GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 20643 of The Maret School, pursuant to 11 DCMR Subtitle X, Chapter 9 for special exceptions under Subtitle U § 203.1(m) and Subtitle X § 104 to allow a private school use, and under Subtitle C § 710.3 from the parking location restrictions of Subtitle C § 710.2 for a private school use (athletic facility) in the R-1-B Zone at part of 5901 Utah Avenue, N.W. (Square 2319, Lots 832).

HEARING DATE: March 9, 2022
DECISION DATES: March 30 and April 6, 2022 and April 5, 2023[1]

DECISION AND ORDER

This self-certified application was filed November 1, 2021 on behalf of The Maret School (the "Applicant") and the Episcopal Center for Children ("ECC"), the owner of the property that is the subject of the application. Following a public hearing, the Board voted to approve the application subject to conditions.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. In accordance with Subtitle Y §§ 400.4 and 402.1, the Office of Zoning provided notice of the application and of the public hearing by letters, dated November 22, 2021, to the Applicant, the Office of Planning ("OP"), the District Department of Transportation ("DDOT"), Advisory Neighborhood Commission ("ANC") 3/4G, the ANC in which the subject property is located, and Single Member District ANC 3/4G02, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 3 as well as the Chairman of the Council and three at-large members of the D.C. Council, the Department of Consumer and Regulatory Affairs, the Office of the Attorney General ("OAG"), the Historic Preservation Office, the Department of Energy and Environment ("DOEE"), and the Office of the State Superintendent of Education, the Office of the Deputy Mayor for Education, the Department of Parks and Recreation, the owners of all property within 200 feet of the subject property. Notice was

[1] On February 23, 2023, the party in opposition filed a motion to reopen the record to accept a letter, dated February 17, 2023, from the Office of the Attorney General Legal Counsel Division to ANC 3/4G and to stay the final decision and order (Exhibit 291). The Applicant and the ANC did not oppose the request to accept the letter into the record but disputed its characterization by the party in opposition; both the Applicant and the ANC opposed the request for a stay (Exhibits 292 and 293). At a public meeting on April 5, 2023, the Board denied the motion, which did not show good cause to reopen the record and, to the extent that the motion sought reconsideration, rehearing, or re-argument of a Board decision, could not be considered "prior to an order being issued pursuant to Subtitle Y § 604.7." (Subtitle Y § 700.3.)

published in the *District of Columbia Register* on December 3, 2021 (68 DCR 12586) as well as through the calendar on the Office of Zoning website.[2]

Parties. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 3/4G were automatically parties in this proceeding. At a public meeting on January 12, 2022, the Board granted a request for party status in opposition to the application submitted by Friends of the Field on behalf of a group of residents living in the vicinity of the subject property.

Applicant's Case. The Applicant presented evidence and testimony from Marjo Talbot, Maret's head of school, Trey Holloway, the assistant head of school for finance and operations, and Jami Milanovich, an expert in transportation engineering, in support of the application. The Applicant proposed to use an existing building as a field house and to construct a baseball diamond, a multi-purpose field, and a parking lot at the subject property for operation of athletic facilities as a private school use.

OP Report. By report dated February 25, 2022, the Office of Planning recommended approval of the application subject to two conditions that would require the Applicant to install and maintain evergreen shrubbery along the perimeter of the planned parking lot to minimize its visual impact and to prohibit the use of sound amplification devices, music, and other sound instruments at the proposed athletic facilities so as to mitigate potential noise impacts. (Exhibit 224.)

DDOT Report. By memorandum dated February 25, 2022, the District Department of Transportation indicated no objection to approval of the application subject to certain conditions. (Exhibit 222.)

ANC Report. By report dated March 1, 2022, ANC 3/4G indicated that, at a public meeting on February 28, 2022 with a quorum present, the ANC voted to adopt a resolution in support of the application subject to a number of conditions. (Exhibit 233.) The ANC later executed a memorandum of understanding with the Applicant that stated its agreement to implement the conditions requested by ANC 3/4G. (Exhibit 282E.)

Office of the Attorney General comments. By letter dated March 8, 2022, the Office of the

[2] The party in opposition twice asked the Board to postpone the public hearing, first asserting that certain matters required resolution before the hearing, including clarification of the zoning relief required, and alleging the existence of a "cloud on the procedure leading up to the ANC's recommendation to the BZA." (Exhibit 188.) That request was opposed by the Applicant, which argued that the issues raised by the party in opposition should be addressed during the public hearing (Exhibit 203). ANC 3/4G took no position on the request for postponement but disputed the party in opposition's "unsupported allegations" and "misstatements" about the ANC's actions related to the application (Exhibit 207). The Board denied the first motion for a postponement at a public meeting on February 23, 2022. On March 8, 2022, the party in opposition filed a "renewed motion to postpone" the hearing (Exhibit 273), again stating concerns about ANC 3/4G and suggesting that the Board should "conduct an inquiry into the application" in light of "legal hurdles" presented by a letter submitted by the Office of the Attorney General (Exhibit 268). The Board denied the renewed motion at the beginning of the public hearing on March 9, 2022.

Attorney General submitted comments in opposition to the application.[3] The comments asserted that approval of the application would not be in the public interest because "the proposed Off-Campus Athletic Facility is a commercial-scale high-intense use that is prohibited in the Off-Campus Site's R-1-B zone." Nonetheless, "[i]f the Board decides to grant the Application," OAG asked the Board to impose certain conditions, in addition to those proposed by the ANC. (Exhibit 268.)

Party in opposition. The Friends of the Field argued that the Applicant's planned "multi-sports complex" would be incompatible with the surrounding residential neighborhood due to the scale and intensity of the planned use and the commercial activity attendant to the Applicant's plan to lease the athletic facilities to unrelated organizations. The party in opposition contended that approval of the application would create adverse impacts relating especially to traffic, parking, noise, the visual intrusion created by the project (the appearance of the parking lot, nets, fencing, retaining walls), and environmental concerns including stormwater management, the use of artificial turf, and the removal of trees. (Exhibit 25.) The party in opposition provided testimony at the public hearing from Bruce Sherman, Jane Sherman, Claudia Russell, Tom Downs, and David Patton, who are members of the Friends of the Field and live near the subject property, as well as Martin Beam, an expert in acoustics issues, and Kyla Bennett and Diana Conway, whose testimony addressed the use of synthetic turf.

Persons in support. The Board heard testimony and received numerous letters in support of the application, including some from residents living in proximity to the subject property or near the Applicant's existing athletic facilities. The persons in support generally stated that the Applicant's project would not result in adverse impacts, including with respect to traffic, parking, noise, light, and environmental concerns such as stormwater management, especially considering other types of development that might occur on the site. The persons in support of the application cited the need for athletic facilities for youth sports activities in a convenient location and commented favorably on the Applicant's plans as an appropriate use at an underutilized space that would provide benefits to the Applicant (athletic facilities) and to ECC (providing funds in support of its mission) as well as for other potential users of the facilities, including neighbors and youth sports organizations.

Persons in opposition. The Board heard testimony and received numerous letters in opposition to the application. The persons in opposition generally argued that approval of the Applicant's proposal would be environmentally insensitive due to the removal of trees and the installation of artificial turf, would create safety problems especially related to drop-off and pick-up activities, would create a commercial use in a low-density residential area, would allow too much activity on

[3] The party in opposition repeatedly referred to the OAG submission as an "OAG opinion" even though the OAG submission itself refers to "comments." The OAG filing was not an Opinion of the Attorney General submitted to the Mayor or Council pursuant to section 101(a)(2) of the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, effective May 27, 2010 (D.C. Law 18-160; D.C. Official Code § 1-301.81(a)(2) (2012 Repl.) and Reorganization Order 50 of 1953, as amended, and published on the OAG website. (*See* https://oag.dc.gov/about-oag/our-structure-divisions/legal-counsel-division/opinions-attorney-general; last viewed on April 5, 2023.) Nor was the OAG submission published on the OAG website as a legal opinion. (*See* https://oag.dc.gov/about-oag/laws-legal-opinions; last viewed on April 5, 2023.)

a small site with insufficient visual or sound buffers, would require high retaining walls that would dwarf neighboring houses, and would create adverse impacts related to increased traffic, parking, noise, stormwater runoff, lighting, and visual intrusion that would be inconsistent with the R-1-B zoning designation of the site.

FINDINGS OF FACT

1. The property that is the subject of this application is an interior lot on the north side of Nebraska Avenue east of its intersection with Utah Avenue (Square 2319, Lot 832).

2. The subject property is irregularly shaped, with a lot area of 213,964 square feet (almost five acres).

3. The subject property is bounded by Nebraska Avenue on the south and by Lot 831 to the southwest. The east lot line abuts properties improved with detached principal dwellings fronting on Nebraska Avenue or 28th Street. The northern and northwestern lot lines abut public alleys. Properties across the alleys from the subject property are improved with detached principal dwellings fronting on Utah Avenue (to the west) or Rittenhouse Street (to the north).

4. Lots 831 and 832 have been owned and used by the Episcopal Center for Children since 1930. Lot 831 is approximately 2.24 acres and contains three buildings. The central building has a semi-circular driveway extending between Utah and Nebraska Avenues.[4] The two flanking buildings face either Utah Avenue or Nebraska Avenue.

5. During the 2017-2018 school year, the Episcopal Center for Children operated a day school with an enrollment of approximately 45 students at its property. ECC suspended operation of its program for children in kindergarten through 8th grade in June 2019 but planned to open an after-school enrichment program for children in pre-kindergarten through 3rd grade in January 2022. The after-school program was expected to serve approximately 30 children from 3:00 p.m. to 6:00 p.m. ECC planned to reinstate its day school program for approximately 25 students, with approximately 25 staff, beginning in Fall 2022.

6. The subject property comprises the remainder of the ECC site, which was previously used by ECC primarily as playing fields and open space and is now designated as Lot 832. Lot 832 is improved with one building, which contains 4,720 square feet of space and was

[4] The ECC site also has a smaller curb cut on Nebraska Avenue to the east of the larger curb cut providing access to the semi-circular drive. The Applicant indicated that ECC will close the smaller curb cut, which is not currently used. DDOT agreed that the smaller existing curb cut on Nebraska Avenue should be closed, and that the existing driveway in public space and within the building restriction line dimensions should be removed and replaced with green space and a street tree in the furniture zone. (Exhibit 222.)

formerly used by ECC as a media center.[5] The building is located to the east and north of the three ECC buildings on Lot 831, without street frontage.

7. In February 2021, the Applicant and ECC signed an agreement allowing the Applicant to lease the subject property for up to 50 years and to develop athletic facilities on the site.

8. The Applicant operates a private school, the Maret School, whose main campus is located in Woodley Park at 3000 Cathedral Avenue, N.W. Its current enrollment is approximately 650 students in kindergarten through 12th grade. The existing seven-acre main campus contains athletic facilities including two gymnasiums and a multipurpose field. The Applicant has used athletic facilities in several off-campus locations, including the field at the Jelleff Recreation Center, to provide additional field space for athletic practices and competitions.

9. The Applicant described athletics as an integral component of its educational and academic instruction and mission. Its students who participate in varsity athletics satisfy a portion of their physical education requirement that is necessary for graduation.

10. The Applicant proposed to construct athletic facilities at the subject property as part of its private school operation. A parking lot will be created in the southern portion of the subject property, accessible from Nebraska Avenue. The area to the north of the parking lot will be configured as a baseball diamond and a multipurpose athletic field for football, soccer, and lacrosse. The two playing areas will overlap, with the outfield of the baseball diamond occupying a substantial portion of the multi-purpose field.

11. The existing building will be renovated and used as a fieldhouse containing locker rooms and changing rooms for visiting teams, office space for the Applicant's athletic department staff, storage space, and restrooms.

12. The Applicant will implement a schedule for the use of the athletic facilities for practices and games involving its students. At specified other times, the Applicant will allow use of the athletic facilities by other schools, youth sports organizations, and the community. The Applicant will offer the athletic facilities for rent by youth sports organizations consistent with the Applicant's policies for the use of its athletic facilities at its existing campus.

13. The Applicant will impose limits on the use of the athletic facilities applicable to all activity at the subject property. These restrictions included that:

    (a) The baseball diamond will not be used simultaneously with the multi-purpose field, given the configuration of the playing areas.

    (b) The athletic facilities will not be scheduled for structured use on federal holidays.

[5] The Board granted a special exception under § 205 of the 1958 Zoning Regulations to the Episcopal Center for Children to allow a new library/media center on the grounds of the existing private school. *See* Application No. 16671 (order issued March 16, 2001).

(c) Use of the athletic facilities in the evenings will depend on available light, since no lighting will be provided and the athletic facilities will be secured after dark.

(d) Alcohol will not be permitted at the subject property.

14. The Applicant will implement the following schedule during both the Fall season (Labor Day to Thanksgiving) and the Spring season (after Washington's Birthday[6] to mid-June):

(a) On weekdays (Monday through Friday), the athletic facilities will be available for use by ECC and District of Columbia Public School ("DCPS") public and charter school students between 9:00 a.m. and 2:00 or 3:00 p.m. (depending on the day).[7]

(b) From Monday through Thursday, the athletic facilities will be reserved for use by the Applicant's students for practices and games from 3:00 p.m. to 6:00 p.m. and for youth sports organizations from 6:00 p.m. to 7:00 p.m.

(c) On Fridays, the athletic facilities will be reserved for games involving the Applicant's students from 3:00 p.m. to 7:00 p.m.

(d) On Saturdays, the athletic facilities will be used for games involving the Applicant's students or for youth sports activities between 10:00 a.m. and 5:00 p.m.

(e) On Sundays, the athletic facilities will be reserved for use by youth sports organizations from 11:00 a.m. until 3:30 p.m. and available for community use from 3:30 p.m. until 8:00 p.m.

15. The Applicant will implement the following schedule during the Winter season (December to Washington's Birthday):

(a) On weekdays (Monday through Friday), the subject property will be open between 9:00 a.m. and 5:30 p.m. The athletic facilities will be available for use by ECC and DCPS students between 9:00 a.m. and 3:00 p.m., and by youth sports organizations between 4:00 p.m. and 5:30 p.m.

(b) On Saturdays and Sundays, the athletic facilities will be available for community use.

16. During the Summer season (mid-June to mid-August), the Applicant will allow use of the athletic facilities by youth sports camps between 9:00 a.m. and 3:00 p.m. on weekdays. The athletic facilities will be reserved for youth sports organizations from 10:00 a.m. to 5:00 p.m. on Saturdays and available for community use on Sundays.

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[6] The Applicant devised a schedule based in part on "Presidents Day." The mid-February holiday observed in the District of Columbia and included in the federal government's schedule of holidays is officially designated "Washington's Birthday."

[7] The Applicant indicated that its use of the athletic facilities will start earlier on Wednesdays, when its academic day ends earlier.

17. The youth sports camps are not expected to have more than 100 participants. Children attending the summer camps will be dropped off and picked up in the afternoon by their parents or guardians.

18. During the Pre-season (mid-August to Labor Day), the Applicant will use the athletic facilities as practice space for its students between 8:00 a.m. and 6:00 p.m. on weekdays. The athletic facilities will be available for community use on the weekends.

19. With respect to the number of persons in attendance at the subject property in connection with its use of the athletic facilities, the Applicant indicated that:

    (a) Practices will be attended by 50 to 60 students and coaches. Weekday practices are not expected to draw any spectators.

    (b) Games held on weekdays (Monday through Thursday) will involve 40 players and draw approximately 50 to 60 spectators.

    (c) Weekend games (on Fridays, Saturdays, or both) will involve 40 players and draw approximately 100 spectators.

    (d) Weekend games will be scheduled on a Friday or Saturday approximately five times during the Fall season; Saturday games will be scheduled approximately six times during the Spring season.

    (e) A "rivalry" game will be scheduled a few times during the Fall and Spring seasons and could draw 200 spectators. Rivalry games will not account for more than five percent of the Applicant's total use of the athletic facilities.

20. The baseball diamond will have bullpens as well as spectator seating (bleachers accommodating approximately 50 spectators each) along the first- and third-base lines. Two batting cages will be built along the third-base line adjacent to the ECC site and north of the parking lot.

21. Two moveable bleachers, each accommodating approximately 40 spectators, will be used for games on the multipurpose field.

22. The Applicant will install up to four storage structures (each 12 feet wide, 16 feet long, and eight feet high) at various locations in the interior of the site.

23. The Applicant will install a scoreboard at the northwest corner of the subject property for use during its games. The scoreboard will have a height of approximately 12 feet above the adjacent finished grade and will be shielded from view from neighboring properties by heritage trees moved from their current locations at the subject property.

24. The multi-purpose field will contain two high school football goalposts, whose standard height is 20 feet. The Applicant will use removable football goalposts, which will be in place for four months of the year and removed at the conclusion of the Fall season. The

goalposts will be at least 50 feet from the closest dwellings on 28th Street or Nebraska Avenue.

25. The Applicant will not install lights at the athletic fields. Limited security lighting will be provided in the parking lot and the area around the field house. The low-wattage security lighting will be placed in various locations at the subject property, approximately 10 feet above grade and pointed at the ground.

26. The Applicant will not employ a marching band or use a public address system or other amplified sound at the athletic facilities. Visitors to the site, including spectators, will not be permitted to use artificial noisemakers such as cowbells or air horns.

27. The Applicant will allow the use of whistles by coaches and game officials at the athletic facilities.

28. The Applicant will employ a shot clock during lacrosse matches (but not practices). The shot clocks are expected to be about 10 feet above the grade of the field at a distance of at least 30 feet from the closest residences. The shot clocks are expected to sound two or three times during a typical game.

29. The Applicant will install netting on support posts around the baseball diamond and the multi-purpose field to prevent balls from leaving the playing fields. The netting may be up to 30 feet in height in some locations but 20 feet high along the alley frontage at the northern edge. The support poles will be painted a light, neutral color to minimize their visual impact.

30. The Applicant will install an ornamental black aluminum picket fence, up to six feet in height, around the perimeter of the site, excluding a community open space that will be created in the northwest corner.

31. The subject property is characterized by areas of significant slope, including a change in grade of approximately 35 feet from the northwest corner to the southeast corner of the site.

32. Construction of the planned athletic facilities will require regrading of the subject property. The Applicant will install a series of retaining walls, a maximum of four feet in height, topped by chain link fences in several locations near the outer edges of the subject property. The retaining walls will be located at three levels to accommodate a change in grade of 12 feet.

33. Construction of the planned athletic facilities will also require the relocation of some heritage trees. Four heritage trees will remain at their current locations, primarily in the southern portion of the site, while four other heritage trees will be transplanted, primarily to the northwest portion of the site. Two heritage trees (one in its current location; the

other transplanted) will be in the northeast portion of the subject property adjacent to the public alley.

34. The Applicant will create an open green space (approximately 9,800 square feet) as an amenity for community use in the northwest corner of the site near three of the relocated heritage trees. To discourage visitors to the site who might park on nearby streets and enter the subject property at the northwest corner to view activity on the fields from there, the open space will be secured to prevent access to or from the athletic facilities, and views of the athletic facilities from the open space will be obscured by mature plantings.

35. The Applicant will implement a landscaping plan that will include new plantings around the perimeter of the site and the eastern portion of the parking lot. The plantings will include a variety of deciduous, evergreen and ornamental trees as well as shrubs, perennials, and groundcovers.

36. Currently no stormwater management facilities are installed at the subject property. The Applicant indicated that the planned athletic facilities were designed and will be constructed to meet or exceed requirements stated in the Stormwater Management Guidebook (dated January 2020) of the Department of Energy and Environment. New stormwater management facilities will include a drainage system designed to meet a 25-year storm event as well as stormwater infrastructure in the parking lot and in the planned field. The parking lot will retain a 1.2-inch storm event by means of the installation of a bio-retention facility sized to retain stormwater according to DOEE requirements. The athletic field area will be constructed with a permeable artificial turf that will allow for the infiltration of stormwater into a six-inch gravel layer under the turf. Drain pipes under the gravel layer will be used to detain stormwater for 36 to 48 hours after a 1.2-inch storm. In an extreme storm event, when the athletic field and gravel will become saturated, the stormwater will be directed by the grade of the field and adjacent areas into an inlet and holding pipes.

37. The Applicant will create a rain garden, a bio-retention facility, in the southeast corner of the subject property bounded generally by the parking lot (west), the baseball diamond (north), and the rear yards of abutting residences (east). Stormwater from the parking lot will be directed via piping or sheet flow into the bio-retention facility, filtered, and then piped to an existing storm drain on Nebraska Avenue.

38. The Applicant will create a parking lot in the southern portion of the subject property, accessible via a new curb cut on Nebraska Avenue. The curb cut will be 24 feet wide.[8]

[8] The Applicant and DDOT indicated that the Public Space Committee granted conceptual design approval of the planned curb cut on Nebraska Avenue on February 24, 2022. (Transcript of March 9, 2022 at 57; Exhibit 222.)

39. The parking lot will provide approximately 48 vehicle parking spaces. The Applicant indicated that the Zoning Regulations stated a minimum vehicle parking requirement of 23 spaces for the planned athletic facilities.

40. A building restriction line extends along Nebraska Avenue, delineating a setback 15 feet deep. The parking lot will be located to the north of the area subject to the building restriction line.

41. The Applicant will create a pick-up/drop-off ("PUDO") zone, 100 feet long, on Nebraska Avenue on either side of the driveway into the parking lot. The PUDO zone will provide two parking spaces for use by buses from the Applicant's campus and visiting schools, and will be available to accommodate pick-up and drop-off activities when not occupied by buses.

42. The Applicant will provide 16 bicycle parking spaces on racks located within the subject property.

43. Trash receptacles will be provided in appropriate locations throughout the site. A trash storage area will be located in the western portion of the parking lot. The Applicant will restrict the times for trash and recycling collection consistent with DDOT's recommendations.

44. The Applicant will provide bus transportation for its students between its existing campus and the subject property for practices and games, except for students who walk or travel by bicycle or Metrobus/Metrorail; students whose parents or guardians attend games may leave with their parents or guardians. During late summer pre-season practices, the Applicant will allow up to 12 students during the morning and afternoon sessions to travel to and from the subject property by car.

45. Visiting teams will also travel to and from the subject property by bus.

46. Most coaches will accompany teams in buses but the Applicant will allow up to five coaches to drive.

47. Roadways in the immediate vicinity of the subject property operate as two-way streets with maximum speed limits of 25 miles per hour. Utah Avenue and Nebraska Avenue, which is 90 feet wide, are collector streets; Rittenhouse Street is classified as a local street.

48. The subject property is near bus stops on two Metrobus routes, one of which provides a connection to the Tenleytown Metrorail station.

49. The planned curb cut on Nebraska Avenue was designed so that no vehicles (including trash trucks) will need to back into the site; all backing maneuvers can occur on private property.

50. The Applicant will implement a transportation management plan to facilitate access to and from the subject property and reduce the impacts of the planned development. The transportation management plan will comprise (1) a transportation demand management ("TDM") plan and (2) an operations management plan.

51. The Applicant will implement the following strategies as part of its TDM plan:
    A. Infrastructure Improvements

        1. Provide at least six short-term bicycle racks (12 bicycle parking spaces) at the subject property.

        2. Subject to DDOT approval, designate a bus drop-off/pick-up zone on Nebraska Avenue (as shown on the Applicant's revised plans) with sufficient length to accommodate two full-size school buses.

    B. Non-Auto Travel

        1. During the school year, all of the Applicant's team members and most coaches will be required to travel to and from the subject property by bus for practices, except for team members who live in the neighborhood (who may walk or travel by bicycle) or who travel by Metrobus. No more than five coaches will be permitted to drive to/from the subject property.

        2. During the school year, all of the Applicant's team members, visiting team members, and most coaches will be required to travel to the subject property by bus for games, except those who live in the neighborhood (who may walk or travel by bicycle) or use Metrobus. The buses will transport team members from the subject property after the conclusion of the games, except that team members whose parents attended the game may leave with their parents or on the bus. No more than five coaches will be permitted to drive to/from the subject property.

        3. During the preseason (three weeks from mid-August until Labor Day), up to 12 team members and five coaches will be permitted to travel to the subject property via personal vehicles for both the morning and afternoon practice sessions. Other team members and coaches will travel to and from the subject property by bus.

        4. Other visitors to the subject property will be encouraged to use Metrobus (the nearby M4 route, which connects to the Tenleytown Metrorail station) when feasible.

52. The Applicant will implement the following strategies as part of its operations management plan:
    A. The Applicant will provide notification to parents of the Applicant's students and to visiting teams and all other users that includes the following:

1. When the on-site parking lot is full, park only in legal on-street parking spaces (i.e. do not block driveways or park in alleys) and obey any parking restrictions in place;

2. Obey all traffic laws when traveling to and from the subject property.

B. The Applicant will ensure that flaggers will be in the parking lot to direct traffic to available spaces in the lot during games and practices when the parking lot is expected to be at or near capacity. Flaggers will be provided by the Applicant or by groups leasing the field.

C. The Applicant will provide trash and recycling receptacles in the corner of the parking lot. Trash trucks will use the Nebraska Avenue curb cut and will circulate through the parking lot to pick up trash and recycling. The collection of trash and recycling will be restricted during the following hours:

1. Between 9:00 p.m. and 7:00 a.m.

2. During the school year, from 3:00 p.m. to 5:00 p.m. on weekdays and from 10:00 a.m. to 5:00 p.m. on Saturdays; and

3. During the summer months, no trash pick-up before 9:00 a.m. or after 3:00 p.m. on weekdays or from 10:00 a.m. to 5:00 p.m. on Saturdays.

53. The subject property is located in a Residential House (R) zone, R-1-B.

54. The purposes of the R-1-B zone are to (a) protect quiet residential areas now developed with detached dwellings and adjoining vacant areas likely to be developed for those purposes and (b) stabilize the residential areas and promote a suitable environment for family life. (Subtitle D § 300.1.) The R-1-B zone is intended to provide for areas predominantly developed with detached houses on moderately sized lots. (Subtitle D § 300.3.)

55. The neighborhood surrounding the subject property is developed primarily with detached principal dwellings. Some institutional uses, including schools and places of worship are dispersed throughout the neighborhood.

56. The planned athletic facilities will be closest to nearby dwellings located to the east and west of the subject property at distances ranging from approximately 25 feet to as much as 85 feet. Dwellings located to the north of the subject property will be at least 30 to 60 feet from the multi-purpose field.

57. In addition to ECC, existing schools near the subject property include St. John's College High School at 2607 Military Road, N.W., approximately one mile southeast of the subject property.

58. The Applicant will implement the conditions recommended by the District Department of Transportation; specifically:

    1. The Applicant shall fund and install the following transportation improvements, subject to DDOT approval, prior to issuance of a certificate of occupancy:

        (a) Install pedestrian safety countermeasures at Nebraska Avenue and Utah Avenue, N.W., which could include concrete or floating curb extensions, flexposts, pavement markings, and signage up to a maximum cost of $70,000, excluding engineering and permitting fees. The improvements will not include the relocation of any storm drains, inlets, traffic signal poles or equipment, or impact bus stops or the critical root zones of any trees. Any leftover funds will be contributed to DDOT's Transportation Mitigation Fund and will be repurposed toward other pedestrian, bicycle, and transit improvements within a quarter-mile of the site.

        (b) Install pedestrian safety countermeasures at Nebraska Avenue and 28th Street, N.W., which could include curb extensions, Rapid Reflecting Flashing Beacon ("RRFB"), missing curb ramps, high-visibility crosswalks, and pedestrian signage.

        (c) Install two curb extensions at the driveway entrance to the site on Nebraska Avenue, N.W.

        (d) Upgrade the crosswalks along Nebraska Avenue at Rittenhouse Street, Moreland Street, and 27th Street, N.W. to high-visibility markings.

        (e) Fund and install a 19-dock Capital Bikeshare station with 12 bikes and one-year cost of maintenance and operation.

        (f) Install a minimum of eight inverted-U bicycle racks for a minimum total of 16 short-term bicycle parking spaces; and

        (g) Ensure any existing School Zone signs are visible to oncoming traffic and in appropriate locations. If they are missing, they should be installed.

    2. The Applicant shall implement the following TDM plan, for the life of the project, unless otherwise noted:

        (a) Subject to DDOT approval, designate a bus drop-off/pick-up zone on Nebraska Avenue with sufficient length to accommodate two full-sized school buses.

        (b) During the school year, all Maret School team members and most coaches will be required to travel to and from the ball fields by bus for practices, except team members who live in the neighborhood or who ride Metrobus. Team members who live in the neighborhood will be permitted to walk or bike to practice. Up to five coaches may be permitted to drive to/from the ball fields.

(c) During the school year, all Maret School visiting team members and most coaches will be required to travel to the ball fields by bus for games, except those who live in the neighborhood or use Metrobus. Team members who live in the neighborhood will be permitted to walk or bike. The buses will transport team members from the fields after the conclusion of the games. Team members whose parents attended the game may leave with their parents or on the bus. Up to five coaches may be permitted to drive to/from the ball fields.

(d) During the preseason (three weeks from mid-August to Labor Day), up to 12 team members and five coaches will be permitted to travel to the ball fields via personal vehicles for both the morning and afternoon practice sessions. Other team members and coaches will travel to the ball fields via bus.

(e) Other visitors to the ball fields will be encouraged to use the adjacent Metrobus M4 line, providing connectivity to the Tenleytown Metrorail station when feasible.

3. The Applicant shall implement the following Operations Management plan, for the life of the project:

(a) Provide notification to Maret parents, visiting teams, and all outside users of the fields when the on-site parking lot is full, users can only park in legal on-street parking spaces (i.e. do not block driveways or park in alleys) and must obey any parking restrictions in place.

(b) Provide flaggers in the parking lot to direct traffic to available spaces in the lot during games/practices in which the parking lot is expected to be at or near capacity. Flaggers to be provided by Maret or by groups who may be leasing the fields.

(c) Trash and recycling receptacles will be located in the corner of the parking lot. Trash trucks will use the Nebraska Avenue curb cut and will circulate through the parking lot in order to pick up trash and recycling. Trash and recycling pick up will be restricted during the following hours:

- Between 9:00 p.m. and 7:00 a.m., in accordance with DCMR § 20-2806;
- During the school year, from 3:00 p.m. to 5:00 p.m. on weekdays and from 10:00 a.m. to 5:00 p.m. on Saturdays; and
- During the summer months, no trash pick-up before 9:00 a.m. or after 3:00 p.m. on weekdays and no trash pick-up from 10:00 a.m. and 5:00 p.m. on Saturdays.

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks special exceptions, pursuant to 11 DCMR Subtitle X, Chapter 9, under Subtitle U § 203.1(m) and Subtitle X § 104 to allow a private school use (athletic facilities) and under Subtitle C § 710.3 from the parking location restrictions of Subtitle C § 710.2 (parking lot in the front of the lot) in the R-1-B zone at part of 5901 Utah Avenue, N.W. (Square 2319, Lots 832). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.), to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11 DCMR Subtitle X § 901.2.)

Authority to consider the application. As a preliminary matter, the Board notes the argument raised by the party in opposition that the Applicant did not request the correct zoning relief for the proposed use of the subject property. According to the party in opposition, the Applicant's proposed use of the subject property could not be permitted by special exception as a private school use but would require approval as a use variance. In its initial motion to postpone the public hearing (Exhibit 188), the party in opposition noted that the relief requested included a special exception to allow a private school use and contended that the "proposed sports facilities and athletic fields stretch to reach this private school use classification" since "the ECC is no longer operational and will only be retaining a portion of the property – separate from the fields" and the Applicant's current private school operation is located more than three miles from the subject property and the Applicant would not conduct any of the principal private school use on the site. Citing the "private education" use category set forth in Subtitle B § 200.2(k)(2)[9] and the zoning definition of an "accessory use,"[10] the party in opposition argued that the proposed use of the subject property could not be considered "accessory" or ancillary to a principal use of academic instruction located on another lot. The party in opposition also cited the Applicant's plans "to actively promote the use of the athletic facilities to users other than itself" as an indication that the actual use of the "athletic complex" would be as "recreational facilities," a use not permitted by special exception that would therefore require a use variance. In its supplemental statement (Exhibit 261), the party in opposition again argued that the Applicant sought "incorrect relief" in this case given that the athletic facilities would not be located on the same lot as the Applicant's

[9] The use categories include Subtitle B § 200.2(k) Education, Private:

> (1) An educational, academic, or institutional use with the primary mission of providing education and academic instruction that provides District or state mandated basic education or educational uses;
>
> (2) Above uses may include, but are not limited to: accessory play and athletic areas, dormitories, cafeterias, recreational, or sports facilities; and
>
> (3) Exceptions: This use category does not include uses which more typically would fall within the daytime care, public education or college/university education use category. This use category also does not include the home schooling of children in a dwelling by their parent, guardian, or private tutor.

[10] The Zoning Regulations define "accessory use" as: A use customarily incidental and subordinate to the principal use and located on the same lot with the principal use. Except for Short-Term Rentals and unless otherwise specifically permitted, an accessory use shall be limited to twenty percent (20%) of the gross floor area." (Subtitle B § 100.2.)

existing private school operation and the application "does not involve the development of an academic institution or any sort of school." Instead, according to the party in opposition, the Applicant "should be requesting a use variance to allow these private athletic areas that fall within the definition of entertainment, assembly or performing arts pursuant to 11-B DCMR § 200.2(m)."

The OAG comments (Exhibit 268) also asserted that the planned "'Off-Campus Athletic Facility' does not qualify as a 'private school' principal use eligible for a special exception" because it would not be located on the same premises as the Applicant's campus as required by Subtitle B § 203.3 and "use of the premises exclusively as an athletic facility is not a 'private school.'" Like the party in opposition, the OAG comments claimed that the Applicant's proposal could not be considered a principal private school use because the site would be used "exclusively for athletic activities – there will be no on-site academic instructional element to which the proposed athletic uses will be accessory." Also similar to the argument made by the party in opposition, the OAG comments asserted that "the Off-Campus Athletic Facility is analogous in its intensity to a private recreation center or commercial gymnasium," particularly since the Applicant was leasing the subject property from ECC "in a purely financial transaction and plans to sublease the Off-Campus Athletic Facility to unidentified third parties." According to the OAG comments, the Applicant's proposed use of the subject property was not permitted because "these uses are too intense for the low-intensity residential uses for which the R-1-B zone is intended" and therefore would require a use variance or an amendment to the Zoning Map or Zoning Regulations "to authorize the proposed private recreation center use."

The application at issue in this proceeding was self-certified by the Applicant in accordance with the procedure set forth in Subtitle Y § 300.6. The Board may consider a self-certified application so long as the Board finds a plausible basis to conclude that the relief requested will be sufficient to achieve the applicant's purpose. The Board has consistently held that, in reaching that conclusion, arguments asserting the need for additional or different zoning relief are irrelevant to its consideration of a self-certified application. *See, e.g.,* Application No. 19689-A (MIC9 Owner, LLC; order on remand issued January 18, 2023) (Board granted a special exception allowing modification of an existing private school plan despite allegations that the actual use of the property was not as a private school but as a "private event center" whose core function was hosting and collecting fees from private events, where the Board found a plausible basis to decide that a special exception under Subtitle X § 104 was sufficient to achieve the applicant's project); Application No. 18263-B (Application of Stephanie and John Lester; order on remand issued July 25, 2013) (The self-certification process allows applicants to decide the type of zoning relief needed while acknowledging that an applicant assumes the risk that the property owner might require additional or different zoning relief from the relief specified in a self-certified application in order to obtain, for the desired project, any building permit, certificate of occupancy, or other administrative determination based on the Zoning Regulations and Map.); *contrast* Application No. 19630 (Goirand and Xenophontos; order issued November 20, 2018) (self-certified application for a special exception was dismissed because the Board found no basis to conclude that the requested relief was sufficient under the circumstances, where the special exception provision did not apply to the applicants' proposal and the applicants failed to revise the application to request variance relief).

In this case, the Board did not need to consider allegations that the Applicant sought "incorrect relief" or that the planned use of the subject property required different relief because the Board found a plausible basis to decide that special exception approval under Subtitle U § 203.1(m) and Subtitle X § 104 to allow a private school use, along with the requested relief from parking location requirements, would be sufficient to achieve the Applicant's project. The Board cannot make a final determination to resolve allegations challenging the nature of a proposed use in the context of an application for special exception relief, in advance of a determination by the Zoning Administrator. *See* Application No. 19689-A (MIC9 Owner LLC; order on remand issued January 18, 2023); Application No. 12045 (Young Men's Christian Association of Metropolitan Washington; order issued May 4, 1976), *affirmed, Ass'n for Preservation of 1700 Block of N Street, N.W. and Vicinity v. District of Columbia Bd. of Zoning Adjustment*, 384 A.2d 674, 675 (D.C. 1978) (upheld Board's decision to grant zoning relief without ruling, in the application proceeding, on whether the planned facility would be a private club for zoning purposes, because the issue should only be considered as an appeal of the decision of the Zoning Administrator); and Application No. 15984 (Carnegie Institution of Washington; order issued November 1, 1995) (Board had a plausible basis to approve a special exception allowing a music school as a private school use despite an argument that a use variance should have been required to permit a trade school), *affirmed, Neighbors on Upton Street v. District of Columbia Bd. of Zoning Adjustment*, 697 A.2d 3 (D.C. 1997).

In finding a plausible basis to consider the relief requested in this application, the Board notes that the Applicant currently operates a private school and filed this application as part of its efforts to obtain additional space to carry out its athletics program, which it described as part of its existing program, integral to its mission, and a requirement for graduation. The Applicant planned to construct a baseball diamond and multi-purpose field, with attendant features such as a scoreboard and seating for spectators, and to use the subject property for the benefit of its students, providing space and regulation-sized fields for athletic practices and games played against other schools. The Office of Planning analyzed the application as a request for a special exception for a private school use, and the Applicant submitted a copy of an email, dated March 8, 2022 and sent by the Zoning Administrator to the Applicant's counsel, stating the Zoning Administrator's agreement "that the proposed athletic facilities meet the definition of 'Education, Private' (Subtitle B Section 200.2(k))" and that "therefore, the appropriate relief for this use would be a Special Exception under [Subtitle] U203.1(m)." (Exhibit 282A.)

The Applicant's plan to allow other users when the athletic facilities are not needed for its private school use did not alter the fundamental nature of the proposed use as athletic facilities as a component of a private school use. Similarly, the location of the Applicant's existing private school operation was not relevant to the Board's consideration of the relief requested, except to the extent that travel between the existing campus and the subject property might cause traffic or other impacts germane to consideration of the special exceptions requested, because approval of the application will allow a principal private school use at the subject property, not an accessory use required to be on the same lot as a principal use. Approval of the requested special exceptions will allow the operation of the approved private school use at the subject property consistent with the restrictions on the use delineated in the application and subject to the conditions of approval adopted in this order, not limited to this Applicant or to any specific private school operation. *See,*

National Black Child Development Institute, Inc. v. District of Columbia Bd. of Zoning Adjustment, 483 A.2d 687, 691-692 (D.C. 1984) (condition restricting use of the subject premises to the applicant was unlawful *per se* as a personal condition that would regulate the conduct of the owner rather than the use of the property; no valid public policy is served by confining a variance to an individual entity; conditions, like the variance itself, must run with the land).

The Board was not persuaded by assertions that the Applicant's use of the subject property must be considered an accessory use required to be located on the same lot as the principal private school use. The Board has repeatedly recognized the use of property by private schools for athletic purposes as a component of the principal private school use, not an accessory use for an ancillary purpose. *See, e.g.*, Application No. 16433 (Protestant Episcopal Cathedral Foundation of the District of Columbia on behalf of the National Cathedral School; order issued August 17, 1999). In that case, the Board granted a special exception under § 206 of the 1958 Zoning Regulations to allow an athletic facility at a private school in the R-1-B zone, rejecting an argument in opposition that the proposed athletic facility would be neither a principal nor an accessory use but required a use variance. The Board held that the planned athletic facility would be part of the applicant's principal private school use, recognizing that "[a]thletics is a form of education, and thus the athletic facilities are educational facilities," and "therefore … the applicant need only meet the standard for a private school special exception." The Board also noted that, under the circumstances of that application, even if "the proposed athletic facility could not be fairly characterized as an extension of the existing principal use, it would nevertheless meet the test for accessory uses as set forth in the Zoning Regulations." The Board's order granting a special exception to allow new athletic facilities as a private school use was upheld on appeal in *National Cathedral Neighborhood Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 753 A.2d 984 (D.C. 2000). The Court noted "an array of arguments, including that the BZA erroneously found the proposed facility to be either (a) an extension of the principal use or (b) an accessory use of the School," but found "none of these arguments a sufficient basis for reversal of the BZA's decision." In holding that the Board's finding with regard to accessory use was sustainable, the Court declined to consider whether the athletic facility could be reasonably characterized as an extension of the principal use, but the Court did not reverse that aspect of the Board's decision or find error in the Board's decision to grant the zoning relief requested to allow an athletic facility as a principal private school use. Since that decision, the Board has approved other special exceptions to allow athletic facilities as a private school use on a lot separate from the location of an applicant's academic building. *See, e.g.,* Application No. 20593 (Archdiocese of Washington on behalf of the Shrine of the Most Blessed Sacrament; order issued September 1, 2022) (Board granted a special exception under Subtitle U § 203.1(m) to allow the continued use of an existing recreational playing field as a private school use in the R-1-B zone, where the playing field was located on a lot separate from the applicant's academic buildings); that use was first approved, subject to a three-year term of approval, in Application No. 17718 (order issued March 6, 2008) and was renewed for a term of 10 years in Application No. 18236 (order issued September 16, 2011); Application No. 19678 (St. Patrick's Episcopal Day School; order issued February 1, 2018) (special exception to allow a new play area/sports deck for private school use on a site across the street from academic buildings); and Application No. 17883 (Vestry of Saint Patrick's Parish; order issued March 4, 2009) (special exception under § 206 of the 1958 Zoning Regulations to allow use of adjoining lots as outdoor physical education and science program space with no new

structures). The Board reaffirms its prior holdings that the Zoning Regulations do not require classification of a private school's athletic facilities as an accessory use or their location on the same lot as the private school's academic buildings.

The party in opposition, in its supplemental statement (Exhibit 261), cited the zoning definitions of "principal" and "accessory" use in arguing that athletic and sports facilities are by definition accessory to a principal private school use.[11] The Applicant countered that "accessory," as used in Subtitle B § 200.2(k)(2), described only play and athletic areas, such that dormitories, cafeterias, recreational, or sports facilities should be considered aspects of a principal private school use, not subject to restrictions on accessory uses. The Board agrees with the Applicant that the term "accessory," as used in the "private education" use category, does not apply to dormitories, cafeterias, recreational, or sports facilities so as to render those facilities a use accessory to a principal private school use.[12] The Board's long-standing practice has been to consider such facilities as an intrinsic aspect of a private school use, not a separate accessory or subordinate use. The operators of private school uses that provide dormitories, cafeterias, or recreational or sports facilities have not been required to locate those features on the same lot as the private school's academic buildings, nor have those features been limited to 20 percent of the gross floor area of academic buildings, as is generally required in the case of an accessory use. *See,* definition of "accessory use" in Subtitle B § 100.2 ("… unless otherwise specifically permitted, an accessory use shall be limited to twenty percent (20%) of the gross floor area" of the principal use),[13] and *e.g.*, Application No. 18071 (The Washington Ballet, order issued June 22, 2010) (special

[11] The Zoning Regulations define "principal use" as: "The primary purpose or activity for which a lot, structure, or building is occupied." Subtitle B § 100.2.

[12] The Board notes that similar terminology is used in Subtitle B § 200.2(j)(2) with respect to College/University Education uses, which can encompass "accessory athletic and recreational areas, dormitories, cafeterias, ancillary commercial uses, multiple academic and administrative buildings, or sports facilities." The use of both "accessory" and "ancillary" indicates that "accessory" was not intended to apply to elements such as dormitories, cafeterias, administrative buildings, and sports facilities, which are instead considered inherent elements of a college/university education use. A college or university use may be permitted by special exception in the Residential House (R) zones, including dormitories and athletic facilities that are not located on the same lot as an academic building and are not subject to the 20-percent limit for an accessory use, pursuant to Subtitle U § 203.3 ("College or university use that is an academic institution of higher learning, including a college or university hospital, dormitory, fraternity, or sorority house proposed to be located on the campus of a college or university shall be permitted as a special exception ….").

[13] The 20-percent limit was not part of the definition of "accessory use" in the 1958 Zoning Regulations but was added to the definition adopted in the 2016 Zoning Regulations in recognition of a long-standing interpretation of the Zoning Administrator that applied a 20-percent benchmark to distinguish a principal use from potential accessory uses. *See*, *e.g.*, *Ass'n for Preservation of 1700 Block of N Street, N.W. and Vicinity v. District of Columbia Bd. of Zoning Adjustment*, 384 A.2d 668, 673 (D.C. 1978) (affirming zoning administrator's determination that a proposed use would be a "private club" even though some of its services would be available to persons who were not members or guests; the zoning administrator testified that the Zoning Regulations expressed no intent to prohibit any and all subordinate or occasional uses, even if outside the scope of the principal use, and that even if the private club derived as much as 20 percent of its income from nonmembers, the zoning administrator would consider that to be incidental usage under the zoning definition of "accessory use."); Application No. 16333 (Richard T. Ross; order issued May 7, 1998) (Board granted a special exception to allow a bed and breakfast as a home occupation, with social events hosted by guests permitted as an accessory use subject to a limit of 24 events per year, "which constitutes less than 20 percent of the calendar year."); *affirmed, Dupont Circle Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 749 A.2d 1258, 1263 (D.C. 2000).

exception under § 206 of the 1958 Zoning Regulations to allow use of a three-story former dwelling as a dormitory and ancillary office space for a private ballet school located on an adjoining lot in the R-2 district) and Application No. 19678 (St. Patrick's Episcopal Day School; order issued February 1, 2018) (new play area/sports deck for private school use on a site across the street from academic buildings).

The party in opposition acknowledged that "athletics comprise an important part of the educational mission of any school" but still argued that "the Applicant's assertion that athletics are academics is simply specious" because the "two words [have] very different meanings." The Board rejects, as overly narrow, the premise that for zoning purposes a "private school" must be restricted only to academic functions such that all other aspects of a private school must be considered accessory rather than an inherent aspect of a private school use. The Zoning Regulations take a more expansive approach, recognizing "private education" as a use category that comprises "*educational, academic, or institutional use* with the primary mission of providing *education and academic instruction* …" (Subtitle B § 200.2(k)(1), emphasis added). Accordingly, the Board reaffirms its prior holding that athletics is a form of education when athletic facilities are operated as an integral component of a private school use.

The Applicant's plan to lease the athletic facilities to other users does not require a different result. The Applicant stated its need to use the athletic facilities at specific times throughout the year, creating periods of time when the facilities would otherwise be unused. Rather than leaving the athletic facilities idle and inaccessible, the Applicant devised a detailed schedule of when the athletic facilities could be available for use by students of other schools, by children participating in youth sports organizations or summer camp, or by unaffiliated persons. The Applicant's decision to grant such permission would not "allow a private school to operate a business" or convert the private school use to a different use because the principal use of the subject property would remain as athletic facilities as a private school use. The Board has a long-standing practice of authorizing private schools to allow use of their facilities by unaffiliated users, which may entail the charging of a fee, as part of the approval of a special exception for private school use.[14] In this case, the Board credits the Applicant's testimony that the use of the athletic facilities will be managed in a way similar to the Applicant's current operation at its main campus, such that the Applicant may allow the limited use of the athletic facilities by third parties, subject to the restrictions stated in the application and to the conditions of approval applicable to the Applicant's use. The Applicant stated an intent to charge a fee designed to defray a portion of maintenance costs, which would not convert the athletic facilities to a commercial use.

Subtitle U § 203.1(m) and Subtitle X § 104. Pursuant to Subtitle U § 203.1, the Board is authorized to permit specified uses if approved as a special exception subject to applicable conditions. These uses include private schools, provided that the private school at issue will be located so that it is

[14] *See, e.g.*, Application No. 19599-A (Georgetown Day School; order issued December 11, 2017), Application No. 18431 (Field School; order issued December 28, 2012), Application No. 18465 (St. Patrick's; order issued December 17, 2012), Application No. 17320 (St. Albans School; order issued March 27, 2006), Application No. 16517 (St. Patrick's; order issued December 28, 1999), Application No. 16433 (National Cathedral School; order issued August 17, 1999), and Application No. 14009 (St. Patrick's; order issued December 23, 1983).

not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions and that "ample parking space," not less than the zoning requirement, will be provided to accommodate the students, teachers, and visitors likely to come to the site by automobile. (Subtitle U § 203.1(m).) Pursuant to Subtitle X § 104, education use by a private school may be permitted as a special exception where the Board determines *inter alia* that the private school will be located so that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions. (Subtitle X §§ 104.1, 104.2.) The private school will be subject to the development standards of the zone where the private school will be located. (Subtitle X § 104.3.)

Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning and to the issues and concerns of the affected ANC, the Board concludes that the Applicant satisfied the requirements for approval of a special exception for use of the subject property as athletic facilities as a private school use under Subtitle U § 203.1(m) and Subtitle X § 104. The Applicant's proposal, which does not entail the construction of any new buildings, will comply with development standards applicable in the R-1-B zone, as well as the pervious surface requirements and limits on the height of retaining walls, and will provide vehicle parking spaces in excess of the minimum required by the Zoning Regulations (see Subtitle C § 701.5). The planned parking lot will provide twice the minimum number of vehicle parking spaces required by the proposed private school use.

The Board concludes that the Applicant's proposal will not create objectionable impacts with respect to noise, given the restrictions on the use stated by the Applicant. Use of the athletic facilities will be primarily by children engaged in structured activities as part of their school day, along with limited use by youth sports organizations and a summer camp. No use of the subject property will be permitted during early morning hours or after dark. The Applicant will use the athletic facilities for practices and games in furtherance of its physical education program, without any amplified sound or marching bands. Spectators will not be permitted to use noisemakers. The Board credits the conclusion reached in a report submitted by the Applicant stating the results of a review performed by an acoustical engineering firm (Exhibit 184D). The acoustical engineers determined that the unamplified noise sources associated with the use of the planned athletic facilities might be audible at nearby residential properties but were not likely to conflict with applicable regulations governing noise, considering especially the distance between the athletic facilities and the closest dwellings (ranging from 25 to 85 feet), changes in grading, landscaping, and other obstacles such as retaining walls that could affect the propagation of noise, and background noise levels at the residential properties. The Board was not persuaded by testimony from the party and persons in opposition that the sound impacts of the use of the athletic facilities would constitute an objectionable condition with respect to noise. The potential noise impacts described by the persons and party in opposition were not so severe as to constitute objectionable conditions, and testimony from an acoustics expert on behalf of the party in opposition was based in part on the inapposite premise that the Applicant's proposal should be considered a commercial use. The Board concludes that the Applicant's planned use of the athletic facilities will not tend to create objectionable conditions related to noise given the nature of the planned use and the restrictions delineated in the application, especially with respect to the number of students and

spectators, the limits on hours of operation, the absence of amplified sound or noisemakers, the distance between the facilities and nearby dwellings, and landscaping to buffer sounds.

The Board concludes that the Applicant's proposal will not create objectionable impacts with respect to traffic, given the restrictions on the use delineated in the application and the Applicant's implementation of measures to manage automobile traffic and to promote travel to the subject property by means other than automobile consistent with the conditions recommended by DDOT. The Board credits the DDOT testimony indicating its lack of objection to approval of the zoning relief requested subject to the conditions DDOT recommended, which the Applicant agreed to implement as part of the application. (Exhibit 282.)

The subject property is located near the intersection of two collector roads where the posted speed limit is 25 miles per hour. The Applicant will provide a parking lot accessible via a driveway that will be located at a sufficient distance from the nearest intersection to avoid the creation of unsafe conditions; the Board notes DDOT's lack of objection to this location, where a curb cut was approved by the Public Space committee. The Applicant will undertake measures to reduce the number of vehicle trips that might otherwise be generated by the athletic facilities and to encourage safe vehicular and pedestrian circulation at and near the subject property. The Applicant will implement a transportation management plan as well as an operations management plan to mitigate potential adverse impacts related to vehicle traffic to and from the subject property. Measures will include emphasizing the use of buses by students, both the Applicant's and students from other schools, to travel to and from the subject property for participation in practices and games; providing traffic control officers or flaggers to direct traffic when a larger number of spectators is expected; scheduling staggered start times for events held at the athletic facilities and coordinating with the nearby St. John's high school to avoid scheduling home games at the same time; installing bicycle parking facilities in convenient locations; and providing notification to persons attending athletic events about compliance with parking restrictions. The Applicant will implement a plan to monitor trip generation and parking occupancy, and will address conditions that are higher than expected.

The Applicant agreed to undertake specific measures recommended by DDOT to encourage travel by bicycle and to enhance pedestrian safety and connectivity. The Applicant will minimize potential vehicle-pedestrian conflicts in the alleys abutting the subject property by installing a perimeter fence that will preclude entrance to the athletic facilities other than through the gate on Nebraska Avenue. The parking lot will provide sufficient area to allow trash collection within the interior of the site, avoiding the use of the relatively narrow public alleys as well as the need for backing maneuvers by trash trucks in public space. DDOT concurred with the Applicant's proposal to handle trash collection via Nebraska Avenue, as well as its proposal to create a PUDO zone on Nebraska Avenue, because DDOT recommended against using the abutting alleys in this case due to projected traffic volumes and the circuitous route through the alleys.

The Applicant submitted a comprehensive transportation review ("CTR") (Exhibits 97A1, 97A2) that was prepared by its expert in transportation engineering after the scope and methodologies of the study were approved by DDOT. The CTR report evaluated existing traffic conditions in the vicinity of the subject property as well as future conditions expected with and without the

Applicant's proposal. On the basis of the study, the Applicant's traffic expert recommended transportation improvements (including roadway, operational, and transportation management strategies) to mitigate the potential traffic impacts of the Applicant's proposal. DDOT noted the Applicant's use of "an agreed-upon scope for the CTR that is consistent with the scale of the action" and concurred with the Applicant's transportation demand management and operations management plans. For that reason, the Board was not persuaded by the party in opposition's objection to "the quality, substance, timetable, and conclusions" of the Applicant's traffic study or its assertion that the study was "significantly flawed in scope, treat[ed] a too-limited study area, [made] only a weak and narrow assessment of existing conditions, and [applied] ill-founded assumptions about the projected use of the proposed facilities." (Exhibit 209.)

However, DDOT did not agree with recommendations in the Applicant's CTR to address potential traffic impacts by means of certain traffic signal and intersection striping modifications, which DDOT indicated "could potentially impact upstream and downstream intersections." Instead, DDOT concluded that impacts on vehicle level of service at two intersections (Nebraska Avenue at Utah Avenue and Military Road at 27th Street) could be addressed by means of "a substantial package of multi-modal improvements in the vicinity of the site to improve pedestrian safety and encourage the use of non-automobile modes of travel." The Applicant agreed to implement DDOT's recommendations, which called for the installation of several frontage improvements to enhance pedestrian safety and connectivity, encourage bicycling, and offset projected traffic impacts. DDOT reviewed the traffic impact analysis completed by the Applicant as part of its CTR – which included "extensive analysis of existing conditions (2021 Existing), future with no development (2024 Background), future conditions with development (2024 Total Future) scenarios, and 2024 Total Future conditions with mitigation" – and concluded that "minimal to no increase in vehicle travel delay outside the study area" would occur as a result of the Applicant's proposal.

The Board concludes that the Applicant's proposal will not create objectionable impacts with respect to number of students, given the layout of the athletic facilities, such that both fields cannot be used simultaneously, and the restrictions on the use delineated in the application. The Applicant's use of the planned athletic facilities will entail a relatively small number of students and visitors to a relatively very large site: typically 50 to 60 persons participating in a weekday practice, with few if any spectators; athletic games involving 40 players and around 100 spectators on weekends, fewer on weekdays; up to 200 for an occasional "rivalry" game; and approximately 100 participants at youth sports camps during summers. The potential impacts associated with the number of students using the athletic facilities will be mitigated by the absence of amplified sound and by the use of buses to transport the majority of players and coaches to and from the subject property. The perimeter fencing will preclude use of the athletic facilities outside the permitted hours.

The Board concludes that the Applicant's proposal will provide ample parking sufficient to accommodate the students, teachers, and visitors likely to come to the site by automobile. The planned athletic facilities will provide vehicle and bicycle parking in excess of the minimum number of spaces required by the Zoning Regulations, and the Applicant will implement transportation demand management and operations management plans that will effectively reduce

the number of vehicle trips that might otherwise be generated by the use of the planned athletic facilities. The Board credits DDOT's conclusion that the provision of 48 vehicle parking spaces will be "sufficient to handle the parking needs" of the planned athletic facilities, given the projected number of players and spectators, the staggered event schedules, and the use of buses as well as the "anticipated auto-mode share." (Exhibit 222.) The Applicant's traffic expert and DDOT both indicated that the curbside parking available in the vicinity of the subject property will be adequate to accommodate any overflow of vehicles on the relatively rare occasions when the 48-space parking lot is full. Two existing curbside parking spaces will be eliminated to accommodate the curb cut needed to provide access to the parking lot, but two new curbside spaces will be created nearby as a result of the closing of one of ECC's existing curb cuts. Six existing curbside vehicle parking spaces will be eliminated to create the PUDO zone, which will reduce the need for vehicle trips to the subject property by providing two bus parking spaces, as well as establishing a safe and convenient area for drop-off and pick-up activities when the bus parking spaces are not occupied. The Board credits the conclusion of the Applicant's traffic expert and DDOT that operation of the planned athletic facilities, subject to the restrictions on the use stated in the application and the conditions adopted in this order, will not create adverse queuing impacts in the public space, especially considering the use of buses by the Applicant's students as well as visiting teams and by the relatively limited number of spectators expected to attend practices and games at the site.

The Board concludes that the Applicant's proposal will not create adverse impacts with respect to any other potential objectionable condition, including environmental impacts. The Board heard testimony about existing conditions related to stormwater runoff from the subject property, which does not currently have any stormwater management facilities; for example, the ANC report mention that "historically, stormwater has run off the field to the southeast corner, flooding adjacent properties." (Exhibit 233.) The Applicant will install new stormwater management facilities that will meet or exceed the requirements of the Department of Energy and Environment, including a drainage system designed to meet a 25-year storm event. The Board was not persuaded by the party in opposition that the Applicant's proposal was insufficient, noting that the Applicant consulted with DOEE in designing the stormwater management plan and infrastructure at the planned athletic facilities and that the project will require DOEE review for compliance with applicable requirements as part of the permitting process. (Exhibit 223.)

The Board heard conflicting testimony regarding the Applicant's plan to use artificial turf at the athletic facilities. The party and persons in opposition argued that the artificial turf would cause objectionable conditions especially with respect to environment impacts relating to heat, stormwater impacts, and the disposal of plastic, and asserted that a synthetic surface would result in injuries to players that could be avoided through the use of grass playing fields. The Applicant countered that its facilities will use a natural-based infill, thereby avoiding heat impacts associated with the use of other materials such as rubber, and will have a permeable underlayer to detain rainwater, thereby enhancing stormwater management. The Applicant also asserted that the use of grass would not be viable in the long term and would also create environmental issues related to the need for watering and fertilizing as well as the prevalence of stormwater runoff due to compacted soil. In light of the Applicant's testimony, and noting that neither the Office of

Planning nor the ANC raised any objection, the Board does not find that the use of synthetic turf at the planned athletic facilities will tend to create objectionable conditions.

The Board concludes that the Applicant's proposal will not create objectionable conditions with respect to the removal of trees or the appearance of the athletic facilities. The Applicant described its collaboration with DDOT urban forestry personnel to address requirements pertaining to the retention, removal, or relocation of trees at the subject property. DDOT reported that its arborist approved the Applicant's tree preservation plan for the heritage trees closest to the parking lot and Nebraska Avenue as well as protection measures needed throughout construction. DDOT anticipated continued cooperation with the certified arborist hired by the Applicant to provide oversight during and after construction of the athletic facilities and ensure compliance with plans related to trees at the site.

With respect to the appearance of the subject property, the Applicant will install and maintain a variety of plantings around the perimeter of the site to help screen views of the athletic facilities, or from the facilities toward nearby dwellings. The Applicant will not install bright lights that would be needed to allow night-time use of the playing fields but will limit lighting fixtures to unobtrusive measures needed for security purposes. The Applicant designed other aspects of the athletic facilities, including the netting needed to prevent balls from leaving the playing fields, in a manner that will minimize their visual impacts.

Subtitle C § 710.3. The Applicant requested a special exception under Subtitle C § 710.3 from the parking location restrictions of Subtitle C § 710.2 to allow a parking lot in the front yard of the subject property. Subtitle C § 710.2(c)(1) requires that vehicle parking spaces must be located on an open area of the lot except between a building restriction line and a front lot line. The Board is authorized under Subtitle C § 710.3 to grant relief from the location requirements as a special exception where an applicant demonstrates that compliance with the location requirements is not practical due to (a) unusual topography, grades, shape, size, or dimensions of the lot, (b) the lack of an alley or the lack of appropriate ingress or egress through existing or proposed alleys or streets, traffic hazards caused by unusual street grades, or (c) the location of required parking spaces elsewhere on the same lot or another lot would result in more efficient use of land, better design or landscaping, safer ingress or egress, and less adverse impact on neighboring properties.

In this case, the Board agrees with the Applicant and the Office of Planning that location of the required parking spaces in the rear (north) portion of the subject property would not be practical because of the topography of the site, which slopes significantly from northwest to southeast and would create the need for grading to accommodate parking in the higher portion toward the rear of the site. Parking located other than at the southern end of the subject property would preclude the efficient use of the site by preventing the overlapping configuration of the baseball diamond and multi-purpose field. Location of the parking lot in the southern portion of the subject property will also result in better design and landscaping by creating an open space in the northwest corner, accessible to the neighboring community and suitable for the relocation of heritage trees from other areas of the site. Location of the parking lot in the front portion of the site will provide for safer ingress and egress and less impact on neighboring properties by accommodating an entrance directly from Nebraska Avenue rather than requiring vehicle travel over longer distances through

relatively narrow alleys. The Board agrees with the Applicant and DDOT that Nebraska Avenue is better suited than the narrow alleys that abut the subject property to provide access to parking spaces for the vehicle traffic expected at the athletic facilities. The parking lot proposed by the Applicant will provide a suitable number of vehicle parking spaces, as well as space for trash storage and collection, in a manner that will be convenient for persons using the athletic facilities. The parking lot will not locate any vehicle parking spaces within the area affected by the building restriction line, resulting in a substantial area that must be maintained in a park-like setting with landscaping that will screen views of the parking lot from dwellings located to the south across Nebraska Avenue. Despite its location in the front portion of the subject property, the parking lot will be at a significant distance from the closest dwellings due to the building restriction line area and the width of Nebraska Avenue.

Subtitle X § 901.2. The Board concludes that approval of the application, given the terms and limits on the planned use delineated in the application and subject to the conditions adopted in this order, will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, as is required for approval of the application under Subtitle X § 901.2. Approval of the application is consistent with the purposes of the R-1-B zone to stabilize the residential area and promote a suitable environment for family life, because the provision of athletic facilities as a private school use, with ancillary use by students of other schools, youth sports organizations, and neighborhood residents, is compatible with and will enhance family life.

While the R-1-B zone provides for areas predominantly developed with detached houses on moderately sized lots, other uses are also anticipated in the zone because the Zoning Regulations allow a variety of other uses in the R-1-B zone, either as a matter of right[15] or by special

[15] The R-1-B zone is included in R-Use Group A. (Subtitle U § 200.2.) Uses permitted as a matter of right in R-Use Group A, in addition to a principal dwelling in a detached building, include a clerical or religious group residence for up to 15 persons, a community solar facility, agricultural uses, car-sharing spaces, a community residence facility for up to eight persons in addition to resident supervisors or staff and their families, an emergency shelter for up to four persons in addition to resident supervisors or staff and their families, local government uses, a health care facility for up to eight persons in addition to resident supervisors or staff and their families, institutional religious-based uses, a private garage up to 450 square feet, public education buildings, public recreation and community centers, and public libraries, temporary buildings for the construction industry incidental to the erection of buildings or other structures, temporary use by fairs, circuses, or carnivals, a mass transit facility, and a youth residential care home for up to eight persons in addition to resident supervisors or staff and their families. (Subtitle U §§ 201, 202.)

The subject property, at 213,964 square feet, contains more than 40 times the minimum lot area required in the R-1-B zone; or, if approved as a special exception, the site could be improved in a theoretical lot subdivision in accordance with Subtitle C § 305. The R-1-B zone requires minimum lot dimensions of 50 feet in width and 5,000 square feet in lot area (Subtitle D § 302.1) and allows lot occupancy up to 60 percent for places of worship and up to 40 percent for all other structures (Subtitle D § 304.1). Building height is generally limited to 40 feet and three stories (not including penthouses, which can be up to 18 feet, six inches and one story in height) but may be as much as 90 feet, not including architectural embellishments, antennas, chimneys, or smokestacks. (Subtitle D §§ 207.2-207.6, 303.1, 303.2.)

exception.[16] Especially considering the varied uses permitted in the zone, the Board was not persuaded by the assertion made in the OAG comments that the R-1-B zone "is not designed to accommodate high intensity activities." The R-1-B zone permits specific uses and does not impose limits on intensity, except with respect to certain uses (where a given use may not be permitted as a matter of right or approved by special exception beyond specified numbers of persons attendant to that use) and by means of development standards such as lot occupancy and yard requirements. The regulations authorizing the special exceptions requested in this application do not impose specific limits on the number of potential users and the Applicant's proposal will meet applicable development standards. *Compare* Application No. 16559 (The Morris and Gwendolyn Cafritz Foundation and The Field School; order issued December 19, 2000) (special exception to establish a private school in an R-1-A zone); *affirmed, Neighbors Against Foxhall Gridlock v. District of Columbia Bd. of Zoning Adjustment*, 792 A.2d 246, 252-253 (D.C. 2002) (upheld Board's conclusion that a private school would fit harmoniously in the neighborhood, considering the size of the school in terms of enrollment and space occupancy relative to R-1-A requirements, noise and traffic impacts, storm water run-off, and other objectionable effects; "… the Board noted the view of other neighbors favoring the application that the school use would 'ensure the preservation of green space ... in lieu of alternative development schemes such as a high-density residential development that could pave and cover up to 60 percent of the land.'").

The party in opposition and the OAG comments argued that the proposed private school use of athletic facilities should be considered a different use, such as a private recreation center or commercial gym, due to the "intensity" of the Applicant's proposal. The Board does not agree; a given use does not become some other use solely due to its intensity. *Accord*, *Neighbors for Responsive Government, LLC v. District of Columbia Bd. of Zoning Adjustment*, 195 A.3d 35, 53 (D.C. 2018) (an emergency shelter for as many as 185 occupants was not "beyond any reasonable outer limit" for a special exception because the requirements for approval imposed no *per se* limit on maximum size; Board *must* approve a proposed shelter as a special exception, regardless of the shelter's size, if it finds that the express conditions of the zoning regulations are met).

[16] The Board is authorized to grant special exception approval for the following uses in R-Use Group A, in addition to a private school use: a chancery; clerical and religious group residences for more than 15 persons; a community center building, park, playground, swimming pool, or athletic field operated by a local community organization or association; community-based institutional facilities for up to 15 persons in addition to resident supervisors or staff and their families; a continuing care retirement community, potentially providing dwelling units for independent living, assisted living facilities, or a licensed skilled nursing care facility; daytime care uses such as a child or elderly development center or adult day treatment facility; an emergency shelter use; a health care facility for nine to 300 persons in addition to resident supervisors or staff and their families; a parking lot or underground garage; performing arts, live theatrical use of an existing theater or performance space in an institutional, educational, or performing arts building; private stables as an accessory use; use of existing residential buildings and land by a nonprofit organization; uses and programs conducted by a religious congregation or group of congregations; utility uses other than an electronic equipment facility; youth or adult rehabilitation home for up to eight persons in addition to resident supervisors or staff and their families; youth residential care home for up to 15 persons in addition to resident supervisors or staff and their families; a corner store use; and a college or university use that is an academic institution of higher learning, including a college or university hospital, dormitory, fraternity, or sorority house. (Subtitle U §§ 203.1-203.3.)

No other conclusion is required on account of the Applicant's plans to charge a fee for the use of the athletic facilities by other users such as youth sports organizations, which, as was previously noted, is a common feature of private school use. The arrangement is contemplated by and permissible under the Zoning Regulations and would not alter the fundamental nature of the subject property as athletic facilities as a private school use. *Compare*, in the case of an athletic field operated by a local community organization or association, the use cannot be organized for profit or include retail sales to the general public "but may charge a fee to members for services, which may include refreshments" (Subtitle U § 203.1(d)(2)), or the use of a residential building and land by a nonprofit organization, which does not allow the commercial creation or sale of goods, chattel, wares, or merchandise but may include the sale of publications, materials, and other items related to the purpose of the nonprofit (Subtitle U § 203.1(o)(5)). For zoning purposes, the assessment of a limited fee to defray costs associated with the private school use of athletic facilities would not convert the use to a commercial operation.

For the reasons discussed above, the Board concludes that approval of the application, subject to the restrictions delineated in the application and the conditions adopted in this order, will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. The Board was not persuaded that the conditions proposed in the OAG comments[17] were necessary to avoid the creation of any potential adverse impact or legally sound, considering the relatively limited scope of the Board's purview in deliberating on an application for special exception relief and its charge not to delve into the minutiae of an applicant's operation outside the scope of the Board's zoning expertise. *See*, *President and Directors of Georgetown College v. District of Columbia Bd. of Zoning Adjustment*, 837 A.2d 58, 77 (D.C. 2003). The imposition of a term of approval requires the Board to "consider the reasonable impacts and expectations of the applicant in doing so." (Subtitle X § 901.5.) The Applicant opposed the Board's adoption of the conditions recommended in the OAG comments, citing its agreement with "the thorough, well-reasoned and fact-supported conditions" proposed by ANC 3/4G. The Board does not find that "a subsequent evaluation of the actual impact of the use on neighboring properties," as proposed in the OAG comments, is necessary in this case in light of the restricted nature of the planned use and the conditions of approval adopted in this order.

The Board heard testimony from the residents of the dwelling located closest to the former ECC media center, which the Applicant designated for use as a field house. The neighbors expressed concerns that the change in use would create adverse impacts due to the proximity of the two buildings, especially with respect to noise. The Applicant proposed a mitigation plan, which included the installation of fencing and landscape screening to discourage people from congregating close to the dwelling, but the neighbors continued to object that the Applicant planned to use the existing entrance to the building rather than create a new entrance further from the dwelling. The Board does not find that approval of the requested zoning relief would tend to

[17] The conditions recommended in the OAG comments were a three-year term of approval, a prohibition against charging "non-Maret School persons and entities for the use of the property," a requirement to post "rules and regulations concerning the use of the field" in a prominent place, a requirement for Maret to provide the telephone numbers of the "administrator in charge of the facility" and "appropriate representatives of any non-Maret School users" to owners of neighboring properties, and a prohibition against expansion of the permitted uses of the field.

create objectionable conditions in light of the Applicant's commitment to pursue additional mitigation measures to decrease the number of persons gathering in the area and to minimize noise, light, and visual impacts associated with the Applicant's use of the field house. The Board encourages the Applicant to continue to consider and implement measures to further mitigate potential impacts, including the possible conversion of the existing door on the west side of the entrance vestibule to emergency egress only and the use of quiet-close doors.

For the reasons discussed above, the Board was not persuaded by the OAG comments that the Applicant's proposal should be characterized as an "Off-Campus Athletic Facility" that would not be part of a principal private school use but "a commercial-scale high-intense use that is prohibited in the Off-Campus Site's R-1-B zone."[18] Therefore, the Board does not concur with the assertion made in the OAG comments, premised on that contention, that approval of the application "would not be in the public interest."[19] Moreover, the OAG comments did not indicate how its purported determination of the public interest was relevant to the Board's consideration of an application for special exceptions, given that none of the applicable zoning provisions required or authorized the Board to consider "the public interest." In evaluating a request for a special exception, the Board is limited to a determination of whether the applicant meets the requirements of that special exception. *Georgetown Residents Alliance v. District of Columbia Bd. of Zoning Adjustment*, 802 A.2d 359,363 (D.C., 2002). An applicant has the burden of showing that the proposal complies with the regulation, but once that showing has been made, the Board ordinarily must grant the application. See, *e.g., National Cathedral Neighborhood Association v. District of Columbia Bd. of Zoning Adjustment*, 753 A.2d 984, (D.C. 2000); *Neighbors Against Foxhall Gridlock v. District of Columbia Bd. of Zoning Adjustment*, 792 A.2d 246, 252 (D.C. 2002), quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973) (special exceptions, unlike variances, are expressly provided for in the Zoning Regulations; the Board's discretion to grant special exceptions is limited to a determination whether the exception sought meets the requirements of the regulation. The burden of showing that the proposal meets the prerequisite enumerated in the particular regulation pursuant to which the exception is sought rests with the applicant. In sum, the applicant must make the requisite showing, and once it has, the Board ordinarily must grant the application). In deliberating on a request for special exception approval, therefore, the Board's consideration is limited to the factors specified in the applicable regulations.

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[18] The R-1-B zone permits specific uses either as a matter of right or by special exception and does not prohibit any use. *See*, Subtitle U, Chapter 2 (Use Permissions in Residential House (R) Zones). *Contrast, e.g.*, Subtitle H § 1110.1 (uses not permitted in Neighborhood Mixed Use (NC) zones), Subtitle I § 304 (uses not permitted in Downtown (D) zones), Subtitle K § 313.1 (uses not permitted in Union Station North (USN) zones), Subtitle K § 415.1 (uses prohibited in the Hill East (HE) zones as both principal and accessory uses), Subtitle K § 615.1 (uses prohibited within the St. Elizabeths East Campus (StE) zones as either a principal or accessory use), Subtitle K § 916.1 (uses prohibited within the Walter Reed (WR) zone as either a principal or accessory use), Subtitle K §§ 1109.1, 1113.1 (uses prohibited in the Barry Farm (BF) zones as either a principal or accessory use), and Subtitle U §§ 514, 519 (uses prohibited in Mixed Use (MU) zones, use groups E and G respectively) as well as Subtitle K § 715.1 (uses not permitted in the Reed-Cooke (RC) zones as either a principal or accessory use), Subtitle U § 509.1 (uses not permitted in MU zones, use groups B and C, either as a matter of right or as a special exception), and Subtitle U § 803 (use restrictions in Production, Distribution, and Repair (PDR) zones).

[19] The OAG comments, which were prepared following a request by the party in opposition and without consulting the Applicant, the Office of Planning, or the affected ANC, did not state any other basis for its purported public interest determination. (*See*, transcript of March 9, 2022 at 124-125, 136, 180-182, 191; Exhibit 282.)

Any additional factors, including assertions that an applicant's proposal would or would not be "in the public interest," cannot provide grounds for the Board's decision to approve or deny an application for special exception consistent with its jurisdiction set forth in the Zoning Act and Zoning Regulations. *See, e.g.,* Application No. 19689-A (MIC9 Owner, LLC; order on remand issued January 18, 2023) (when deliberating on an application for special exception approval, Board's consideration of factors not specified in the Zoning Regulations would in effect constitute an amendment of the Zoning Regulations, which the Board lacks the authority to do); Application No. 18063 (Zachary and Lydia Plotz, et al.; order issued March 4, 2011), Application No. 18065 (Shomarka Keita; order issued January 18, 2011), Application No. 17022 (Edmund Burke School; order issued August 4, 2004), and Application No. 16970 of National Child Research Center; order issued March 29, 2005 (Board lacked legal authority to dismiss or deny an application for a special exception solely on grounds not stated in the specific or general requirements set forth in the Zoning Regulations for approval of the requested special exception).

The OAG comments also objected that the application failed to include requirements under Subtitle X § 105, especially Subtitle X § 105.3; this argument too is unavailing. Under Subtitle X § 105.1, an applicant seeking approval of a private school plan is required to submit a plan for the school showing the location, height, and bulk of all present and proposed improvements. The Applicant's submissions in this proceeding met the requirements of Subtitle X § 105.1 by showing the facilities existing and proposed at the subject property and by describing the range of activities planned at the new athletic facilities, as well as other relevant information, as required by Subtitle X § 105.1(a)-(e). The Office of Zoning referred the application to the Office of Planning, the Department of Transportation, and the Department of Energy and Environment, as required by Subtitle X § 105.2 (see Exhibit 22). Subtitle X § 105.3 does not state a requirement for applicants but directs the Board to approve a private school based on a determination by the Board that the application will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property, in accordance with the Zoning Regulations and Zoning Map. For the reasons already discussed, the Board has determined in this case that approval of the application, subject to the restrictions imposed on the use by the Applicant and the conditions adopted in this order, is consistent with those requirements.

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.).) For the reasons discussed above, the Board agrees with OP's recommendation that, in this case, the application should be approved. The Office of Planning recommended two conditions, requiring the Applicant to install and maintain evergreen shrubbery along the outer perimeter of the parking lot to minimize the visual impact of the lot, and to prohibit the use of sound amplification devices to mitigate noise impacts. The Board agrees with the Office of Planning in this regard, and adopts the conditions recommended by OP in this order.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.))); *see also* Subtitle Y § 406.2. In this case, ANC 3/4G submitted a resolution in support of the application subject to a number of conditions. The Applicant subsequently indicated its agreement with the ANC's

recommended conditions and entered into a memorandum of understanding with ANC 3/4G to reflect that agreement (Exhibit 282). The ANC indicated that its recommended conditions were developed "after extensive consultation" with its advisory group, which included members of Friends of the Field, the Applicant, and ECC.

The Board reviewed the ANC's submissions, including the recommended conditions, as indicative of the ANC's issues and concerns regarding the relief requested in the application, potential adverse impacts associated with the planned use of the subject property as athletic facilities as a private school use, and measures that the Applicant could implement to mitigate the potential impacts. The Board fully considered the views of ANC 3/4G in deliberating on this application but declined to adopt the conditions recommended by the ANC in light of the restrictions on the use delineated in the application and the conditions of approval recommended by OP and DDOT, which the Board adopts in this order. The ANC's recommendation was devised consistent with the ANC's statement of purpose,[20] and addressed several matters that were outside the Board's purview in this proceeding. Nonetheless, the Board recognized the ANC's contribution in reaching an agreement with the Applicant, especially with respect to the restrictions on the planned use as stated in the Applicant's proposal, which will ensure the operation of the private school use of the athletic facilities in a manner consistent with applicable special exception requirements.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for special exceptions under Subtitle U § 203.1(m) and Subtitle X § 104 to allow a private school use and under Subtitle C § 710.3 from the parking location restrictions of Subtitle C § 710.2 to allow the proposed athletic facilities as a private school use in the R-1-B zone at part of 5901 Utah Avenue, N.W. (Square 2319, Lots 832). Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown at Exhibits 184C1 through 184C10 and subject to the following **CONDITIONS**:

1. The Applicant shall implement the conditions recommended in the report submitted into the record of this proceeding by the District Department of Transportation (Exhibit 222; also shown in Finding of Fact No. 58).

[20] The ANC "evaluated the application based on whether, taken as a whole, the proposed project is likely to create objectionable impacts on neighboring properties," considering not only the "significant interest" of the immediate neighbors but also "all of the impacts on the community, including the effect the project will have on ECC and its students, Maret's students and parents, youth sports organizations in the District, Lafayette Elementary School children, neighbors who wish to use a nearby athletic field, and even those District of Columbia Public School (DCPS) students who will have greater access to the Jelleff Recreation Center field if Maret has an alternative field and relinquishes its priority scheduling rights at Jelleff." The ANC did not restrict its assessment of the application to the zoning requirements germane to the Board's deliberations but "paid particular attention to eight key considerations to determine whether [the Applicant's] plans would create objectionable impacts on the neighborhood: (1) the long-term financial stability that this project provides for ECC, permitting it to resume its educational mission; (2) the plan for both a multipurpose field and a baseball field rather than a single multipurpose field; (3) the extent to which the fields will be used by Maret, its lessees, and the community; (4) the management of stormwater; (5) the management of traffic and its impact on pedestrians and bicyclists; (6) the plans to preserve or transplant heritage trees; (7) the noise expected as a result of the project; (8) the use of turf rather than grass fields; and (9) the disruption created by construction of the fields."

2. The Applicant shall install and maintain evergreen shrubbery along the outer perimeter of the parking lot to minimize the visual impact on nearby properties fronting on 28th Street or across Nebraska Avenue from the subject property.

3. The Applicant shall not permit the use of sound amplification devices, music, or other sound instruments at the athletic facilities.

4. The Applicant shall designate a representative who will communicate with ANC 3/4G for the purpose of mitigating any conflicts that might arise between the Applicant's operations at the subject property and the ANC.

VOTE: 4-0-1 (Frederick L. Hill, Carl H. Blake, Chrishaun S. Smith, and Anthony J. Hood to **APPROVE**; Lorna L. John not participating)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: April 12, 2023

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF BUILDINGS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME

MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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.