



June 1, 2023

Chairman Hill
D.C. Board of Zoning Adjustment
441 4th Street, N.W., Suite 210
Washington, D.C. 20001

Re: Maret/BZA Application #20643
Supplemental Opposition to Applicant's Request for Clarification/ Reconsideration
of Conditions of BZA Order No. 20643

Chairman Hill,

On behalf of Friends of the Field (the "Friends"), and in advance of the June 14, 2023 hearing, we file the following:

1. Supplemental Opposition to Applicant's Request for Clarification/ Reconsideration of Conditions of BZA Order No. 20643; and
2. Annotated Site Plan with Maret's accommodations.

We appreciate the Board's consideration of these items.

Sincerely,

/s/ Edward L. Donohue for Friends of the Field

Enclosures

**SUPPLEMENTAL OPPOSITION TO MARET’S MOTION FOR CLARIFICATION/RECONSIDERATION
OF THE CONDITIONS OF BZA ORDER NO. 20643**

Friends of the Field (“Friends”), the Party in Opposition in the Board of Zoning Adjustment (“BZA” or the “Board”) case number 20643, by undersigned counsel and pursuant to the BZA Rules of Practice and Procedure, files this Supplemental Opposition to Maret’s Motion for Clarification/Reconsideration of the Conditions of BZA Order No. 20643 (Maret’s motion hereinafter referred to as the “Motion for Clarification/Reconsideration”).

This Opposition supplements Friends’ April 26 Opposition to Request for Clarification/Reconsideration. Friends’ April 26 Opposition is incorporated herein by reference. As stated therein, 11 Y § 700.4 mandates the Board’s dismissal of Maret’s Motion for Clarification/Reconsideration. Should the Board determine, in contravention of § 700.4, to hear Maret’s Motion for Clarification/Reconsideration, the BZA should deny that motion and decline to change its final Order.

First, many of the conditions that Maret seeks to have added to the BZA’s Order were previously considered at the March 9, 2022 hearing. The Board already decided to include some of those conditions in its final Order and not to include others, e.g., the Board did not include any of the conditions proposed by Friends. In its April 21, 2023 Motion for Clarification/Reconsideration, Maret admits that the proposed conditions were already presented to the Board for consideration at the March 9, 2022 hearing. The Board had over a year to consider what conditions to include in its final Order. The Board was not rushed into issuing an unclear or incomplete order.

Title 11 Y § 604 addresses the finality of the Board’s orders. In this instance, Maret, whose application for a special exception has been granted, is attempting to circumvent Rule 604, by styling as a motion for “clarification” or “reconsideration” what is, in reality, a request that the Board allow Maret to relitigate the content of the Board’s final order. Under Section 604.13, this same action is strictly prohibited for a party whose application has been denied or disapproved. There is no provision in the rules or applicable case law that would allow Maret, a party whose application has been **approved**, to relitigate the case, as Maret attempts to do here. Should the Board permit this, it would render the concept of “finality” meaningless.

Further, Maret’s claim of necessity is disingenuous. The majority of the proposed “conditions” are already included in the Board’s Order as part of the fifty-eight (58) Findings of Fact. Maret is attempting to modify the Board’s Findings of Fact, which have already been litigated. For example, Fact # 23 of the Board’s Order states:

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. BZA 296, page 7 (emphasis added).

Maret previously represented to the BZA that it had agreed to an 8 foot reduction in the height of the scoreboard, from the 20 feet originally proposed to 12 feet. Attachment 1. Maret also previously represented to the Board that it had agreed to the relocation of the scoreboard from center of Rittenhouse Street alley to northwest corner of site, where the field elevation is lower than the alley and

it will be buffered by relocated Heritage Trees. See Exh. 282D (Maret's Powerpoint slides depicting proposals and changes).

However, Maret's Motion for Clarification/Reconsideration seeks to add the following "condition" to the Board's Order:

10. **The proposed scoreboard shall be limited to a height of no more than 20 feet**, measured from the finished grade adjacent to its immediate location. BZA 298, Exhibit A (emphasis added).

Maret is attempting to change the Findings of Fact in the Board's Order, to increase the scoreboard height by 8 feet, and to **delete** its previous commitment to relocate the scoreboard. Both retractions will create an objectionable condition to the surrounding neighbors.

Similarly, Fact # 25 of the Board's Order states:

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. BZA 296, page 8 (emphasis added).

But Maret's Motion for Clarification/Reconsideration seeks to **increase** the height of those lights:

9. The lights shall be **no higher than 12 feet** and shall be fully down-lit. BZA 298, Exhibit A (emphasis added).

Similarly, Fact # 30 of the Board's Order states:

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. BZA Exhibit 296, page 8.

Maret previously represented to the BZA that it had agreed to upgrade the fence originally proposed. See Exh. 282D (Maret's Powerpoint slides depicting proposals and changes). But Maret's Motion for Clarification/Reconsideration seeks to retract this commitment:

6. The Applicant shall construct a security fence around the perimeter of the property and shall prohibit players and spectators from accessing the adjacent alleys or properties from the playing fields. BZA Exhibit 298, Exhibit A (emphasis added).

The Board should not allow Maret to retract the miniscule number of concessions it previously represented to the Board were made to the community. Doing so violates the Board's rules, applicable law and is highly prejudicial to Friends and the wider community. Allowing Maret to relitigate the facts that the Board included in its final Order is also highly prejudicial to Friends, which already spent over a year's time and significant legal resources to be heard on March 9, 2022. The Board already considered the conditions before issuing its final Order, and there is no rule or caselaw that allows the Board to revisit - on a motion for reconsideration - issues previously litigated. Maret may be dissatisfied with the Board's Order granting the special exception, however there is no available means for Maret to try - as

it attempts to do with its Motion for Clarification/Reconsideration, to improve the Board's Order for Maret, the prevailing party, to the detriment of Friends and the greater community.

Second, although in its Motion for Clarification/Reconsideration, Maret describes the restrictions and limitations on the use and design of the athletics facilities as "proposed," Maret and the ANC entered into a Memorandum of Understanding (the "MOU") and their position is that the MOU is an enforceable contract, without the need for modification of the Board's Order.

As ANC Chair Lisa Gore stated in the ANC's March 1, 2023 Response to the Friends of the Field's Motion to Reopen the Record and Stay the Final Decision and Order:

The Commission does not oppose FoF's [Friends'] request to reopen the record for the sole purpose of including the OAG's letter. **The Commission takes issue, however, with FoF's misinterpretation of that letter. The ANC/Maret MOU is expressly a settlement agreement voluntarily entered into as part of this administrative proceeding. The Board will determine what portions of the MOU it will incorporate in its written order, and once incorporated, the MOU will be enforceable by the Board. The Commission and Maret, acting in good faith, have already begun implementing the MOU and the task force has been reporting the results to the community.** The Commission — consistent with the OAG's letter — has clarified the role of the Commission-appointed task force in monitoring Maret's compliance with the MOU. BZA Exhibit 292 (emphasis added).

The conditions that are the subject of Maret's Motion for Clarification/Reconsideration, previously proposed and addressed or excluded from the Board's final Order after over a year of deliberation, are contained in the MOU. Prior to the Board's issuance of its final Order, the ANC, also a party to this matter, also argued that "All of the substantive provisions in the MOU — including those relating to how construction will be conducted — should be included in the Board's order because they will help prevent adverse impacts on the neighboring property, thereby meeting the standard for a special exception. DCMR § 11-X901." However the Board declined to do that. Prior to the Board's issuance of its final Order, Maret was already voluntarily implementing the MOU conditions. It is disingenuous for Maret or the ANC to argue that "clarification" of the Board's final Order is necessary for Maret to continue to do this. Maret can voluntarily adhere to the conditions.

Third, Maret's Motion for Clarification/Reconsideration states that the reason is "the Applicant's interest that the proposed restrictions and limitations of use and design of the athletic facilities delineated in the application are specifically articulated in the order so as to be fully enforceable." However it is unnecessary for the BZA to disturb its final Order to achieve this end. As noted above, there is nothing stopping Maret from voluntarily adhering to the conditions it seeks to have made "enforceable." Additionally, any "proposed" restrictions and limitations of the use and design of the athletic facilities can be made fully enforceable by Maret agreeing to them in an enforceable settlement agreement with Friends. There is no need for the Board to "clarify" or "reconsider" its final Order.

For each of the foregoing reasons, the Board should deny Maret's Motion for Clarification/Reconsideration.

CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2023, a copy of the SUPPLEMENTAL OPPOSITION TO MOTION FOR CLARIFICATION/RECONSIDERATION filed by undersigned counsel was sent to counsel for the Applicant, Paul Tummonds, via electronic mail to ptummonds@goulstonstorrs.com, to ANC 3/ 4G Chair Lisa Gore, via electronic mail to 3G01@anc.dc.gov, and to the Office of Planning, via electronic mail to jennifer.steingasser@dc.gov.

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