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April 4, 2022

Chairman Hill
D.C. Board of Zoning Adjustment
441 4th Street, N.W., Suite 210
Washington, D.C. 20001

Re: Maret/BZA Application #20643
Post Hearing Submission

Chairman Hill,

On behalf of Friends of the Field (the "Friends"), and in response to directions from the Board dated March 28, 2022, we are submitting the attached Opposition to ANC 3 4G's Motion to Strike Portions of the Response to Applicant's Post-Hearing Submission, which itself has an attachment (Exhibit 1). Copies of this filing are being sent to all parties.

We appreciate the Board's consideration of these items.

Sincerely,

Edward L. Donohue
for Friends of the Field

Enclosures

D.C. Board of Zoning Adjustment
441 4th Street N.W., Suite 200 South
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Friends of the Field	)	
	)	
Party in Opposition,	)	
	)	
v.	)	BZA Case No. 20643
	)	
The Maret School	)	
	)	
Applicant.	)	

OPPOSITION TO ANC 3/4G's MOTION TO STRIKE PORTIONS OF THE RESPONSE TO APPLICANT'S POST-HEARING SUBMISSION

Friends of the Field ("Friends" or "FoF") respectfully opposes the motion of ANC 3/4G to strike six (6) pages of Friends' Response to Applicant's Post-Hearing Submission (BZA Ex. 285). The ANC argues that the Board should strike this content because "[n]one of [Friends'] claims in this section in any way respond to the Applicant's March 16, 2022 post hearing submission."

Friends' Response replies directly to the Applicant's Post-Hearing Submission, BZA Ex. 282, consistent with the order of the Board, BZA Ex. 280. On the first page of its Post-Hearing Submission, the Applicant incorporates portions of its preliminary application (BZA Ex. 17) and its Response to Motion to Postpone (BZA Ex. 203). Friends' Response to Applicant's Post-Hearing Submission responds to matters that are discussed in both. In the six pages of its Post-Hearing Submission devoted to accessory use, the Applicant suggests that the OAG failed to take a "collaborative posture" with the ANC and Applicant's counsel, and indicates that the ANC's recommendation in this case is entitled to "great weight." The Applicant's Post-Hearing Submission also suggests that the opinion of the "elected ANC" is entitled to greater weight than is the Applicant's adherence to the Zoning Regulation itself. Friends of the Field is entitled to respond to all of this.

We do not believe that the ANC's opinion is entitled to great weight in this matter, because of the Zoning Regulations and ANC 3/4G's bias toward and preferential treatment of the Applicant. Additionally, Friends is entitled to reply to the section of the Applicant's Post-Hearing Submission that addresses the Memorandum of Understanding and the ANC's official action to adopt the MOU (BZA Ex. 282E). Friends' submission was entered into the record following the March 9, 2022 hearing and entered in accordance with the Board's Order.

The facts laid out in Friends' Response are true. These are addressed in Exhibit 1. Although the ANC's motion disputes these facts as if the ANC is learning of them for the first time, all are a matter of public record. See, e.g., BZA Exhibits 188, 208. There is no basis on which the Board can, or should, strike any portion of Friends' Response from the record.

The ANC's motion is simply a distraction from the primary issue in the matter and the focus of both the Applicant's Post-Hearing Submission and Friends' Response, namely whether the proposed Offsite Athletics Facility would be a permissible private school use in an R-1-B zone. That question hinges on the distinction between principal and accessory use of the 5-acre field (the "Field") located at the Episcopal Center for Children ("ECC").

Chairman Speck and Commissioner John Higgins provided detailed comments and posed specific, direct questions to the Applicant on this issue in October 2021, in their mark-up of the Applicant's draft application. Their comments included:

> **It is a legitimate question whether Maret's use of the ECC property is properly an "accessory" use**. The first examples given in the regulations are dormitories and cafeterias (as well as sports). This context suggests that it could apply only for facilities which are close by or adjacent to the base educational school – e.g., dorms and cafeterias are not three miles from the base school. **The application should address how the ECC property qualifies as an "accessory" since it is significantly distant from Maret's home campus**. A DC boarding school or day school might access a neighboring open lot, or even buy some neighboring houses and tear them down for a dormitory or a cafeteria or other "accessory" purpose. A recreational open space for recess is part of the school day educational routine. But **the distance from Maret to ECC raises questions about the validity of the exception Maret is seeking. The applications should explain how the ECC property qualifies as an "accessory" use.** (Emphasis added).

These comments, which the ANC now claims were made on behalf of the public,[1] prompted the Applicant to pursue a different strategy - the novel legal position that the proposed Offsite Athletics Facility would be a ***principal*** private school use.

From the moment Applicant adopted this strategy, **the commissioners never raised the issue of accessory use again**. Not even once. Although the commissioners' "careful questioning of Maret's initial plans" went unanswered, on this issue the commissioners went silent. Worse still, within a few months, the ANC adopted Maret School's novel and unfounded legal assertion as its own. The ANC states in its Memorandum of Understanding that Maret's application before this

[1] Chairman Speck also argues that he "promptly gave the markup of Maret's draft application to one of the FoF organizers," however at an ANC special meeting held on February 1, 2022, the Chairman stated to a member of the public: "I don't know how you got that mark-up of the application, which we gave to Maret and not to anyone else." See, You Tube recording of ANC 3/4G February 1, 2022 Public meeting: https://www.youtube.com/watch?v=zzaq9zUGAfE at time stamp 2:04:00.

Board is a request for "special exception relief **for a principal private school use**." Exhibit 282E (emphasis added). As the ANC acknowledges on its public website, this language, which the ANC characterizes as a "formality," was a change from the previously approved conditions, and was unilaterally added to the MOU by the ANC. Friends is entitled to respond to discrepancies between the final signed MOU and the processes leading to its drafting, in which Friends participated on behalf of hundreds of residents of ANC 3/4G. There is no basis for striking Friends' response.

Although the ANC asserts that it marked up Maret's draft application for the benefit of the public, as the Applicant revealed in its Post-Hearing Submission, neither Chair Speck nor any of the other commissioners reached out to the Office of the Attorney General (OAG) to inquire about their concerns that the proposed development was an impermissible accessory use. Commissioner Speck asserts that he "raised multiple concerns about Maret's proposal, and Maret made changes to its plans to address those concerns." But one particular ANC "concern" didn't merit any follow-up by the ANC: the concern that Maret's application address how the ECC property qualifies as an "accessory" use since it is significantly distant from Maret's home campus. Friends of the Field is entitled to respond to Maret's failure to address this concern in its initial application, BZA Ex. 17, which is incorporated into its Post-Hearing Submission.

The ANC's role is "to be their neighborhood's official voice in advising the District government (and Federal agencies) on things that affect their neighborhoods." About ANCs | anc (dc.gov). How and why did the ANC, whose "report represents hundreds of hours' work by all of the Commissioners, who listened to residents, researched the issues, and analyzed all of the facts," go from carefully questioning and raising multiple concerns, to actively failing to seek an answer, to finally adopting wholesale the Applicant's position that it is seeking "special exception relief for a principal private school use"?

The answer is **bias**.

In asking the Board to strike 6 pages of Friends' response, ANC 3/4G once again tries to silence and disenfranchise the public. ANC 3/4G further attempts to single out and diminish the voice of Friends of the Field, which represents more than 270 community members, stating: "[a]lmost all of the FoF members reside in ***only one single member district*** represented by one of the seven Commissioners." (Emphasis added). Significantly, most Friends residents live in the single member district (SMD) in which the proposed development under consideration by the Board would be located. Two-thirds of the neighbors whose homes are located within 200 feet of the Field are aligned with Friends in opposition to the proposal as presented. Friends has the strongest presence where the proposed development would have the greatest impact.

As justification for disregarding views of this significant portion of the community, the ANC asserts that "[s]ix of the Commissioners represent constituents who are not [Friends] members and ***may*** have very different — but equally strongly held — views." (Emphasis added). Significantly, at no point since Maret filed its application for special exceptions, or during any of

the ANC meetings, has even one of these six commissioners (each of whom joined the Motion to Reopen the Record) suggested that his or her constituents disagreed with or had very different — but equally strongly held — views that were not being heard. All constituents represented by these six commissioners also had the right to seek Party status to express any strongly held different views. None did. The ANC was not justified in disregarding the views of the more than 270 community members represented by Friends, or in giving any consideration to ***possible*** (but silent) constituents who ***may*** have very different — but equally strongly held — views to those of Friends, while completely disregarding other constituents of these six commissioners who are not Friends members, were equally silent, but ***may*** have the ***same*** views as Friends about the proposed development. The ANC's opinion is not entitled to great weight.

To demonstrate the strength of community opposition to the Maret development proposal, Friends mapped the household locations of residents who oppose the development proposal and the home addresses of individuals who wrote letters of support for the Maret development. Along the key metric of proximity to the Field, within a one-quarter mile radius of the ECC field, Friends counts 122 supporting households, as compared to 16 supporting the Maret proposal. The bulk of Maret's supporters (as recorded in Exhibits in the case log) are from much farther away, including locations remote from the Field, and locations well outside ANC 3/4G.

ANC 3/4G effectively disenfranchised its own residents, the nearest neighbors, specifically Friends, and placed the interests of silent residents (whose unexpressed opinions they had no way of knowing), distant residents and self-interested groups, many of whom do not reside within the ANC's jurisdiction, over the concerns and needs of residents who elected them. Their opinion is not entitled to great weight.

ANC 3/4G suggests that Friends "seeks to disenfranchise the rest of our ANC in order to exclusively serve the interests of a group of vocal immediate neighbors." No constituent of ANC 3/4G was "disenfranchised" by Friends. If that were the case, the six commissioners who, according to themselves, devoted "hundreds of hours work by all of the Commissioners, who listened to residents, researched the issues, and analyzed all of the facts," would certainly have mentioned it. This claim demonstrates the commissioners' misunderstanding of representation of the community and supports the conclusion that their recommendation is not entitled to great weight. Friends are not elected representatives of the community; the ANC commissioners are. Our advocacy for the most affected neighbors' views does not "disenfranchise" other neighbors in any way. It is the legal right of every member of the community, including the 270+ comprising Friends, to make their views known and to advocate for those views. ANC 3/4G clearly has no idea what their role is. The ANC's role should be "to be their neighborhood's official voice in advising the District government (and Federal agencies) on things that affect their neighborhoods." ANC 3/4G has failed completely in this role and their opinion is not entitled to great weight.

Friends respectfully requests that the Board DENY the motion by ANC 3/4G to delete six (6) pages of Friends' Response from the record in this case.

EXHIBIT 1

1. The Claim: There were no material omissions in the ANC's recommendation of approval of the Episcopal Center for Children's (ECC's) historic landmark designation.

   The Truth: The February 22, 2021, ANC 3/4G meeting agenda and the meeting minutes are matters of public record. We've seen the video and urge the Board to watch it as well. Neither the Maret lease nor Maret's proposed development were mentioned in the agenda provided to the public, although Chairman Speck now admits that they were a topic of the meeting. The Maret lease and proposed development were also missing from the meeting minutes provided to the public. In fact, the public could not have known from the agenda or minutes that the February 22, 2021, ANC meeting was about something other than the ECC seeking historic preservation "for its campus," which is comprised of more than seven (7) acres. The meeting's published agenda gave no hint that the discussion was about protecting a 5-acre portion of the campus from historic designation so it could be developed by Maret. Neither the agenda nor the minutes reference Maret, the lease, or the proposed development. Those omissions were material. See, https://www.youtube.com/watch?v=v-DRGQa6Wi4 at time stamp 54:53.

2. The Claim: Commissioner Speck fully disclosed his decades-ago relationship with Maret.

   The Truth: There is a difference between honesty and transparency, on the one hand, and getting caught concealing facts, on the other. While taking the lead on the Maret proposed development (which was not in the Chair's single member district), beginning months before the Maret School filed its application, Chairman Speck failed to disclose his status as a Maret alumna parent. The issue is not that Chairman Speck's daughter attended the Maret School. It is that Chairman Speck concealed this fact while at the same time taking the lead in advancing Maret's application for special exceptions. This deprived the public of the ability to consider and evaluate the information fully and fairly. Chair Speck only revealed his status as a Maret alumna parent after Friends issued a position statement on January 13, 2022, calling on the ANC, in its review, to "mandate that all involved parties declare any actions or associations present or past that could reasonably be construed as instances of bias or preference with respect to the Maret proposal."

   Chairman Speck has alternately claimed full disclosure and diminished his failure to disclose by arguing his Maret connection is a "decades-old connection." There is no sell-by date on transparency. If Chairman Speck's Maret connection were unimportant, he would have revealed it to the public.

3. The Claims: Each Commissioner has disclaimed any conflict that would require recusal or any other restriction on participation in this case. Friends offers no facts suggesting that any Commissioner has a financial or other materially recognizable interest in the outcome.

The Truth: The Chairman is raising a straw man against which to argue. Friends has never alleged or suggested that Chair Speck or any ANC commissioner had a financial conflict of interest. The ANC's bias in favor of, and preferential treatment of, the Maret School are a matter of record.

4. The Claim: The Commission followed the BZA's instructions in working with Maret when it was preparing its application.

   The Truth: Applicants for special exceptions are entitled to use the BZA's January 12, 2017, Power Point Tutorial on "Burden of Proof/Special Exception." There is no concern if any applicant utilizes the BZA's Tutorial's guidance. There is no instruction in the tutorial that encourages ANC commissioners to engage in the highly irregular pre-application dialogue that occurred in this case. Notably, this dialogue occurred while Chair Speck was still concealing his Maret connection from the public. There is also no instruction in the tutorial that discourages ANC commissioners from pursuing to resolution the issues they do raise with applicants.

5. The Claim: The Commission attempted to find compromises that would be acceptable to Maret and the community while Friends who were members of the Commission's advisory group refused to work with the non-Friends members of that group, who dissented from the Friends' proposals on the disputed issues.

   The Truth: All six citizens who participated in the ANC-led advisory group met every Wednesday evening for months, and worked cooperatively and in good faith. Friends, not the ANC, created the proposed construction agreement and proposed conditions that were presented to the advisory group. The six participants agreed to all terms of the proposed construction agreement. As to the conditions, two citizens of the six favored the construction of the proposal as presented by Maret.

6. The Claim: The Commissioners made final changes to be considered at their regular meeting on February 28, 2022. At that point, all the parties' positions were well known, and no further input was required.

   The Truth: as set forth on Pages 9-10 of the Friends' Response, which the ANC asks the Board to strike from the record, the ANC made material changes to the proposed conditions that were not discussed with the community and were detrimental to the closest neighbors who will be most directly and negatively affected by the proposed development.