

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



Application No. 20472 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, NW (Square 1727, Lots 4, 5).

HEARING DATE: October 27, 2021

DECISION DATE: November 3, 2021

DECISION AND ORDER

This self-certified application was filed February 17, 2021 on behalf of The River School (“Applicant”), which was authorized by the owner of the property that is the subject of the application.¹ Following a public hearing, the Board voted to approve the application subject to conditions.

Preliminary Matters

Notice of Application and Notice of Hearing. In accordance with Subtitle Y §§ 400.4 and 402.1, the Office of Zoning provided notice of the application and of the public hearing by letters, dated March 15, 2021, to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), Advisory Neighborhood Commission (“ANC”) 3E, the ANC in which the subject property is located, and Single Member District ANC 3E05, the Department of Parks and Recreation, the Office of State Superintendent of Education, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 3 as well as the Chairman of the Council and three at-large members of the D.C. Council, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on May 14, 2021 (68 DCR 5239) as well as through the calendar on the Office of Zoning website.²

Parties. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 3E were automatically parties in this proceeding. At a public meeting on May 19, 2021, the Board granted a request for party status

¹ 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.)

² The public hearing was originally scheduled for July 21, 2021 and was rescheduled administratively to October 13, 2021. (Exhibit 35.) The hearing was postponed again, to October 27, 2021, at the Applicant’s request. (Exhibit 38.)

in opposition to the application submitted by the Tenleytown Preservation Association, whose members own residences near the subject property.

Applicant's Case. The application requested special exceptions to allow the use of the subject property as a private school and a child development center, with an accessory clinic use, and to reduce the number of required vehicle parking spaces. The Applicant presented evidence and testimony in support of the application from Nancy Mellon, the founder and director of the private school; Rachel Moore Weller, vice president of the Applicant's board of trustees; Patrick Burkhart, an expert in architecture; Craig McClure, an expert in landscape architecture; Jami Milanovich, an expert in transportation planning and engineering; Will Mellon, a clinician; and Grace Kowal, a former student of the private school. After filing the application, the Applicant modified the plans for the subject property, decreasing the size of a planned new building.

OP Report. By report dated October 15, 2021, the Office of Planning recommended approval of the application subject to the conditions proffered by the Applicant with any modifications recommended by DDOT. (Exhibit 65.)

DDOT Report. By memorandum dated October 18, 2021, the District Department of Transportation indicated no objection to approval of the application subject to a number of conditions intended to avoid the creation of adverse traffic impacts. (Exhibit 69A.)

ANC Report. ANC 3E submitted a resolution in opposition to the application that the ANC adopted at a public meeting on October 14, 2021 with a quorum present. (Exhibit 83.)

Party in opposition. The Tenleytown Preservation Association argued that the proposed development was too large for the site, would result in the removal of significant greenspace, and would endanger the safety of residents by adding the planned use to "an already heavily-trafficked residential neighborhood." The party in opposition contended that approval of the application would result in adverse impacts related to traffic, parking, noise, and the construction of "imposing and unsightly, non-residential buildings." (Exhibit 32.) The party in opposition presented testimony at the public hearing from Joe Mehra, an expert in traffic, and from members of the association, Anne Chrun, Alexandra Gianinno, and Clifford Bond.

Persons in support. The Board received letters and heard testimony from persons in support of the application who generally described the need for the Applicant's private school program and asserted that approval of the requested zoning relief would not result in adverse impacts, including with respect to traffic, especially considering that the proposed private school use would have fewer impacts on the surrounding neighborhood than would other types of development permitted at the subject property. The persons in support commented favorably on aspects of the application including the planned location of new buildings, the landscaping plan, and the reuse of a former mansion consistent with its historic character. The persons in support also described the Applicant's drop-off/pick-up procedures as working well at its current location, and asserted that the planned procedures would avoid creating any objectionable conditions at the subject property, where public transportation options will also be available.

Persons in opposition. The Board received letters and heard testimony from persons in opposition to the application who generally argued that approval of the application would create adverse impacts especially with respect to noise, traffic, pedestrian safety, and parking in light of the prevalence of other educational uses in the vicinity whose operations already created traffic congestion and unsafe conditions for pedestrians and the large residential and mixed-use projects currently under development nearby. According to the persons in opposition, the proposed private school use would be too large and intensive for the site and would entail the construction of large institutional structures inconsistent with the character of the residential area. The persons in opposition challenged the likely efficacy of the Applicant's proposed transportation management measures and objected to the Applicant's plans to provide a clinic at the site.

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, NW (Square 1727, Lots 4 and 5).
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 northern portion of Square 1727 contains detached dwellings fronting on Nebraska Avenue, Warren Street, or 42nd Street.
4. The subject property has a lot area of 98,935 square feet (2.27 acres).
5. The subject property is improved with a two-story detached building formerly used as a principal dwelling, which was built in 1924 with later additions, creating an L-shaped configuration. The former dwelling, known as Under Oak or the "Historic Building," is located in the northwestern portion of the subject property.
6. The subject property contains several accessory structures, including a small garage, a guest or gate house (built in the 1970s), a pool house (built along with a pool in 1958), and a garden shed. The property also contains a cupola placed on a brick base.³
7. The remainder of the site is open space with numerous trees, including special trees and five heritage trees.
8. The Applicant proposed to redevelop the site for use as a private school and a child development center, with an accessory clinic, with a maximum enrollment of 350 students from birth through sixth grade and 90 employees.⁴ To accommodate the proposed uses,

³ The Applicant stated that the cupola was originally installed at the Mount Alto Veterans Administration Hospital and was moved to the subject property when the hospital was demolished in the 1960s.

⁴ 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.

the Applicant planned to renovate the Historic Building and some of the accessory structures and to construct a new building.⁵

9. The private school use will serve children from pre-kindergarten (age three) through the sixth grade. The Applicant anticipated that the private school will enroll approximately 252 children.
10. The planned child development center will occupy approximately 20,058 square feet of the gross floor area at the site. The Applicant anticipated that the child development center will enroll approximately 98 children up to three years of age.
11. Upon completion of the new construction, the total gross floor area at the subject property will be 61,281 square feet, comprising 12,603 square feet of existing development and 48,678 square feet, as well as below-grade space, in the new building.
12. The planned construction will result in a lot occupancy of 31.39 percent at the subject property, where a maximum of 40 percent is permitted. (Subtitle D § 304.1.) The floor area ratio will be 0.65. More than 58 percent of the subject property will constitute pervious surface, where a minimum of 50 percent is required. (Subtitle D § 308.1.)
13. Although the Historic Building is not a designated landmark and is not located in a historic district, the Applicant considered the building's historic character in its plans for the new use of the subject property. The Applicant consulted with the staff of the Historic Preservation Office, who commented on the location, scale, and massing of any new construction at the subject property. The Applicant participated in a courtesy review of the plans by the Historic Preservation Review Board ("HPRB") in light of the historic merit of the site. At a public meeting on February 25, 2001, HPRB expressed "overall support" for the proposed private school use and provided comments on aspects of the proposal. In response to HPRB concerns about the overall size and massing of new construction and its relationship to the Historic Building, the Applicant revised plans to reduce the size of the planned new building, to change some architectural design elements, and to retain the existing accessory garage structure in the northern portion of the site. In a subsequent courtesy review on July 1, 2021, HPRB commented favorably on the plan revisions, as better suited to the site and the neighborhood, and on improvements to the Applicant's landscape plan.
14. The Applicant will renovate the interior of the Historic Building, keeping the exterior intact, to provide administrative and clinic offices as well as space for some of the youngest students.
15. An existing wooden garage, located at the northern edge of the site, will be retained.

⁵ For zoning purposes, the new construction will be considered one building because the two pavilions will be connected below-grade by a level of programmed space and a parking garage. (Exhibit 46A1.)

16. Outdoor play areas will be provided in the center of the site to the west and south of the Historic Building. The Applicant will not utilize an off-site play area for the child development center.
17. The Applicant will build a new building configured as two “pavilions” for the private school use, both located along Nebraska Avenue. The pavilions will be set back 10 feet from Nebraska Avenue to accommodate an existing building restriction line.
18. The North Pavilion will have two stories and a gabled roof, and will contain classroom space.
19. The South Pavilion will be located at the south end of the site at the intersection of Nebraska Avenue and Van Ness Street. The building will be three stories and 40 feet in height. The South Pavilion will provide space for classrooms, student gatherings, and school offices. Its below-grade level will provide space for a gym, drama and music rooms, and a theatre. A two-story wing extending to the west along 42nd Street will contain additional classroom space.
20. The pool house will be relocated to the west of the subject property south of the Historic Building.
21. The Applicant will use the existing wooden garage, guest/gate house, and pool house as accessory space for the maintenance, security, and storage needs of the private school use.
22. The Applicant will construct a below-grade parking garage in the southeast portion of the subject property under both the North and South Pavilions. The vehicle entrance to and egress from the garage will be provided via a ramp in the northeastern portion of the site.
23. The parking ramp will be enclosed and covered to minimize its potential visual and noise impacts. Views of the parking ramp will also be mitigated by the retention of the existing two-story gate house in the northeastern corner of the subject property as well as the relocation of the cupola to a new location near the ramp enclosure.
24. The subject property presently has curb cuts near the north lot line on both Nebraska Avenue and on 42nd Street. The primary entrance, on Nebraska Avenue, leads to a circular driveway adjacent to the Historic Building and continues west to the 42nd Street curb cut.
25. The Applicant will close the curb cut on 42nd Street.
26. Vehicular traffic will enter the subject property via a curb cut on Nebraska Avenue in the same location as the existing curb cut.⁶ The entrance driveway will be 20 feet wide, as

⁶ Approval of a driveway for zoning purposes does not constitute permission for a curb cut in public space. An applicant for a driveway with a curb cut in public space has the responsibility to obtain all other necessary approvals from DDOT. (Subtitle C § 711.1.)

required to accommodate emergency vehicles, and will be limited to right-in maneuvers from the southbound lane of Nebraska Avenue.⁷

27. The Applicant proposed to create a new curb cut, 10 feet wide, further to the south on Nebraska Avenue to provide an exit for vehicular traffic. The south curb cut will allow only right-turn egress onto southbound Nebraska Avenue.
28. The Applicant will encourage compliance with the prohibition against left turns into or from the subject property by stationing a traffic control officer at each driveway during pick-up and drop-off (“PUDO”) operations. The Applicant will also pursue appropriate measures with DDOT such as the installation of signs and potentially angling the curb cuts to discourage left turns.
29. A driveway, known as the “loop road,” will extend across the northern portion of the subject property to provide vehicular access to a one-way PUDO area and then to the south curb cut. The driveway will extend from the north curb cut, past the garage ramp and the existing circular driveway adjacent to the Historic Building, to a new portion of the driveway leading to the exit at the south curb cut.
30. A portion of the driveway near the north curb cut will be paved with a vegetated permeable pavement. That area will be drivable to provide additional width for emergency vehicles but is not intended for use on a regular basis. The permeable pavement will not be part of the Applicant’s regular PUDO operations but will provide overflow space to accommodate more vehicles in the PUDO queue when necessary to avoid using Nebraska Avenue for PUDO operations.
31. 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).
32. The Applicant will provide nine long-term bicycle parking spaces as well as 34 short-term bicycle parking spaces at the subject property. Bicycle storage and shower facilities will be provided in the garage. Short-term bicycle spaces will be provided along the loop road near each of the new pavilions.
33. The Applicant calculated the minimum requirement for vehicle parking spaces for the planned uses as 52 spaces (42 for the private school use and 10 for the child development center use). The calculation was based on the Applicant’s expectations of 63 employees for the private school use and 20,058 square feet of space devoted to the child development center use. The parking calculation accounted for the 10 clinicians expected to work in the

⁷ Emergency vehicles will enter and exit the site via the north curb cut. All other vehicular traffic will enter through the north curb cut and exit via the south curb cut.

accessory clinic by allocating seven clinicians to the private school use and three to the child development center use.

34. The Applicant will provide 47 zoning-compliant spaces at the subject property: 43 in the garage and four surface spaces at the north of the site near the Historic Building. (Exhibit 51B1.)
35. The Applicant will provide a total of 65 on-site vehicle parking spaces. In addition to the 47 zoning-compliant spaces, the subject property will contain 18 vehicle parking spaces that were not counted toward the minimum requirement because they will not comply with Subtitle C § 711.3 (all required parking spaces, except those in an automated parking garage, must be accessible at all times from a driveway accessing an improved street or alley). The 18 additional parking spaces will be located on the loop road (six spaces available except during pick-up/drop-off periods) and in the garage, which will provide 12 tandem parking spaces for use by the Applicant's employees.
36. Three parking spaces in the garage will be designated for short-term (15 minutes) use.
37. Vehicles entering the subject property for pick-up/drop-off operations will enter through the north curb cut by right turn from Nebraska Avenue, pass the garage ramp, and proceed to the designated PUDO site on the loop road between the Historic Building and the new pavilions. Vehicles will exit the subject property by making a right turn onto Nebraska Avenue from the south curb cut.
38. The loop road will accommodate a queue of 22 vehicles without blocking the entrance to the garage ramp or using the portion of the driveway paved with permeable pavers. The entire driveway through the subject property will be able to accommodate a total of 27 vehicles without blocking the sidewalk or requiring vehicles to queue on Nebraska Avenue.
39. The PUDO area will accommodate pick-up and drop-off activities for as many as 14 vehicles at a time. Vehicles engaged in PUDO activities will line up two abreast, in lanes 10 feet wide, between the Historic Building and the south curb cut near the pavilions. Drivers waiting to pick up or drop off students will queue on the loop road, where the Applicant will assign employees to direct traffic. Drivers will not be permitted to leave their vehicles in the PUDO area.
40. Loading facilities will be provided adjacent to the North Pavilion. The Applicant indicated that the planned loading facilities – one berth and one platform/delivery space – will meet zoning requirements. (Subtitle C § 901.1.)
41. Access to and egress from the loading facilities will be provided via Nebraska Avenue. Trucks will be able to enter and exit the site front-first, with any backing maneuvers occurring within the subject property and not in public space.

42. The Applicant will implement measures through its operations plan to manage the traffic associated with deliveries and trash collection. Provisions will include establishing schedules and specifying that deliveries must be made in box trucks and not tractor trailers. (Exhibit 46A1.)
43. The Applicant will implement a landscaping plan as shown in Exhibits 51B2 and 51B3. Elements of the landscaping plan include the retention of existing trees and planting of new trees especially along Nebraska Avenue and 42nd Street. Additional plantings, including shrubs and ground covers, will visually buffer the subject property from surrounding properties.
44. An existing brick wall between the subject property and residences on the abutting properties to the north will be retained.
45. As shown on the landscaping plan, the Applicant will relocate two heritage trees to other locations on the subject property so as to maximize the distance between the Historic Building and the new construction while also minimizing the construction footprint. One heritage tree will be moved to the south lawn of the Historic Building at the site of the tree that gave the estate its name; the other will be moved to an open area between the Historic Building and the South Pavilion. Three heritage trees, including two near the north lot line, will be preserved in their current locations.
46. 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.)
47. The Applicant devised its TDM plan 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. The Applicant’s general strategies for the TDM plan are the following:
 - 1) The Applicant will designate a TDM coordinator who will be responsible for organizing, marketing, and accomplishing the tasks in the TDM plan and who will act as a liaison with DDOT and the community. The TDM coordinator position may be part of the duties assigned to the individual.
 - 2) The Applicant will create a transportation section on its website with up-to-date information regarding all transportation options available to students, parents/guardians, and employees, including but not limited to public transportation (Metrobus and Metrorail), bicycle facilities and amenities (including campus bicycle parking).

- 3) The Applicant will hold quarterly meetings with ANC 3E and ANC 3D to garner feedback on traffic and parking-related issues for the length of the performance monitoring program (discussed below).
- 4) The Applicant will provide a bicycle maintenance facility and bicycle parking in the garage or other easily accessible area for students and employees.
- 5) The Applicant will make showers and lockers available to students and employees who walk, jog, or bike to the subject property.
- 6) The Applicant will provide one 200V electric vehicle charging station in the parking garage.
- 7) The Applicant will incorporate the up-to-date TDM plan into the student contract and will implement the following procedure in case of infractions:
 - 1st infraction: email from the principal
 - 2nd infraction: phone call from the principal
 - 3rd infraction: meeting with the principal
 - 4th infraction: meeting with the head of school
 - 5th infraction: probation from school for up to 10 days
 - 6th infraction: dismissal; revocation of the student contract.
- 8) 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 following exceptions:
 - a) Parents/guardians of prekindergarten and younger students are not required to carpool; and
 - b) On a case-by-case basis, students who demonstrate a hardship based on special transportation needs are not required to carpool, with prior approval.
- 9) The Applicant will provide carpool matching assistance for parents/guardians to increase the average vehicle occupancy (“AVO”) at the subject property. Assistance programs could include:
 - a) Creation of an online, interactive map for parents/guardians to identify families of other enrolled children who live near them and are interested in carpooling and to provide contact information; and
 - b) Registration with and promotion of the Commuter Connections School Pool program to assist parents/guardians in finding other parents/guardians in their neighborhood to form carpools, walking groups, or biking groups.
- 10) The Applicant will actively promote carpooling by providing links to the carpool matching site on its website and by providing fliers, emails, and other informational pieces at least once per semester.

- 11) 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.
- 12) The Applicant will provide transit/alternate commute incentives to encourage students to use non-auto modes of transportation to travel to the subject property. Incentives will include:
 - a) Encouraging District of Columbia students to take advantage of the Kids Ride Free program, which allows students to ride for free on Metrobus, Metrorail, and the DC Circulator.
- 13) The Applicant will provide outreach and education events to stress the importance of using non-auto modes of transportation and to make information more readily available. Outreach and educational events could include:
 - a) Holding a “transportation to school” event at the beginning of each school year, stressing the importance of public transportation, carpooling, biking, etc.;
 - b) Participation in DDOT’s Safe Routes to School program, which encourages students and their parents/guardians to walk and bicycle to school by examining conditions around schools and conducting projects and activities to improve safety and accessibility as well as providing pedestrian and bicycle safety training in classrooms;
 - c) Establishing inter-class and inter-grade competitions with incentives and prizes for the classes that take transit, walk, and bike the most;
 - d) Hosting four Walk to School/Bike to School Days each year; and
 - e) Promoting walking and biking in communications with parents/guardians.
- 14) The Applicant will add bicycle education into the general physical education curriculum.
- 15) The Applicant will provide carpool matching assistance for employees to increase the average vehicle occupancy for the subject property. Assistance programs could include:
 - a) Creation of an online, interactive map for employees to identify other employees who live near them and are interested in carpooling and to provide contact information;
 - b) Registration with Commuter Connections and promotion of the Commuter Connections’ ride-matching service; and
 - c) Distribution of parking passes for the garage first to employees who carpool, then to employees who live more than one mile from the subject property and more than one mile from a Red Line Metrorail station.
- 16) The Applicant will provide transit/alternate commute incentives to encourage employees to use non-auto modes of transportation to the subject property. Incentives will include:

- a) Provision of \$135 monthly SmarTrip cards for employees who take public transportation;
 - b) Allowing employees to set aside \$255 per month in pre-tax funds (or the current amount allowed under federal law) through their paycheck for transit or vanpool expenses;
 - c) Enrollment in Guaranteed Ride Home, which provides employees who regularly take transit, vanpool, carpool, walk, or bike to work with a reliable ride home when an unexpected emergency arises; and
 - d) Provision of \$20 in monthly subsidies (or current amount allowed tax-free under federal law) or bikeshare memberships to employees who bike to the subject property and do not drive or take public transit.
- 17) The Applicant will provide training for employees at the beginning of each academic year to implement and enforce the TDM plan.
48. The Applicant will implement an operations management plan to ensure that pick-up and drop-off procedures do not adversely impact the surrounding neighborhood. (Exhibit 100B.) Components of the operations management plan are:
- 1) The Applicant will establish a clear pick-up/drop-off protocol for parents/guardians as follows:
 - a. Before the beginning of the school year, the Applicant will assign a 15-minute PUDO window to parents/guardians who will be dropping off and picking up students via automobile to ensure that the PUDO area will not exceed capacity (the PUDO windows do not apply to students in after-care);
 - b. Drop-off will occur between 8:00 and 9:00 a.m. Pick-up will occur between 12:00 and 12:30 p.m. for half-day students, between 2:45 and 3:45 p.m. for full-day students, and between 4:00 and 6:00 p.m. for students in the after-school program;
 - c. PUDO traffic will enter the subject property via the north curb cut on Nebraska Avenue and will exit via the south curb cut on Nebraska Avenue.
 - d. The Applicant will not permit PUDO activities on 42nd Street, Van Ness Street, Warren Street, or other neighborhood streets under any circumstances.
 - e. The Applicant will distribute badges to parents/guardians who walk their children to the subject property to identify them as “walkers.” The Applicant 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).
 - f. All parents/guardians who must leave their vehicles to pick up or drop off students during the regular PUDO times must park their vehicles in a designated parking space on the subject property (three spaces in the garage will be

designated for PUDO activities). Parents/guardians using the PUDO lanes must remain in their vehicles and will drop off or pick up their children when they stop in front of the school.

- g. Up to 14 vehicles can load or unload students at a time. The Applicant will provide employees to direct traffic within the PUDO area to ensure that queued vehicles will backfill the loading/unloading area in a safe and efficient manner.
 - h. The Applicant will provide parents/guardians with a tag (the “PUDO pass”) showing students’ names for placement inside a vehicle so as to be visible through the windshield. An employee will radio the names of students back to the school as the vehicles enter the subject property. Staff at the school will shepherd the named students to the awaiting vehicles once they stop. The Applicant may replace this process with an app-based system or other, similar system depending on available technology.
 - i. The Applicant will provide a special tag for display in the windshield of vehicles for students who have a yearlong exemption from mandatory carpooling.
 - j. The Applicant will station employees in the PUDO area to assist students in getting from vehicles into the school in the morning and from the school into the appropriate vehicles in the afternoon.
- 2) The Applicant will utilize two traffic control officers at the access to and egress from the subject property to help manage conflicts between pedestrians and bicyclists and entering and exiting vehicles.
 - 3) The Applicant will require staff to arrive before 8:00 a.m. and prohibit staff departures between 2:45 and 3:45 p.m.
 - 4) The Applicant will implement measures to facilitate loading activities.
 - a. The Applicant will schedule deliveries (except parcel deliveries via UPS, FedEx, Amazon, or similar carrier and mail delivery) and trash/recycling collection so that they do not coincide with PUDO activities.
 - b. The Applicant will notify all vendors that they must use the loading facilities at the subject property for deliveries.
 - c. The Applicant will notify all vendors that deliveries must be made in box trucks (that is, no tractor trailers will be permitted on the subject property).
49. 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.)

50. To assess trip thresholds and on-site queuing elements as part of the monitoring study, the Applicant will:
- 1) 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.
 - 2) Conduct traffic counts when the Applicant's school, D.C. Public Schools, and Congress are in session.
 - 3) Conduct traffic counts during the Fall semester at the driveways to the subject property from 7:30 a.m. to 9:30 a.m. and from 2:30 p.m. to 6:30 p.m. The counts must be done on a typical weekday when no adverse weather impacts travel conditions.
 - 4) Determine the number of trips generated by the Applicant's use of the subject property as follows:
 - a. The "A.M. peak hour" shall be determined by selecting the single highest hourly inbound plus outbound volume (for all driveways combined) between 7:30 a.m. and 9:30 a.m.
 - b. The "P.M. school peak hour" shall be determined by selecting the single highest hourly inbound plus outbound volume (for all driveways combined) between 2:30 p.m. and 4:30 p.m.
 - c. The "P.M. commuter peak hour" shall be determined by selecting the single highest hourly inbound plus outbound volume (for all driveways combined) between 4:30 p.m. and 6:30 p.m.
 - 5) Conduct vehicle occupancy counts (number of students per vehicle) at the PUDO location to determine the average vehicle occupancy (AVO). The vehicle occupancy counts will be conducted during the same timeframes as the trip generation counts indicated above.
 - 6) Conduct a queue study at the PUDO location to determine the length of the queues and to ensure that the queues do not spill onto Nebraska Avenue.
 - 7) Conduct a mode split survey during the Fall semester to determine the mode of transportation for students and employees.
 - 8) Compile a list of TDM measures in effect at the time the study was conducted.
 - 9) Verify the number of students enrolled and staff employed at the time the study was conducted.
 - 10) Address notes from meetings of ANC 3E and other community meetings documenting traffic issues.

51. 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 vehicle trip thresholds are shown in the following table:

Trip Type	A.M. Peak Hour			P.M. School Peak Hour			P.M. Commuter Peak Hour		
	In	Out	Total	In	Out	Total	In	Out	Total
Vehicle trips without TDM plan	204	204	408	87	87	174	35	73	108
Vehicle trips with TDM plan	112	112	224	74	74	148	30	62	92

52. During Year 1 (that is, the first school year commencing upon the initial opening of the Applicant’s school), the Applicant will conduct a monitoring study two times per semester. The first monitoring study must be completed no later than October 15.
53. Beginning in Year 2, the Applicant will conduct a monitoring study during the Fall semester each year, completed no later than October 15. 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 within five days of completion of the study. The meeting will be held within 30 days of completion of the study, subject to the availability of representatives of DDOT and ANC 3E, for the purpose of identifying remedial revisions to the TMP necessary to promote compliance.
54. The Applicant will make diligent efforts to implement remedial measures within 30 days of the meeting with DDOT and ANC 3E. Remedial strategies could include one or more of the following enhanced strategies:
- 1) Acquisition of off-site off-street parking for PUDO spaces.
 - a. Reduce the number of PUDO passes issued proportionally based on the percentage of trips in excess of the trip threshold or by the number of vehicles queued in excess of the on-site queuing capacity.
 - b. Lease off-street parking spaces in a garage within a one-third-mile radius of the subject property (e.g., at City Ridge, Upton Place, or 4200 Wisconsin Avenue), at the Applicant’s expense, 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. The number of leased spaces will be at least equal to the number of revoked PUDO passes.
 - 2) Conversion of the garage to PUDO operation.
 - a. Convert all parking spaces in the garage, except for the tandem spaces and ADA spaces, to short-term parking for PUDO operations and visitor spaces when PUDO activities are not in operation.

- b. Lease off-site parking within a one-third-mile radius of the subject property (e.g., at City Ridge, Upton Place, or 4200 Wisconsin Avenue), at the Applicant's expense, for use by the Applicant's employees. The number of off-site parking spaces required will be equal to the number of spaces converted to PUDO operations in the garage.
 - c. Modify the PUDO lane to utilize a single stacking lane with a bypass lane to allow the garage PUDO lane to bypass the queue lane.
 - 3) Increased carpooling requirements.
 - a. For any parents/guardians still dropping off or picking up students on-campus, increase the mandatory carpooling requirement from two students per vehicle to three students per vehicle (except that parents/guardians of prekindergarten and younger students are not required to carpool and, on a case-by-case basis, students who demonstrate a hardship based on special transportation needs are not required to carpool, with prior approval).
- 55. Beginning in Year 2, if the trip thresholds and queue requirements are not met during the Fall semester, the Applicant must conduct a second study during the Spring semester of that year to determine whether the implementation of enhanced strategies resulted in compliance.
- 56. Beginning in Year 5, if the Applicant has successfully shown compliance with the trip threshold and queuing requirements for two consecutive years, the Applicant will monitor compliance with the trip thresholds triennially in the Fall semester (with the monitoring report being completed no later than October 15). The Applicant will continue to complete triennial studies at least through Year 17 (that is, five times between Year 5 and Year 17). If the Applicant fails to meet the trip threshold and queuing requirements during the Fall semester, the Applicant will request a meeting with DDOT and ANC 3E within five days of completion of the study. The meeting will be held within 30 days of completion of the study, subject to the availability of representatives of DDOT and ANC 3E, to identify additional enhanced strategies to be implemented by the Applicant. The Applicant will implement such measures as soon as feasible but no later than the end of the Fall semester. The Applicant will be required to monitor again in the Spring semester of that year and will thereafter resume annual monitoring studies until the annual monitoring study demonstrates that the Applicant has met the trip threshold and queuing requirements for two consecutive years. The Applicant will then resume completing triennial studies until Year 17 or when two consecutive triennial studies demonstrate compliance, whichever is later.
- 57. After the Applicant's operations at the subject property have reached 80 percent of the maximum enrollment (280 students), for its annual reports to DDOT and ANC 3E, the Applicant will collect appropriate traffic data and evaluate the need for additional signage, restrictions, signal changes, removal of parking, or tactical safety improvements at the following intersections:
 - a) The two curb cuts into the subject property on Nebraska Avenue;

- b) Nebraska Avenue at Van Ness Street, NW;
 - c) Nebraska Avenue at 42nd Street, NW;
 - d) Nebraska Avenue at Warren Street, NW;
 - e) Nebraska Avenue at 41st Street, NW;
 - f) Van Ness Street at 41st Street, NW / National Presbyterian School driveway;
 - g) Van Ness Street at 42nd Street, NW; and
 - h) Wisconsin Avenue and Yuma Street (West) (Tenley Circle).
58. If DDOT determines that remedies are necessary at any of the specified intersections, the Applicant will fund and install those remedies, subject to DDOT approval, up to a maximum cost of \$75,000, exclusive of design and permitting fees.
59. The Applicant will monitor the impacts of the specified intersections beginning the first year the school operations reach 80 percent of maximum occupancy (280 students). The Applicant will continue the monitoring until the Applicant has either remedied any observed issues at the intersections (up to a maximum of \$75,000 exclusive of design and permitting fees) or after the Applicant has reached 95 percent of its maximum enrollment (333 students) and DDOT determines, based on the submitted data, that remedies are not warranted.
60. Once the Applicant's operations have reached 95 percent of the maximum enrollment (333 students), the Applicant will contribute any unused portion of the \$75,000 to DDOT's Transportation Mitigation Fund for DDOT to use for other pedestrian, bicycle, and transit improvements in the vicinity of the subject property.
61. The Applicant will fund and construct a sidewalk along the 42nd Street frontage of the subject property before receiving a certificate of occupancy.
62. Within one year of obtaining a certificate of occupancy, the Applicant will fund and construct a high-intensity activated crosswalk ("HAWK") pedestrian signal, or similar device, at the intersection of Nebraska Avenue and Warren Street, NW, subject to DDOT approval. If DDOT determines that none of the Applicant's proposed signal types are warranted or if DDOT is not ready for the installation, the Applicant will make a monetary contribution to DDOT in the amount of \$25,000 for DDOT's use to install a signal or make other pedestrian, bicycle, transit, and safety upgrades in the vicinity of the subject property.
63. Before receiving a certificate of occupancy, the Applicant will fund and install a 19-dock Capital Bikeshare station in the vicinity of the subject property, with one year cost of maintenance and operations, subject to DDOT approval.
64. Before receiving a certificate of occupancy, the Applicant will remove the yield sign on the 41st Street approach to Nebraska Avenue and replace it with a stop sign, stop bar, high-visibility crosswalk, and any other striping to shorten the crossing distance for pedestrians, subject to DDOT approval.

65. The subject property is located across the street from two triangular reservations bordered by Nebraska Avenue both to the south and to the east. The larger reservation, to the east, is bounded by 41st Street on the east, Van Ness Street on the south, and Nebraska Avenue on the west. The smaller reservation, to the south, is bounded by Van Ness Street on the north, 42nd Street on the west, and Nebraska Avenue on the east. Both reservations are undeveloped open spaces.
66. Areas to the east and to the west of the subject property are developed primarily with detached principal dwellings.
67. American University operates its Tenley Campus on a large parcel immediately north of Square 1727 that is bounded by Nebraska Avenue and Warren, 42nd, and Yuma Streets. The Tenley Campus is used primarily by the Washington College of Law and is limited to a student cap of 2,000 pursuant to the 2021 campus plan approved by the Zoning Commission. (See Z.C. Order No. 20-31, effective April 8, 2022.)
68. The square to the north of the law school contains a public library, a church, and other institutional and educational uses including a public elementary school and a child development center. Properties on the east side of Nebraska Avenue between the subject property and Tenley Circle are devoted primarily to residential use in detached dwellings.
69. Properties along Nebraska Avenue to the south of the subject property are devoted primarily to educational and institutional uses including a child development center, private school, and churches. Other uses along Nebraska Avenue south of the subject property include a facility used by the federal Department of Homeland Security, a television studio, and American University.
70. Three daytime care uses for children are located within 1,000 feet of the subject property: the National Presbyterian child development center on the east side of Nebraska south of Van Ness Street, Broadcasters child development center on the west side of Wisconsin Avenue north of Van Ness Street, and St. Alban's Early Childhood Center on the west side of Wisconsin Avenue north of Yuma Street. The National Presbyterian site also contains a private school and a church.
71. The subject property is located one-third of a mile from a Metrorail station (Tenleytown-AU on Wisconsin Avenue at Albemarle Street) and less than one-fourth of a mile from a priority corridor network Metrobus route (Route 31 along Wisconsin Avenue/Pennsylvania Avenue). Stops for at least nine Metrobus routes are located within a quarter-mile of the subject property.
72. Wisconsin Avenue functions as a principal arterial in the vicinity of the subject property, experiencing average daily traffic of 29,000 vehicles. Van Ness and 42nd Streets are collectors, while Warren, Yuma, and 41st are classified as local streets. All of the streets serve two-way traffic except for Tenley Circle, at the intersection of Nebraska and Wisconsin Avenues.

73. Nebraska Avenue functions as a principal arterial in the vicinity of the subject property, experiencing average daily traffic of 16,000 vehicles. The speed limit is 30 miles per hour, and parking restrictions are in effect during peak periods. Nebraska Avenue operates with three travel lanes during the morning peak period (7:00 to 9:30 a.m.) and evening peak period (4:00 to 6:00 p.m.), with four travel lanes the remainder of the day.
74. The Applicant currently operates a private school founded in 1999 to provide an inclusive educational experience for students with hearing loss. Since its inception, the private school has operated at 4880 MacArthur Boulevard, NW. The private school presently has an enrollment of 222 students, from birth through third grade, with 72 faculty and staff members.
75. The Applicant's current operation includes a clinic for children with hearing loss, which primarily serves the school population, including alumni, and is open to other children. The clinic provides audiological diagnostic and treatment; hearing aid and cochlear implant programming; occupational, speech, and auditory-verbal therapy; and psychoeducational assessment and treatment.
76. The Applicant planned to operate the clinic program at the subject property, noting that the Zoning Administrator determined that the clinic use is accessory to the private school use. The clinic will occupy 20,058 square feet (approximately 11.5 percent) of the building area at the subject property. The clinic will employ 10 clinicians, each seeing up to five patients per day. The Applicant anticipated that 60 percent of the 50 patients seen each day will be current students at the subject property so that the clinic would likely be attended by a maximum of 20 people per day who are not current students.
77. The clinic use was expected to generate no more than 40 vehicle trips to the subject property per day. None of the 40 vehicle trips was expected to occur during the Applicant's morning or afternoon peak periods; at most four were expected to occur during the evening peak period for commuter traffic.
78. The Applicant operates a summer camp for low-income children with hearing loss.
79. The subject property is located in a Residential House (R) zone, R-1-B. The Residential House zones are residential zones, designed to provide for stable, low- to moderate-density residential areas suitable for family life and supporting uses. (Subtitle D § 100.1.) The provisions of the R zones are intended to (a) provide for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development; (b) recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city; (c) allow for limited compatible accessory and non-residential uses; (d) allow for the matter-of-right development of existing lots of record; (e) establish minimum lot area and dimensions for the subdivision

and creation of new lots of record; and (f) discourage multiple dwelling unit development. (Subtitle D § 100.2.)

80. The purposes of the R-1-B zone are (a) to protect quiet residential areas now developed with detached dwellings and adjoining vacant areas likely to be developed for those purposes and (b) to stabilize the residential areas and promote a suitable environment for family life. (Subtitle D § 300.1.) The R-1-B zone is intended to provide for areas predominantly developed with detached houses on moderately sized lots. (Subtitle D § 300.3.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks special exceptions, pursuant to 11 DCMR Subtitle X § 901, under the private school use provisions of Subtitle X § 104 and Subtitle U § 203.1(m), under the daytime care use provisions of Subtitle U § 203.1(h), and under Subtitle C § 703.2 from the minimum parking requirements of Subtitle C § 701.5 to allow a new private school and a child development center in the R-1-B zone at 4220 Nebraska Avenue, NW (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.)

Pursuant to Subtitle U § 203.1(m), a private school use may be permitted by special exception in R-Use Group A subject to specific requirements.⁸ The private school 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 § 203.1(m)(1).) Ample parking space, but not less than that required by the Zoning Regulations, must be provided to accommodate the students, teachers, and visitors likely to come to the site by automobile. (Subtitle U § 203.1(m)(2).) Under Subtitle X § 104, education use by a private school is permitted if approved by the Board as a special exception, subject to similar standards as those specified in Subtitle U § 203.1(m)(1). The development standards applicable to a private school are those of the zone in which the private school is located. (Subtitle X § 104.3.)

Pursuant to Subtitle U § 203.1(h), a daytime care use, including a child development center, may be permitted by special exception in R-Use Group A, subject to specific requirements. The facility must be located and designed to create no objectionable traffic condition and no unsafe condition for picking up and dropping off persons in attendance. (Subtitle U § 203.1(h)(1).) Any off-site play area must be located so as not to endanger individuals traveling between the play area and the facility. (Subtitle U § 203.1(h)(2).) The Board may approve more than one child development center in a square or within 1,000 feet of another child development center, an elderly development center, or adult day treatment facility only when the Board finds that the cumulative effect of the

⁸ The R-Use Group A includes the R-1-B zone. (Subtitle U § 200.2.)

facilities will not have an adverse impact on the neighborhood due to traffic, noise, operations, or other similar factors. (Subtitle U § 203.1(h)(4).)

Based on the findings of fact, the Board concludes that the application satisfies the requirements for approval of the requested special exceptions for the private school and child development center uses, subject to the conditions adopted in this Order. The planned use of the subject property is not likely to become objectionable to adjoining and nearby property because of noise or other objectionable conditions. The subject property, with a lot area of almost 100,000 square feet, is suitably large for the Applicant's private school and child development center uses. The private school use will be located primarily along Nebraska Avenue and concentrated in the southern portion of the site, separated from nearby residences by the streets that abut the subject property. The existing Historic Building, which is located nearest to any neighboring residences, will be used as space for the Applicant's offices and by the youngest children in the child development center. All of the Applicant's buildings will be located at a sufficient distance from nearby residences so as to avoid the creation of any objectionable conditions for those properties related to noise, privacy, or similar concerns. Enrollment will be limited in terms of the number and ages of the students. Academic activities will conclude by 6:00 p.m. and will occur mostly indoors, except for the use of small outdoor play areas that will be concentrated in the interior of the site. The private school use will not involve outdoor sports events or other activities that might tend to create noise or light impacts for nearby properties. The Board was not persuaded by testimony in opposition to the application that the Applicant's proposal will be too intensive for the site,⁹ noting that the buildings at the subject property will comply with applicable development standards and that DDOT commented favorably on the site layout and circulation and on the Applicant's plans to accomplish all PUDO operations, vehicle parking, and loading on private property consistent with DDOT standards.

The Board also was not persuaded by testimony in opposition to the application that the Applicant's use of the subject property will be objectionable due to the "institutional" appearance of new construction that would be incompatible with the surrounding residential neighborhood. The Applicant's facility will comprise a total of less than 62,000 square feet of gross floor area in multiple buildings, three stories or less in height, on a site larger than two acres. The facility will comply with the requirements for matter-of-right development in the R-1-B zone with respect to building height, yards, pervious surface, and lot occupancy. The Board does not find that the alleged "institutional" appearance of the buildings will constitute an objectionable condition within the scope of the Board's jurisdiction in this proceeding. The Applicant devised a proposal that will retain an existing building with historic significance and will appropriately locate new construction toward the edges of the subject property in response to historic preservation concerns and to create areas for outdoor activity in the central portion of the site, where any potential noise impacts on nearby residences will be mitigated by distance and school buildings. The Applicant will provide suitable landscaping, with a variety of plant types, to enhance the appearance of the subject property from the abutting streets and nearby properties. The Applicant's facility will not

⁹ The party in opposition described the subject property as "the equivalent of two house lots." However, the minimum lot area for a detached dwelling in the R-1-B zone is 5,000 square feet while the subject property has an area of almost 100,000 square feet. (See Subtitle D § 302.1.)

appear incompatible with the surrounding residential neighborhood; the portion of the R-1-B zone that encompasses the subject property and other properties in its vicinity along Nebraska Avenue presently contains a number of institutional uses, which are permitted as a matter of right or by special exception in the R-1-B zone. (See Subtitle U §§ 201-203.)

The Board concludes that approval of the application, subject to the conditions adopted in this Order, will not create objectionable conditions with respect to traffic, including that the Applicant's facility will be located and designed so as to create no objectionable traffic condition and no unsafe condition for picking up and dropping off persons in attendance. The subject property will employ a circulation system using one-way vehicle traffic for PUDO activities in an area on-site that will be large enough to allow for the loading and unloading of students as well as for vehicle queuing on the subject property without hindering access to the garage or creating a spillover line on Nebraska Avenue. The Applicant will implement measures to facilitate the safe and efficient operation of its PUDO activities on-site and to prevent the use of nearby streets by drivers attempting to pick up or drop off students in public space. The Applicant will enforce its PUDO protocol through its student contract; the consequences for infractions could result in a student's dismissal from school.

As discussed below, the subject property will provide adequate vehicle parking for the planned uses. The development will also provide bicycle facilities and the Applicant will employ measures to encourage the use of public transportation to the site. Consistent with the conditions of approval adopted in this Order, the Applicant will implement a detailed transportation management plan, which the Board finds adequate to avoid the creation of adverse impacts related to traffic. The transportation management plan, which encompasses a transportation demand management plan, an operations plan, a monitoring plan, and specific physical improvements, is intended to reduce the number of vehicle trips to the subject property that would otherwise occur. The plan, which was designed to be flexible and responsive to potentially changing conditions, will require the Applicant to take specified actions and to meet regularly with DDOT and ANC 3E to assess whether the Applicant's measures are effective or require modification. The Applicant will offer a variety of incentives and other measures to encourage students and employees to travel to and from the subject property by means other than automobile.

In consultation with DDOT, the Applicant proposed a set of improvements that the Applicant will install, subject to DDOT approval and a specified maximum cost. The Applicant indicated its agreement with DDOT's recommendations and its intention to undertake the improvements if they are warranted. (Exhibit 100B, Transcript of October 27, 2021 at 107, 128, 141, 142.) The Board notes DDOT's testimony that the Applicant's package of transportation improvements, in conjunction with the performance monitoring plan, TDM plan, and operations management plan, will be sufficient to support the Applicant's reduced trip generation assumptions, manage demand for vehicle traffic traveling to and from the site, and mitigate the impacts of the Applicant's development on the District's transportation network.

The Applicant submitted a comprehensive traffic report prepared by its transportation expert (Exhibit 46A1). The report used a study area that encompassed intersections near the subject property that were determined to be potentially impacted by the planned private school use. The

study area was later enlarged at the request of ANC 3E. The Board was not persuaded by the party in opposition's argument that, because the Applicant's methodology was flawed,¹⁰ the planned use of the subject property would generate a larger number of vehicle trips daily than predicted by the Applicant. The Board credits DDOT's testimony indicating that DDOT concurred with the scope and methodology used in the Applicant's traffic study to predict trip generation as well as the conclusions drawn in the traffic study.

The Board notes a concern expressed in opposition to the application that the Applicant failed to consider other projects that were currently under development or expected to be built in the vicinity of the subject property. The Board does not agree, noting the Applicant's rebuttal¹¹ as well as DDOT's testimony that the Applicant's transportation report provided a projection of the project's likely transportation impacts but also noted that "in an urban environment that is rapidly developing and changing, the projections may not provide enough certainty to reveal an action's true future impacts." The Board concurs with DDOT's conclusion that the Applicant's monitoring plan will provide "the framework for increasing the level of certainty concerning expected impacts to future travel conditions."

ANC 3E and the party in opposition disputed the Applicant's assertions that the transportation management plan will be effective in avoiding the creation of adverse traffic impacts. The Applicant stated a goal of reducing vehicle trips during the morning peak by 45 percent from the number that could be expected without implementation of its TDM plan. However, the Applicant declined the request of ANC 3E to "attempt to reduce its vehicular drop-offs by 70-80 percent of the estimated volume via busing, carpooling and any other non-vehicular mode of transit." (Exhibit 83.) The Board was not persuaded that the ANC's request was realistic or equitable, especially in light of the ages of the young children who will be enrolled in the Applicant's facility and the current operation of other similar uses in the neighborhood without transportation management plans. The Board concludes that the Applicant's approach is a reasonable and feasible means to achieve a safe and efficient PUDO operation that will avoid the creation of adverse impacts on the streets in the vicinity of the subject property. The Applicant will implement a variety of measures to encourage alternatives to vehicle travel by students and employees as well as to spread the students' arrival and departure times to avoid unmanageable peaks in PUDO traffic. *Compare, National Cathedral Neighborhood Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 753 A.2d 984, 987 (D.C. 2000) (assuming that the Board was required to take into account existing deficiencies in parking availability on a site, the Board could fairly conclude that a new facility would not add to the effects of that shortage).

¹⁰ The Applicant rebutted this contention, asserting that the alternative proposed by the traffic expert for the party in opposition would not be a better predictor of the trip generation for the Applicant's use of the subject property than the data specific to the Applicant that was used in the Applicant's study. According to the Applicant, the alternative favored by the party in opposition was based on sites in suburban locations with limited opportunity for walking or biking and without public transportation options. (Transcript of October 27, 2021 at 305.)

¹¹ The Applicant's traffic expert testified that their "analysis explicitly included six pipeline developments" so that the traffic study done for the Applicant's proposal was "the most comprehensive look at traffic conditions in the neighborhood." (Transcript of October 27, 2021 at 307.)

The ANC argued that the Applicant's failure to reduce traffic generation by more than 45 percent will cause unsafe traffic conditions on Nebraska Avenue and at nearby intersections. The Board was not persuaded by the ANC's projections, which were based in part on an expectation that drivers would make left turns into or from the subject property, which will be prohibited, and by a perceived absence of mitigation measures implemented east of Nebraska Avenue. The Applicant's transportation management plan will require the Applicant to monitor traffic conditions at specified intersections in the vicinity of the subject property and to consult with DDOT and ANC 3E on the selection of appropriate remedies that might be warranted.

The ANC also asserted that approval of the application would result in adverse traffic impacts in part because of a perceived lack of commitment by the Applicant to alternative transit modes in its TMP. The Board does not agree. The Applicant will be obligated to implement a variety of measures to encourage trips on foot, by bicycle, and by public transit as well as encouraging carpooling by both students and employees. The transportation plan will provide both incentives and enforcement measures to achieve compliance. In light of the scope of the Applicant's transportation plan, including its measures to discover and address potential infractions, the Board was not persuaded by the concern stated by ANC 3E that Warren Street or other nearby street will become "a de facto queue" for the Applicant's PUDO operation. The Board notes that DDOT agreed with the findings of the Applicant's traffic report that the PUDO loop will be sufficiently long to avoid queuing on Nebraska Avenue or create other impacts on public space, given the staggering of PUDO hours and other operations management measures proposed by the Applicant.¹²

Similarly, the Board was not persuaded by assertions, including from ANC 3E, that the Applicant's plan to avoid the creation of adverse traffic impacts failed to provide adequate consequences for non-compliance. The Board disagrees, noting DDOT's testimony that the Applicant's "multifaceted, multipronged approach" to traffic mitigation was appropriate. (Transcript of October 27, 2021 at 205.) The Applicant's transportation plan will require the implementation of TDM strategies to reduce the number of vehicle trips generated by the Applicant's use of the subject property. The TDM plan will be appropriately flexible to allow its adaptation to changes in school demographics, technology, transportation services, and the availability of various mitigation options. The Applicant will undertake specified physical improvements before beginning operation, including construction of a sidewalk along 42nd Street, installation of a new Capital Bikeshare station, and measures to enhance pedestrian safety at designated intersections. DDOT commented favorably on the Applicant's performance monitoring plan as a means to increase the level of certainty concerning expected impacts to future travel conditions that would also establish potential remediating measures. The monitoring plan will require the Applicant to collect and share data needed for the evaluation of the success of its mitigation measures, and to undertake potentially expensive remedial action if necessary. The Applicant's transportation plan will allow needed flexibility in devising a response that would be effective under then-existing

¹² Based on its current operation, the Applicant anticipated that approximately one-quarter of the students would attend for half-days, leaving at noon; approximately 40 percent of students would be dismissed between 2:45 and 3:45 p.m.; and almost a third would attend after-care and be dismissed between 4:00 and 6:00 p.m. The Applicant also enrolls some students whose parents are employed at the school; their travel to and from the site was accounted for in the faculty/staff trip generation component of the Applicant's traffic study.

traffic conditions without jeopardizing pedestrian safety. The Board concurs with DDOT's assessment that the Applicant's "comprehensive mitigation package very much offsets their impacts on the transportation network" and provides "an opportunity [for the Applicant, DDOT, and ANC 3E] to come back year after year and reevaluate, re-collect data, and implement solutions going forward." (Transcript of October 27, 2021 at 212-213.) The Board concludes that the transportation management plan reflects an on-going commitment by the Applicant to reduce the number of vehicle trips to the subject property, to ensure the safe and efficient operation of PUDO activity, and to monitor and adjust to changing conditions by undertaking enhanced or remedial measures devised in consultation with DDOT and ANC 3E.

Pursuant to Subtitle U § 203.1(h)(4), the Board may approve more than one child development center in a square or within 1,000 feet of another child development center, an elderly development center, or adult day treatment facility only when the Board finds that the cumulative effect of the facilities will not have an adverse impact on the neighborhood due to traffic, noise, operations, or other similar factors. The Applicant's child development center will be within 1,000 feet of three existing child development centers. The Board agrees with OP that the principal concern about the cumulative effect of the facilities was based on traffic, and concludes that operation of the new child development center at the subject property, consistent with the Applicant's transportation management plan, will not create objectionable conditions, including with respect to parking, or cause adverse impacts on the use of neighboring properties. The application demonstrated that the Applicant's child development center, which is expected to serve fewer than 100 children who will arrive and leave on staggered schedules, will accommodate its PUDO operation on site. The Board also notes that the new child development center will be located at a sufficient distance from the existing facilities and from nearby residences to avoid the creation of noise or other potentially objectionable conditions.

A private school use is required to provide ample parking space, but not less than that required by the Zoning Regulations, to accommodate the students, teachers, and visitors likely to come to the site by automobile. (Subtitle U § 203.1(m)(2).) The Applicant indicated that the zoning requirement for vehicle parking spaces for the planned use of the subject property is 52 spaces. The plans submitted in the application demonstrated that 47 zoning-compliant parking spaces will be provided, although the subject property will be able to accommodate parking for a total of 65 vehicles. The Applicant requested a special exception, pursuant to 11 DCMR Subtitle X § 901 and Subtitle C § 703.2, for a reduction in the minimum parking requirements of Subtitle C § 701.5 for the planned private school and child development center uses.

The Zoning Regulations provide flexibility from the minimum required number of parking spaces when providing the required number would be (a) impractical due to the shape or configuration of the site, (b) unnecessary due to a lack of demand for parking or the site's proximity to transit options, or (c) contrary to other District of Columbia regulations. (Subtitle C § 703.1.) The Board may grant a full or partial reduction in the number of required parking spaces as a special exception pursuant to Subtitle X, Chapter 9 and subject to an applicant's demonstration of at least one of the 10 specified factors. (Subtitle C § 703.2.)

The Board agrees with the Applicant that a reduction in the minimum requirement for parking spaces was warranted because, due to the physical constraints of the subject property, the required parking spaces cannot be provided either on the lot or within 600 feet of the lot in accordance with Subtitle C § 701.8. (See Subtitle C §§ 703.2(a), (i).) The Applicant's ability to provide parking at the subject property was constrained by factors including the location of the Historic Building and existing accessory structures, which limited the areas of the subject property where parking could be located, either in surface lots or below grade, without causing damage to the existing buildings. Similarly, the subject property contains a number of trees, including several heritage trees, that restricted options for providing vehicle parking spaces without causing damage. No parking spaces within 600 feet of the subject property were identified, although the Applicant acknowledged the ability to provide parking at locations within a third of a mile of the site if necessary in accordance with its transportation management plan.

The application also demonstrated that approval of the requested reduction in the number of required parking spaces is consistent with several other factors listed in Subtitle C § 703.2, including that the planned use at the subject property will be well served by mass transit, shared vehicle, or bicycle facilities (Subtitle C § 703.2(b)). The Applicant's operations consistent with its transportation management plan will reduce the amount of traffic congestion that the parking for the planned use would reasonably be expected to create in the neighborhood (Subtitle C § 703.2(d)) and will ensure that the nature of the use and the number of employees, guests, customers, or clients who would reasonably be expected to use the planned buildings at one time will generate demand for less parking than the minimum parking standards (Subtitle C § 703.2(e)). The Applicant will provide sufficient parking, other than on-street parking, on the property that will reasonably be expected to be available when the buildings are in use (Subtitle C § 703.2(g)). The supply of vehicle parking on site will include 18 spaces that will not meet zoning requirements for accessibility but will be well-suited to the planned use of the property. The Board notes that, although the Historic Building is not a "Historic Resource,"¹³ the Applicant's plan to retain the Historic Building at its current location – a proposal reviewed by the Historic Preservation Review Board – hinders the provision of parking on the subject property and the provision of the required number of parking spaces would result in architectural and structural difficulty in maintaining the integrity and appearance of the Historic Building.

Consistent with Subtitle C § 703.3, the reduction in the required number of parking spaces approved by the Board in this Order was limited to the number of spaces that the Applicant demonstrated could not reasonably be provided on the site. The Board notes the Applicant's effort to maximize vehicle parking on site within the applicable constraints. Consistent with Subtitle C § 703.4, the Applicant's request for a reduction in the parking requirement included a transportation demand management plan, which DDOT approved and was made a condition of approval of this Order.

The Board concludes that approval of the application, subject to the conditions adopted in this Order, will be in harmony with the general purpose and intent of the Zoning Regulations and

¹³ A "Historic Resource" is defined for zoning purposes as "A historic landmark or a building, structure, object or feature, and its site, that contributes to the character of a historic district, as determined in accordance with the Historic Landmark and Historic District Protection Act of 1978." (Subtitle B § 100.2.)

Zoning Maps, as is required for approval of the application under Subtitle X § 901.2. The buildings at the subject property will comply with the development standards applicable in the R-1-B zone, and the planned uses will be consistent with the purposes of the R-1-B zone to protect quiet residential areas and to promote a suitable environment for family life. Approval of the application is consistent with the Residential House zones, which are designed in part to permit supporting uses for stable low- to moderate-density residential areas. The special exception relief will provide for the orderly development and use of land and structures in an area predominantly characterized by low- to moderate-density residential development, will recognize and reinforce the importance of neighborhood character and improvements to the overall environment, to the overall housing mix and health of the city, and will allow for a limited compatible non-residential use. Consistent with Subtitle X § 105.1, the application included plans showing the location, height, and bulk of the planned new building in the context of the Applicant's existing buildings, parking, and athletic and recreational facilities as well as a description of activities conducted at the private school.

The Board concludes that the Applicant's planned clinic will be consistent with the purposes of the Residential House zones to allow for limited compatible accessory and non-residential uses. The Board credits the Applicant's testimony that the Zoning Administrator determined that the clinic use will be accessory to the planned private school use, noting the Applicant's testimony that the clinic is integral to its program. The clinic will be limited to approximately 11 percent of the gross floor area at the subject property, and more than half of the 50 patients anticipated each day will be current students at the subject property.¹⁴

For the reasons already discussed, the Board concludes that approval of the requested special exceptions, subject to the conditions adopted in this Order, will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, as is also required for approval of the application under Subtitle X § 901.2.

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 that, in this case, 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 case, ANC 3E submitted a resolution in opposition to the application. The resolution stated the ANC's conclusion that the Applicant's proposal would result in adverse impacts related to traffic, stating issues and concerns related to the number of vehicle trips expected to be generated by the Applicant's use of the subject property, the Applicant's use of local streets for queuing during PUDO operations, adverse impacts on the level of service experienced at intersections in the vicinity of the subject property, the Applicant's "lack of commitment to alternative transit modes in the TMP," and insufficient consequences for non-compliance with the

¹⁴ The Zoning Regulations define an "accessory use" as "A use customarily incidental and subordinate to the principal use and located on the same lot with the principal use. Except for Short-Term Rentals and unless otherwise specifically permitted, an accessory use shall be limited to twenty percent (20%) of the gross floor area." (Subtitle B § 100.2.)

TMP. For the reasons discussed above, the Board did not find that ANC 3E offered persuasive advice that would require denial of the application.

Based on the findings of fact and conclusion of law, 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 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 for a reduction in the minimum parking requirements of Subtitle C § 701.5 (47 zoning-compliant vehicle parking spaces provided; 65 spaces total) to allow a new child development center and private school in the R-1-B zone at 4220 Nebraska Avenue, NW (Square 1727, Lots 4, 5). Accordingly, it is **ORDERED** that the application is **GRANTED** subject to the following **CONDITIONS** and in conformance with plans shown at Exhibits 51B1, 51B2, and 51B3, dated October 6, 2021, with the flexibility described in Condition No. 16:

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. 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.
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 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.

VOTE: 5-0-0 (Frederick L. Hill, Lorna L. John, Carl H. Blake, Chrishaun S. Smith, and Robert E. Miller to APPROVE).

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: September 22, 2022

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 AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS 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,

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 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.