

May 2, 2023

D.C. Board of Zoning Adjustment  
Office of Zoning  
441 4<sup>th</sup> Street, N.W., Suite 200S  
Washington, DC 20001

Re: **BZA Application No. 20643 –The Maret School (“Applicant”) - Reply to the Friends of the Field’s Opposition to Motion for Clarification/Reconsideration of the Conditions of BZA Order No. 20643**

Dear Members of the Board:

The Applicant hereby replies to the Friends of the Field’s (“FoF”) Opposition to the Motion for Clarification/Reconsideration, submitted by FoF on April 26, 2023 (the “Opposition Filing”). The Opposition Filing makes clear that FoF’s sole basis to oppose the Motion for Clarification/Reconsideration is that FoF filed a Petition for Review of BZA Order No. 20643 in the DC Court of Appeals (“DCCA”) on April 18, 2023. However, as further explained below, FoF’s initial Petition was woefully deficient as FoF failed to effectuate service on the Parties in this proceeding. This information will support the Board’s denial of the FoF request to dismiss the Applicant’s Motion.

Notice of Filing of the Petition for Review Provided by FoF

When the Applicant filed the Motion for Clarification/Reconsideration on April 21, 2023, it was not aware that FoF had purportedly attempted to file an appeal of BZA Order No. 20643 with the DCCA. More than a week later, on April 26, 2023, the Applicant was made aware, for the first time, that FoF had attempted to file a Petition with the DCCA<sup>1</sup>. If the Applicant had known of the purported earlier filing of the Petition for Review, it would have requested a waiver from Subtitle Y, Section 700.4 of the Zoning Regulations at the same time that it filed the Motion for Clarification/Reconsideration.

After receiving the Opposition Filing, Counsel for the Applicant checked the DCCA’s docket to determine whether the Petition for Review had been accepted. As of the close of business on April 27, 2023, there was no record of such a Petition for Review being filed with

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<sup>1</sup> The Applicant was only made aware when it received the FoF’s Opposition Filing.

the DCCA. In addition, Counsel for the Applicant contacted Counsel for FoF and requested a copy of the Certificate of Service that should have been filed along with the Petition, as required by DC Court of Appeals Rule 15(c)<sup>2</sup>. On April 28, 2023, Counsel for FoF responded that the Petition for Review had been refiled and included a copy of the refiled Petition, along with a Certificate of Service that noted the Applicant, ANC 3/4 G, and the Office of Planning were served with a copy of the Petition for Review on April 28, 2023. On May 1, 2023, the DCCA's docket lists the filing date of FoF's Petition for Review as April 28, 2023.

#### Request for Waiver of Subtitle Y, Section 700.4

Since the DCCA has accepted the FoF Petition for Review, the Applicant requests that the Board waive Subtitle Y, Section 700.4, in order for the Board to review and approve the Applicant's Motion for Clarification/Reconsideration. Subtitle Y, Section 700.4 states:

No party may file a motion for reconsideration or rehearing after a petition to review an order granting or denying a special exception or variance application or affirming or reversing a decision on appeal has been filed with the District of Columbia Court of Appeals and any pending motion for reconsideration or rehearing shall be dismissed if such a petition is filed.

The BZA is authorized to grant a waiver from the Zoning Regulations pursuant to the requirements of Subtitle Y, Section 101.9, which states:

Except for Subtitle Y §§ 100 through 105, 604.6, 700.3, and 1602.5 the Board may, for good cause shown, waive any of the provisions of this subtitle if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

#### Satisfaction of the Waiver Standards

Granting this waiver request, which will merely allow the Board to review the merits of the Applicant's Motion for Clarification/Reconsideration, will not prejudice the rights of any party to this proceeding. To the contrary, if the waiver is **not** granted the rights of the Applicant would be prejudiced. The Board's granting of this waiver request is not otherwise prohibited by law and is consistent with the DC Court of Appeals Rules.

In this instance, the FoF is attempting to use the Petition for Review with the DCCA offensively, as a means to prevent the Applicant from exercising its rights that are clearly

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<sup>2</sup> Rule 15(c) of the DC Court of Appeals Rules states:

"At the time of filing, the Petitioner must:

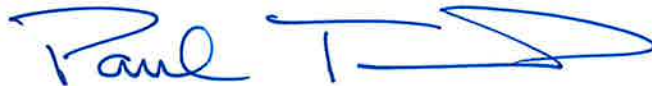
- (1) Serve or have served, a copy on each party admitted to participate in the agency proceedings, except for the respondents; and
- (2) File with the Clerk a list of those served."

enumerated in Subtitle Y, Section 700.2. The Applicant has satisfied every procedural requirement to have its Motion for Clarification/Reconsideration considered. The Applicant filed the Motion on April 21, 2023, nine days after the issuance of the Order in BZA Application No. 20643 and before the Order became effective. The Applicant satisfied all timing and service requirements when it made this filing and, as noted above, was not aware of the FoF's earlier attempt to file the Petition for Review.

The application of Section 700.4 is entirely appropriate when the same party that is seeking a Motion for Reconsideration before the BZA simultaneously pursues a Petition for Review before the DCCA. In that situation, the Board needs to require that party to select one venue to raise their issues with the Board's decision. However, a party to a BZA proceeding should not be able to use a procedural process to take away the clearly enumerated rights of another party in that case. That is what the FoF is proposing to do in their Opposition Filing. The Board should not allow this injustice to occur.

The Applicant's Counsel is prepared to address this issue in oral testimony at a Public Meeting of the Board, if the Board would find such testimony helpful. Please feel free to contact the undersigned if you have any questions or comments. The Applicant looks forward to the Board addressing these issues at the earliest possible date.

Sincerely,



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Paul Tummonds