

November 6, 2024

TO: Board of Zoning Adjustment
Government of the District of Columbia

FROM: Joshua Toll
Brandon Jamison
Parties in Opposition

Subject: BZA No. 21101 – Response to Applicant’s Oct. 30, 2024, Post Hearing Submission

On October 2, 2024, the BZA conducted a Virtual Public Hearing for Case #21101, granting Party Status in Opposition to Joshua Toll and Brandon Jamison. The BZA continued its hearing procedures to a Virtual Public Hearing on Wednesday, November 13, 2024. The BZA kept the record OPEN in this case and requested that specific items be provided by the parties involved. Specifically, the BZA requested supplemental information from the Applicant by October 30, 2024, on its proposed conditions, along with clarification on how the alley would be used and how the proposed bike racks would impact use of the alley, and an optional response from the Parties in Opposition to the Applicant’s filing no later than November 6, 2024. The Parties in Opposition have reviewed the Applicant’s filing and maintain their position that Applicant’s request for a special exception under Subtitle U-203.1(h) should be denied. Applicant’s supplemental filing does little to reassure the Parties in Opposition that the proposed CDC will not exacerbate what are already objectionable traffic conditions on the 200 block of Peabody St. NW and surrounding areas as a result of the operation of Capital City PCS and its CDC on the 100 block of Peabody St. NW.

While we applaud the Applicant's proposed initiatives to incentivize staff, parents and guardians of daycare attendees to utilize modes of transportation other than their privately owned vehicles (POVs), the reality of the demographics of the customer base (i.e., children 6 months to five years of age), and the absence of convenient public transportation options (i.e., the closest Metrorail stations are approximately one mile away and the K2 bus line, which currently provides service to the area, has been eliminated by WMATA as part of their Better Bus Network redesign) mean that the vast majority of staff and parents (likely more than the 62% estimated in the Applicant's traffic study) will utilize POVs, further exacerbating traffic conditions on Peabody St. NW between 3rd St. and Blair Rd.

The Parties in Opposition also take notice of the inconsistent and somewhat incredulous stance the Applicant has taken regarding the impact the CDC at Capital City PCS should have on the BZA’s analysis under Subtitle U-203.1(g). The regulation permits approval of multiple CDCs within 1,000 feet of one another only where BZA finds that “the cumulative effect of these facilities will not have an adverse impact on the neighborhood due to traffic, noise, *operations*, or other similar factors.” (emphasis added). The Applicant first argued that there was not a CDC within 1,000 feet of the property at 245 Peabody St. NW, obviating any need for increased scrutiny of the traffic, noise, and operations impact. Now that the Applicant has discovered that Capital City PCS, which is within 1,000 feet of 245 Peabody St. NW, has been providing

services that are typically performed by a CDC and recently obtained a license formalizing its status as such, it argues that this discovery has no practical impact on the BZA's decision. Specifically, the Applicant contends that the traffic study it relies on to support its request for a special exception was comprehensive and accounted for the impact of the existing CDC on traffic conditions. But as alluded to above, the Parties in Opposition object to the premises and assumptions upon which the Applicant's traffic study is based, and we do not believe that significant weight should be placed on the study. As explained in more detail in Exhibit A to this response, amongst other things, the Applicant utilizes an artificially-low mode split gleaned from its CDC at 5331 Colorado Ave. NW, whose location, configuration, and street typology could not be more different than that at 245 Peabody St. NW. In addition, it uses an unexplained 1.6 Average Vehicle Occupancy number to further reduce its estimate of the number of cars that will be commuting to and from the CDC and it staggers the anticipated arrival and departure time of cars based on unrelated surveys from parent and staff surveys from the Colorado Ave. location. The end result is a convenient circumvention of the exacting scrutiny that would be provided were a Traffic Impact Analysis triggered.

Importantly, the Applicant also misses a critical thrust of Subtitle U-203.1(g). The regulation singles out the presence of two CDCs within 1,000 feet of one another as an important consideration not because of the unique implications for traffic conditions that CDCs have on the surrounding community, but because the existing CDC is likely to already fulfill the needs of the community for daycare services. While the CDC at Capital City PCS does not serve children below the age of three, as the Applicant intends to, Capital City PCS currently has 24 children between the ages of three and five enrolled in its CDC program. Given the presence of a CDC right next door that can serve the daycare needs of the immediate community for children ages three to five years old, and the dire traffic implications likely to arise from having a new CDC on the same narrow, local road, the occupancy for students should be reduced from 82 to 58, and for staff from 20 to 15, should the BZA be inclined to grant Applicant's request for a special exception. *See Exhibit B* to this response for further explanation of why the reduction in occupancy is both warranted and feasible.

Finally, the Applicant rejects the BZA's suggestion that it consider a time limit or sunset provision for any order approving the special exception it seeks. The Applicant argues that some of the conditions it proposes, such as an annual check-in with the ANC to discuss the environment created by the placement of a CDC at 245 Peabody St. NW, obviates the need for a time limit. The Applicant also attempts to distinguish this case from two others it cites (i.e., Case #20111 and #18079B) where the BZA imposed time limits, arguing, amongst other things, that it owns the property where it plans to operate the CDC, in contrast to the applicants in the two cited cases who were leasing the properties at issue. But the owner-lessee dichotomy is immaterial to the question of whether a time limit should be included in the BZA's order were it to approve the Applicant's request for a special exception. Just as the BZA held in Case #20111 (i.e., Trinity Episcopal Church), a time limit is necessary here to ensure that any mitigation measures adopted by the CDC are effective in limiting adverse impacts on neighboring properties and traffic conditions. In the Trinity Episcopal Church case, the BZA imposed a seven-year time limit. The same should apply here, given the traffic problems that already exist in the neighborhood prior to the addition of the proposed CDC.

In addition to a seven-year time limit, the Parties in Opposition believe that more robust conditions are necessary to inoculate residents from the harm likely to follow should the BZA grant the special exception the Applicant seeks. Those conditions are identified and further explained in Exhibit C to this response. They include, but are not limited to, the aforementioned cap on the number of students and staff allowed, a seven-year time limit on any approval order by the BZA, and Applicant's utilization of a Transportation Management Coordinator tasked with ensuring that traffic and parking rules are adhered to by staff and parents on the 200 block of Peabody St. NW and in the public alley behind 245 Peabody St. NW.

Enclosures (3):

Exhibit A: Rebuttal to Traffic Study Supplement

Exhibit B: Parties in Opposition Counterproposal

Exhibit C: Parties in Opposition Conditions

Exhibit A: Rebuttal to Traffic Study Supplement

Rebuttal of October 30, 2024 Supplemental Traffic Study:

The Supplemental Traffic Study (October 30, 2024) (Exhibit 57E) offered by Mendomas LLC does not address multiple fundamental flaws in the original traffic study that were pointed out by the Parties in Opposition at the October 2, 2024 hearing. Specifically, the studies considered collectively demonstrate that Mendomas, LLC has not carried its burden to show that unsafe or objectionable traffic conditions will not be created by the proposed project.

Specifically, the Supplemental Traffic Study has not addressed the concerns about Peabody Street NW, which is classified by DDOT as a local road, not being able to handle the flow of traffic in both directions at drop off and pick up that will be caused by the proposed project. As the Parties in Opposition explained, that block of Peabody Street NW allows parking on both sides. When cars are parked on both sides, it is not possible for traffic to flow in both directions. Instead, one car has to “duck in” to an open parking space to allow the other car to go by. However, if there are no available parking spaces (since they will be taken up by parents dropping their child off), then traffic will cease to flow and it will be total gridlock. As pointed out by the Parties in Opposition, this will create a dangerous situation because if there is a resident in the middle of the block that needs emergency medical services, or if there is a fire in the middle of the block, emergency vehicles will not be able to reach the affected location in a timely fashion. Mendomas has simply failed to address this point.

Related to this concern is the further concern that the model offered by Mendomas LLC on which it claims to project the flow of cars by hour during pick up and drop off is flawed. As shown by Exhibit 57E and the original traffic study (Exhibit 28), these projections are based on observations of only one other day care center, which is located at 5331 Colorado Ave NW. However, Mendomas has not explained why this other day care center is an appropriate model for what could happen at 245 Peabody St NW. It is concerning that the mode split was provided by the Applicant based on parent and staff survey results and did not account for any other sources. In fact, DDOT Guidance for Comprehensive Transportation Review provides: “A variety of sources provide insight into various travel assumptions, but typically **no single document or source provides a complete projection of future travel demand.**”¹ (emphasis added). Thus, there is no reason to believe that this single source, which is the basis for critical assumptions made by the Applicant, provides anything close to a complete projection of future travel demand to this site.

The reliance on a singular source of data is all the more concerning when the differences between that location and the Peabody proposed site are significant in ways and were not appropriately accounted for in the submitted traffic study. In looking at the data provided, one obvious difference is that the Colorado Ave NW is a larger road, categorized by DDOT as a collector road, as opposed to Peabody being a local road. Indeed, Peabody is a much narrower street without designated bike lanes and cannot sustain parking on either side and two-way traffic, whereas Colorado Ave. NW has marked, two-way traffic lanes and is large enough to allow traffic to pass in both directions even when cars are parked on either side. Additionally,

¹ chrome-extension://efaidnbmnnibpcajpcgclefindmkaj/https://ddot.dc.gov/sites/default/files/dc/sites/ddot/CTR%20Guidance%20-%20January%202022%20Version%202.0.pdf at 54.

Exhibit A: Rebuttal to Traffic Study Supplement

the Colorado Ave NW location has a bus stop right next to the school, and the Peabody location does not. In fact, the closest bus stop to Peabody is approximately .25 miles away, which is not an attractive option when commuting with young children, and one of those bus lines (K2) is likely going to be discontinued as part of WMATA's Better Bus Network redesign. Furthermore, Peabody is a residential area with single family homes, whereas the Colorado Ave NW location is directly across from apartment buildings which would presumably prompt more walking families to the daycare than the Peabody location. All of these differences suggest that more people are going to be driving to Peabody St. NW than drive to Colorado Ave NW and demonstrate that they are not comparable locations.

The bottom line remains that of the 82 students that the daycare will serve, Mendomas does not know how many will be driven to the day care. At most, they are making an assumption. Further, their claim of 1.6 persons per vehicle does not stand up to scrutiny. As Ms. White explained at the October 2 hearing, this is a reference to DDOT's Guidance for Transportation Review (available online), but the actual table, reproduced below, does not support the thesis.

Figure 13 | Average Vehicle Occupancy (AVO) for Selected Trip Purposes (Nationwide)

Trip Purpose						
To/From Work	Shopping	Other Family / Personal Errands *	Social / Recreation	All Other Purposes **	School	Childcare
1.18 persons/veh	1.82 persons/veh	1.82 persons/veh	2.10 persons/veh	1.67 persons/veh	1.58 persons/veh	1.60 persons/veh

Source: 2017 National Household Travel Survey (Table 16). School and childcare AVOs came from the NHTS AVO by Trip Origin Purpose breakdown spreadsheet. Rates in this table are nationwide averages.

Notes:

* "Other Family/Personal Errands" includes trips such as to post office, dry cleaners, or library.

** "All Other Purposes" includes trips to school, church, doctor, dentist, and work-related business trips.

Although this table does state 1.60 persons per vehicle (based on 2017 national data, which is almost 7 years old), it is completely unclear what this means. Obviously kids attending childcare cannot drive themselves, so there has to be at least one adult. So this would mean an average of .6 children per vehicle, which obviously does not make sense. But the table does not say 1.6 children per vehicle. In any event, it does not support the thesis that there will be 1.6 children per vehicle in the cars that are driving to 245 Peabody St. NW. Again, as stated above, DDOT recommends relying on multiple sources; in any event, Mendomas has not carried its burden on this issue.

Further, in addition to not being able to determine with certainty how many parents will drive their children to the daycare, Mendomas LLC also cannot say when these parents will arrive and to what extent the drop-off and pick-up will be staggered. The below table is an assumption at best and highly speculative:

Exhibit A: Rebuttal to Traffic Study Supplement

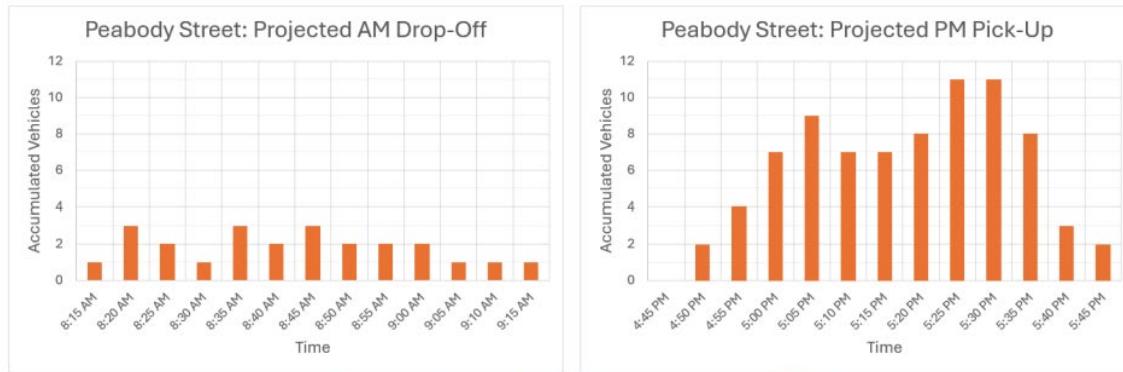


Figure 2: Projected Accumulation of Vehicles During Drop-off/Pick-up Operations

As the Parties in Opposition stated at the October 2 hearing, Mendomas LLC has deliberately sliced and diced the data in a way so that they would be just under the 25 vehicle trips in peak direction, which would trigger the more comprehensive Traffic Impact Analysis (TIA), which was not done. **The Board should order Mendomas LLC to conduct the TIA** because if 62% of the students are driven to the daycare (Mendomas estimate), this is 49 students, and therefore, depending on when they are dropped off, there would likely be more than 25 vehicle trips at the peak time. Mendomas has certainly not carried its burden of establishing that this would not occur.

Given that the BZA must determine whether the proposed project would create objectionable traffic conditions and unsafe conditions for picking up and dropping off young children, the questionable assumptions made to arrive at the reduced peak vehicle trips number should give the Board serious pause.

Exhibit B: Parties in Opposition Counterproposal

The Parties in Opposition of Medomas LLC's D.C. Board of Zoning application for 245 Peabody Street NW, Joshua Toll and Brandon Jamison, hereby submit an alternative to the proposed occupancy counts detailed in the Applicant's special exception request for relief under § 901.2 of the zoning regulations. If this facility seeks to serve as a neighborhood child development center (CDC), its operation must be in keeping with the neighborhood qualities and character. The Parties in Opposition contend that the Applicant's supplemental filing submitted on October 30, 2024, is not responsive to the Parties' concerns regarding the scope and size of the CDC and the associated traffic and transportation impacts. The neighborhood cannot withstand a large-scale CDC eclipsing the nearby homes, servicing customers city-wide and from Maryland, and producing untenable traffic conditions for the immediate neighborhood on a local street. While the potential uses for the lot at 245 Peabody Street NW are dictated by zoning regulations, the BZA must ensure the approved uses are conducted in a manner in keeping with the size and scope of the surrounding area and be designed to create no objectionable traffic conditions.

Should the BZA be inclined to approve the Applicant's request for a special exception (thereby requiring a full order), the Parties in Opposition implore the BZA to set specific conditions beforehand, including but not limited to, capping the CDC's occupancy at 245 Peabody Street NW to **58 children and 15 staff**. The following analysis outlines occupancy conditions and the associated transportation impacts, which the Opposition believes provide a reasonable reduction in the size and scope of the operation to alleviate some traffic concerns.

The architectural plans and elevations of the proposed project submitted in the application translate to a consistent calculated square foot per child rate as shown in Figure 1. For example, rooms planned to serve children 18-24 months vary from 45-46 sqft per child.

Figure 1: Proposed CDC Classroom Square Footage per Child by Age

<i>Cellar</i>			
<u>0-18 Months</u>	Room 001	Room 002	
Square Ft	379	360	
Children	8	8	
SqFt/Child	47	45	

<i>1st Floor</i>			
<u>18-24 Months</u>	Room 101	Room 102	Room 103
Square Ft	554	540	641
Children	12	12	14
SqFt/Child	46	45	46

<i>2nd Floor</i>	
<u>30-54 Months</u>	Room 202
Square Ft	856
Children	24
SqFt/Child	36

Exhibit B: Parties in Opposition Counterproposal

As detailed in the application and Figure 1 above, the Applicant proposes offering two (2) classrooms serving children 0-18 months; three (3) classrooms serving children 18-24 months; and one (1) classroom serving children 30-54 months. Considering the Applicant's proposed classroom orientation and age groupings, the Parties in Opposition propose the reduction of one (1) classroom intended to serve children 18-24 months. The space dedicated in the proposed architectural plans for the 18-24 months classroom recommended for removal would instead accommodate the planned 30-54 months classroom currently proposed on an expanded second floor. This approach reduces the number of children onsite but maintains the full age span of children the CDC seeks to serve. A comparison between the Applicant's proposed classroom offerings and the proposed classroom offerings of the Parties in Opposition is shown in Figure 2.

Figure 2: Applicant Proposed Classrooms vs. Opposition Proposed Classrooms

	Applicant Proposed		Opposition Proposed	
	Kids	Staff	Kids	Staff
<u>Cellar</u>				
Classroom 001	8	2	8	2
Classroom 002	<u>8</u>	<u>2</u>	<u>8</u>	<u>2</u>
<i>Subtotal</i>	<i>16</i>	<i>4</i>	<i>16</i>	<i>4</i>
<u>1st Floor</u>				
Classroom 101	12	3	12	3
Classroom 102	12	3	12	3
Classroom 103	<u>14</u>	<u>3</u>	<u>18¹</u>	<u>3</u>
<i>Subtotal</i>	<i>38</i>	<i>9</i>	<i>42</i>	<i>9</i>
<u>2nd Floor</u>				
Classroom 202	<u>24</u>	<u>3</u>		
<i>Subtotal</i>	<i>24</i>	<i>3</i>		
Calculated Occupancy	78	16	58	13
Proposed Occupancy	82	20	58	15

Under the Opposition's proposal, the elimination of one (1) 18-24 months classroom results in a 29% reduction in child occupancy (20 less children) and corresponding 25% reduction in staff occupancy (5 less staff). This adjustment in occupancy is necessary and directly impacts the projected peak hour total person trips and peak hour vehicle trips in the peak direction. The Parties in Opposition assert that this modification mitigates some traffic concerns by decreasing the generated trips to the neighborhood on a local road within 1,000 feet of an existing CDC (Capital City Public Charter School (CCPCS)).

¹ Under the opposition's proposal, Classroom 103 serves 18 children 30-54 months. This number is calculated using the square footage planned for Classroom 103 (641 sqft) and the calculated square foot per child rate for the 30-54 months age range from the applicant's request for Classroom 202 (36 sqft/Child).

Exhibit B: Parties in Opposition Counterproposal

Figure 3 presents the peak hour vehicle trip generation reported in the Applicant's Transportation Statement dated September 19, 2024.

Figure 3: Applicant's Peak Hour Vehicle Trip Generation

	AM Peak			PM Peak		
	Inbound	Outbound	Total	Inbound	Outbound	Total
Person Trips	54	50	104	50	56	106
Auto Person Trips	34	31	65	31	35	66
Auto Trips	21	19	40	19	22	41

Figure 4 presents the Opposition's *adjusted* peak hour vehicle trip generation numbers from the Applicant's Transportation Statement dated September 19, 2024 by applying a 29% reduction in AM Peak and PM Peak person trips in alignment with the reduction in child occupancy approach detailed in Figure 2. The same vehicle occupancy rate for a CDC (1.6) and auto person trip percentage (62.6%) from the Applicant's Transportation Statement are applied to the Opposition's adjusted person trip numbers consistent with the Applicant's calculations.

Figure 4: Opposition's Adjusted Peak Hour Vehicle Trip Generation

	AM Peak			PM Peak		
	Inbound	Outbound	Total	Inbound	Outbound	Total
Person Trips	38	35	74	35	40	75
Auto Person Trips	24	22	46	22	25	47
Auto Trips	15	14	29	14	15	29

While the Parties in Opposition contend that the proposed CDC will create objectionable traffic conditions, we believe that the proposed reduction in occupancy will have a measurable impact on the daily volume of vehicles driving down and accumulating on the 200 block of Peabody Street NW. Given that the CCPSC CDC has documented safety and traffic issues and the intersection at 3rd Street NW and Peabody Street NW is a busy thruway for vehicles, bicycles, and pedestrians, it is imperative that the BZA compel the Applicant to right-size its proposed operation to mitigate its impact on the neighborhood.

Exhibit C: Parties in Opposition Conditions

The BZA has the authority to impose reasonable conditions when granting special exceptions (*President & Dirs. of Georgetown Coll. v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 69 (D.C. 2003) and if the BZA is inclined to grant this special exception, it should consider more robust conditions than those proposed by the Applicant to address the additional traffic congestion that would be generated.

The Applicant refers to both a Transportation Management Coordinator (“TMC”) in its supplemental filing and a designated staff member whose role would be to ensure efficient traffic flow, prevent congestion, and ensure compliance with PUDO rules in the addendum. *See Applicant’s Proposed Condition 10.* It is unclear whether the Applicant intends the TMC to perform the functions of the designated staff member charged with overseeing traffic flow and enforcing rule compliance. For the purpose of this response from the Parties in Opposition, we assume that the positions are synonymous. As such, the TMC should be further specified in the conditions:

- The current proposal is for a staff person to be “located at the front of the school during peak drop-off and pick-up times.” *See Applicant’s Proposed Condition 10.* The Addendum to the Student Handbook, submitted as Exhibit A1 to the Applicant’s supplemental filing details the policy and procedures for pick-up and drop-off and mentions a staff member will also be posted at the front of the building as an “intake staff person” who will be in communication with teachers inside the building and managing the hand-off of students. The TMC must be distinct from this intake staff person in order to ensure that their full attention is directed towards ameliorating any negative traffic impacts arising out of the CDC.
 - o The BZA should order that the Applicant designate a staff member to serve as TMC who will be tasked with overseeing and resolving any traffic flow issues and concerns, as may be appropriate. (This condition was imposed by the BZA in Case #18079B, a CDC with 74 students.)
 - o The selected TMC should be dedicated to managing traffic and distinct from the staff member who is overseeing child hand-off to teachers.
 - o In addition, the peak drop-off and pick-up times, in which the TMC is placed out front to monitor traffic flow, must encompass the arrival and departure times for Capital City PCS, which the Applicant acknowledges are currently 8:15-8:30 am and 3:30 pm, respectively. This requirement is necessary to ensure that the traffic situation is managed when congestion is likely to be greatest on the 200 block of Peabody St. NW.
- The Applicant should be required to monitor drop-off/pick-up operations and implement changes that may include staff supported operations as needed throughout the life of the project and not limited to the first six months of operation. (This condition was imposed without any kind of time limit by the BZA in Case #18079B, a CDC with 160 students.)
- The BZA should be required to provide annual monitoring to DDOT regarding the status of the conditions and perform additional monitoring of transportation in the area and reassess the TDM conditions as necessary.

Cap on the number of students and staff

- The CDC's occupancy at 245 Peabody St. NW should be limited to 58 children and 15 staff to mitigate the acceleration and exacerbation of traffic problems in and around the 200 block of Peabody St. NW that have emanated from Capital City PCS, the CDC for which currently serves 24 children between the ages of three and five.

Conditions that should be imposed by BZA concerning the alley specifically:

- The Applicant shall appoint a TMC to be present during pick-up and drop-off times to ensure that cars are not blocking the adjacent alley. (This condition was imposed by the BZA in Case #18949, a CDC with 62 children.)
- Signage prohibiting the use by Estrellitas Montessori parents of the public alley. (This proposal is in the spirit of language from Case #20111, a CDC with 60 children.)

Additional communication with neighbors and reporting of activities/data collection:

- The Applicant and party status individuals shall discuss language and content for brochures and information to share with daycare parents regarding parking and pickup/drop-off. (This condition was imposed by the BZA in Case #20111, a CDC with 60 students.)
- The Applicant is proposing annual check-ins as a condition to an approval order so that the ANC is kept abreast of the effectiveness of any traffic mitigation measures. Given that a time limit or sunset for the order would not afford the community an opportunity to revisit the effectiveness of the mitigation measures for years to come, check-ins with the ANC must be no fewer than two times per year.
- The Applicant shall provide the TMC's contact information to goDCgo, conduct an annual commuter survey of employees on-site, and report TDM activities and data collection efforts to goDCgo once per year. (This condition was imposed by the BZA in Case #18830A, a CDC with 115 children.)
- The Applicant shall demonstrate how the short- and long-term bicycle parking requirements are being met. (This condition was imposed by the BZA in Case #18830A, a CDC with 115 children.)

Noise from the play area:

- Diligent efforts shall be taken by the Applicant to reduce noise in the play area and when the children are escorted through the neighborhood. (This condition was imposed by the BZA in Case #18728, a CDC with 120 students.)

Deliveries:

- The Applicant shall implement policies for incoming deliveries to minimize the impact of this traffic on the neighborhood. (This condition was imposed by the BZA in Case #18728, a CDC with 120 students.)

Time Limit/Sunset Provision:

- A seven-year time limit for any approval order which will afford parties of interest a formal mechanism to revisit the effectiveness of any traffic mitigation measures.

Other:

The Applicant has stated it will not have more than 20 staff members employed at the site yet it provides that it will “Comply with Transportation Benefits Equity Amendment Act if over 20 staff members (including part-time staff). This seems inapplicable here.

Additionally, the Applicant says that it will “Charge staff ‘market rate’ for parking or comply with DC Parking Cashout Law when the number of staff reaches 20,” which would require 100% participation.