

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 20308 of 4865 MacArthur Landlord, LLC, pursuant to 11 DCMR Subtitle Y, Chapter 9 for a special exception under the use provisions of Subtitle U § 203.1(g) to authorize a continuing care retirement community use on the R-1-B zoned portion of property located at 4865 MacArthur Boulevard, N.W. (Square 1389, Lot 25)

HEARING DATE: November 4, 2020

DECISION DATE: November 4, 2020

DECISION AND ORDER

Pursuant to notice, at its November 4, 2020, public hearing, the Board of Zoning Adjustment (“**Board**”) deliberated on the application (the “**Application**”) of 4865 MacArthur Landlord, LLC (the “**Applicant**”) requesting the following relief under the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all references are made unless otherwise specified) for on Lot 25 in Square 1389 (the “**Property**”), with an address of 4865 MacArthur Boulevard, N.W., in the R-1-B and MU-4 zones:

- A special exception pursuant to the use provisions of Subtitle U § 203.1(g) to authorize a continuing care retirement community (“**CCRC**”) use on the R-1-B zoned portion of the Property. The Board reviewed the Application pursuant to its Rules of Practice and Procedure, Subtitle Y. For the reasons explained below, the Board voted to **APPROVE** the requested relief.

FINDINGS OF FACT

I. BACKGROUND

PARTIES

1. The following were automatically parties in this proceeding pursuant to Subtitle Y § 403.5:
 - The Applicant; and
 - Advisory Neighborhood Commission (“**ANC**”) 3D, the ANC within which boundaries the Property is located and so the “affected” ANC per Subtitle Y § 101.8.
2. Palisades Park Community Association (“**PPCA**”) filed a request for party status in opposition on November 2, 2020 but withdrew its request prior to the public hearing and ultimately supported the Application. (Exhibit [“**Ex.**”] 28, 34.)

NOTICE

3. Pursuant to Subtitle Y §§ 400.4 and 402.1, the Office of Zoning (“OZ”) sent notice on August 21, 2020, of the Application and November 4, 2020, public hearing to:
 - The Applicant;
 - ANC 3D;
 - ANC 3D01 Single Member District Commissioner, whose district includes the Property;
 - The Office of ANCs;
 - The Office of Planning (“OP”);
 - The District Department of Transportation (“DDOT”);
 - The National Park Service (“NPS”);
 - The Councilmember for Ward 3, whose district includes the Property;
 - The Chair and At-Large Members of the D.C. Council; and
 - The owners of all property within 200 feet of the Property. (Ex. 14-25.)
4. OZ also published notice of the November 4, 2020, public hearing in the October 16, 2020, *D.C. Register* (67 DCR 11926), as well as to the calendar on the OZ website.

THE PROPERTY

5. The irregularly shaped Property is approximately 64,815 square feet in area.
6. The Property is improved with a parking lot and structure that previously housed a grocery store. (Ex. 3 and 27A.)
7. The Property is bounded by:
 - To the north – by V Street, N.W.;
 - To the east – by a parking lot;
 - To the south – by U Street and MacArthur Boulevard, N.W.; and
 - To the west – by 48th Place, N.W. (Ex. 7, 27A1 at 3-4.)

ZONING

8. The Property falls within two zones (Ex. 5, 7, 27A):
 - The northern portion of the Property, totaling 29,401 square feet, is in the R-1-B zone district, which is intended to
 - Protect and stabilize quiet residential areas developed with detached dwellings to promote a suitable environment for family life (Subtitle D § 300.1); and
 - Support areas predominantly developed with detached houses on moderately sized lots (Subtitle D § 300.3); and
 - The southern portion of the Property, totaling 35,414 square feet, is in the MU-4 zone district, which is intended to
 - Permit moderate-density, mixed-use development;
 - Provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District outside of the central core; and
 - Be located in low- and moderate-density residential areas with access to main roadways or rapid transit stops. (Subtitle G § 400.3.)

II. THE APPLICATION

THE PROJECT

9. The Application proposed to redevelop the Property with a building devoted to a CCRC use with approximately 156 assisted living and independent living units, dining facilities, and recreation/community rooms (the “**Overall CCRC**” or “**Project**”). The Application proposed that the part of the CCRC on the R-1-B portion of the Property (the “**R-1-B Building**”) have:
- A 39-foot, 7-inch height with three stories;
 - A 39.9% lot occupancy based on the R-1-B portion of the Property;
 - Approximately 36 independent living units; and
 - 54 parking spaces in a below-grade garage. (Ex. 4, 7, 27A1.)

APPLICANT’S SUBMISSIONS AND TESTIMONY

10. The Application, as initially filed on May 20, 2020, (Ex. 7-12, the “**Initial Application**”) included:
- Justification for the proposal’s compliance with the burden of proof
 - Architectural Plans & Elevations (Ex. 5) for the CCRC, including photographs of the surrounding neighborhood and renderings of the proposal in place of color photographs (Ex. 13); and
 - A Transportation Study with a proposed Transportation Demand Management plan (the “**TDM Plan**”) to mitigate any potential adverse impacts of the R-1-B Building. (Ex. 10, 10A.)
11. The Applicant filed an October 14, 2020, submission (Ex. 27, together with the Initial Application, the “**Revised Application**”) that revised the Initial Application as follows:
- **Revised Architectural Plans & Elevations** that proposed:
 - 23 additional parking spaces – 15 spaces on a new surface parking lot in the side yard of the R-1-B-zoned portion of the Property and eight spaces added to the below-grade garage of the R-1-B Building; and
 - A retail use or grocery store use in alternative locations on the MU-4-zoned portion of the Property (Ex. 27A1-27A2); and
 - **Updated Transportation Study** that
 - Evaluated the 23 additional parking spaces;
 - Included the TDM Plan; and
 - Concluded that the R-1-B Building would:
 - Generate fewer than DDOT’s threshold of 25+ peak hour trips requiring a detailed capacity analysis;
 - Have a negligible impact on the area’s transportation network; and
 - Include sufficient parking and loading facilities to meet anticipated demand without significant impact on availability of on-street parking around the Property. (Ex. 27B.)
12. At the November 4, 2020, public hearing, the Applicant presented its case through:
- The Applicant’s attorney, Carolyn Brown, Esq., who presented a PowerPoint presentation justifying the Revised Application’s compliance with the zoning

- requirements (Ex. 40A1 & 40A2; Public Hearing Transcript of November 4, 2020 [“Tr.”] at 135-36, 153);
- Eric Fischer, its member, who testified that:
 - The R-1-B Building would include a valet service to address any transportation needs of the Project’s residents;
 - The Revised Application resulted from informal and formal feedback from the ANC, PPCA, and overall community to increase open air, include a retail component to accommodate a grocery store with dedicated parking, accommodate and avoid interfering with the operations of a community farmer’s market near the Property, minimize building frontage along MacArthur Boulevard, N.W., and expand the R-1-B Building’s parking garage to avoid negative impacts on existing and future traffic demand;
 - The Applicant had worked with the ANC and PPCA to execute a Memorandum of Agreement (“MOA”) and Construction Management Agreement (“CMA”) that incorporated a retail grocery component and additional parking at the Overall CCRC to support neighboring retail businesses (Ex. 12, 31; Tr. at 136-40, 163-64);
 - Gary Steiner, an architect, as an expert in architecture (Tr. at 134), who testified that:
 - The R-1-B Building complied with zoning requirements;
 - The architectural design of the R-1-B Building and site plan were chosen to mimic and maintain scale with nearby residential structures; and
 - The proposed parking was increased at the request of the community and hidden from view in an underground parking garage that accommodated the Overall CCRC without interfering with on-street parking for patrons of retail space along MacArthur Boulevard, N.W. (Tr. at 144-47, 149; Ex. 40A1, 40A2); and
 - Erwin Andres, a transportation consultant, as an expert in transportation (Tr. at 134), who testified that:
 - The R-1-B Building would not create any adverse transportation impacts because it satisfied the loading requirements and exceeded the minimum parking spaces required by the Zoning Regulations;
 - The Applicant’s Transportation Study was sufficient, and the Project did not generate sufficient traffic to trigger the requirement for a full traffic study;
 - Daily traffic generated by the Overall CCRC would be less than the Property’s prior use as a grocery store, and incorporation of a TDM Plan further mitigated any adverse effects of the Project on traffic in the area; and
 - The R-1-B Building would not cause any safety concerns, contrary to the concerns raised in opponents’ letters about pedestrian conflicts and the new curb cut proposed by the Revised Application, because the R-1-B Building’s proposed curb cuts met DDOT safety requirements and the Applicant committed to pedestrian-related safety improvements in the MOA with the ANC. (Tr. at 150-153.)

RELIEF REQUESTED

13. The Revised Application requested:
 - A special exception pursuant to Subtitle U § 203.1(g) to authorize a CCRC use on the R-1-B zoned portion of the Property. (Ex. 1, 7.)
14. The Revised Application did not seek any relief for the part of the Overall CCRC in the

MU-4 zoned portion of the Property.

JUSTIFICATION FOR RELIEF

15. The Revised Application asserted the R-1-B Building satisfied Subtitle U § 203.1(g)(1) because it would provide independent and assisted living units, with a memory care component. (Ex. 7; Tr. at 137.)
16. The Revised Application asserted that the R-1-B Building is not limited to eight residents pursuant to Subtitle U § 203.1(g)(2), as it includes assisted living facilities. (Ex. 7.)
17. The Revised Application stated the Overall CCRC would include the following ancillary uses: dining, multipurpose, and entertainment rooms; clinic; rehab; and fitness centers; a library; staff offices; and a garden terrace, as permitted pursuant to Subtitle U § 203.1(g)(3). (Ex. 2, 7.)
18. The Revised Application asserted the R-1-B Building satisfied Subtitle U § 203.1(g)(4)'s requirement to provide sufficient off-street parking because it includes a below-grade parking garage, which the Applicant's Transportation Study (both as initially filed and as revised) demonstrated was sufficient to meet the parking demand of all employees, residents, and visitors of the Overall CCRC, while avoiding negative impacts to the surrounding community. (Ex. 7, 10, 27B.)
19. The Revised Application asserted the R-1-B Building satisfied the requirement of Subtitle U § 203.1(g)(5) because it was located and designed in the following manner to minimize objectionable conditions to neighboring properties:
 - Entrance was set back from 48th Place, N.W. and bounded on three sides to reduce noise emanating from arriving vehicles and visitors and to separate the Building from homes along V Street, N.W.;
 - Lighting was designed to avoid interference with neighboring properties;
 - Community outdoor space was sited along the commercial corridor on MacArthur Boulevard, N.W.;
 - Loading facilities and trash rooms were in the below-grade garage;
 - Mechanical equipment was located at interior lower levels; and
 - Implementation of the proposed TDM plan to mitigate potential adverse traffic impacts. (Ex. 7.)
20. The Revised Application asserted the R-1-B Building was designed to reflect its adjacency to the single-family houses on V Street, N.W. and so asserted that it would not require special treatment from the Board, as authorized by Subtitle U § 203.1(g)(6). (Ex. 7.)
21. The Revised Application asserted the requested relief satisfied the general special exception requirements of Subtitle X § 901.2 because the R-1-B Building:
 - Was harmonious with the general purpose and intent of the Zoning Regulations and Map since it was:
 - A residential use that fit comfortably within the R-1-B zone,
 - Particularly suited to the Property, where the single-family community to the north

- met the commercial corridor of MacArthur Boulevard, N.W. to the south, and
- An excellent transition between these areas that allowed senior residents to live in a multi-unit care facility at the edge of a commercial district while remaining part of a single-family neighborhood; and
- Would not tend to adversely affect the uses of neighboring properties since:
 - The nature of its residence and their need for assistance would not alter the existing quiet character of the residential neighborhood; and
 - The asserted shift rotation of the Overall CCRC's staff would be at non-peak vehicular and pedestrian times and required parking would be provided and self-contained. (Ex. 7.)

III. RESPONSES TO THE APPLICATION

OP

22. OP filed an October 23, 2020, report (Ex. 30, "**OP Report**"), that evaluated the Revised Application and:
- Concluded that the Revised Application satisfied the applicable criteria for granting a special exception set forth at Subtitle U § 203.1(f) and Subtitle X § 901.2 because:
 - The CCRC "would offer independent and assisted living including memory care;"
 - A maximum of 44 dwelling units would be in the R-1-B-zoned portion of the Property;
 - "The proposed CCRC would include ancillary uses for the further enjoyment, service, and care of the residents;"
 - "The entire facility will provide 77 parking spaces, which meets the parking requirement for the CCRC and retail uses;"
 - The proposed CCRC use in this location is not likely to become objectionable to neighboring properties in the R-1-B zone because of noise, traffic, or other objectionable conditions;
 - The proposal would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps; and
 - The proposed CCRC should not adversely affect the use of neighboring properties in the residential zone; and
 - Recommended that the Board approve the Revised Application.
23. At the November 4, 2020, public hearing, OP reiterated its recommendation to approve the Application. (Tr. at 175-176.)

DDOT

24. DDOT filed an October 21, 2020, report (Ex. 29, "**DDOT Report**") that:
- Determined the Project would have no adverse impacts on transportation network travel conditions, although it might:
 - Lead to minor increases in vehicular, transit, pedestrian, and bicycle trips, and vehicle parking demand and utilization in the immediate area; and
 - Generate minor impacts to on-street parking conditions; and
 - Had no objection to approval of the relief, provided the Applicant implemented the TDM Plan for the life of the Project.

ANC

25. ANC 3D filed an October 21, 2020, report (Ex. 31, “**ANC Report**”), stating that at its October 21, 2020 meeting, which was attended by a quorum of its Commissioners, the ANC unanimously voted to:
- Raise the following issues and concerns:
 - The Board should incorporate the signed MOA and CMA into the Board’s order as special treatment as authorized by Subtitle U § 203.1(g)(6);
 - The CCRC special exception use is significantly different from the other special exception uses permitted by Subtitle U § 203.1, which should more clearly apply different standards for community-driven public interest uses from the commercial for-profit CCRC use;
 - The Board’s evaluation of the Revised Application should include the MU-4-zoned portion of the Property that did not require relief for the proposed CCRC use;
 - The Overall CCRC use would displace the previously existing retail use that the community valued, and the Revised Application’s proposed 5,000 square foot grocer was unlikely to generate needed business as a retail anchor like the prior 15,000 square foot grocer did;
 - Due to these concerns, the Zoning Regulations should, but do not allow the community to contribute impactful views on the broad merits and location of facilities such as the one proposed by the Revised Application;
 - The Overall CCRC might lessen the future viability of the MacArthur Boulevard commercial corridor because of the insufficient retail allocation on the MU-4-zoned portion of the Property; and
 - Support the Revised Application despite these concerns.
26. At the November 4, 2020, public hearing, ANC Commissioner for 3D04, Michael Sriqui, testified:
- That ANC 3D only learned of the Project’s specific ancillary uses at the public hearing, and so was unable to interact with the Applicant to propose potential community use of these ancillary uses;
 - That ANC 3D’s concern was that the use of the Property, particularly the MU-4-zoned portion, under the Revised Application, would replace the prior community-based service use of the grocery store with a use that would not have significant community interaction;
 - That the CMA was between the Applicant and PPCA and not with the ANC;
 - Raising concerns about parking and any loss of social and commercial spaces in their community from the Project;
 - Reiterating the concerns of the ANC Report, some of which he conceded were not relevant to the relief sought; and
 - That ANC 3D unanimously supported the Project, and this support was not conditioned upon the recommendations of the ANC Report. (Tr. at 156-61, 169-70.)
27. ANC 3D did not file a written report adopting Commissioner Sriqui’s testimony, as required for the testimony to be granted “great weight” as the views of the ANC pursuant to the ANC Act (D.C. Law 1-21, as amended; D.C. Code 1-309.10(d)(4); *see* Subtitle § Y

503.4).

PUBLIC SUPPORT

28. PPCA submitted an October 30, 2020, letter (Ex. 34) that:
- Withdrew its earlier request for party status in opposition; and
 - Supported the Revised Application because of its benefits, particularly:
 - Reducing the mass of the Overall CCRC on MacArthur Boulevard, N.W.;
 - Guaranteeing a 5,000 square foot retail space, likely a grocer tenant;
 - Preserving public space for the PPCA’s weekly Farmers’ Market, including room to expand;
 - Constructing new sidewalks, crosswalks, and stop signs to ensure pedestrian safety;
 - Agreeing to work with PPCA on landscaping and public space improvements; and
 - Protecting the Farmers’ Market and community, based on the CMA. (Ex. 34.)
29. At the November 4, 2020, public hearing, one member of the public testified in support of the Revised Application. (Tr. at 192-93.)

PUBLIC OPPOSITION

30. Three members of the public filed letters in opposition to the Application (Ex. 35-36) that:
- Expressed concern that the R-1-B Building would have adverse impacts on pedestrian safety due to the Revised Application’s proposed new curb cut on V Street, N.W., which might become the primary entrance into the Overall CCRC and therefore attract commercial traffic onto the residential street network;
 - Echoed the ANC Report’s request that the Board incorporate the MOA and CMA into the Board’s order; and
 - Requested the Board require a full traffic and pedestrian safety impact study within 30 days of the opening of the Overall CCRC, with the results shared with the community within 60 days, and the pedestrian safety improvements required by the study be submitted to DDOT for its review and approval within three months of the Overall CCRC’s opening.
31. At the November 4, 2020 public hearing, three members of the public testified in opposition to the Revised Application and expressed the same concerns expressed in the letters in opposition – the potential adverse impacts on traffic and pedestrian safety and potential intrusion of commercial activities into the R-1-B zone through the V Street, N.W. curb cut. (Tr. at 179-82, 183-86, 188-91.)

CONCLUSIONS OF LAW

AUTHORITY

1. Section 8 of the Zoning Act of 1938 (D.C. Code § 6-641.07(g)(2) (2018 Repl)); *see also* Subtitle X § 901.2) authorizes the Board to grant special exceptions, as provided in the Zoning Regulations, where, in the judgement of the Board, the special exception:
- Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map,
 - Will not tend to affect adversely the use of neighboring property in accordance with the

- Zoning Regulations and Zoning Map, and
- Complies with the special conditions specified in the Zoning Regulations.
2. For the relief requested by the Application, the “specific conditions” are those requirements at Subtitle U § 203.1(g)(1)-(6).
 3. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the Board’s discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and “if the applicant meets its burden, the Board ordinarily must grant the application.” *First Washington Baptist Church v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. District of Columbia of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).

SPECIAL EXCEPTION – CCRC USE IN R-1-B ZONE

Specific Special Exception Standards - Subtitle U § 203.1(g)

4. Based on the case record and the Findings of Fact above, the Board concludes the Revised Application met the specific special exception standards of Subtitle U § 203.1(g) to authorize a CCRC in the R-1-B zone as discussed below.
5. The Board concludes the Revised Application satisfies the requirement of Subtitle U § 203.1(g)(1) because the CCRC includes independent and assisted living facilities. (Finding of Fact [“FF”] 15.)
6. The Board concludes that the limits in Subtitle U § 203.1(g)(2) on the number of CCRC residents does not apply to the Revised Application because the CCRC includes independent and assisted living facilities. (FF 16.)
7. The Board concludes the Revised Application provides ancillary uses as authorized by Subtitle U § 203.1(g)(3), including dining, entertainment, and multipurpose rooms, amongst others, that further the enjoyment, service, and care of the residents. (FF 15-17.)
8. The Board concludes the Revised Application satisfies the requirement of Subtitle U § 203.1(g)(4) to provide sufficient off-street parking for employees, residents, and visitors because the R-1-B Building exceeds the minimum number of required off-street parking spaces in the Zoning Regulations and will be subject to the TDM Plan, which will be sufficient to mitigate potential adverse impacts as confirmed by the Applicant’s Transportation Reports and the OP and DDOT Reports. (FF 18, 22, 24; Ex. 29, 30.)
9. The Board concludes the Revised Application satisfies the requirement of Subtitle U § 203.1(g)(5) to ensure that R-1-B Building’s use as a CCRC is located and designed to not be objectionable to neighboring properties because:
 - The R-1-B Building’s entrance is designed to reduce potential noise impacts by being significantly setback from 48th Place, N.W., and separated from the residential

- properties to the north and east by the R-1-B Building;
 - Community outdoor space for the Overall CCRC is located along the commercial corridor of MacArthur Boulevard, N.W.;
 - Mechanical equipment for the Overall CCRC is not located outside, but instead inside the lower building levels;
 - All lighting will be directed downward so as not to interfere with the adjacent properties;
 - The R-1-B Building’s design responds to the aesthetic of the existing residential area;
 - The trash and loading facilities, and most of the parking, are located in the underground parking garage accessible from 48th Place, N.W.;
 - The V Street, N.W., curb cut only provides access to the 15 surface parking spaces located on the corner of 48th Place and V Street, N.W.;
 - The 15 surface parking spaces are separated from residential properties by 48th Place and V Street, N.W., and are shielded from the residential neighbors by two heritage trees; and
 - The Applicant’s TDM Plan, approved by DDOT, will mitigate the potential adverse traffic and pedestrian impacts of the R-1-B Building. (FF 19, 22, 24.)
10. The Board concludes that the Revised Application requires specific treatment to protect adjacent and nearby properties pursuant to Subtitle U § 203.1(g)(6), specifically conditions requiring traffic and pedestrian safety improvements and the implementation of the TDM Plan. (FF 20.)

General Special Exception Standards - Subtitle X § 901.2

11. Based on the case record and the Findings of Fact above, the Board concludes that granting the requested relief would:
- Be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, as required by Subtitle X § 901.2(a), because the R-1-B Building proposes a service use deemed compatible with the R-1-B zone that will help protect and stabilize a quiet residential area in conformity with the intent of the R-1-B zone, as confirmed by OP (FF 8, 22);
 - Not tend to affect adversely the use of neighboring properties in accordance with the Zoning Regulations and Map, as required by Subtitle X § 901.2(b), because:
 - The design and siting of the R-1-B Building shields the adjacent residential community from noise and lighting impacts, as confirmed by OP; and
 - The Revised Application adequately addresses any potential adverse traffic and pedestrian safety concerns, as confirmed by the DDOT Report, based on its parking and access layouts, the sidewalk and intersection improvements required as a condition of this order, and the TDM Plan. (FF 18-22, 24.)

GREAT WEIGHT TO RECOMMENDATIONS OF OP

12. The Board must give “great weight” to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective Sept. 20, 1990 (D.C. Law 8-163; D.C. Code § 6-623.04 (2018 Repl.)) and Subtitle Y § 405.8. *See also Metropole Condo. Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).

13. The Board finds persuasive OP's evaluation of the Revised Application as compliant with the requirements for a CCRC use in the R-1-B zone and its recommendation that the Board approve the Revised Application and concurs with this judgment.

GREAT WEIGHT TO WRITTEN REPORT OF THE ANC

14. The Board must give "great weight" to the issues and concerns raised in a written report of an affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective Mar. 26, 1976 (D.C. Law 1-21; D.C. Code § 1-309.10(d) (2012 Repl.)) and Subtitle Y § 406.2. To satisfy the great weight requirement, the Board must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. *Metropole Condo. Ass'n*, 141 A.3d at 1087. The D.C. Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns." *Wheeler v. District of Columbia Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (D.C. 1978) (citation omitted).
15. The Board considered the issues and concerns raised by the ANC Report and:
- Found the concern about retail on MacArthur Boulevard, N.W., unpersuasive because the use of the MU-4 zone portion of the Property was not before the Board in this proceeding, although the Board notes that the Applicant addressed this concern in its MOA and CMA;
 - Found unpersuasive the request that the Board incorporate the CMA and MOA in the order as a special treatment under Subtitle U § 203.1(g)(6) necessary to protect neighboring properties from the adverse impacts of granting the requested relief because portions of the MOA and CMA were irrelevant to the relief requested, addressed matters outside of the Board's jurisdiction, and affected portions of the Property for which no relief was sought, although the Board memorializes the CMA and MOA as an unenforceable condition of this order;
 - Found the concern that the current regulation of CCRC uses – by special exception in a R-1-B zone, but as a matter of right in a MU-4 zone – is unpersuasive and legally irrelevant to the Board's consideration of the Revised Application because the Zoning Regulations establish the authority and procedure for the Board to evaluate a request for relief within certain limited parameters and the ANC's concern is a question of public policy for consideration by the Zoning Commission that enacts the Zoning Regulations; and
 - Notes that the ANC Report, and ANC Commissioner Sriqui's testimony, supported the Revised Application and concurs in that judgement.

DECISION

Based on the case record, the testimony at the hearing, and the Findings of Fact and Conclusions of Law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the Revised Application's request for:

- A special exception pursuant to Subtitle U § 203.1(g) to authorize a CCRC use on the R-1-B zoned portion of Lot 25 in Square 1389
- and therefore **APPROVES** the Revised Application subject to the following **CONDITIONS**:

1. The R-1-B Building shall be constructed in accordance with the plans¹ submitted as Exhibits 27A1 and 27A2 in the record, as required by Subtitle Y §§ 604.9 and 604.10.
2. The Applicant shall implement the following traffic and pedestrian safety improvements around the perimeter of the Property:
 - a. Construct sidewalks, at the Applicant's expense, on the south side of V Street, N.W, from 48th Place, N.W., to MacArthur Boulevard, N.W., and from 48th Place, N.W., to the curb cut providing access to the proposed V Street, N.W., parking lot subject to permission and final approval by DDOT;
 - b. Construct, at the Applicant's expense, an extension of the sidewalk on the west side of 48th Place, N.W. up to V Street, N.W., at the beginning of the construction of the R-1-B Building, subject to permission and final approval by DDOT; and
 - c. Actively seek, in writing and orally, the following safety improvements near the R-1-B Building's site, and if approved by DDOT, construct these improvements:
 - i. Three-way stop signs and cross walks at V Street and 48th Place, N.W; at V and 49th Streets, N.W.; and at V and 48th Streets, N.W.;
 - ii. A no-right-turn-for-trucks sign at the 48th Place and V Street, N.W. intersection for trucks exiting 48th Place, N.W.;
 - iii. A crosswalk and a speed control measure on 48th Street near the intersection with U Street, N.W.;
 - iv. 15 mph signs near the library on V Street, N.W.;
 - v. A high-visibility crosswalk and crosswalk signal at U Street and MacArthur Boulevard, N.W.; and
 - vi. Sidewalk extensions along all of V, 48th, and 49th Streets, N.W.
3. The Applicant shall implement the following Transportation Demand management ("TDM") Plan, as proposed in the October 7, 2020, Transportation Memo, for the life of the project, unless otherwise noted:

¹ Self-Certification. The zoning relief requested in this case was self-certified, pursuant to Subtitle Y § 300.6. (Ex. 4.) In granting the requested self-certified relief subject to the plans submitted with the Application, the Board makes no finding that the requested relief is either necessary or sufficient to authorize the proposed construction project described in the Application and depicted on the approved plans. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any such application that would require additional or different zoning relief from that granted by this Order.

- a. The Applicant will unbundle the cost of vehicle parking from the housing cost for each independent living unit and lease vehicle parking spaces separately at a rate equivalent to or greater than the average market rate within a half mile;
- b. The Applicant will provide private transportation for medical appointments, grocery shopping, errands, and other common trips to the CCRC's residents;
- c. The Applicant will designate a TDM Coordinator for the planning, construction, and operations phases of development. The Transportation Coordinator will act as the point of contact with DDOT, goDCgo, and Zoning Enforcement;
- d. The Applicant will provide the TDM Coordinator's contact information to goDCgo, conduct an annual commuter survey of staff, transportation survey of residents, and report TDM activities and data collection efforts to goDCgo once per year;
- e. The TDM Coordinator will develop, distribute, and market various transportation alternatives and options to the staff and residents, including promoting transportation events (*i.e.*, Bike to Work Day, National Walking Day, Car Free Day) on the staff portal, property website, and in any internal building newsletters or communications;
- f. The TDM Coordinator will receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM Plan;
- g. The Applicant will provide welcome packets to all new staff and residents that include site shuttle information, the Metrorail pocket guide, brochures of local bus lines, carpool and vanpool information, Guaranteed Ride Home brochure, and the most recent DC Bike Map;
- h. The TDM Coordinator will provide staff who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments ("MWCOG") or other comparable service if MWCOG does not offer this in the future;
- i. The TDM Coordinator will subscribe to goDCgo's newsletters and distribute information on alternative transportation options to staff and residents on a regular basis;
- j. The Applicant will post all TDM commitments on website, publicize availability, and allow the public to see what commitments have been promised;
- k. The Applicant will provide every staff member a free SmartTrip card pre-loaded with \$50 and a complimentary annual Capital Bikeshare membership for one year after the building opens;
- l. The Applicant will provide every resident a free SmartTrip card pre-loaded with \$50;

- m. The Applicant will meet the Zoning Regulations' minimum requirements for short- and long-term bicycle parking;
 - n. The Applicant will provide three collapsible shopping carts (utility cart) available to residents to promote and encourage residents to walk for grocery shopping and to run errands; and
 - o. The TDM Coordinator will host transportation events for staff and residents twice a year to raise and maintain awareness of alternative transportation options. Examples include resident social, walking tour of local transportation facilities, goDCgo lobby event, transportation fair, WABA everyday Bicycling seminar, bicycle safety/information class, bicycle repair event, *etc.*
4. The Board acknowledges the existence of the Memorandum Of Agreement Between ANC 3D, 4865 MacArthur Landlord LLC, and The Trammell Crow Company For The Development At 4865 MacArthur Boulevard, dated October 27, 2020, and the Construction Management Agreement, dated October 27, 2020, between Midatlantic Development, Inc. and PPCA for the purpose of memorialization only, and disclaims any authority to enforce these Agreements, as portions of both are outside its jurisdiction.

VOTE (November 4, 2020): 4-0-1 (Frederick L. Hill, Lorna L. John, Chrishaun S. Smith, and Peter A. Shapiro to **APPROVE**; one seat vacant)

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: June 4, 2021

PURSUANT TO 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 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 SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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.