

MEMORANDUM

TO: ANC 3/4G Commissioners

FROM: Paul Tummonds

DATE: February 23, 2022

SUBJECT: BZA Application No. 20643 – Applicant’s Response to Proposed ANC 3/4G Conditions of BZA Approval

This memo provides the comments of the Maret School and the Episcopal Center for Children (“ECC”) to the proposed conditions of BZA approval that the ANC will be reviewing at the ANC 3/4G Special Public Meeting on February 24, 2022. Maret and ECC are supportive of the vast majority of the proposed conditions and we appreciate the time, energy, and diligence that the ANC has taken in crafting these conditions.

Maret and ECC provide the following comments and propose the following edits to the conditions:

Community Area at Intersection of Rittenhouse Street and Utah Avenue Alleys

In response to requests from the surrounding property owners, Maret has agreed to enhance the landscape buffer between the community area at the intersection of the Rittenhouse Street and Utah Avenue alleys. The purpose of this enhanced landscape buffering is to prevent spectators from watching games on the athletic fields from the community area. Proposed Condition 4.b.xii requires Maret to close the community area when Maret has scheduled home games. Maret believes that the enhanced landscape buffer at this location will prevent spectators from using the community area to watch games, so there is no need to include a condition that requires Maret to close the community area during scheduled home games. Therefore, Maret proposes the following revisions to Condition 4.b.xii:

- xii. Maret shall create a community area at the intersection of the Rittenhouse Street and Utah Avenue alleys that will be open to the public. ~~except when Maret has scheduled home games.~~

Spectators

Maret has noted that it will not provide food to spectators at the property (by not proposing a concession stand or not allowing food trucks to come to the property). Maret is concerned that the language included in Condition 4.b.xiii. is too restrictive and unreasonable because spectators may bring their own snacks and/or drinks. Therefore, Maret proposes the following revisions to Condition 4.b.xiii:

- xiii. Maret shall advise spectators that ~~food and alcohol are~~ **is** not permitted on the field. ~~Food will be permitted on the field only for organized community events such as scheduled block parties or birthday parties.~~

Clarification of Permitted Construction Hours

There appears to be an inconsistency in the permitted construction hours as enumerated in Condition 5.a.iv.C and Condition No. 5.b.i. Maret believes that the hours of permitted construction noted in Condition No. 5.b.i. (“Normal construction hours shall be between 7:00 am and 5:00 pm Monday through Friday, and between 9:00 am and 5:00 pm on Saturday.”) are appropriate. Therefore, Maret proposes the following revisions to Condition 5.a.iv.C:

- (C) Hours: Maret shall specify actions that the General Contractor will take to prohibit construction traffic (including hauling or replacing dumpsters) into or out of the site Monday through ~~Friday Saturday~~ before ~~7~~**8**:00 am or after 5:00 pm, ~~Saturdays before 9:00 am or after 5:00 pm~~, or at any time on Sundays for the duration of construction. Nevertheless, the General Contractor shall be permitted to seek permission from DDOT or DCRA for certain highly limited activities outside of these hours.

Composition of the Proposed Task Force

Maret believes that the duly elected ANC 3/4G Commissioners are best suited to serve as members of the Task Force. Therefore, Maret proposes the following revisions to Condition 5.a.viii.(A):

- viii. Management and Community Relations

- (A) Task Force: Beginning two months before any construction begins and continuing through two months after construction is completed, Maret and/or the General Contractor will meet monthly (or as often as the Task Force determines is necessary, but not more than two times per month) with a Task Force of ~~at least seven and no more than nine neighborhood residents and~~ **three to** five ANC commissioners. ~~The Task Force shall include at least one resident from each of these areas: (i) 28th Street, NW, (ii) Nebraska Avenue, NW, (iii) Utah Avenue, NW, and (iv) Rittenhouse Street, NW. The Task Force shall also include at least one ANC commissioner and at least two other at-large representatives.~~ The Task Force members will be selected by ANC 3/4G, and their names and contact information will be posted on ANC 3/4G’s website (anc3g.org). Maret, the General Contractor, and the Episcopal Children’s Center may be represented at all Task Force meetings as ex-officio members and will report on the status of construction, the upcoming construction schedule, and any problems or concerns that residents have raised.

Dispute Resolution

Maret recognizes the ANC's experience with creating a robust enforcement mechanism for construction conditions related to the expansion of the Ingleside Presbyterian Retirement Community. Maret notes that in the Ingleside case there was a general cap of \$100,000 for fines related to violations of the construction management provisions of the BZA conditions. Since the construction proposed by Maret is significantly less impactful on the surrounding community than that proposed by Ingleside and of a significantly smaller budget and scope, Maret proposes a cap of \$25,000 for fines related to established violations of the construction management provisions of the ANC's proposed conditions of BZA approval. Also, Maret and ECC request that ECC not be subject to any potential fines, as ECC will not be responsible for any construction activity. Therefore, Maret and ECC propose the following edits to Condition 6.A:

- A. Any person claiming that Maret, ~~or Maret's contractors, or ECC has violated~~ **has violated** any of these conditions may submit a complaint to the Task Force. The Task Force will attempt to resolve the dispute informally. The Task Force may impose reasonable fines and/or require performance of the obligations imposed by these conditions. **The total amount of fines will be capped at \$25,000.**

Duration

The proposed conditions should relate to the use of the ECC property for private school athletic fields. In the event that Maret terminates its lease with ECC, these conditions should only apply to another private school user of these athletic fields. Therefore, Maret and ECC propose the following edits to Condition 7.B:

- B. If Maret terminates its lease with ECC or does not renew its lease for the full 50 years, ECC shall assume Maret's obligations under these conditions **so long as the field continues to be used as a private school athletic field.** If the ECC sells the property or transfers the lease to any other entity, the new property owner or lessee shall assume the obligations under these conditions **so long as the field continues to be used as a private school athletic field.**

We appreciate your consideration of these proposed revisions to the conditions of BZA approval in Case No. 20643. Please feel free to contact me if you have any questions or comments.