

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 20472-B of The River School, pursuant to 11 DCMR Subtitle X § 901, for special exceptions under the daytime care use provisions of Subtitle U § 203.1(h), under the private school use provisions of Subtitle X § 104 and Subtitle U § 203.1(m), and under Subtitle C § 703.2 from the minimum parking requirements of Subtitle C § 701.5 to allow a new child development center and private school in the R-1-B Zone at 4220 Nebraska Avenue, N.W. (Square 1727, Lots 4, 5).¹

INITIAL ORDER DATE: September 22, 2022
HEARING ON REMAND DATE: July 3, 2024
DECISION ON REMAND DATE: July 24, 2024

DECISION AND ORDER ON REMAND

By order issued September 22, 2022, the Board granted, subject to conditions, a self-certified application submitted on behalf of The River School (the “Applicant”).² The application sought special exceptions to allow a private school and a child development center, with an accessory clinic use, as well as relief from vehicle parking requirements, in the R-1-B zone at 4220 Nebraska Avenue, N.W. (Square 1727, Lots 4, 5).

Parties in this proceeding are the Applicant, Advisory Neighborhood Commission (“ANC”) 3E, and a party in opposition to the application, the Tenleytown Preservation Association. The party in opposition appealed the Board’s order to the District of Columbia Court of Appeals, arguing that the Board acted arbitrarily and capriciously in finding that the proposed site would not become objectionable because of traffic and the number of students and that the Board failed to give “great weight” to the opposition filed by ANC 3E. The Court “affirmed most of the Board’s conclusions but remand[ed] for further proceedings to address an issue relating to both traffic and student enrollment that was not adequately considered by the Board.” *See, Tenleytown Preservation Association v. District of Columbia Bd. of Zoning Adjustment*, No. 22-AA-0806 (D.C.; decided December 18, 2023).

¹ By orders issued August 25, 2023, the Zoning Commission approved text amendments that established new zone names and amended some of the regulations applicable in this proceeding. (See Zoning Commission Orders No. 18-16 and 19-27.) This order reflects the zoning provisions in effect at the time of the Board’s vote at the conclusion of the public hearing on the application.

² The River School is the contract purchaser of the subject property. The owner, the Ruth H. Buchanan Revocable Trust, authorized the filing of the application. (Exhibit 5.)

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The initial order stated the Board's conclusion that objectionable conditions related to traffic and the number of students were unlikely to occur as a result of approval of the requested zoning relief. The Court noted that the Board's conclusion was based in part on the Applicant's transportation study, which projected a 45-percent decrease in morning drop-off traffic, compared to the volume of traffic that would be expected absent any mitigation measures, on the assumption that students in kindergarten through grade six would utilize a school-provided shuttle bus. However, the Board's order did not make the shuttle a required component of the Applicant's transportation management plan. The Court held that the failure to recognize the significance of the shuttle bus in the Applicant's projections undermined the basis for approving the special exception by overlooking the traffic study's assumption about shuttle usage, leading to an insufficient assessment of whether adverse traffic impacts were likely to become objectionable. Accordingly, the case was remanded to the Board for additional proceedings to "explicitly address the shuttle's role in achieving the 45% reduction, the likelihood of full compliance by K-6 students, [and] whether it was possible to achieve the reduction without full compliance by using other tools in the School's 'toolbox.'" *Tenleytown Preservation Ass'n.* at 6. The Court noted that "whether the School would actually require use of the shuttle was unclear, even though its traffic figures assumed 100% compliance to achieve its goal, and the School had provided no evidence that it could reach its goal without 100% compliance." *Tenleytown Preservation Ass'n.* at 10.

At a public meeting on May 15, 2024, the Board voted to issue a procedural order to request submissions and to schedule a continued public hearing for further proceedings on remand. *See, Application No. 20472-A, issued May 24, 2024.* The Board asked the parties and the Office of Planning to address the role of the shuttle bus in achieving the Applicant's reduction goal and whether 100-percent compliance was required to meet the goal. Questions to be addressed included that, if shuttle use would be required, how would the Applicant enforce the requirement?

Submissions were received from the Applicant (Exhibits 171, 171A), ANC 3E (Exhibit 173), the party in opposition (Exhibit 172), and the Office of Planning (Exhibit 170). Following the public hearing on July 3, 2024, the Board again voted to approve the application subject to conditions. In this order on remand, the Board reaffirms its decision as set forth in the original order to approve the application subject to conditions, adopts a new Condition No. 17 proposed by the Applicant, modifies Condition No. 4, and clarifies the rationale for the Board's conclusion that approval of the application will not cause adverse impacts on the use of neighboring property, including with respect to traffic and number of students. This order on remand supplements the original order and incorporates the findings of fact and conclusions of law set forth in the original order in approving the application subject to the previously stated conditions.

Applicant's Submission. The Applicant clarified the role of the planned shuttle bus service, which will be mandatory for morning drop-off for students in kindergarten through grade 6 with certain exceptions, and proposed a new Condition No. 17 intended to ensure enforceability of the shuttle requirement. The Applicant also proposed a revision, requested by the ANC, to Condition No. 4 as adopted in the initial order to clarify that student pick-up and drop-off activities must occur at the subject property and not on neighborhood streets. (Exhibit 171A.)

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OP Report. By memorandum dated June 20, 2024, the Office of Planning continued to recommend approval of the requested application subject to conditions, including the condition proposed by the Applicant in its remand submission. (Exhibit 170.)

ANC 3E. At a public meeting on June 25, 2024 with a quorum present, ANC 3E adopted a resolution that stated “a number of outstanding concerns about the latest draft proposal” from the Applicant. (Exhibit 173.)

Party in Opposition’s submission. The Tenleytown Preservation Association argued that the Applicant failed to demonstrate that its proposal would not cause objectionable traffic impacts. According to the party in opposition, the Applicant’s “purported evidence is premised on the assumption that 100% of K-6 students will arrive at the school on shuttles,” a “premise...unsupported by the record, which includes no firm commitment by River to provide a shuttle and no effective mechanism to enforce 100% shuttle usage by K-6 students.” (Exhibit 172.)

FINDINGS OF FACT

1. The property that is the subject of this application is a triangular parcel located in Square 1727 with an address of 4220 Nebraska Avenue, N.W. (Square 1727, Lots 4 and 5). The subject property has a lot area of 98,935 square feet (2.27 acres).
2. Square 1727 is generally triangular, bounded by Warren Street on the north, Nebraska Avenue on the east, Van Ness Street on the south, and 42nd Street on the west. The subject property comprises the southern portion of the square.
3. The subject property was improved with a two-story detached building formerly used as a principal dwelling as well as several accessory structures. The Applicant proposed to redevelop the site for use as a private school and a child development center, with an accessory clinic. The Applicant will renovate the former dwelling and construct a new building (two pavilions connected below-grade by a level of programmed space) as well as a below-grade garage.
4. The maximum enrollment of the private school and child development center will be a total of 350 students from birth through sixth grade. The planned child development center will enroll approximately 98 children up to three years of age. The private school will enroll approximately 252 children from pre-kindergarten (age three) through the sixth grade.
5. The Applicant estimated that 24 to 48 children included in the total enrollment of 350 children will be part-week students who will attend school either two or three mornings per week. As a result, the Applicant anticipated that the number of students at the subject property on any given day will be 326 to 338.
6. The total number of employees will not exceed 90.

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7. The Applicant will provide a shuttle bus to the subject property for students in kindergarten through the sixth grade. The Applicant will select one or more locations, based on current enrollment, where students can meet a shuttle (e.g., a parking lot on MacArthur Boulevard that would be convenient for students arriving from Virginia).
8. The Applicant will implement a transportation management plan to facilitate the flow of vehicular traffic to, through, and from the subject property and reduce the potential impacts of the planned use of the subject property. The plan comprised a transportation demand management (“TDM”) plan, an operations management plan, a monitoring plan, and a set of physical transportation improvements. (Exhibit 100B.)
9. The Applicant’s TDM plan was devised to mitigate the potential for traffic congestion by decreasing the demand for vehicle traffic and parking at the subject property. The TDM plan was intended to be flexible so that the Applicant will be able to respond to changes in school demographics, technology, transportation services, and the variety of available mitigation options.
10. Elements of the TDM plan will include that the Applicant will (a) provide a shuttle service to transport students to the subject property from one or more off-site locations during the morning drop-off period, (b) establish a mandatory carpooling program that requires parents/guardians dropping off or picking up students by automobile to have at least two students per vehicle, except for pre-kindergarten and younger students and in cases of hardship based on special transportation needs, and (c) provide transit/alternate commute incentives to encourage students to use non-auto modes of transportation to travel to the subject property.
11. The Applicant will incorporate the TDM plan into the student contract and will implement disciplinary procedures in case of infractions. The Applicant proposed an escalating series of responses to violations, as follows: after the first infraction, an email from the principal; the second infraction, a telephone call from the principal; the third infraction, a meeting with the principal; the fourth infraction, a meeting with the head of school; the fifth infraction, probation from school for up to 10 days; and the sixth infraction, dismissal and revocation of the student contract.
12. The Applicant will implement an operations management plan to ensure that pick-up and drop-off (“PUDO”) procedures do not adversely impact the surrounding neighborhood. (Exhibit 100B.) Components of the operations management plan will include that the Applicant will establish a clear PUDO protocol for parents/guardians who will be dropping off and picking up students via automobile, and will ensure that PUDO activities will not occur on 42nd Street, Van Ness Street, Warren Street, or other neighborhood streets. The Applicant will distribute badges to parents/guardians who walk their children to school to identify them as “walkers” and will station employees at pedestrian entrances to the subject property to ensure that only “walkers” enter the subject property on foot (and not students arriving from a parked car on a neighborhood street).

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13. The Applicant will conduct annual monitoring studies to ensure that the TDM plan and operation management plan are functioning as intended, and submit the studies to DDOT and ANC 3E. The studies will address trip thresholds and on-site queuing as well as impacts on specified intersections near the subject property. (Exhibit 100B.) As part of the monitoring study, the Applicant will (a) determine the number of vehicle trips generated by the uses at the subject property during the A.M. peak hour, the P.M. school peak hour, and the P.M. commuter peak hour, (b) conduct traffic counts at specified times and locations, (c) determine the number of trips generated by the Applicant's use of the subject property, (d) conduct vehicle occupancy counts (number of students per vehicle) at the PUDO location to determine the average vehicle occupancy, and (e) conduct a mode split survey during the Fall semester to determine the mode of transportation for students and employees.
14. The Applicant will establish a goal of reducing peak-hour vehicular traffic generated by the use of the subject property, from what would otherwise be generated without a TDM plan, by 45 percent during the A.M. peak hour and 15 percent during the P.M. school peak hour and P.M. commuter peak hour through the implementation of its TDM plan. The Applicant will conduct monitoring studies at specified intervals, starting in Year 1 of school operation and extending at least until Year 17. If a monitoring study reveals that trip thresholds are not met, or if PUDO queues are not contained on the subject property, the Applicant will request a meeting with DDOT and ANC 3E for the purpose of identifying remedial revisions to the TMP necessary to promote compliance. Remedial strategies could include a reduction in the number of PUDO passes issued based on the percentage of trips in excess of the trip threshold, the acquisition of off-site parking spaces for employees or as short-term parking/PUDO spaces for use by parents/guardians who would otherwise drive to the subject property but would now park in the leased spaces and walk their children to the school, and increased carpool requirements.

CONCLUSIONS OF LAW AND OPINION

In the initial order, the Board approved, subject to conditions, zoning relief including a special exception under the private school use provisions of Subtitle X § 104 and Subtitle U § 203.1(m) to allow a new private school in the R-1-B zone at 4220 Nebraska Avenue, N.W. (Square 1727, Lots 4, 5). 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.)

The requirements for approval of a special exception to allow a private school use include that the use must 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 U §

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203.1(m)(1); see also Subtitle X § 104.) The Board concluded that approval of the special exception would not cause objectionable conditions, including with respect to traffic and number of students, in light of the Applicant's commitments to implement mitigation measures, including steps to achieve a 45-percent decrease in morning drop-off traffic as compared to the volume of traffic that would be expected absent any mitigation measures. The mitigation measures included operation of a shuttle bus service and other means to lower the number of vehicles engaged in student drop-offs.

On remand, the Board was directed to address the role of the shuttle bus service in achieving the 45-percent decrease, the likelihood of full compliance by students, and whether achievement of the reduction would be possible without full compliance by other means. The Board concludes that implementation of the planned shuttle bus service is integral to achieving a reduction in the number of vehicle trips that would otherwise result with the planned student population, and that use of the shuttle will be mandatory for the morning drop-off of students in kindergarten through grade 6 with specific exceptions that primarily involve students who will not arrive at the subject property in a vehicle containing only one student. To state the shuttle bus requirement clearly, the Board adopts an additional condition in this order to specify that students enrolled in kindergarten through grade 6 will be required to utilize a shuttle bus provided by the Applicant to arrive at the subject property during the morning drop-off, subject to specific exceptions. The Applicant will enforce the use of the shuttle bus service, as well as other measures of its TDM plan, by means specified in a student's enrollment contract. The conditions of approval of the application adopted by the Board will be enforceable in accordance with Subtitle A § 303 (Compliance with Conditions in Orders). The Board reaffirms its conclusion that approval of the application will not tend to create objectionable conditions, including with respect to traffic and the number of students, in light of the Applicant's commitment to operate a shuttle bus service as one component of a transportation management plan that entails monitoring and remedial measures if the projected trip reduction does not occur and that the Applicant is required to implement as an enforceable condition of approval of the application.

In concluding that approval of the application would not cause objectionable conditions with respect to traffic or number of students, the Board did not anticipate that all students would arrive at the subject property via a shuttle bus. Rather, the Board understood that the Applicant proposed a shuttle bus service as an important means, but not the sole means, to ensure that the 45-percent reduction could be realized. The Board concluded that achievement of the reduction was possible without 100-percent ridership on a shuttle bus because the Applicant proposed an array of measures to ensure that objectionable traffic conditions will not be created since students who do not utilize the shuttle bus service nonetheless will not generate a high degree of vehicle traffic to the subject property.

Consistent with the conditions of approval of the application, the Applicant will ensure that, with limited exceptions, all students in kindergarten through grade 6 will utilize the shuttle bus service to arrive at the subject property during the morning drop-off period. Exemptions from the general rule will be available for students who arrive in a vehicle with a younger sibling who is enrolled in a pre-kindergarten level and is authorized by the Applicant to travel by vehicle, or with a parent

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or guardian who is employed by the Applicant and is authorized to drive to the subject property. Students who walk, ride bicycles, or utilize public transportation to travel to the subject property, and have been authorized as “walkers” by the Applicant, will not be required to ride the shuttle bus. Students with a documented physical disability or condition, other than hearing loss, who cannot use the shuttle bus will be exempted from the general requirement.

The Board finds that the specified exceptions to the general rule requiring use of the shuttle service will not result in the creation of adverse traffic impacts. The exemptions will primarily be available to students whose travel to school will not cause an increase the number of vehicles traveling to the subject property. Even with the exemptions, the Applicant will be required to conduct monitoring studies, which will address trip thresholds as well as other impacts, to assess whether the TDM plan and operation management plan are functioning as intended. (See Condition No. 6 and Findings of Fact 46 through 64 in the initial order.) The studies will be submitted to DDOT and ANC 3E, who will be consulted on any necessary remedial measures.

The Board concludes that the 45-percent reduction in morning peak-hour vehicular traffic generated by the Applicant’s use of the subject property, from what would otherwise be generated without a TDM plan, can be achieved through compliance with the conditions of approval adopted for the operation of the planned private school use at the subject property. The Applicant will include the shuttle-bus provision as a requirement of the student contract, which will warn that failure to comply “will result in progressive consequences” culminating in dismissal from the private school. The Applicant’s compliance with each condition adopted in this proceeding will be treated as a condition to the issuance of a building permit or certificate of occupancy for the planned use of the subject property. See Subtitle A § 303 (Compliance with Conditions in Orders).

The Applicant anticipated that the private school will enroll approximately 252 students in pre-kindergarten through grade 6, along with approximately 98 younger children in the child development center. Because not all of the 350 children comprising the maximum enrollment will attend school every day, the Applicant anticipated that the total number of children at the subject property on any given day will be approximately 326 to 338. The Applicant will implement a TDM plan designed, among other objectives, to minimize the number of vehicle trips to the subject property in connection with the older students in kindergarten through grade 6.

Because the Applicant indicated that the subject property will not be ready for use as a private school and child development center until 2030 at the earliest³ and because school demographics are variable, the Board concluded that the Applicant’s TDM plan was reasonably designed as a flexible means to mitigate the potential for traffic congestion by decreasing the demand for vehicle traffic and parking at the subject property.⁴ Nonetheless, the TDM plan included a number of

³ Transcript of July 3, 2024 at 76.

⁴ The Applicant testified that, since the issuance of the initial order, the Applicant had “agreed to update the transportation management plan with additional protocols to address specific concerns” raised by ANC 3E regarding the use of the shuttle service. For instance, the Applicant agreed to take attendance on the shuttle bus to ensure that the students expected to ride the shuttle are using the service, and to report the results as part of the Applicant’s annual monitoring. (Transcript of July 3, 2024 at 24.)

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specific provisions, including that (a) the Applicant will provide a shuttle service to transport students to the subject property from one or more off-site locations during the morning drop-off period;⁵ (b) the Applicant will establish a mandatory carpooling program that requires parents/guardians dropping off or picking up students by automobile to have at least two students per vehicle, with the certain exceptions including that the pre-kindergarten and younger students are not required to carpool, and will implement measures to promote carpooling and to increase vehicle occupancy; (c) the Applicant will provide incentives to encourage students to use non-auto modes of transportation to the subject property, especially public transportation, walking, and bicycling; and (d) the Applicant will designate a TDM coordinator responsible for the implementation of the TDM plan and will disseminate information about transportation options including public transportation (Metrobus and Metrorail), bicycle facilities and amenities for students and employees. The Applicant did not originally propose a condition requiring use of the planned shuttle bus service but provided exhibits and testimony at the public hearing, including from the head of school, indicating that use of the shuttle service would be mandatory as a condition of enrollment for students in kindergarten through grade 6, with specific exemptions, to help achieve the projected 45-percent reduction in morning drop-off traffic. (See Exhibit 171A, footnote 5.)

In concluding that approval of the application will not result in objectionable conditions, the Board did not anticipate that every student in kindergarten through grade 6 would arrive at school in a shuttle bus. Rather, the Board recognized the Applicant's commitment to implement a transportation management plan intended to achieve a 45-percent reduction decrease in the otherwise expected morning drop-off traffic volume through the implementation of a variety of mitigation measures. The assumptions made about shuttle usage in the Applicant's traffic study were considered in the context of indications that the Applicant will implement several measures to encourage non-auto travel to the site, recognizing the location of the subject property as convenient to public transit options and within walking or biking distance for some students, as well as the potential for carpooling. The Board agrees with the Applicant that use of the planned shuttle bus is necessary as one of several strategies to meet the Applicant's morning peak hour vehicle trip thresholds and achieve its trip reduction goal, and that 100-percent utilization of the shuttle is not necessary to meet the trip thresholds. The Board credits the testimony of the Office of Planning, in reaffirming its recommendation of approval, that the anticipated "reduction in vehicle trips to the site would be through a variety of means, including non-auto modes of transportation, the provision of a shuttle service, rideshare programs with incentives, outreach and education, and procedures for infractions." According to OP, "it was not expected that students attending kindergarten through grade 6, who use alternate modes of transportation such as bike or walk to school, would use the shuttle." The Office of Planning noted that "the alternate modes of transportation to access the school, including the shuttle bus use, would be enforced through the student contracts and conditions of enrollment." (Exhibit 170.)

⁵ The Applicant has not yet determined how many shuttle buses will be required but anticipated using "multiple shuttle buses." (Exhibit 171A.) The Applicant will "review the shuttle bus routes" with DDOT and ANC 3E before they are finalized to "establish the appropriate locations for the bus stops." (Transcript of July 3, 2024 at 24.)

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In concluding that approval of the requested special exceptions will not result in objectionable impacts due to traffic or number of students, the Board recognized that students will have other means to arrive at the subject property “that do not result in a K-6 student vehicle trip (e.g., walking or biking, public transportation, or arriving by car with a pre-K sibling or a parent who is a member of the faculty or staff).” (Exhibit 171A.) The Applicant will require the affected students to utilize the shuttle bus as a condition of their enrollment contract. Infractions will be addressed with increasing severity, ranging from an email from the principal after the first infraction to revocation of the student contract and dismissal after a sixth infraction. In the event that a student had “a documented disability or hardship” that precluded use of the shuttle bus, and instead arrived at the subject property in a vehicle during the morning peak hour, that trip would be counted toward the vehicle trip threshold.

In the event of noncompliance with the shuttle bus requirement, the increased number of trips to the subject property would be reflected in the Applicant’s traffic counts and other means of monitoring school-generated traffic. To the extent that the Applicant’s failure to achieve the projected 45-percent decrease will result in additional vehicle trips to the subject property, the Applicant will be required to implement remedial measures consistent with the conditions of approval of the application, which are separately enforceable.

Great weight. 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, reiterated on remand, that the application should be approved subject to the conditions proposed by the Applicant with modifications recommended by DDOT.

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 remand proceeding, ANC 3E submitted a resolution stating “a number of outstanding concerns about the latest draft proposal” from the Applicant. (Exhibit 173.) The Board credits the views of ANC 3E but did not find that ANC 3E offered persuasive advice. ANC 3E objected that the Applicant had not applied updated traffic counts or provided enough detail so that the Applicant’s plan could be considered “more than a notional plan.” For the reasons discussed above, the Board disagreed and again concluded that approval of the application, subject to enforceable conditions, will not generate objectionable conditions, including with respect to traffic.

The Board was not persuaded by the ANC’s claims that consequences for students’ failure to adhere to enrollment stipulations “lack specificity” or that the Applicant will not face consequences “if they fail to implement or successfully maintain a shuttle bus program....” The ANC asserted that “the Board should require a condition that incorporates the school’s purported escalating discipline system” so that “students who violate these policies shall be subject to mandatory escalating discipline” ranging from “a warning” for a first offense to “expulsion on the sixth offense.” (Exhibit 173.) The Applicant is required, as a condition of approval of the

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application, to implement a transportation management plan substantially as shown in Exhibit 100B in the record (also described in Findings of Fact 46 through 64 in the initial order). Elements of the TDM plan anticipated by the Applicant included that the student contract will state a procedure in case of infractions, ranging from an email from the principal for a first infraction to revocation of the student contract and dismissal after a sixth infraction. The Board declined to adopt the ANC's recommended alternative condition to specify "the precise consequences for students who impermissibly arrive at school via automobile." The conditions of approval adopted in this proceeding require the Applicant to undertake certain actions so as to avoid the creation of adverse impacts. The ANC's condition would inappropriately address students rather than the Applicant and would impede the flexibility intended to allow the Applicant to adjust the TDM plan as necessary to achieve the intended results. Compare, *President and Directors of Georgetown College v. District of Columbia Bd. of Zoning Adjustment*, 837 A.2d 58, 69, 77 (D.C. 2003) (Implicit in the Board's power to grant special exceptions is the authority to place reasonable conditions on such approval; however, Court rejected conditions addressing "details and mechanics" of university operation that were removed from the Board's expertise and area of responsibility and in which a zoning body lacked specialized competence).

The Board did not agree with ANC 3E that the reasons the Applicant might exempt a student from the requirement to utilize the shuttle service will be "so broad as to render meaningless the utility of the shuttle bus." Each exemption specifically encompasses only a verifiable subset of students who might arrive at school in a vehicle, while the utility of the shuttle bus system will remain apparent as an important means to achieve the 45-percent reduction in morning drop-off traffic. Similarly, the Board credits the Applicant's testimony in declining to adopt the ANC's recommendation to limit a possible shuttle bus exemption to students with a physical disability or condition that would require an accommodation, rather than students who would qualify for an accommodation.⁶ The ANC expressed concern that the Applicant's proposal would result in an excessively high number of exemptions. The Board did not agree, and found no basis for the ANC's recommendation to limit shuttle bus exemptions to no more than four annually. In any event, all exemptions allowed by the Applicant will be reflected in traffic counts that could require the Applicant to implement remedial measures.

The Board declined to modify Condition No. 4 as proposed by Applicant in response to a request from ANC 3E, except to add a new initial sentence to emphasize that all student pick-up and drop-off activities must occur within the subject property. The other proposed change (to add "or other neighborhood streets" to the list of three specific streets immediately adjacent to the subject property) was vague, overly broad, and unnecessary in light of other measures the Applicant will implement as part of its operational plan, such as requiring students who walk, bicycle, or use public transportation to the site to register in advance as "walkers" to discourage drop-offs at nearby off-campus locations.

Based on the findings of fact and conclusions of law stated in the original order (issued September 22, 2022) and in this Order on Remand, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for special exceptions under the daytime care use

⁶ Transcript of July 3, 2024 at 36-37.

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provisions of Subtitle U § 203.1(h), under the private school use provisions of Subtitle X § 104 and Subtitle U § 203.1(m), and under Subtitle C § 703.2 from the minimum parking requirements of Subtitle C § 701.5 to allow a new child development center and private school in the R-1-B Zone at 4220 Nebraska Avenue, N.W. (Square 1727, Lots 4, 5). Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans submitted at Exhibits 51B1, 51B2, and 51B3, dated October 6, 2021, with the flexibility described in Condition No. 16, and subject to the following **CONDITIONS**, which were adopted in the initial order and are restated here with the addition of Condition No. 17 and modification of Condition No. 4, as discussed in this Order on Remand:

1. The maximum enrollment shall be 350 full-time and part-time students in the aggregate.
2. The maximum number of full-time equivalent faculty and staff shall be 90.
3. At the beginning of each school year, but in no event later than October 15 of any calendar year when the Applicant is subject to monitoring and reporting requirements, the Applicant shall provide to DDOT and ANC 3E documentary evidence sufficient to demonstrate the total enrollment of students at the subject property and compliance with the terms of the Applicant's transportation management plan.
4. All student pick-up and drop-off activities shall occur on campus. The Applicant shall not permit pick-ups or drop-offs of students from passenger vehicles on the streets immediately adjacent to the subject property (i.e., 42nd, Van Ness, Warren Street, or Nebraska Avenue). The Applicant will ensure that caregivers will not park on those neighborhood streets during drop-off and pick-up to wait or walk their student(s) to or from the subject property.
5. The Applicant shall provide three short-term parking spaces in the garage reserved for caregivers to park and walk their student(s) to or from the school building.
6. The Applicant shall implement a transportation management plan substantially as shown in Exhibit 100B in the record (also described in Findings of Fact 46 through 64).
7. The Applicant may offer or authorize the use of the subject property for summer programs outside the regular school year, provided that the program use will meet the same trip thresholds that apply during the school year. Any summer use of the subject property shall follow the same pick-up/drop-off procedures described in the Applicant's operations plan (see Exhibit 100B and Finding of Fact 48).
8. The Applicant shall design the new construction to meet the certification requirements under the LEED v.4 rating system.
9. The Applicant shall conclude all academic activities at the subject property by 6:00 p.m.

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10. The Applicant shall not install or use any artificial lighting of the playgrounds, outdoor recreation facilities, or green space that is directed at any nearby residence, provided that the Applicant may install any code-required lighting (such as path lighting).
11. The Applicant shall ensure that exterior building lights are not directed toward any existing residence.
12. The Applicant's use of loudspeaker (i.e., audio) and bell systems at the subject property shall not be audible in the neighborhood except for standard emergency alarm systems. The Applicant shall not install or use any permanent outdoor audio system of any kind except those required by law or for safety.
13. The Applicant may use a temporary outdoor audio system (apart from a loudspeaker, bell system, or alarm system) at the subject property only during school hours for special school events, and not more than three times per year.
14. The Applicant may hold occasional private, non-school events at the subject property, including conferences and fundraisers, provided that the Applicant shall:
 - (a) Provide ANC 3E at least 30 days' notice before a non-school event; and
 - (b) In the event the attendance at such an event will exceed the Applicant's normal population at the subject property or have an expected impact on traffic greater than that of school operations, the Applicant shall submit an event transportation management plan to ANC 3E at least seven days prior to the event.
15. The Applicant may partner with other public or private schools for use of the subject property, including outdoor playground space, provided that such partner use shall be subject to the same conditions and limitations stated in this Order.
16. The Applicant shall have the following areas of design flexibility in the building permit process:
 - (a) To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, signage, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the buildings;
 - (b) 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;
 - (c) To make minor refinements to exterior details, dimensions, and locations, including belt courses, sills, bases, cornices, railings, balconies, trim, frames, mullions, spandrels, or any other changes to comply with Construction Codes or that are

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otherwise necessary to obtain a final building permit, or are needed to address the structural, mechanical, or operational needs of the building uses or systems;

- (d) To reconfigure the garage layout, provided that no additional relief is required; and
- (e) To make refinements or revisions required by District agencies, including the Historic Preservation Review Board, to receive building permits and Certificates of Occupancy for the subject property.

17. The Applicant shall require students enrolled in Kindergarten through Grade 6, as a condition of their enrollment and as affirmed in the student contract, to utilize a shuttle bus provided by the Applicant to arrive at the subject property during the daily morning drop-off, subject to the following exemptions:

- (a) K-6 students who arrive at the subject property in a vehicle with a younger sibling who is concurrently enrolled in the Applicant's pre-K grade levels and is authorized to be transported to campus via vehicle in accordance with the Applicant's transportation management plan (Exhibit 100B).
- (b) K-6 students who arrive at the subject property in a vehicle with a parent or guardian who is employed by the Applicant and is authorized to drive a vehicle to the subject property in accordance with the Applicant's transportation management plan (Exhibit 100B).
- (c) K-6 students who live within walking or biking distance of the subject property and have been authorized as "walkers" by the Applicant and comply with the requirements for walkers as set forth in the Applicant's transportation management plan (Exhibit 100B). For the purposes of this exemption, "walkers" included those students who arrive via bicycle.
- (d) K-6 students who utilize public transportation (e.g., Metrorail and Metrobus) to travel to the subject property and are authorized as "walkers" by the Applicant (to walk the remaining distance to the campus) and comply with the requirements for walkers as set forth in the Applicant's transportation management plan (Exhibit 100B).
- (e) K-6 students who have a documented physical disability or condition such that they would qualify for an accommodation pursuant to the Americans with Disabilities Act (ADA) or DC Human Rights Act which would prevent them from utilizing the shuttle bus, approved each school year by the Applicant. Hearing loss in and of itself shall not constitute an acceptable exemption.

The Applicant shall ensure that failure to comply with this requirement of the student contract will result in progressive consequences up to and including dismissal from school, as specifically enumerated in the student contract and set forth in the Applicant's transportation management plan (Ex. 100B).

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VOTE: 5-0-0 (Frederick L. Hill, Lorna L. John, Carl H. Blake, Chrishaun S. Smith, and Robert E. Miller voting to approve this decision on remand)

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: November 12, 2024

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, BZA APPLICATION NO. 20472 PAGE NO. 30 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

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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.