoring plan and noted favorable remarks from DDOT. The Board explained that under the plan, the School was required to annually evaluate the success of its mitigation measures in collaboration with the ANC and DDOT and to "undertake potentially expensive remedial action if necessary."

b. Traffic Volume and Intersection Performance

The ANC voiced concern about the traffic volumes generated by the School and recommended that the School reduce morning peak-hour vehicular drop-offs by 70-80%. The ANC explained that the traffic study, which incorporated a 45% reduction, still projected performance drops at nearby intersections, such as Nebraska Avenue/Van Ness Street and Nebraska Avenue/Warren Street. In a separate section dedicated to its concern about intersection performance, the ANC argued that the School's traffic would "cause existing intersection problems to worsen," citing an additional intersection at Van Ness/42nd Street. The ANC again recommended that the School "drastically reduce" its traffic volume to mitigate the issue.

In its order, the Board rejected the ANC's recommendation for a 70-80% reduction in vehicular drop-offs. The Board reasoned that the School's plan, which required only a 45% reduction, "is a reasonable and feasible means to achieve a safe and efficient [pick-up and drop-off] operation that will avoid the creation of adverse impacts." Under the plan, the Board explained that the School "will implement a variety of measures to encourage alternatives to vehicle travel . . . as well as to spread the students' arrival and departure times to avoid unmanageable peaks in [pick-up and drop-off] traffic." Furthermore, the Board explained that it was "not persuaded that the ANC's request was realistic or equitable," given the young ages of the children and similar operations of other schools without mitigation plans.

Similarly, the Board disagreed that a reduction goal of more than 45% was necessary to prevent unsafe traffic conditions at nearby intersections. The Board stated that it was unpersuaded by the ANC's projections, partly because of an incorrect assumption about turns on Nebraska/42nd Street and the ANC's incorrect belief that there were no mitigation measures east of Nebraska Avenue. Additionally, the Board observed that the Transportation Management Plan will require the School "to monitor traffic conditions at specified intersections" near the property and to collaborate with DDOT and the ANC to select appropriate remedies.

2. Discussion

The Board is required to give "great weight" to the ANC's "issues and concerns." D.C. Code § 1-309.10(d)(3)(A). To give "great weight," the Board must "articulate with particularity and precision the reasons why the Commission does or does not offer persuasive advice under the circumstances" and "articulate specific findings and conclusions with respect to each issue and concern raised[.]"

Id. § 1-309.10(d)(3)(B). "At the same time, though, the [Board] is not required to exhaustively discuss every detail in the ANC's submission, or to defer to the ANC's views." *Youngblood v. D.C. Bd. of Zoning Adjustment*, 262 A.3d 228, 240 (D.C. 2021) (internal quotation marks omitted).

Tenleytown argues that the Board failed to afford great weight to (1) the ANC's concern about inadequate consequences for the School and (2) the ANC's recommendation that the School should reduce traffic volumes by 70-80%. We disagree and hold that the Board afforded the requisite great weight.

a. Consequences for Noncompliance

Tenleytown does not dispute that the Board acknowledged the ANC's concern regarding consequences for noncompliance. It contends, however, that the Board's response to the concern was inadequate because the Board failed to "identify any consequences . . . for non-compliance, evaluate why those consequences were sufficient, or find that consequences were unnecessary." We find some merit to Tenleytown's argument, as a significant portion of the Board's explanation primarily addressed an ancillary issue—whether the School was resolute in its commitment to the plan, which could obviate the need for serious consequences. Nevertheless, we are satisfied that the Board adequately addressed the consequences issue, particularly in light of its discussion regarding the monitoring plan.

The ANC specifically sought consequences for the School to ensure compliance with trip-count and on-site-queuing commitments. The Board determined that the failure to meet these precise commitments would trigger immediate review with the ANC and DDOT and an obligation to implement "remedial measures" or "enhanced strategies." The Board recognized that these remedial measures could impose substantial costs. The Board also emphasized the ongoing ability of the School, DDOT, and the ANC to "come back year after year and reevaluate, re-collect data, and implement solutions going forward."

Although the Board never explicitly labeled these measures as "consequences," the measures effectively serve as repercussions in the event of noncompliance. Furthermore, during the hearing, the Board heard the neighborhood's concern about "real repercussions" and "constraints on River School" for noncompliance. The School identified "enhanced strategies," which functioned as a financial deterrent, and the Board incorporated them into its findings and concluded that they were adequate. Although the ANC did not appear to view these measures as consequences, the Board disagreed, and it was not required to

defer to the ANC's view. *Youngblood*, 262 A.3d at 240. In sum, the Board specifically responded to the ANC's concern about the lack of consequences to hold the School accountable and afforded it great weight. *See Glenbrook Rd. Ass'n v. D.C. Bd. of Zoning Adjustment*, 605 A.2d at 22, 35-36 (D.C. 1992).

b. Traffic Volume and Intersection Performance

Tenleytown argues that the Board failed to give great weight to the ANC's recommendation to increase the School's vehicle reduction goal to 70-80%. According to Tenleytown, the Board (1) inappropriately focused on whether the recommendation was "realistic or equitable"; (2) failed to make specific findings about the three intersections the ANC cited; and (3) relied on the monitoring plan, which will not actually prevent adverse traffic impacts. We are satisfied that the Board gave the ANC's concern about traffic volumes and intersection performance great weight.

The Board acknowledged the ANC's request for a steeper reduction goal but ultimately disagreed with the recommendation. It simply found the School's plan—with its 45% reduction goal—sufficient to ensure a "safe and efficient" pick-up and drop-off operation and effective to prevent "adverse impacts on the streets in the vicinity of the subject property"—i.e., at the nearby intersections. The Board explained that, under the plan, the School was obligated to implement various strategies to "avoid unmanageable peaks" in traffic, such as encouraging alternative modes of transit and staggering arrival and departure times. Because this explanation sufficiently addressed the ANC's concern about traffic volumes and intersection performance and articulated the reasons for rejecting the higher reduction goal, the Board was not required to discuss each intersection's performance in detail. *See Youngblood*, 262 A.3d at 240 ("[T]he [Board] is not required to exhaustively discuss every detail in the ANC's submission . . . .") (internal quotation marks omitted).

The Board further explained why the ANC's concern about nearby intersections was not persuasive. It observed that the ANC held incorrect expectations about turns onto the property and the "perceived absence of mitigation measures" and believed that the monitoring plan would help prevent unsafe traffic conditions "at specified intersections in the vicinity."

Tenleytown makes several arguments as to why the monitoring plan provided an insufficient basis for rejecting its concern. Although we find most of these arguments unpersuasive, we acknowledge that the monitoring plan indeed functions

more as a remedial measure rather than a preventive one. As explained above, however, the Board sufficiently justified its conclusion that adverse impacts at nearby intersections would not occur given the Transportation Management Plan's comprehensive strategies to encourage alternative vehicle travel and stagger students' arrival and departure times.

Finally, we agree with Tenleytown that part of the Board's rationale in rejecting the ANC's higher reduction goal focused on extraneous considerations. The Board explained that it was not persuaded by the recommendation because it was not "realistic or equitable" given the young ages of the students and the absence of a similar requirement for other schools in the neighborhood. Whether a goal is realistic or equitable is distinct from whether its implementation is necessary to mitigate adverse traffic conditions—the primary concern behind the ANC's recommendation. Thus, the Board's emphasis on the former does not directly confront the core of the ANC's concern.

It appears, however, that practicability and equitability were alternative grounds for the Board's rejection. The Board still "c[a]me to grips with the ANC view," *Neighbors Against Foxhall Gridlock v. D.C. Bd. of Zoning Adjustment*, 792 A.2d 246, 249 (D.C. 2002) (alteration in original), about adverse traffic impacts and ultimately reconciled this concern, explaining that adverse impacts will be avoided under the various strategies outlined in the School's Transportation Management Plan. Thus, the Board devoted specific attention to the content of the ANC's recommendation, articulated the reasons it was unpersuaded by it, and fulfilled its statutory requirement to provide "great weight" to the ANC's views. *See id.* at 249-50 (affirming Board's rejection of ANC's position that ten-car stacking lane was required to insure safety where Board credited contrary expert opinion explaining that "a combination of alternative design measures," including a left-turn lane to accommodate stacking, will maximize traffic safety).

IV. Conclusion

For the foregoing reasons, we largely affirm the Board of Zoning Adjustment's judgment. We remand for further proceedings on the shuttling issue because the Board's conclusion that traffic conditions were not likely to become objectionable relies on a critical assumption it never expressly found.

So ordered.

ENTERED BY DIRECTION OF THE COURT:

JULIO A. CASTILLO
Clerk of the Court

Copies emailed to:

Presiding Administrative Law Judge

Copies e-served to:

Spencer Churchill, Esquire

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