

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



Application No. 20508 of 9 New York Avenue LLC, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9 for a special exception under Subtitle C § 909.2 from the minimum loading berth requirements of Subtitle C § 901.1 to allow a new apartment house (116 units, 14 stories with penthouse) in the D-5 Zone at 7 New York Avenue, NE (Square 671, Lot 14).¹

HEARING DATES: September 22 and 29, 2021
DECISION DATE: September 29, 2021

DECISION AND ORDER

This self-certified application was filed April 12, 2021 on behalf of 9 New York Avenue LLC (“Applicant”), the owner of the property that is the subject of the application. 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 May 4, 2021, to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), Advisory Neighborhood Commission (“ANC”) 6C, the ANC in which the subject property is located, and Single Member District ANC 6C06, ANCs 5E and 6E as adjacent ANCs,² the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 6 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 7, 2021 (68 DCR 5006) as well as through the calendar on the Office of Zoning website.

¹ This caption has been amended to reflect that a request for a special exception under Subtitle C § 1504 from the penthouse height requirements of Subtitle C § 1500.9, contained in the original application, was withdrawn after the Applicant revised the proposed penthouse design in response to comments from the Planning, Zoning, and Economic Development Committee of ANC 6C. (Exhibits 30, 36.)

² In accordance with Subtitle Y § 101.8, the term “affected ANC” refers to any ANC that represents an area directly across the street from the property that is the subject of an application as well as the ANC within which the subject property is located.

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Parties. Pursuant to Subtitle Y § 403.5, the Applicant and ANCs 6C, 5E, and 6E were automatically parties in this proceeding.³ The Board did not receive any requests for party status.

Applicant's Case. The Applicant presented evidence and testimony from Rishi Bhatnagar, on behalf of the owner of the subject property, J.B. Lallement, the project architect, and Erwin Andres, a traffic engineer, in support of the application for loading relief in connection with the redevelopment of the subject property with a new apartment house. Mr. Lallement and Mr. Andres were recognized as expert witnesses in architecture and transportation, respectively.

OP Report. By report dated September 10, 2021, the Office of Planning recommended approval of the application. (Exhibit 33.)

DDOT Report. By memorandum dated September 10, 2021, the District Department of Transportation indicated no objection to approval of the application subject to a condition requiring the Applicant to implement a loading management plan. (Exhibit 34.) In a supplemental report dated September 27, 2021, DDOT again stated no objection to approval of the application subject to a condition requiring the Applicant to implement its revised loading management plan. (Exhibit 42.)

ANC Report. ANC 6C submitted a report stating that, at a public meeting on July 14, 2021 with a quorum present, the ANC voted to oppose the application because the “proposed loading zone is inadequate and will not work as claimed.” (Exhibit 38.)

Person in opposition. The Board received a letter in opposition to the application from a resident of N Street, NE across from the Applicant's property. The person in opposition stated that recent developments in the neighborhood have increased traffic congestion and asserted that approval of the application, for a project close to a complex intersection, would exacerbate traffic and parking conditions and adversely affect the neighborhood.

FINDINGS OF FACT

1. The property that is the subject of this application is a through lot bounded by New York Avenue on the north and N Street, NE on the south (Square 671, Lot 14).
2. The subject property is generally triangular in shape, with approximately 164 feet of frontage on New York Avenue and 150 feet of frontage on N Street. The east lot line, approximately 67 feet long, abuts Lot 27. The western boundary abuts a portion of Reservation 183 located to the east of the intersection of New York Avenue, N Street, and North Capitol Street.

³ ANCs 5E and 6E did not submit reports or otherwise participate in this proceeding.

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3. The subject property has a lot area of 5,009 square feet.
4. The subject property was improved with a three-story building formerly used as a public charter school known as the Covenant House.
5. The Applicant proposed to raze the existing building and construct an apartment house at the subject property. The new building will be 14 stories and approximately 130 feet in height, with a penthouse 20 feet high, and will contain approximately 116 dwelling units as well as amenity space on the ground-floor and penthouse levels. The planned building, with a total of 68,805 square feet of gross floor area, will meet zoning requirements other than with respect to loading.
6. The Applicant proposed not to provide loading facilities on the subject property but to create a new loading area in public space on the north side of N Street adjacent to the new building, the use of which will be subject to a loading management plan implemented by the Applicant. The loading area will be more than 100 feet in length and will not interfere with vehicle travel lanes on N Street.
7. The curbside configuration will provide a 50-foot truck loading zone and approximately 65 feet of space designated for pick-up/drop-off use as well as for move-in/move-outs, trash collection, and deliveries when the loading zone is occupied. The loading management plan specified signage that will prohibit vehicle parking in the loading area but allow standing and shorter-term pick-up/drop-off activities.⁴
8. The loading area will be used both for deliveries and for trash collection. Deliveries into the building will be accommodated via a door located approximately six feet from the east property line providing access to the elevator lobby on the ground floor of the building. The building will provide a trash storage room on the ground floor, accessible from N Street through a service corridor.
9. The Applicant submitted a report prepared by its transportation engineer that analyzed various scenarios for the provision of on-site loading (Exhibit 30C). The report concluded that none of the scenarios for on-site loading was feasible because of the small size of the subject property, its triangular shape, and the need to locate the building's elevators so as to meet the setback requirements at the penthouse level. The alternatives considered were:
 - (a) A curb cut on New York Avenue near the east property line accommodating head-in, head-out loading with turning movements on the subject property.

⁴ DDOT expressed general support for the loading concept proposed by the Applicant (see Exhibit 30A, page A-03) and approved the Applicant's loading management plan but noted that final approval of the curb-side loading zone would occur during public space permitting, when the exact size of the loading zone and appropriate signage would be identified. (Exhibit 34.) The Applicant anticipated the installation of "No Parking: Loading Zone" signs adjacent to the loading zone and "No Parking" signs adjacent to the pick-up/drop-off zone to promote compliance. (Exhibit 43A.)

- (b) A curb cut on N Street near the east property line accommodating head-in, head-out loading with turning movements on the subject property.
 - (c) A curb cut on N Street near the east property line accommodating a back-in configuration.
 - (d) A curb cut on N Street near the east property line accommodating head-in arrivals from N Street and head-out departures onto New York Avenue.
10. The subject property does not have access from a public alley.
 11. The Applicant's project will provide short- and long-term bicycle parking consistent with zoning requirements. (See Subtitle C § 802.1.) The new apartment house is not required under the Zoning Regulations to provide vehicle parking. (Subtitle C §§ 701.1, 702.)
 12. Pedestrian access to the new building will be provided primarily in two entrances on New York Avenue or on N Street. The building will also have a door on N Street providing access to the bicycle storage room.
 13. The subject property currently has three curb cuts, two on New York Avenue and one on N Street. The existing curb cuts will be closed as part of the Applicant's redevelopment of the site.
 14. The abutting property to the east has a curb cut on N Street that is located 1.5 feet from the lot line in common with the subject property.
 15. The abutting property is improved with a hotel 130 feet in height (33 New York Avenue, N.E.). A large apartment house, known as the Belgard and containing approximately 350 dwelling units, is located across N Street to the south of the subject property.
 16. The surrounding area contains a mix of residential, retail, and industrial buildings as well as parking lots.
 17. Properties to the west of the subject property, across North Capitol Street, are zoned RA-4 (a Residential Apartment zone) south of New York Avenue. Properties fronting on North Capitol Street to the north of New York Avenue are located in Mixed Use ("MU") zones, MU-4 and MU-5.
 18. The subject property and surrounding properties east of North Capitol Street are located in a Downtown (D) zone, D-5. The purposes of the Downtown zones are to provide for the orderly development and use of land and structures in areas the Comprehensive Plan generally characterized as: (a) central Washington or (b) appropriate for a high-density mix of office, retail, service, residential, entertainment, lodging, institutional, and other uses, often grouped into neighborhoods with distinct identities. (Subtitle I § 100.1.) The

provisions of the Downtown zones are intended to (a) create a balanced mixture of land uses by providing incentives and requirements for retail, residential, entertainment, arts, and cultural uses the Comprehensive Plan identifies as essential to a successful downtown, and by guiding and regulating office development; (b) protect historic buildings and places while permitting compatible new development, subject to the review process of the Historic Landmark and Historic District Protection Act of 1978; (c) guide the design of buildings into being not inconsistent with the policies of the Central Washington Element and other relevant elements of the Comprehensive Plan; (d) provide for the return of historic L'Enfant streets and rights of way; (e) establish design or use requirements for the ground-level of buildings facing certain streets that are of high priority for furthering retail, pedestrian or historic purposes contained in the Comprehensive Plan; (f) encourage the development of publicly accessible open space; (g) encourage the development of housing, including the development and preservation of affordable housing, in Central Washington consistent with the policies of the Central Washington Element and other relevant elements of the Comprehensive Plan; (h) provide incentives and flexible mechanisms for achieving the retail, residential, historic, and open spaces goals through the generation and use of density credits that can be traded within defined areas; (i) ensure a continued mix of retail and residential development in the Comprehensive Plan's Chinatown policy focus area; (j) promote the growth of a well-design mixed-uses and streetscapes on portions of M Street, S.E., South Capitol Street, and properties now devoted to federal offices in Southwest, including a mechanism for selective design review by the Zoning Commission; and (k) provide for adequate and visually acceptable parking and consolidated loading facilities that do not interfere with active, pedestrian-oriented sidewalks and the flow of vehicular traffic. (Subtitle I § 100.2.)

19. The purposes of the D-5 zone are to promote high-density development of commercial and mixed uses in areas that had been receiving areas for transferable development rights under Chapter 17 of the 1958 Zoning Regulations. (Subtitle I § 538.1.)
20. In the D zones, a vehicular entrance to a garage or loading area is permitted on the face of a building adjacent to a public street only if DDOT permits access to the garage entrance or loading area directly from a public street right of way without an intervening alley and there is not an improved and accessible alley or alley system that is consistently at least 15 feet wide connecting a public street and the building lot's rear or side property line. (Subtitle I § 401.1.)
21. A vehicular entrance that does not meet the requirements of Subtitle I § 401.1 may be approved by the Board as a special exception when (a) there is no practical alternative means of serving the parking, loading, or drop-off needs of the building to be served by the proposed driveway, such as signage approved by DDOT that would direct vehicles to an alternative entrance point within the same square, (b) the vehicular entrance would not impede the flow of pedestrian traffic on designated primary street frontage, and (c) the driveway that would access the proposed parking or loading entrance or exit would not be

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inconsistent with any DDOT landscape plans for the public rights of way on the designated street frontage. (Subtitle I § 401.2.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception, pursuant to 11 DCMR Subtitle X Chapter 9 and Subtitle C § 909.2, from the minimum loading berth requirements of Subtitle C § 901.1 to allow a new apartment house (116 units, 14 stories with penthouse) without loading facilities in the D-5 zone at 7 New York Avenue, NE. (Square 671, Lot 14). 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.)

The Zoning Regulations generally require a residential building with more than 50 dwelling units to provide a loading berth, at least 12 feet wide and 30 feet deep, and a service/delivery space, at least 10 feet wide and 20 feet deep. (Subtitle C §§ 901.1, 905.2, 905.3.) The Zoning Regulations provide flexibility from the loading requirements when, among other things, the provision of the number of loading spaces would be (a) impractical due to the shape or configuration of the site constraints, (b) unnecessary due to a lack of demand for loading, or (c) contrary to other District of Columbia regulations. (Subtitle C § 909.1.) The Board may grant full relief from the number of loading berths and service/delivery spaces required by Subtitle C § 901.1 as a special exception subject to an applicant's demonstration of at least one of the specified grounds for relief.⁵ Approval of relief from the loading requirements may be appropriate when a given use or structure will generate a lower loading demand as a result of the nature of the use or structure or when a loading demand management plan will result in a lower loading demand than the minimum loading standards of Subtitle C §§ 901 and 905 require, so long as the loading management plan is filed in the case record in accordance with Subtitle Y § 300.14 and is approved by DDOT, and implementation of the plan is made a condition of the Board's approval of the relief. (Subtitle C § 909.2(a).) Approval of relief from loading requirements may be appropriate when the only means by which a motor vehicle could access a lot is from a public street, and provision of a curb cut or driveway on the street would violate any regulation in Chapter 9 of the Zoning Regulations ("Loading") or in Chapters 6 or 11 of Title 24 DCMR.⁶ (Subtitle C § 909.2(b).) When approving flexibility from loading requirements, the Board may impose conditions as to loading management practices or any other requirement it deems necessary to protect adjacent or nearby property and promote the public health, safety, and welfare. (Subtitle C § 909.5.)

⁵ Three grounds are specified, one of which is not relevant to this application: when the loading berths or service/delivery spaces would be required for an addition to a historic resource. (Subtitle C § 909.2(c).)

⁶ This refers to Chapter 6 "Parking Facilities and Valet Parking" and Chapter 11, "Downtown Streetscape" of Title 24 (Public Space and Safety) of the District of Columbia Municipal Regulations.

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Based on the findings of fact, the Board concludes that the application demonstrated that the provision of the required loading facilities would be impractical due to the shape and configuration of the site constraints and would be contrary to other District of Columbia regulations. Approval of the application is consistent with Subtitle C § 909.2 because the only means by which a motor vehicle could access the Applicant's property is from a public street and the provision of a curb cut or driveway on the street would violate other District regulations, and because the Applicant submitted a loading management plan that DDOT approved and the Board adopts in this order as a condition of the approval of the requested loading relief.

The Applicant's property does not have access to a public alley, so vehicular access can be provided only from a public street.⁷ The existing curb cuts on New York Avenue do not meet current DDOT standards due to their location on the busier of the two streets abutting the property. The Board credits the Applicant's explanation that, especially considering the proximity of the subject property to the intersection of New York Avenue and North Capitol Street, the use of curb cuts on New York Avenue for loading access would be the disfavored approach according to the DDOT Design and Engineering Manual (see DDOT Design and Engineering Manual, Section 31.5(g); a curb cut should be located "on the street with the lower volume of vehicular traffic when a property fronts on two or more streets and when consistent with area planning and historic preservation objectives."). Similarly, a curb cut on N Street would not meet the requirements of Chapter 6 of Title 24 (Public Space and Safety) of the District of Columbia Municipal Regulations, in part because of the proximity of an existing curb cut on the abutting property. The Applicant cited especially 24 DCMR § 605.8, which requires that all curb cuts and driveways must meet the specifications of and be permitted by DDOT, and noted that a curb cut on N Street would not likely be approved through the public space process over DDOT's objections. (Exhibit 43.)

In addition to the Applicant's inability to provide compliant curb cuts, other constraints make the provision of loading facilities infeasible at the subject property. The Board credits the conclusion of the Applicant's transportation expert, which was corroborated by DDOT, that on-site loading would not comply with DDOT policies, including those applicable to turning movements. The Board also agrees with the Applicant that on-site loading facilities would be infeasible because of the small size of the lot, its triangular shape, and the impact that any loading facilities would have on internal features of the building. The provision of on-site loading would prevent the location of the elevator core so that the elevator override would comply with zoning regulations governing penthouse setbacks, and would preclude use of much of the ground floor for any purpose other than loading.

In urging the Board to deny the application, ANC 6C argued that the Applicant had "failed to adequately consider onsite loading options." The ANC recognized the unusual shape of the subject property "and that head-in, head-out maneuvers are fundamentally infeasible." According to the ANC, however, "serious consideration" was warranted for "two other onsite options: 1) pull-

⁷ Any existing curb cuts would be subject to review by the Public Space Committee and would require renewed approval to carry out the planned redevelopment. Based on testimony from the Applicant and DDOT in this proceeding, the Board concludes that the existing curb cuts do not satisfy DDOT's current requirements and would not be reapproved.

through access entering on N St. and exiting (right turn only) onto New York Avenue, and 2) back-in, pull-forward access from N Street.” (Exhibit 38.) The Board concludes that the ANC’s options are not feasible because they would violate DDOT standards in various ways, including by requiring the continued use of noncompliant existing curb cuts, creating an area on N Street wider than 24 feet configured as driveways (in conjunction with the existing driveway on the adjoining property), and by requiring back-in movements in public space. The options identified by the ANC also would require changes to the planned building design and would prevent compliance with penthouse setback requirements. The Board credits the testimony of the Applicant’s architect that the impacts on the building design would be significant and detrimental, and would not constitute “minor adjustments,” as the ANC characterized changes including the relocation of the elevator core, the loss of a bay projection, and a reduction in the size of a second-floor unit.

The Board was not persuaded by the ANC’s assertion that the DDOT standards are not “an inflexible mandate” but can be waived or relaxed, as they were for the property to the east of the subject property, where a back-in loading arrangement was approved.⁸ The Board notes that DDOT did not support a waiver of its standards in this case, where DDOT instead favored the establishment of a curbside loading facility as the best available option. The ANC did not explain why the circumstances of this application were suitable for a waiver of DDOT standards, which were devised consistent with “DDOT’s practice . . . to accommodate vehicle loading in a safe and efficient manner, while at the same time preserving safety across non-vehicle mode areas and limiting any hindrance to traffic operations.” (Exhibit 34.) According to DDOT, its recommendation for the property to the east, now the site of a hotel, was based on factors not present in the instant application, including that the hotel property was large enough to accommodate a loading berth and that the hotel would generate greater demand for loading, creating a need for on-site loading facilities reserved for that use. In this case, DDOT concluded that the curbside loading facility would be the better solution for the new development proposed by the Applicant, especially for reasons of pedestrian safety.

In recognition of the infeasibility of providing loading facilities on the subject property, the Applicant proposed to designate a curbside loading area in the public space along N Street and devised a loading management plan to govern its use for residential loading and trash collection needs. DDOT approved the Applicant’s loading management plan, as ultimately revised in this application, to facilitate the movement of trucks and to minimize impacts from the lack of loading facilities on the subject property. DDOT found the Applicant’s initial loading management plan acceptable and commented favorably on subsequent revisions made by the Applicant, which DDOT concluded provided greater assurance that “the curbside operations will be managed in an

⁸ See Application No. 18344 of JBG/New York Avenue Hotel L.L.C., under the 1958 Zoning Regulations, for a parking variance and a special exception from the roof structure requirements to allow a hotel in the then C-3-C zone at 33 New York Avenue, NE (Square 671, Lot 27); approved by summary order issued May 11, 2012. The hotel was designed with loading facilities that met zoning requirements but would require vehicles to back in from N Street. In its report, DDOT noted the agency’s preference for “turn around movements in private space” but concluded that “the small size of the site and its odd shape make turning around in private space overly burdensome.” The report noted DDOT’s “general agreement with the proposed loading scheme” due to “the very low vehicle and pedestrian volume on this segment of N Street, in conjunction with an infrequent delivery schedule.” (Exhibit 27.)

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orderly and efficient manner that minimizes impacts to public space, the pedestrian realm, and traffic flow on N Street NE.” (Exhibits 34, 42.)

ANC 6C challenged the proposed curbside loading zone as inadequate to accommodate a building containing 116 apartments, arguing that the originally proposed loading management plan “will not work as a practical matter.” The ANC noted that the curbside loading zone would not be reserved for the exclusive use of the Applicant’s building, and asserted that “[g]iven the heavy demands associated with a building of this size – move-in and move-out events, trash and recycling collection, and service/repair vehicles, among others – [ANC 6C considers] it unacceptable for there to be no dedicated loading space.” The ANC contended that, in addition to “the problem of legal competition for this curb space, there is the problem of loading zones being used for illegal parking by unauthorized vehicles,” citing the ANC’s experience with loading zones in other areas within the boundaries of ANC 6C, despite the ANC’s attempts “to improve the clarity of the signage and to engage ... [the] Parking Enforcement Management Administration in enforcing more vigorously against violations.” The ANC asserted that “more energetic” enforcement alone “would do nothing to clear the curb space and make it available for use,” and concluded that – in the absence of prompt towing, which the Applicant could not ensure – the loading management plan would not be effective because “the loading manager would have no practical ability to ensure that the loading zone is in fact available at any given time or for any specified duration.” (Exhibit 38.)

The Board concludes that the curbside loading arrangement, operated in conformance with the Applicant’s loading management plan, will result in lower loading demand in a manner that will protect nearby properties and promote the public health, safety, and welfare. The application demonstrated that the loading needs of the new development will be managed so as to avoid the creation of objectionable conditions including with respect to pedestrian and vehicular traffic circulation and the use of neighboring properties. The loading management plan, which is adopted in this Order as enforceable conditions of approval of the requested special exception, requires the Applicant to designate a loading zone manager to coordinate loading activities, including by requiring residents of the new building to use only the designated loading zone for deliveries and for move-in/move-out activities and to schedule any loading operation using a truck at least 20 feet in length. The loading zone manager will undertake measures to prevent double-parking or other actions that might block vehicular or bicycle traffic on N Street at the subject property. The loading zone manager will also supervise the collection of trash from the Applicant’s building in a manner that will minimize interference with the use of the sidewalk or other public space, and will ensure compliance with applicable guidelines for heavy vehicle operations, including routing and restrictions on engine idling.

The ANC objected that the loading management plan would not function as intended, in part because the loading zone manager would not be able to ensure that the loading facility will be available when needed by the residents of the new apartment house or to enforce compliance with measures intended to prevent double parking or other obstacles to vehicular traffic on N Street. The Board does not agree, especially considering the large size of the curbside loading facility, which will have signs designating the loading and drop-off/pick-up areas, and the fact that the

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apartment house will not have ground-floor retail or other commercial uses that would increase the need for loading facilities. The Board credits the Applicant's testimony that the loading zone manager will actively manage use of the curbside loading facilities as required by the conditions of approval of the requested flexibility from the zoning requirements for loading.

Subtitle X § 901.2. 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 Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, as is required for approval of the application under Subtitle X § 901.2. Approval of the application is consistent with the purposes of flexibility from the loading requirements, as stated in Subtitle C § 909.1. The Board's approval of the requested relief subject to conditions requiring the Applicant to implement a loading management plan is consistent with the intent of Subtitle C § 909.5 to ensure the protection of adjacent and nearby property and promote the public health, safety, and welfare. The Board concurs with OP that approval of the application is also consistent with the purposes of the Downtown (D) zone by facilitating a project that will promote the orderly development and use of land and structures in an area characterized as appropriate for a high-density mix of uses. Approval of the requested relief from loading requirements will encourage development of housing, in this case a new apartment house on a site faced with several development constraints, and will avoid the creation of loading facilities that would interfere with active, pedestrian-oriented sidewalks or with the flow of vehicular traffic. Approval of the application is also consistent with D zone provisions intended to avoid the creation of a vehicular entrance to a loading area on the face of a building adjacent to a public street when there is a practical alternative means of serving the loading needs of the building without impeding the flow of pedestrian traffic. In this case, the planned curbside loading facility, operated consistent with the loading management plan, will be a practical alternative means to serve the loading and drop-off needs of the Applicant's proposed apartment house without impeding the flow of pedestrian, bicycle, or vehicular traffic.

Approval of the application will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. The new development will eliminate existing curb cuts that do not meet current requirements and, by providing a curbside loading area in lieu of on-site loading facilities, will avoid the need to create new curb cuts that could create unsafe conditions affecting pedestrian and vehicular traffic. The Board credits the testimony of OP and DDOT that approval of the application, subject to implementation of the loading management plan, will not tend to adversely affect the use of neighboring properties. DDOT noted that the curbside loading arrangement provided several benefits "from urban design and safety perspectives" by avoiding the "conflicts with pedestrians from the backing of trucks across the sidewalk" that would result from a new curb cut, by creating "a complete and uninterrupted streetscape all the way around the site on N Street and New York Avenue," and by retaining space for an additional street tree along N Street. (Exhibit 42.)

The Board was not persuaded by ANC 6C that the curbside loading arrangement, used in accordance with the loading management plan, will be ineffective to meet the loading needs of the Applicant's new building, resulting in adverse impacts on traffic and on the use of neighboring

properties. Although the curbside loading facility cannot be reserved entirely for the use of the new apartment house, the N Street frontage of the subject property – an area of more than 100 feet in length, double the zoning requirement for the size of loading facilities for the apartment house – will be made available for loading and pick-up/drop-off activities. In accordance with the loading management plan, the loading zone manager will coordinate the use of the loading area by residents of the apartment house and take various actions to address any violations that might arise.

The ANC did not believe that the loading management plan would be “sufficient to ensure that loading space will be available as needed,” in part because of “ineffectual and insufficient” enforcement at other locations. (Exhibit 44.) The Board does not agree, in part because of the size of the curbside loading arrangement that will be in place along N Street relative to the zoning requirement for loading to serve the new apartment house. The Board credits the Applicant’s testimony that the loading zone manager will implement measures as necessary to ensure that the curbside loading facility will be managed and operated as intended.

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.

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 6C submitted a report in opposition to the application primarily on the grounds that the Applicant could provide loading facilities on the property and that the proposed curbside loading arrangement would not be adequate for the planned building. (Exhibit 38.) The ANC later reiterated its opposition to approval of the application, arguing that the Applicant’s loading management plan would not be sufficient to ensure that the curbside loading facility will be available as needed. (Exhibit 44.) The Board credits the ANC’s experience with loading at buildings within its boundaries, and appreciates the ANC’s discussions with the Applicant and DDOT that contributed to improvements in the Applicant’s loading management plan. However, for the reasons already discussed, the Board concludes that the application satisfied the requirements for approval of the requested special exception from the loading requirements of Subtitle C § 901 subject to the conditions adopted in this order.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof for a special exception under Subtitle C § 909.2 from the minimum loading berth requirements of Subtitle C § 901.1 to allow a new apartment house (116 units, 14 stories with penthouse) without on-site loading in the D-5 zone at 7 New York Avenue, NE (Square 671, Lot 14). Accordingly, it is **ORDERED** that the application is **GRANTED** subject to the following **CONDITIONS** requiring the Applicant to implement the loading management plan shown in Exhibit 43A:

1. The Applicant or building management shall designate a loading zone manager who will be on duty during delivery hours. The loading zone manager shall be responsible for coordinating

and scheduling loading activities with vendors and tenants, and shall work with the community and neighbors to resolve any conflicts that arise.

2. The Applicant shall ensure that lease provisions require all tenants to use only the designated loading zone for all deliveries and move-in/move-out activities through coordination with the loading zone manager.
3. The Applicant shall require all tenants to schedule deliveries that utilize the loading zone (any loading operation conducted using a truck 20 feet in length or larger).
4. The Applicant shall ensure that the loading zone manager schedules deliveries using the loading zone such that the zone's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the loading zone is full, the loading zone manager will direct that driver to return at a later time when the loading zone will be available so as not to compromise safety or impede N Street, NE functionality.
5. The Applicant shall require the loading zone manager to ensure that double-parking does not occur adjacent to the loading zone and that trucks accessing the loading zone do not block vehicular or bicycle traffic along N Street NE.
6. The Applicant shall require the loading zone manager to direct any private trash collection service to park trash trucks in the loading zone while trash bins are wheeled out the side door on N Street directly to the truck and then immediately back into the building. The Applicant shall store trash internal to the building and not along the sidewalk or in public space.
7. The Applicant shall obtain signage such as "No Parking: Loading Zone" for use to demarcate the loading zone and "No Parking" signs to demarcate the pick-up/drop-off area. The design and wording of the signs may be modified by DDOT's Parking and Ground Transportation Division, which may require additional placards, as deemed necessary.
8. Subject to public space approval, the Applicant shall install a loading zone in the parking lane approximately 50 feet in length, with the remaining distance of approximately 65 feet designated a pick-up/drop-off area for the new building. The pick-up/drop-off area may provide back-up delivery space in the event the loading zone is occupied or if a larger truck arrives at the site.
9. The Applicant shall ensure that the loading zone manager will use traffic cones to block off the loading zone and actively manage deliveries and move-in/move-out activities. The loading zone manager may call 311 to obtain enforcement of the parking restriction in the loading zone and pick-up/drop-off zone, as needed. The loading zone manager shall encourage and assist residents to obtain emergency no parking signs if there is observed non-compliance with the parking restriction in the loading zone.

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10. The Applicant shall provide a curbside management and signage plan, as well as copies of DDOT's supplemental report in this proceeding, to DDOT's Parking and Ground Transportation Division, as part of its Public Space construction permit application.
11. The Applicant shall ensure that trucks using the loading zone will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including, but not limited to, 20 DCMR Chapter 9, Section 900 (Engine Idling), the goDCgo Motorcoach Operators Guide, and the primary access routes shown on the DDOT Truck and Bus Route Map (godcgo.com/freight).
12. The Applicant shall ensure that the loading zone manager is responsible for providing suggested truck routing maps to the building's tenants and to drivers from delivery services that frequently utilize the development's loading zone as well as notifying all drivers of any access or egress restrictions. The loading zone manager shall distribute flyer materials, such as the MWCOG Turn Your Engine Off brochure, to drivers as needed to encourage compliance with idling laws. The loading zone manager shall also post these materials and other relevant notices in a prominent location within the loading area.

VOTE: 5-0-0 (Frederick L. Hill, Lorna L. John, Carl H. Blake, Chrishaun S. Smith, and Anthony J. Hood 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: May 24, 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

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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 THEREOF, 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.