

November 8, 2017

D.C. Board of Zoning Adjustment
441 4th Street, NW, Suite 200S
Washington, DC 20001

Re: **BZA Case No. 19599 – Application of Georgetown Day School (“Applicant”) for Special Exception Relief for its Campus at Square 1673, Lot 824, 14, 804, 812, 815; Square 1673, Lots 822, 824 (collectively, the “Campus”) – Pre-Hearing Statement of the Applicant**

Dear Members of the Board:

This letter serves as the Applicant’s pre-hearing statement in the above-referenced application for special exception relief pursuant to Subtitle U, Section 203.1(l) and Subtitle X, Section 104 of the District of Columbia Zoning Regulations. The Applicant seeks to develop a consolidated private school at the Campus, constructing a new Lower Middle School and related improvements (“**New School**”) to accompany the existing High School (“**Existing School**”).

I. Background

Georgetown Day School was established in 1945 as the first racially integrated school in the District of Columbia. The Existing School, a school for students in grades 9-12, has been in existence in its current Tenleytown location since 1985. The Applicant also operates a lower/middle school for students in grades Pre-K through 8 at a location on MacArthur Boulevard, NW. The current lower/middle school is permitted to enroll up to 575 students and employ 120 full time equivalent (“**FTE**”) faculty and staff, and the Existing School is permitted to enroll up to 500 students in grades 9-12 and employ up to 100 FTE faculty and staff. After the Applicant acquired the former Safeway grocery store that now makes up the northeastern portion of the Campus, the Applicant decided to relocate the lower/middle school to the Campus in order to consolidate its operations in Tenleytown.

The New School building is located entirely in the MU-4 zone, where private educational uses are permitted as a matter-of-right. An athletic field, play areas, and a parking garage supporting the New School are located in the R-2 and R-3 zones, which is why the New School requires the requested special exception. The Applicant does not seek any relief other than the special exception for the private school uses in the R-2 and R-3 zones.

The New School is four stories. Combined with the Existing School, the Campus will have approximately 216,414 square feet of educational uses with a total lot occupancy of approximately 25 percent with a maximum height of 50 feet and a total of 277 parking spaces. The New School also includes improvements to circulation, landscaping, and play areas. The

Applicant seeks to increase enrollment to up to 1,200 students and 260 FTE faculty and staff over time.

II. Revisions to Previous Plans

Following consultation on the plans for the New School with the Office of Planning (“OP”), Advisory Neighborhood Commission (“ANC”) 3E, and neighbors and other community members, the Applicant has made changes to the New School that improve the project and avoid adverse impacts. Revised plans are attached as Exhibit A. Notable changes to the plans include:

- Relocation of the primary vehicular egress for the New School’s garage to accommodate the request of a residential abutter;
- Provision of extensive landscaping and landscaped buffers between the Campus and surrounding residential areas;
- Inclusion of fencing and noise-attenuating fencing to accommodate community requests; and
- Redesign of the New School’s exterior along 42nd Street, NW to replace the originally proposed curtainwall with punched windows, to better accommodate school programming, and to address OP’s concerns about the originally proposed 42nd Street, NW facade.

III. Update on Community Outreach

Attached as Exhibit B is a revised Statement of Public Outreach, which updates the initial statement included as Exhibit 11 in the record of the instant proceeding.

For several months, the Applicant has engaged in a significant and robust campaign of community outreach to engage ANC 3E, neighbors, and other residents of Tenleytown and AU Park in its plans for the Campus. In furtherance of this community outreach, the Applicant voluntarily delayed the public hearing in this matter by a month in the hopes of reaching consensus with more groups and individuals. The Applicant is pleased that it has achieved significant support for the New School and its plans for the Campus and has made significant progress with the ANC. The Applicant also regrets but understands that not all community members support this Application. However, the Applicant is confident that the plans for the New School have been significantly improved as a result of discussions with the community. Many of the revisions recited above are in response to discussions with the community.

Given the extensive dialogue with community stakeholders that has occurred over the past many months (dating in some instances back to before the Applicant’s 2015 proposal to pursue a PUD for portions of the Campus and nearby property), the Applicant doubts that those currently opposed to the New School are likely to become supporters. Nevertheless, the Applicant is comfortable adopting certain recommendations from opponents of this application, and such recommendations are incorporated alongside those from the ANC and supportive neighbors. The Applicant believes the application is much better as a result of such an intensive community process.

A. ANC 3E

The Applicant and the ANC remain in ongoing and active discussions regarding the Applicant's proposed transportation plans for the Campus. The Applicant is scheduled to appear before the ANC at its regularly scheduled meeting on November 9. The Applicant will update the Board prior to the public hearing on the status of discussions with the ANC and is optimistic about the progress of these discussions.

B. GDS Neighbors

The Applicant has had discussions with a group of Chesapeake Street, NW neighbors who have organized under the name of GDS Neighbors and are nominally led by a Mr. Dennis Williams. The Applicant understands that the primary concern of GDS Neighbors is an opposition to any increase in the number of vehicle trips to the Campus in excess of the number of trips to the Existing School at present. The Applicant finds it unworkable to limit the number of new trips for the New School to the number of trips generated by the Campus today. Accordingly, the Applicant and GDS Neighbors have been unable to find common ground on the New School's trip generation.

C. Abutters

The Applicant notes that two direct abutters have separately requested party status in this proceeding. These two abutters are Adam Rubinson, who is the resident and property owner of 4821 43rd Street, NW and Karla Etten, who is the non-resident co-trustee of the Carol W. Jaenicke Rev. Trust, which owns 4226 Ellicott Street, NW. The Applicant does not object to such requests although the Applicant notes that Ms. Etten's request, which was filed by counsel, is deficient insofar as it fails to include any written statement of the party status criteria required under Subtitle Y, Section 404.1(i). The Applicant has worked in close consultation with both abutters to address their concerns and requests about the Applicant's plans for the New School.

The Applicant is happy to note that Mr. Rubinson has described himself as a conditional supporter of the application. The Applicant's team has been in contact with Mr. Rubinson and has included conditions proposed by Mr. Rubinson in its draft conditions attached here as Exhibit C.

Despite numerous in-person meetings and further exchanges with Ms. Etten's counsel, Ms. Etten remains opposed to the application. Ms. Etten has requested a number of changes to the plan for the Campus and the New School as well as improvements to her property. The Applicant is willing to accommodate a number of these requests. Exhibit D includes a detailed discussion of the items requested by Ms. Etten, and the Applicant's response to each. The Applicant requests that the Board take note that the Applicant has provided good faith accommodations to Ms. Etten on every concern that she has raised. Unfortunately, the Applicant and Ms. Etten have been unable to reach a final agreement.

IV. Satisfaction of Special Exception Standards

The details for the New School and the Campus have changed as a result of proposals by and discussion with ANC 3E, neighbors, and the community. The Applicant hereby supplements its initial statement with the additional justification below that this application satisfies the special exception requirements of Subtitle U, Section 203.1(1) and Subtitle X, Section 901.2.

A. The New School Is Not Likely to Become Objectionable to Adjoining and Nearby Properties (Subtitle U, Section 203.1(1)(1)).

The New School and the use of the Campus following completion of construction in accordance with this application are unlikely to become objectionable. The Applicant is taking numerous affirmative steps to ensure objectionable conditions are unlikely to arise.

The Board has previously articulated, and the D.C. Court of Appeals previously affirmed, two tests that the Board may use to evaluate whether the New School is likely to become “objectionable.” That is, the Board may examine whether the New School (1) “would significantly increase objectionable qualities over their current levels in the area” or (2) “would significantly increase objectionable qualities over the level that an alternative, as-of-right structure would likely create.”¹ The New School satisfies both tests.

1. The New School Is Unlikely to Significantly Increase Objectionable Qualities Over Current Levels in the Area.

The New School is unlikely to significantly increase objectionable qualities over current levels in the area surrounding the Campus today. The Campus currently contains a private school that has been found to satisfy the special exception requirements; a vacant lot that was formerly a Safeway grocery store with adjacent surface parking; and adjacent vacant residential lots.

The New School is unlikely to increase objectionable qualities over current levels around the Campus with respect to number of students, noise, or other potentially objectionable conditions. Though the New School will increase the number of students relative to the current usage, such increase is not likely to be objectionable in light of the thoughtful design of the New School, which allows for 75 percent of the Campus to remain unbuilt and which has ample setbacks from all property lines adjacent to residential areas. The New School is unlikely to be objectionable with respect to noise or other conditions in light of the former and current conditions on the Safeway lot. The Safeway was used for commercial purposes for many more hours per day, year-round than the proposed school use. In particular, the loading operations at the Safeway were very noisy. The Safeway also contained a large surface parking lot that was

¹ See *Draude v. Bd. Of Zoning Adjustment*, 527 A. 2d 1242, 1253 (D.C. 1987). The court in *Draude* noted that there were two standards for evaluating whether an application was likely to become objectionable and left it to the Board to determine which method to use. *Id.* The Applicant is confident that the New School satisfies both tests and includes an analysis under each for completeness. The Court of Appeals in both *Draude* and subsequently in *Glenbrook Rd. v. Bd. Of Zoning Adjustment*, 605 A. 2d 22, 34 (D.C. 1992) declined to mandate that the Board use any one of these two evaluation metrics.

not constructed to modern environmental performance standards and that contained external lighting that was not designed to avoid impacts to residential neighbors. The New School eliminates all of these potentially objectionable conditions: there are no large surface parking lots; the New School is designed to modern environmental performance standards (with a commitment to achieving a LEED Gold level of design) and contains a green roof; and the improvements to the Campus include updated landscaping and a play area and athletic field that will be open for community use at certain times. The Applicant's proposed conditions, attached as Exhibit C, include limitations on noise, outdoor activities, and hours of operation to ensure that no objectionable conditions arise. Neither these conditions nor anything analogous applies to the current use of the Safeway.

The New School is also unlikely to increase objectionable traffic qualities over current levels around the Campus. The Applicant's Traffic Consultant, Wells + Associates, conducted a Comprehensive Transportation Review ("CTR") for the project. The CTR concluded that traffic-related impacts of the project could be mitigated through implementation of an aggressive Transportation Management Plan ("TMP"), including significant commitments to reducing vehicular traffic and a monitoring plan to ensure those commitments are met. The CTR also recommended that an eastbound right turn lane be provided at the Ellicott Street/Wisconsin Avenue intersection and that left turn egress at the proposed River Road curb cut be restricted. The Applicant has agreed to all of these mitigation measures. An updated TMP is attached as Exhibit E. The updated TMP reflects the extensive outreach and dialogue with the ANC and abutters but does not represent the final discussions with the ANC.

2. The New School Is Unlikely to Significantly Increase Objectionable Qualities Over the Level that Alternative As-of-Right Structure Would Likely Create.

The New School is similarly unlikely to significantly increase objectionable qualities over the level that an alternative, as-of-right development would likely create on adjoining and nearby properties. The primary reason that the New School is unlikely to be objectionable under the standard set forth above is another private school with the same height and bulk attributes could be constructed on the portion of the Campus where the school building of the New School is located.

As noted above in the Background section, the Campus is split between the R-2, R-3, and MU-4 zones. The New School is located entirely within the MU-4 zone portion of the Campus but shares amenities and service areas (such as the parking garage, field, and loading) with other portions of the Campus within the R-2 and R-3 zones. It is only because of the shared amenities and service areas in the R-2 and R-3 zones that the New School is even subject to the special exception requirements. A private school use such as the New School is permitted as-of-right in the MU-4 zone. *See* 11-U DCMR § 512.1(e). Therefore, a school that was independent of the Campus (i.e., that did not share amenities with the Existing High School in the R-2 and R-3 zones) could be constructed as-of-right where the New School is to be located. Such hypothetical as-of-right school could be the same size and accommodate the same number (or more) of students and faculty/staff as the New School. Accordingly, such as-of-right school could have

the same or greater aggregate negative effects with respect to noise, traffic, number of students, or otherwise objectionable conditions. Evaluated against this as-of-right scenario, the New School is unlikely to have any objectionable qualities on adjoining and/or nearby properties.

Other as-of-right uses of the MU-4 portion of the Campus could have even greater possible negative qualities and effects than the New School. For instance, retail, office, restaurants, medical care facilities, galleries, and museums are all permitted as-of-right. Even a public parking garage is permitted as-of-right in the MU-4 zone. Such uses could operate for longer periods of the day and year round, all without the noise, traffic, and other restrictions imposed as part of the conditions in an order in the instant proceeding. As a result, any of these other as-of-right uses is likely to have greater aggregate negative effects with respect to noise, traffic, or otherwise objectionable conditions.

In sum, when compared to the evaluation standards previously articulated by the Board and affirmed by the Court of Appeals, the New School is unlikely to become objectionable to adjoining and nearby properties.

B. The New School Provides Ample Parking (Subtitle U, Section 203.1(1)(2)-(3)).

There has been no change to the number of parking spaces serving the New School since the initial proposal. The amount of parking proposed satisfies the requirements of the Zoning Regulations. The Applicant, its transportation expert, DDOT, the ANC, and the community more generally are all in agreement that no additional parking is required.

C. The New School Is in Harmony with the General Purpose and Intent of the Zoning Regulations (Subtitle X, Section 901.2(a)).

The New School is in harmony with the general purpose and intent of the Zoning Regulations as set out in the District’s zoning enabling legislation.² The general purposes and intent of the Zoning Regulations are as follows:

1. Lessen Congestion: The application is in harmony with the purpose of the Zoning Regulations to lessen congestion in the streets by providing the robust TMP and imposing a number of conditions that regulate travel to and from the New School and the Campus more generally.
2. Secure Safety: The application helps secure safety by being designed fully in accordance with all construction, fire, and life safety codes and by providing exterior

² See D.C. Code § 6-641.02 (Reciting that the purpose and intent of the “zoning regulations shall be designed to lessen congestion in the street, to secure safety from fire, panic, and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration of population and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services.”).

- improvements such as fencing, appropriate security lighting, and thoughtfully designed landscaping and related improvements to ensure that the Campus remains safe at all times for students and neighbors.
3. Promote Health and General Welfare: The application is in harmony with the purpose of promoting health and general welfare by providing ample opportunity for students and faculty to exercise and maintain a healthy lifestyle. Similarly, the New School's use as an educational facility promotes the general welfare of students. In addition, the Applicant will open certain Campus facilities as an amenity to the general public at certain times, thereby further promoting good health and general welfare.
 4. Provide Adequate Light and Air: The design of the New School allows for adequate light and air both on the Campus as well as with respect to adjoining properties. The New School is substantially set back from the property line on all sides and allows for maintenance of ample open space on the Campus. The New School also satisfies all bulk and dimensional requirements of the Zoning Regulations.
 5. Prevent Undue Concentration of Population and Overcrowding: The application is in harmony with the intent of the Zoning Regulations by being constructed at a density below that allowed under the Zoning Regulations. The application does not require any dimensional or other relief under the Zoning Regulations apart from the special exception for private school uses in a residential zone under a private school plan. In this regard the application is in harmony with both the purposes as well as the substance of the Zoning Regulations.
 6. Promote Favorable Distribution and Land Use Conditions: The application advances the purposes of the Zoning Regulations that seek to promote the distribution of population and use of land that creates conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities. The application's effects on conditions such as health, safety, transportation, protection of property are articulated above. The application creates favorable conditions for the distribution of civic activity, recreational, education, and cultural opportunities. The Applicant is proud that the school boasts students from a variety of socioeconomic backgrounds and provides an opportunity for educational advancement and future prosperity. Likewise, the Applicant provides opportunities for prosperity among its faculty and staff by providing a stable source of employment. Finally, the Campus provides numerous additional civic, recreational, and cultural opportunities through events such as student volunteering, community service initiatives, sports, and arts and other related programming.
 7. Further Economy and Efficiency of Public Services: The application is in harmony with the intent of the Zoning Regulations to tend to further economy and efficiency in supply of public services. The New School is located in an infill and previously

developed location that does not require newly extending public utilities or constructing new roads or overstretch public safety officials. The application's transportation measures will tend to improve the nearby transportation network.

D. The New School Will Not Tend to Affect Adversely the Use of Neighboring Property (Subtitle X, Section 901.2(b)).

The New School has been designed to mitigate adverse effects on neighboring property and therefore will not tend to adversely affect such property. As noted above, the Applicant has made numerous changes to the design of the New School and the Campus in order to accommodate concerns of the ANC and abutters:

- The Applicant has committed to installing fencing, landscaping, and noise-proofing and other measures to avoid adverse effects;
- The application's robust transportation management plan ensures that the New School will not tend to adversely affect use of neighboring property from a traffic and loading perspective; and
- The New School's site plan involves preservation of open space, creation of green space where today is a surface parking lot, and significant setbacks from the property line on all sides.

All of these design features ensure that the New School will not adversely affect any neighboring properties.

V. **Satisfaction of School Plan Requirements; OP Request for Information**

This application satisfies the requirements of Subtitle X, Sections 104-106 pertaining to a private school plan as shown on Exhibit E, attached hereto. OP has also requested an analysis of the Applicant's treatment of the two residential lots on the Campus, and such analysis is also included on Exhibit F.

VI. **Design Flexibility**

The Applicant requests the flexibility to revise its plans following issuance of the final order in this application to allow the following:

1. Balconies/terrace on fourth floor: To vary the exact size and location of the fourth floor balcony or terrace in general conformance in design intent to what is shown;
2. Interior layouts: To vary the location and design of interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the building;

3. Material color: To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim, louvers and vents, such that the refinements do not substantially change the external configuration or appearance of the building; and
4. Windows: To vary, following a solar study, the exact dimension of windows on the upper floors may change, but the design intent of their modularity will remain.

The Applicant notes that this language is generally consistent with design flexibility reviewed and approved by the Office of Attorney General in the context of other applications.

VII. Incorporation of Conditions for Existing School

The Existing School is subject to conditions enumerated in BZA Order No. 17868 (“**Existing GDS Order**”). The Applicant requests that the conditions of the Existing GDS Order be incorporated into and superseded by the conditions of the order for this proceeding so that the Campus may operate under a unified set of conditions.

VIII. Proffer of Expert

The Applicant proffers the following experts:

1. Jami L. Milanovich of Wells + Associates as an expert in transportation planning and engineering. Ms. Milanovich has been accepted as an expert in such field by the BZA in many previous cases, and her resume was previously submitted along with the CTR as Exhibit 29B in the record of this proceeding.
2. Jeff Barber of Gensler as an expert in architecture. Mr. Barber’s resume is attached in Exhibit G.
3. Robby Deem of Cerami & Associates, Inc., as an expert in acoustical engineering and noise impact analysis. Mr. Dickman’s resume is attached in Exhibit G.

IX. Conclusion

For the reasons set forth in the Applicant’s initial statement as supplemented above, this application satisfies the requirements under Subtitle U, Section 203.1(1) and Subtitle X, Section 104 of the Zoning Regulations to construct the New School on the Campus.

If you have any questions, please do not hesitate to contact the undersigned at (202) 721-1106.

Board of Zoning Adjustment – Georgetown Day School
November 8, 2017
Page 10

Sincerely,


Allison C. Prince

Enclosures

Certificate of Service

The undersigned hereby certifies that copies of the foregoing document was delivered by first-class mail or hand delivery to the following addresses on November 8, 2017.

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