

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



**BZA Order No. 20065
BZA Application No. 20065
Dilan Investments, LLC
1818 Rhode Island Avenue, N.E. (Square 4208, Lot 7)**

Pursuant to notice, at its August 4, 2021, public meeting,¹ the Board of Zoning Adjustment (the “**Board**”) deliberated on the application, as revised (the “**Final Application**”) of Dilan Investments (the “**Applicant**”) that requested 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 Lot 7 in Square 4208, with an address of 1818 Rhode Island Avenue, N.E. (the “**Property**”) in the MU-4 zone:

- An area variance from Subtitle C § 711.5’s required minimum eight-foot-wide driveway that provides access to required vehicle parking spaces;
- An area variance from Subtitle C § 805.3’s requirement that required long-term bicycle parking spaces to be located in a bicycle storage room; and
- An area variance from Subtitle C § 805.9’s requirement that at least half of the required long-term bicycle parking spaces be horizontal,

to raze the existing detached principal dwelling unit and construct a new eight-unit residential apartment building on the Property. For the reasons explained below, the Board voted to **APPROVE** the Application.

FINDINGS OF FACT

I. BACKGROUND

PARTIES

1. The following are automatically parties in this proceeding pursuant to Subtitle Y § 403.5:
 - The Applicant; and
 - Advisory Neighborhood Commission (“**ANC**”) 5C, the ANC within which boundaries the Property is located and so the “affected” ANC per Subtitle Y § 101.8.

¹ The Board postponed, per the Applicant’s requests, the public hearing from the initially scheduled July 17, 2019, date to September 25, 2019 (Ex. 32-33), then to November 20, 2019, (Ex. 34 and 36), then to January 29, 2020 (Ex. 38-39), and finally to February 26, 2020, at which point the Board voted to approve the 2nd Revised Application (as defined below). At its June 23, 2021, public meeting, the Board rescinded its prior vote to approve and asked the Applicant to address the Board’s concerns about the Application’s eligibility for the requested special exception relief, which the Board scheduled to consider at its July 28, 2021, public meeting, but then postponed to August 4, 2021 (Ex. 60, 63).

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NOTICE

2. Pursuant to Subtitle Y §§ 400.4 and 402.1, the Office of Zoning (“**OZ**”) sent notice of the Application and the initially scheduled July 17, 2019, public hearing by a May 31, 2019, letter (Exhibit [“**Ex.**”] 15-27) to:
 - The Applicant;
 - ANC 5C;
 - ANC Single Member District Commissioner 5C07, 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 5, whose district includes the Property;
 - The Chairman and At-Large Member of the D.C. Council; and
 - The owners of all property within 200 feet of the Property
3. OZ also published notice of the July 17, 2019, public hearing in the May 31, 2019, *D.C. Register* (66 DCR 6613) as well as through the calendar on OZ’s website.

THE PROPERTY

4. The Property is an interior lot that is 35 feet wide and measures 2,910 square feet, with an angled rear lot line (Ex. 8, 55).
5. The Property is currently improved with a detached building that houses a principal dwelling unit (Ex. 8, 55).
6. The Property abuts the following:
 - To the north - detached buildings housing principal dwelling units;
 - To the east - detached buildings housing principal dwelling units;
 - To the south - Rhode Island Avenue, N.E.; and
 - To the west - detached buildings housing principal dwelling units (Ex. 8, 31, 46).
7. The Property is subject to a 1922 reciprocal easement (the “**Easement**”) shared with the abutting property at 1816 Rhode Island Avenue, N.E., (the “**West Abutter**”) that covers a four-and-a-half foot strip along the Property’s western side and a four foot strip on the West Abutter’s eastern side for a shared driveway right-of-way for both the Property and the West Abutter (Ex. 40, 57).
8. This shared driveway located on the Easement is the Property’s only access to the District’s street network and is seven feet, five inches (7 ft., 5 in.) wide at its narrowest point (Ex. 50A).
9. The neighboring properties include a mix of uses, including commercial and low-to-

moderate density residential uses (Ex. 8).

10. The Property is close to several modes of transit including:
 - 371 feet away from the Rhode Island Avenue and 18th St., N.E., bus stop;
 - 0.1 miles from the nearest Capital Bikeshare station;
 - 0.9 miles from the nearest rental car location; and
 - 1.2 miles from the Rhode Island Avenue Metro Station (Ex. 8).
11. The Property is located in the MU-4 zone, which Subtitle G § 400.3 states is intended to permit:

“moderate density mixed-use developments, to provide for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside the central core, and to be located in low and moderate density residential areas with access to main roadways or rapid transit stops, and include office employment centers, shopping centers, and moderate bulk mixed-use centers.”

II. THE APPLICATION

12. The Application proposes to raze the existing building and construct a new apartment building (the “**Building**”) (Ex. 8, 44, 51, 57).
13. The Application initially proposed that the Building would have 10 units (Ex. 8, the “**Initial Application**”).
14. On January 24, 2020, the Applicant updated the Application (Ex. 44-44D, the “**Revised Application**”) to:
 - Redesign the Building to not encroach on the Easement;
 - Reduce the number of units in the Building from 10 to eight, which reduced the minimum parking requirement from two spaces to one space;
 - Add three bicycle parking spaces in a bicycle room in the Building’s entry level;
 - Add two bicycle storage lockers in the rear yard of the Building.
15. On February 14, 2020, the Applicant further updated the Application (Ex. 51, 52, the “**2nd Revised Application**”) to:
 - Eliminate the proposed three-bicycle storage unit in the front of the Building in order to comply with the Applicant’s agreement with DDOT to provide accessible access to the Building from the public sidewalk on Rhode Island Avenue, N.E.;
 - Add three vertical bicycle storage racks in a corridor on the Building’s lower level; and
 - Add one additional exterior horizontal bicycle storage locker in the rear yard for a total of three exterior spaces in the rear yard and six total space on the Property.

ZONING RELIEF REQUESTED

16. The Initial Application requested the following relief for the Building:
 - A special exception pursuant to Subtitle X, Chapter 9, and Subtitle C § 703.2 from Subtitle C § 701.5's minimum two vehicle parking spaces to provide no parking spaces (Ex. 4).
17. The Revised Application amended the requested relief to:
 - Reduce the special exception relief from Subtitle C § 701.5 to relief from the one required vehicle parking space, since the smaller eight-unit building no longer required two vehicle parking spaces, to provide no parking spaces; and
 - Add a special exception pursuant to Subtitle X, Chapter 9, and Subtitle C § 807.2 from Subtitle C § 805.9's requirement that half of the three required indoor bicycle parking spaces be horizontal to provide all three required indoor spaces in a vertical format (Ex. 44, 44A).
18. The 2nd Revised Application amended the requested relief to:
 - Remove the requested special exception under Subtitle C § 807.2 from Subtitle C § 805.9's requirement to provide half of the three required indoor bicycle parking spaces in a horizontal format; and
 - Instead add a special exception under Subtitle C § 807.2 from Subtitle C § 802.1's three required long term bicycle parking spaces (although the Application still proposed to provide three substandard vertical bicycle parking spaces in the Building and three substandard bicycle parking spaces in exterior lockers) (Ex. 52, 52A).
19. The Final Application, filed on August 3, 2021, requested - in the alternative to the 2nd Revised Application's requested two special exceptions for vehicle and bicycle parking - the following three area variances:
 - From Subtitle C § 711.5's minimum eight-foot wide driveway that provides access to required vehicle parking spaces;
 - From Subtitle C § 805.3's requirement that required long-term bicycle parking spaces are located in a bicycle storage room; and
 - From Subtitle C § 805.9's requirement that at least half of the required long-term bicycle parking spaces are horizontal (Ex. 65-65B).

APPLICANT'S JUSTIFICATION OF RELIEF

Vehicle Parking – Minimum Access Requirements (Subtitle C § 711.5)

20. At the February 21, 2020 continued public hearing, the Applicant testified that the Applicant:
 - Could not provide the single vehicle parking space required by the Zoning Regulations on the Property because:
 - The shared driveway is too narrow to comply with the minimum width required by the Zoning Regulations;

- The Property has no alley access; and
 - Expanding the driveway would require moving the existing retaining wall in public space in front of the Property as well as the Building;
 - Accepted DDOT’s proposed revisions to the TDM plan; and
 - Would inform the Building’s future residents that they are not allowed to park in the shared driveway to address the West Abutter’s concerns and would allow the West Abutter to contact the Applicant directly with concerns about unauthorized parking (Transcript of the February 26, 2020, Public Hearing [“**Feb. Tr.**”] at 15-20).
21. The Final Application asserted that it met the area variance standards for relief from Subtitle C § 711.5’s minimum eight-foot width for driveways accessing required parking spaces because:
- *Exceptional condition* – the existing substandard driveway:
 - Is only half on the Property, with the other half on the West Abutter’s property; and
 - Cannot be expanded on the Property because the driveway directly abuts two objects that cannot be moved:
 - An existing retaining wall in public space; and
 - An existing telephone pole;
 - *Practical difficulty* – without the requested variance, the Applicant would not be able to use the existing driveway to provide the required parking space;
 - *No harm to the public good* – the requested variance would enable the Applicant to construct the eight-unit apartment house that is consistent with the purposes of the MU-4 zone; and
 - *No impairment of Zoning Regulations* – the requested variance would enable the Property to provide the parking space on the Property required by the Regulations (Ex. 65A).

Bicycle Parking – Location and Format Requirements

22. At the February 26, 2020 continued public hearing, the Applicant testified that it:
- Could not provide the required three long-term bicycle parking spaces in a bicycle room inside the Building as required by the Zoning Regulations unless the Applicant removed a unit, in which case the Building would not be required to provide any bicycle parking spaces; and instead
 - Would provide six bicycle parking spaces on the Property, although these would not meet the requirements to be in a separate room with at least half in horizontal racks (Feb. Tr. at 15-20).
23. The Final Application asserted that it met the area variance standards for relief from Subtitle C § 805.3’s requirement that required long-term bicycle parking spaces be inside a bicycle storage room and from Subtitle C § 805.9’s requirement that half of the required bicycle parking be in horizontal racks because:
- *Exceptional condition* – the Property’s steep slope to Rhode Island Avenue, N.E.,

prevents the Applicant from providing two horizontal long-term bicycle parking spaces inside the Building at the entry level because DDOT refused to approve an elevator in public space so that the Applicant had to provide a street entrance to the Building's lower level that eliminated the Application's initially proposed bicycle storage room;

- *Practical difficulty* – without the requested variances, the Applicant would have to reduce the number of units in the Building from eight to seven, in which case long-term bicycle parking is no longer required per Subtitle C § 807.2(a);
- *No harm to the public good* – the requested variances would:
 - Provide three bicycle storage spaces in the Building in vertical racks along the corridor instead of in a separate room with two in horizontal racks; and
 - Enable the Applicant to construct the eight-unit apartment house that is consistent with the purposes of the MU-4 zone; and
- *No impairment of Zoning Regulations* – the requested variances are minor and are mitigated by the Applicant's providing three non-zoning compliant bicycle parking spaces in the Building together with the TDM Plan (Ex. 65A).

III. RESPONSES TO THE APPLICATION

OP

24.

OP submitted a January 17, 2020 report (Ex. 40, the “**First OP Report**”) that:

- Concluded that the Initial Application failed to demonstrate that it met the requirements for the requested special exception relief because:
 - The Building appeared to require additional relief not requested in the Application – from Subtitle C § 802 and 805's bicycle parking requirements and Subtitle § 202.1's closed court dimensional requirements;
 - The Application's justification for vehicle parking relief asserted lack of access from an alley, but the Property's easement shared with the West Abutter provided access to the District's street network and so did not justify the requested vehicle parking relief unless the easement was extinguished; and
 - Left significant issues unresolved, including a TDM, roof plan, and trash storage facilities; and
- Therefore recommended denial of the Application.

25.

OP submitted a February 21, 2020 supplemental report (Ex. 55, the “**Revised OP Report**”) that:

- Determined that the 2nd Revised Application satisfied the special exception criteria to permit a reduction to zero in the number of compliant parking spaces provided by the Project because:
 - The Building is particularly well-served by buses and shared bicycle facilities;
 - The reduction in parking spaces was for only the amount the Applicant is physically unable to provide on the lot and is proportionate to the reduction in demand demonstrated by the Applicant,
 - The Applicant had agreed to a TDM; and

- The Building was unable to provide the required three bicycle parking spaces on the property given the physical constraints of the Property, specifically DDOT's requirement that the Applicant provide an accessible building entrance without using a lift located in public space, which required a redesign of the lower building level eliminating the lockable bicycle storage room; and
 - Therefore recommended approval of the Application (Ex. 55).
26. At the February 26, 2020, continued public hearing, OP testified that:
- The Building complied with the development and use standards of the MU-4 zone;
 - The Property has limited access for parking because it lacks alley access and the existing driveway is of a substandard width;
 - The Applicant's provision of six bicycle parking spaces, even if substandard, are sufficient for DDOT and OP to determine compliance with the intent of the Zoning Regulations and address the potential transportation impacts of the Building (Jan. Tr., at 46-51); and
 - Therefore, OP supported the Application, subject to the TDM conditions (Feb. Tr. at 48).
27. OP submitted a July 7, 2021 supplemental report (Ex. 55, the "**Final OP Report**") that:
- Reiterated the prior OP Report's analysis of the requested special exception relief requested by the 2nd Revised Application;
 - Asserted that the eight-foot by sixteen-foot vehicle parking space shown on Exhibit 50A would not comply with the minimum size requirements of Subtitle C § 712.5; and
 - Relied on the Zoning Administrator's advice that the 2nd Revised Application was eligible for the requested special exception relief.

DDOT

28. DDOT submitted a September 19, 2019 report (Ex. 35, the "**First DDOT Report**") that:
- Noted that the Property lacks alley access to the District's street network;
 - Stated that DDOT would be unlikely to approve the expansion of the existing driveway's curb cut because:
 - The minimum size of curb cuts is 14 feet wide; and
 - Widening the existing curb cut would remove at least one curb-side parking space;
 - Concluded that "this proposed action will have no adverse impacts on the travel conditions of the District's transportation network;"
 - Concluded that the bicycle parking relief was mitigated by the Applicant's proffer of four substandard bicycle parking spaces; and
 - DDOT had no objection to the Application, provided that the Applicant adopt a Transportation Demand Management ("**TDM**") plan with DDOT's specific conditions (Ex. 35).
29. DDOT submitted a February 21, 2020 supplemental report (the "**Supplemental DDOT**

Report”), that reiterated that DDOT Report and:

- Reviewed the Revised Application that added special exception relief from Subtitle C § 802’s bicycle parking requirements;
- Concluded that the bicycle parking relief was mitigated by the Applicant’s proffer of three substandard bicycle parking spaces in lockers in the Building’s rear yard as well as three substandard vertical bicycle parking spaces in a corridor in the Building’s lower level;
- Determined that the Revised Application would have no adverse impacts on the travel conditions of the District’s transportation network; and
- Therefore concluded that DDOT had no objection to the Revised Application, provided that the Applicant implement the TDM plan approved by DDOT (Ex. 52B).

ANC 5C

30. ANC 5C submitted a June 19, 2019 report (Ex. 31, the “**First ANC Report**”) stating that at its June 19, 2019 noticed public meeting, at which a quorum was present, the ANC voted to oppose the Application and to express the following issues and concerns:

- The Building would substantially compromise the quality of life of adjacent properties because:
 - The proposed excavation and grade change to make the Building’s entry level directly accessible to Rhode Island Avenue, N.E., would damage the East and West Abutters’ properties that would remain at the current grade;
 - The location of trash receptacles in public space;
 - The impact on on-street parking that is already scarce;
 - The absence of rear fire egress given the Property’s lack of alley access and proposed lower grade than adjacent properties; and
- The Building will substantially and detrimentally alter the character of the immediate neighborhood by replacing a single household residence with an eight-unit apartment house that does not match the adjacent single household residences, and therefore is substantially inconsistent with the general intent and purpose of the Zoning Regulations.

31. ANC 5C submitted a supplemental February 21, 2020 report (Ex. 53 and 54, the “**Supplemental ANC Report**”) stating that at its February 5, 2020, duly-noticed public meeting, at which a quorum was present, the ANC voted to oppose the 2nd Revised Application and expressed the following issues and concerns in addition to those stated in the First ANC Report:

- Where the property line fell along the western edge of the Property;
- Who owned the shared driveway between the Property and the West Abutter;
- The elevation and grade change between the Building and the two existing neighboring properties given the proposed plans;
- Detriment to the privacy of the neighbors; and
- The Building’s scale, use, and design are inconsistent with the existing single-household residences that are adjacent to the Property.

32. At the February 26, 2020 public hearing, the ANC Commissioner for the Single Member District in which the Property is located, provided testimony that:
- Questioned the accuracy of the Applicant's revised plans;
 - Asserted that the Building would impact the privacy of the neighboring single-family dwellings;
 - Argued that residents of the Building will likely bring cars, and the Applicant's assertion that the residents would not have cars is unrealistic; and
 - Argued that the Building's scale and use are not consistent with the neighboring single-household buildings and the neighborhood in general (Feb. 26 Tr. at 29-45).
33. The ANC did not respond to the Final Application.

PERSONS IN SUPPORT

34. The Board received no letters or testimony from persons in support of the Application.

PERSONS IN OPPOSITION

35. The Board received 29 letters in opposition to the Application that echoed the concerns expressed by the ANC Reports:
- The Building's scale and use was out of character with the neighboring single-household residences;
 - The Building would have parking impacts and so should not be exempted from providing at least the single required parking space; and
 - The location of the Building's trash facilities is of concern (Ex. 29, 30, 37).
36. The West Abutter testified in opposition to the Building because she shared the driveway with the Applicant and expressed concern that the residents of the Building would park in the shared driveway, blocking access to the parking behind the West Abutter (Feb. Tr. at 52-54).

CONCLUSIONS OF LAW

1. Based on the case record and the Findings of Fact, the Board concludes that the Final Application's request in the alternative for variance relief is the appropriate relief, not the special exceptions initially requested, because the relief required is from the access requirements for required vehicle parking and from the location and format requirements for required bicycle parking, for which the Zoning Regulations do not authorize special exception relief (although the Zoning Commission is currently considering authorizing such special exception relief in Z.C. Case No. 21-10).
2. At its August 4, 2021 public meeting, the Board, out of an abundance of caution, granted a waiver pursuant to Subtitle Y § 101.9 from the notice requirements of Subtitle Y § 402

in order for the Board to consider the Final Application which requested variance relief in alternative to the initially requested special exception relief. The Board concluded that no additional notice was required because:

- The plans for the Building had not changed;
- The relief remained from the vehicle and bicycle parking requirements;
- The justification for the relief rested on facts already in the record concerning the Property's physical constraints;
- The possibility of changing the type of relief from special exceptions to variances was raised publicly by the Board's June 23, 2021 decision to rescind its prior vote and request that the Applicant and OP provide a further analysis of the eligibility of the Application for the requested special exception relief; and
- The Board's request for that information provided an opportunity for the parties in this case to respond.

The Board concluded that if a waiver was required, good cause existed to grant such notice due to the length of time since the Board's initial vote on February 26, 2020, and that granting the notice would cause no prejudice to the parties since they were given an opportunity to respond.

AUTHORITY

3. Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(3) (2018 Repl.); *see also* Subtitle X § 1000.1, 1002.1) authorizes the Board to grant a variance from the requirements of the Zoning Regulations where the Board concludes that:
 - The property is affected by exceptional size, shape, or topography or other extraordinary or exceptional situation or condition;
 - The owner would encounter peculiar and exceptional practical hardship if the Zoning Regulations were strictly applied; and
 - The variance, if granted, would:
 - Not cause substantial detriment to the public good; and
 - Not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Exceptional Condition

4. "The 'exceptional condition' requirement may be satisfied by a characteristic of the land, *see Fleischman v. District of Columbia Bd. of Zoning Adjustment*, 27 A.3d 554, 561 (D.C. 2011); '(a) condition inherent in the structures built upon the land,' *Capitol Hill Restoration Soc'y, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939, 942 (D.C. 1987); or prior zoning actions regarding the property." *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097–98, 1100 (D.C. 1979) "The extraordinary or exceptional conditions affecting a property can arise from a confluence of factors; however, the critical requirement is that the extraordinary or exceptional condition must affect a single property." *Metropole Condo. Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1082–83 (D.C. 2016); *Ait-Ghezala v. District of*

Columbia Bd. of Zoning Adjustment, 148 A.3d 1211, 1217 (D.C. 2016).

Practical Difficulty

5. Due to “the nature of the respective types of variances and their effects on the zone plan the higher ‘undue hardship’ standard applies to requests for use variances while the lower ‘practical difficulty’ standard applies to area variances” *Gilmartin v. District of Columbia Bd. of Zoning Adjustment B.Z.A.*, 579 A.2d 1164, at 1170 (DC 1990). “A use variance cannot be granted unless a situation arises where reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations. An inability to put property to a more profitable use or loss of economic advantage is not sufficient to constitute hardship. It must be shown that the regulations preclude the use of the property in question for any purpose for which it is reasonably adapted, *i.e.*, can the premises be put to any conforming use with a fair and reasonable return arising out of the ownership thereof?” *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 542 (DC 1972) (internal quotations and citations omitted) However, “at some point economic harm becomes sufficient, at least when coupled with a significant limitation on the utility of the structure.” *Gilmartin*, 579 A.2d 1164, 1171.

AREA/USE VARIANCE

6. Subtitle X § 1001 distinguishes between use and area variances,² with use variances limited to three specific categories:
 - Uses not permitted as a matter of right or by a special exception;
 - Uses expressly prohibited; or
 - A prohibited expansion of a nonconforming use (Subtitle X § 1001.4).
7. The area variance category is instead “open ended” and broadly encompasses deviations from requirements including “minimum parking or loading requirements to an extent greater than what may be permitted by special exception” amongst other examples (Subtitle X §§ 1001.3(b); *NRG, LLC v. D.C. Bd. Of Zoning Adjustment*, 195 A.3d 35, 61 (D.C. 2018)).
8. An applicant for an area variance must prove that an extraordinary condition of the property would result in “peculiar and exceptional practical difficulties” by demonstrating first that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property (*Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990); Subtitle X § 1002.1(a)).
9. “[B]ecause of the nature of the respective types of variances and their effects on the zone

² In 2013, the Zoning Commission adopted definitions of use and area variances in Z.C. Case No. 12-11; prior to that time, use and area variances were defined by case law. OP’s set down report stated “use variance treatment is only appropriate when an applicant seeks to establish a use that is not permitted at all within a zone district, as opposed to a use that is permitted, but restricted or conditioned in some way” (Z.C. Case No. 12-11, Ex. 1 at 14).

plan the higher ‘undue hardship’ standard applies to requests for use variances while the lower ‘practical difficulty’ standard applies to area variances” *Gilmartin*, 579 A.2d at 1170.

ANALYSIS

10. Based on the case record and the Findings of Fact, the Board concludes that the Final Application’s request in the alternative for variance relief satisfied the burden of proof for the reasons discussed below.

Area Variance

11. The Board concludes that the Application’s request for variances from Subtitle C §§ 711.5, 805.3, and 805.9 properly qualify as area variances because these would allow deviations from minimum parking requirements to an extent greater than permitted by special exception.

Exceptional Condition

12. The Board concludes that the Property is affected by the following exceptional conditions applicable to the requested variances:
- The Property’s steep slope along its frontage on Rhode Island Avenue, N.E.;
 - The Property’s lack of access to the District’s street network by an alley;
 - The Property’s substandard existing driveway that is equally divided between the Property and the West Abutter’s property pursuant to the driveway easement;
 - The Property’s existing conditions of a retaining wall and telephone pole in public space that prevents the expansion of the existing driveway; and
 - DDOT’s statement that it would not support the expansion of the existing curb cut necessary to comply with the vehicle parking space access requirements.

Practical Difficulty

13. The Board concluded that these exceptional conditions created the following practical difficulties for the Applicant:
- Without the requested variance from the vehicle parking access requirement, the Applicant could not provide the vehicle parking space required for the Building’s eight dwelling units – despite having the area to do so and the existing driveway to provide access; and
 - Without the requested variances from the bicycle parking location and format requirements, the Applicant would have to reduce the number of units in the Building from eight to seven, in which case long-term bicycle parking is no longer required per Subtitle C § 807.2(a).

No Substantial Harm to Public Good

14. The Board concluded that granting the requested variances would not create substantial harm to the public good because:
- The Applicant has agreed to a transportation demand management plan with DDOT to

- mitigate the impacts of the requested relief (FF 48, 56);
- The variance from the vehicle parking access requirement will allow the Applicant to comply with the intent of the vehicle parking requirements by providing the single required vehicle parking space, as shown on Exhibit 50A, with access to the District's street network by the existing driveway;
 - The Applicant has indicated that it would ensure that the Building's residents do not block the driveway that is also used by the West Abutter;
 - The variances from the bicycle parking location and format requirements will allow the Applicant to comply with the intent of the bicycle parking requirements because the Property will have six substantially compliant long-term bicycle spaces as mitigation for not providing the three required fully compliant long-term bicycle spaces
 - Three on vertical racks in the corridor of the Building's lower level; and
 - Three in horizontal format in exterior lockers in the Property's rear yard, as shown on Exhibit 50A; and
 - The variances would enable the Applicant to construct the eight-unit apartment house that is consistent with the purposes of the MU-4 zone.

No Substantial Impairment of the Zoning Regulations

15. The Board concluded that granting the requested variances would not substantially impair the intent, purpose, and integrity of the Zoning Regulations because:
- The Property will substantially comply with the vehicle and bicycle parking requirements since the requested relief is minor:
 - The driveway width is approximately seven inches short of the required eight feet; and
 - The Applicant is providing twice as many bicycle parking spaces as required and these are substantially compliant with the location and format requirements:
 - Three of the bicycle racks are in the Building; and
 - Three are in horizontal format in enclosed lockers;
 - The Applicant will comply with the TDM plan; and
 - The Building meets the intent of the MU-4 zone to permit moderate density development that can be located in low and moderate density residential areas with access to main roadways and rapid transit stops.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

16. The Board must give “great weight” to the recommendations of OP, pursuant to § 13(d) of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001); *see* Subtitle Y § 405.8).
17. The Board finds persuasive the recommendations of OP's reports and testimony that the Building will not have adverse impacts on neighboring properties, will substantially comply with the vehicle and bicycle parking requirements of the Zoning Regulations, and that the Application should be approved, and concurs in that judgement. The Board does

not believe that OP's reliance on the Zoning Administrator's private consultation or the self-certification process relieves the Board of its responsibility to interpret the Zoning Regulations since "it is the Board, not the Zoning Administrator, which has the final administrative responsibility to interpret the zoning regulations."³ The Board cannot blindly accept the self-certification process or Zoning Administrator's interpretation where the facts presented by an applicant with the burden of proof indicate that the requested relief is not appropriate due to a fundamental lack of eligibility. The Board also does not concur with the OP Final Report's assertion that the vehicle parking space proposed in the Property's rear yard in Exhibit 50A does not comply with the dimensional requirements of Subtitle C § 712.5 as OP appears not to have considered the Zoning Commission's amendment of that section in Z.C. Case No. 21-04 to allow compact vehicle parking spaces where no more than two spaces are required. The Board notes that the proposed space as shown on Exhibit 50A may not fully comply with the amended Subtitle C § 712.5, but that there appears to be ample space if the space is oriented 90 degrees from the drive aisle, so the Board provides the Applicant with the flexibility from the orientation shown on Exhibit 50A to provide a fully compliant space.

"GREAT WEIGHT" TO THE WRITTEN REPORT OF THE ANC

18. The Board must give "great weight" to the issues and concerns raised in a written report of the 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 March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.); see Subtitle Y § 406.2). To satisfy this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns" *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978).

19. The Board finds persuasive the ANC Report's concern about the lack of vehicle parking in the neighborhood and the 2nd Revised Application's request to provide no vehicle parking spaces on the Property. However, the Board concludes that the Final Application, together with the plans at Exhibit 50A, satisfactorily addresses this concern because:
 - The Applicant will provide the single required vehicle parking space on the Property as shown on Exhibit 50A;
 - The Applicant will provide twice the required number of bicycle parking spaces, with these spaces substantially compliant;
 - The Property is especially well served by mass transportation and bicycle facilities; and
 - The Applicant will comply with the TDM plan approved by DDOT.

³ *Bannum, Inc. v. D.C. BZA*, 894 A.23 423, 431 (D.C. 2006).

20. The Board does not find persuasive the ANC Report's other issues and concerns because these are beyond the scope of the Board's review in considering relief from the vehicle and bicycle parking requirements, and therefore are not "legally relevant issues and concerns":
- The Building's scale and use, and impact on the character of the neighborhood are not before the Board, since these comply with the matter-of-right requirements for the MU-4 zone and so no relief is requested; and
 - The concerns about trash disposal, the accuracy of the plans, protection of abutting properties due to the grade change, and the sufficiency of emergency access will be addressed by the applicable regulatory agencies during the review of the building permit application.

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 its burden of proof with respect to the request for:

- An area variance from Subtitle C § 711.5's required minimum eight-foot-wide driveway that provides access to required vehicle parking spaces;
- An area variance from Subtitle C § 805.3's requirement that required long-term bicycle parking spaces to be located in a bicycle storage room; and
- An area variance from Subtitle C § 805.9's requirement that at least half of the required long-term bicycle parking spaces be horizontal,

and therefore **APPROVES** the Final Application for that relief, subject to the following conditions:

1. Development of the Property that uses the relief granted in this Order shall comply with the approved plans at Exhibit 50A⁴ as required by Subtitle Y §§ 604.9 and 604.10, provided that the Applicant may alter the orientation of the vehicle parking space shown on Exhibit 50A to comply with the dimensional requirements of Subtitle C § 712.5; and
2. The Applicant shall implement the Transportation Demand Management Plan approved by DDOT as detailed in Exhibit 52B.

⁴ Self-Certification. The zoning relief requested in this case was self-certified, pursuant to Subtitle Y § 300.6 (Exhibit 65A). 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 Building 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 Building and to deny any such application that would require additional or different zoning relief from that is granted by this Order.

The Board notes that the Applicant's later submitted plans (Ex. 62B) were based on the initially requested special exception relief and so not applicable to the variance relief granted, which required the provision of the one vehicle parking space and the three exterior bicycle spaces in the rear of the Building as well as the three horizontal bicycle spaces in the Building's lower level (Ex. 50A, Sheet A300.1).

VOTE (August 4, 2021): 5-0-0 (Frederick L. Hill, Lorna L. John, Carl H. Blake, Chrishaun S. Smith, and Peter A. Shapiro 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: August 16, 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.

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,

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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.