

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Application of
The Maret School

BZA Case No. 20643

**ANC 3/4G's Response to Friends of the Field's
Motion to Postpone the March 9, 2022 Hearing**

ANC 3/4G (the Commission), a party to this proceeding, takes no position on whether the Board of Zoning Adjustment (BZA) should postpone the scheduled March 9, 2022 hearing. Nevertheless, the Commission is compelled to respond to the Friends of the Field's (Friends) motion because it misstates the facts. Arguments based on those misstatements may not be the basis for granting this motion. Contrary to the Friends' unsupported allegations,

1. The Commission properly provided comments about community concerns on Maret School's (Maret's) November 1, 2021 Statement of the Applicant before it was filed and promptly and transparently shared those comments with residents who would later organize the Friends;
2. Commissioners disclosed all prior connections with any parties, none of which could be construed as reflecting bias;
3. The Commission immediately investigated the Friends' suggestion of intimidation and found that it was completely baseless;
4. The Commission expressly *included* and *did not exclude* a Friends' representative when commissioners met for an on-site walk-through; and

5. The Commission fully and promptly provided the neighborhood with all of the information it had about the application for a public space permit to install a curb cut and driveway to the proposed parking lot.

The Commission has at all times acted ethically, fairly, and transparently.

The Friends' first purported justification for postponement is a "potential agreement with the Applicant." It is true that the Commission has attempted to mediate the disputed issues in this proceeding and has worked with an advisory group of nearby neighbors — including four of six members who are part of the Friends' leadership — to identify areas of possible agreement. This advisory group has met under the Commission's auspices almost weekly since December 16, 2021. In all of these meetings, the Friends members of the advisory group have made clear that they will not compromise on the most substantial issues — (1) the proposed sports field must be limited to only a multipurpose field with no baseball field; (2) Maret may not permit any other youth sports organizations to use the field when Maret is not using it; (3) the storm water management system must be designed for a 50-year storm rather than the 15-year storm that regulations require or the 25-year storm that Maret proposes; and (4) the field should be grass rather than turf. Maret has made equally clear that it cannot accept these conditions. While the Commission has made headway in resolving some aspects of this case with the parties, they are at an impasse on several basic premises of the application. A complete settlement between the Friends and Maret is not possible, and a hearing

before the Board will be required to decide these issues. There is no foreseeable potential settlement that would obviate the need for a hearing.

Friends also justify the request for a postponement based on a pending ethics complaint against the Commission. The allegations in that complaint — which Friends refuse to provide to the Commission¹ — are completely false and without merit. The Commission has gone to extraordinary lengths to engage with the community and particularly with members of the Friends. The Commission has met or exceeded all of its ethical responsibilities. Each of the Friends complaints is specious.

First, the Commission is an advisory — not an adjudicatory — body. Constituents routinely come to us before submitting applications to District agencies to get the Commission’s perspective. It is our job to help identify community concerns and advise applicants of pitfalls that they would be well advised to avoid. Similarly, applicants — like Maret — typically work with permitting agencies before submitting their applications in order to resolve concerns before the application is filed.

Maret and the Commission followed this long-established practice. The Commission invited Maret to present its preliminary plans at a public meeting on September 27, 2021.² Most of this two-hour discussion was devoted to community

¹ The Friends have refused to give the Commission a copy of the complaint that they say they filed with the Board of Ethics and Accountability (BEGA), stating on February 18, 2022, that they have “reached out to [BEGA] to inquire as to the proper process now that the Complaint has been filed.” The only description of the alleged unethical conduct is the cryptic summary in Friends’ Motion.

² See the minutes and video of the September 27, 2021 meeting.

feedback on the proposal, and a number of concerns were raised. In late October, Maret asked the Commission for comments on its draft Statement of the Applicant for the BZA filing. On October 24, 2021, Commissioners Higgins and Speck highlighted a number of concerns that had been raised by residents and commissioners that Maret would be well-advised to address — e.g., stormwater management, the size and location of the parking lot, the transportation management plan, noise mitigation, the number of spectators, players, and coaches, the extent and hours of field use, leasing the field to youth sports organizations, the extent and terms of neighborhood use of the field, and the height of the netting and scoreboard.³ On November 1, 2021, at a meeting with the nearby neighbors, Commissioner Speck reported on this review of Maret’s draft and offered to share this review with the neighbors — including one of the Friends’ organizers, David Patton — which he subsequently did on November 2, 2021. As Mr. Patton acknowledged, Commissioner Speck invited him to share it with others. The Commission performed its advisory role and immediately shared its comments with members of the Friends. The Commission’s actions were proper in every respect.

Second, none of the commissioners has any conflict of interest. We have fully disclosed any connections with any parties that might be construed as creating a bias. When on January 13, 2022, the Friends sent a letter via email asking the Commission to “declare actions or associations, past or present, that may reflect bias in considering

³ Commissioners Higgins’ and Speck’s complete comments as provided to Maret and the neighbors are posted on the Commission’s website.

Maret's proposal," the Commission responded the next day with statements from each commissioner and posted this response on its website. Commissioner Speck stated that

25 years ago our now grown daughter graduated from Maret. I've had no association with Maret since then, and there is no reasonable basis for construing a bias or preference with respect to Maret's proposal. Neither I nor anyone in my family has anything to gain or lose — financial or otherwise — from Maret's proposal.

The commissioners fully disclosed all facts related to any possible association with Maret, no matter how remote. No commissioner had any contacts with Maret that could be reasonably construed as reflecting bias in consideration of Maret's proposal.

Third, the Commission acted swiftly to intervene and investigate the allegations of "intimidation tactics." The investigation determined that they were unfounded and that any misunderstanding had been fully resolved. A couple residing immediately next to the Episcopal Center for Children (ECC) sought to close the alley that provided access to ECC's property. Their counsel and Maret's counsel engaged in conversations and emails over the summer and fall of 2021. Although Maret was aware in October 2021, that these neighbors had signed a letter raising concerns about Maret's plan to develop a sports field at the ECC site, Maret and the parties had continued to talk with them about the alley.

However, at the Commission's January 10, 2022 public meeting on the sports field proposal, this couple shared with the Commission that they had heard the week before that because they had signed the initial Friends' letter posing questions and seeking data about Maret's use of the sports field, Maret was going to "outright oppose" their proposal

on the alley. The neighbor expressed “confusion” about Maret’s position. Maret Head of School Marjo Talbott responded at the Commission meeting that she was surprised to learn of such alleged impropriety and asserted that Maret was open to speaking with anyone concerned about the project regardless of their affiliation. She suggested meeting with the couple to resolve the matter.

On January 19, 2022, the Friends’ counsel characterized Maret’s actions with respect to the neighbors as “intimidation” and asked the Commission to intervene and restrain Maret from such behavior. That same day, Commissioner Higgins emailed Maret asking them to provide a complete description of its interactions with the neighbors. On January 20, 2022, Maret replied with a detailed chronology of discussions and unequivocally refuted the assertion that they had ever suggested opposition to the alley plan. Maret further reported that discussions had continued in a cordial manner. In fact, when the couple reached out to Maret to visit their home, Maret accepted and met with the couple on November 2, 2021. Counsels for both parties continued contact and scheduled a meeting for January 10, 2022. While the neighbors’ counsel cancelled that meeting at the neighbor’s request, all parties met again on January 13, 2022, and subsequently reached agreement on the alley closure.

On January 20, 2022, Commissioner Higgins also contacted the neighbors, his constituents, and gave them a copy of the Friends’ counsel’s January 19, 2022 letter to the Commission. The neighbors responded that they “had not seen [the Friends’ letter] previously and, as you note, it was not directly sent on our behalf.” They further stated

that the Friends attorney was not representing them in the alley discussions at all. The neighbors concluded, “We are pleased and appreciative” that further discussions led to a resolution of the alley matter. In their response to the ANC the neighbors made no reference to any past or continuing “intimidation” by Maret.

At most there was a misunderstanding that was promptly addressed and resolved. There certainly was not the exercising of any intimidation tactics by Maret, as suggested by the Friends’ attorney. On January 22, 2022, the Commission emailed the Friends’ counsel, noting that the ANC had “investigated the facts of the events described in your letter referencing the ECC neighbors,” and that “we have contacted both the neighbors and Maret and have concluded that no further action by the ANC is warranted.” As the communications between the ANC, Maret, and the neighbors attest, the Friends’ counsels’ January 19, 2022 letter to the ANC: (1) was written without consulting the affected neighbors; (2) was not directly sent on the neighbors’ behalf, and (3) was not generated by the attorney actually representing the neighbors. The Commission’s actions in response to the Friends’ allegation of intimidation were swift, thorough, and appropriate.

Fourth, the Commission *included* and *did not* exclude the Friends from an on-site walk-through of the ECC field. At the Commission’s January 10, 2022 public meeting, several commissioners expressed an interest in walking the field to better understand Maret’s proposal after it had made modifications. We arranged for that walk at 9:00 am on January 13, 2022. All seven commissioners participated, along with an ECC Board

member, Maret's Assistant Head of School, and Jon Axelrod, a member of the advisory group to the Commission *and a member of the Friends*. Thus, it is completely inaccurate to state that the Commission excluded Friends from participating in this walk-through.

Fifth, the Commission conveyed to the neighborhood all of the information it had about the ECC/Maret application for a public space permit for a curb cut that would provide access to the proposed parking lot. The Commission first learned of this application on January 22, 2022, from the Friends' counsel who noted that it had been included on a tentative agenda for the Public Space Committee's January 27, 2022 meeting. Upon learning of this, the Commission initiated an investigation because it was unaware of this application. The Commission received no notification of the curb cut permit application from the Public Space Committee (which, regrettably, is a common omission). Maret had indicated in a December 15, 2021 public update to its proposal that it expected to need a review of the curb cut application in February, 2022. Our investigation found that, unbeknownst to the Commission, the original application had been submitted to the Public Space Committee on October 29, 2021, but Maret subsequently modified it and asked the Public Space Committee to defer the hearing until February. The posting on the tentative agenda for the January 27, 2022 Public Space Committee meeting was in error. On January 23, 2022, Commissioner Speck advised the Friends' counsel that

Maret has not yet submitted its modified drawings and plans to DDOT. I contacted Maret and asked that they promptly notify the ANC of any new filings or notices from the Public Space Committee related to this

application. I will pass on any updates I receive to you. If Maret submits the required materials for review in time for the ANC's February 14, 2022 meeting, we will consider it then. The next Public Space Committee meeting is on February 24, 2022.

The Commission provided Friends with the modified drawings as soon as they became available to the Commission and were posted on DDOT's TOPS database. The Commission then published its draft agenda for its February 14, 2022 public meeting on February 6, 2022, including notice that it would discuss and possibly vote on the curb cut application. The discussion and vote took place at the February 14, 2022 Commission public meeting,⁴ and this application is on the Public Space Committee's February 24, 2022 final agenda. The Commission fully and in a timely manor apprised the Friends and the neighborhood of all the information it had about this application and the Commission's consideration of it.

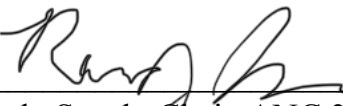
Conclusion

The Commission takes no position on whether the BZA should postpone the long-scheduled hearing. However, it is important to highlight that two of the Friends' bases for its motion are not supported by the facts. First, the parties are at an impasse on key issues in this proceeding, and there is no likelihood of any resolution of those issues without a hearing. Second, the Friends' complaint to BEGA has no merit whatsoever and should be disregarded as a purported basis for deferring the hearing. If the BZA decides to defer the

⁴ See the February 14, 2022 meeting video.

hearing, the Commission requests that it clearly explain the basis for its decision, particularly with regard to the spurious allegations of unethical conduct.

Submitted on February 21, 2022 on behalf of the Commission by



Randy Speck, Chair, ANC 3/4G
202-669-3246
3G03@anc.dc.gov

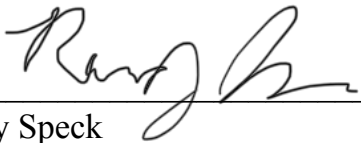
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bzasubmissions@dc.gov**

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CERTIFICATE OF SERVICE

I certify that on February 22, 2022, I sent a copy of “ANC 3/4G’s Response to Friends of the Field’s Motion to Postpone the March 9, 2022 Hearing” to counsel for the Applicant, Paul Tummonds, via electronic mail at ptummonds@goulstonstorrs.com, to counsel for Friends of the Field, Ed Donahue, via electronic mail at edonohue@DTM.law, and to the Office of Planning, via electronic email to Jennifer.steingasser@dc.gov.



Randy Speck
Chair, ANC 3/4G
2940 Northampton Street, NW
Washington, DC 20015
202-229-3246
3G03@anc.dc.gov