

LAW OFFICES

GRIFFIN, MURPHY, MOLDENHAUER & WIGGINS, LLP

MARK G. GRIFFIN (DC, MD)
BRIAN P. MURPHY (DC, MD)
ASHLEY E. WIGGINS (DC, MD, VA)
MERIDITH H. MOLDENHAUER (DC, MD, VA)
ERIC M. DANIEL (MD, DC)

DIRECT DIAL (202) 530-1482
DIRECT EMAIL MMOLDENHAUER@WASHLAW.COM

October 22, 2013

Via Hand Delivery

Lloyd Jordan, Chairman
Board of Zoning Adjustment
for the District of Columbia
441 4th Street, N.W., Suite 210S
Washington, DC 20001

Re: BZA Application No. 18632 of Madison Investments, LLC
Applicant's Proposed Findings of Fact and Conclusions of Law

Dear Chairman Jordan and Members of the Board:

On behalf of Madison Investments, LLC, enclosed please find the proposed findings of fact and conclusions of law as requested by the Board at the October 2nd hearing.

Respectfully submitted,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP


By: Meredith H. Moldenhauer

Enclosures

Cc Advisory Neighborhood Commission 1B
c/o Tony Norman, Chair (via email)
Single Member District 1B12 Representative, Zahra Jilani (via email)
Elisa Vitale, Office of Planning (via email)
Cliff Moy, Board of Zoning Adjustment (via email)

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18632
EXHIBIT NO. 40

Board of Zoning Adjustment
District of Columbia

Application No. 18632 of Madison Investments LLC, pursuant to 11 DCMR §3103.2, for variance relief from the requirements regarding public space at the ground level (§633), lot occupancy on the first and second story (§634), and rear yard setback (§636.2); and, pursuant to 11 DCMR §3104.1, for special exception relief from the parking requirement for historic structures (§2120.6) and the ARTS Overlay setback requirement (§1902.2) to allow the Applicant to renovate two historic structures and build a new residential building with ground floor retail in the CR/ARTS District at premises 1921-1923 14th Street NW (Lot 180, Square 237), 1925 14th Street NW (Lot 196, Square 237), and 1351 Wallach Place NW (Lot 806, Square 237).

HEARING DATE: October 8, 2013

DECISION DATE: October 29, 2013

DECISION AND ORDER

On July 11, 2013, Madison Investments, LLC (the "Applicant"), the contract purchaser of 1921-1923 14th Street NW (Lot 180, Square 237), 1925 14th Street NW (Lot 196, Square 237), and 1351 Wallach Place NW (Lot 806, Square 237) (the "Property"), filed a self-certified application with the Board of Zoning Adjustment (the "Board") for zoning relief. The Board held a public hearing on the application on October 8, 2013.

PRELIMINARY MATTERS

Self-Certification. The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3114.2.

Notice of Public Hearing. Pursuant to 11 DCMR §3113.1, notice of the hearing was sent to the Applicant, all individuals and entities owning property within 200 feet of the Property, Advisory Neighborhood Commission ("ANC") 1B, and the Office of Planning ("OP"). The Applicant posted placards at the subject property regarding the application and public hearing and timely submitted an affidavit to the Board to this effect.

The Applicant's Case. The Applicant was represented by Meridith H. Moldenhauer Esq., of Griffin, Murphy, Moldenhauer & Wiggins, LLP. Sia Madani testified on behalf of the Applicant. The Applicant presented three witnesses in support of the application: Jeff Goins, Partner at PGN Architects; Emily Eig, President of EHT Traceries; and Erwin Andres, Principal at Gorove/Slade. The Board qualified Emily Eig as an expert in Historic Preservation and Erwin Andres as an expert in Traffic Engineering and Transportation Planning and Analysis.

ANC 1B. The Property is located within the area served by ANC 1B, which is automatically a party to this application. ANC 1B filed a letter and resolution, dated October 3, 2013 indicating that ANC 1B, at its regularly scheduled meeting on October 3, 2013, which was properly advertised and where a quorum was present, voted unanimously, 7-0-0, in support of the application. *See* ANC Report.

Office of Planning (OP) Report. OP submitted a report dated October 1, 2013, indicating they were not opposed to the Application, based on OP's conclusions that the application was in conformance with the criteria for granting the requested area variances and special exception relief requested in this case. At the hearing, OP indicated they recommended approval of the project, withdrawing any objection to the roof deck and pointing out only that the project had not, at the time of the hearing, obtained approval from the Historic Preservation Review Board ("HPRB").

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 18632
PAGE NO. 2

DDOT Report. By memorandum dated October 3, 2013, DDOT indicated no objection to the application emphasizing that “[t]he site's proximity to the U Street/ African-American Civil War Memorial Cardozo Metro Station, 13 Metrobus lines and one Circulator route, Capital Bikeshare stations, quality of pedestrian and bicycle infrastructure in the subject area, commitment to a strong TDM program, and provision of adequate bicycle parking will lead to low levels of auto ownership and use.” DDOT also concluded that the project, in conjunction with the Applicant's mitigation measures, limit the likelihood of residents owning vehicles and the demand for parking. *See DDOT Report.*

Party in Opposition. Aileen Johnson, a resident of the property at 1343 Wallach Place, NW, submitted a request for party status filed September 19, 2013. *See Exhibit No. 25.* Ms. Johnson withdrew her party status request at the hearing.

Persons in Opposition. Three persons spoke in opposition at the hearing regarding their difficulty parking in the neighborhood. The persons speaking in opposition were Michael Hochman, Dan Wittels and Guy Podgornik. After the hearing, Michael Hochman rescinded his opposition and submitted a letter in support of the project and requested zoning relief. *See Applicant's Wallach Place Outreach Update.*

Persons in Support. The Applicant submitted 82 letters in support of the Application, 12 of which were Wallach Place residents. Ward One DC Councilmember Jim Graham sent a letter of support. As stated, Michael Hochman submitted a letter in support following the hearing.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The Property is located at 1921-1923 14th Street NW, 1925 14th Street NW, and 1351 Wallach Place NW, at the northeast corner of 14th Street and Wallach Place NW.
2. Square 237 is located in the northwest quadrant of the District and is bounded on the north by U Street, on the east by 13th Street, on the south by T Street, and on the west by 14th Street. Wallach Place runs east-west and bisects the square.
3. The Property contains approximately 9,540 square feet of land area and is located in Northwest Washington, D.C.
4. The Property has approximately 90 feet of frontage along 14th Street NW and approximately 106 feet of frontage along Wallach Place NW.
5. The Property is in the CR/ARTS District.
6. The CR District is a mixed-use commercial residential district. 11 DCMR 600.1. The purpose of the CR District is to encourage a diversity of compatible land uses that may include a mixture of residential, office, retail, recreational, light industrial, and other miscellaneous uses. The CR District is intended to “help create major new residential and mixed use areas . . .” and “encourage the preservation and rehabilitation of structures of historic or architectural merit in the District of Columbia.”
7. The ARTS Overlay permits a maximum height of 100 feet in the underlying CR District provided that the Inclusionary Zoning Requirements are met, 11 DCMR §§ 2604 and 1909.1(d)(3), and that no part of the building projects above a plane drawn at a 45-degree angle from a line located

Application No. 18632 of Madison Investments LLC, pursuant to 11 DCMR §3103.2, for variance relief from the requirements regarding public space at the ground level (§633), lot occupancy on the first and second story (§634), and rear yard setback (§636.2); and, pursuant to 11 DCMR §3104.1, for special exception relief from the parking requirement for historic structures (§2120.6) and the ARTS Overlay setback requirement (§1902.2) to allow the Applicant to renovate two historic structures and build a new residential building with ground floor retail in the CR/ARTS District at premises 1921-1923 14th Street NW (Lot 180, Square 237), 1925 14th Street NW (Lot 196, Square 237), and 1351 Wallach Place NW (Lot 806, Square 237).

HEARING DATE: October 8, 2013

DECISION DATE: October 29, 2013

DECISION AND ORDER

On July 11, 2013, Madison Investments, LLC (the "Applicant"), the contract purchaser of 1921-1923 14th Street NW (Lot 180, Square 237), 1925 14th Street NW (Lot 196, Square 237), and 1351 Wallach Place NW (Lot 806, Square 237) (the "Property"), filed a self-certified application with the Board of Zoning Adjustment (the "Board") for zoning relief. The Board held a public hearing on the application on October 8, 2013.

PRELIMINARY MATTERS

Self-Certification. The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3114.2.

Notice of Public Hearing. Pursuant to 11 DCMR §3113.1, notice of the hearing was sent to the Applicant, all individuals and entities owning property within 200 feet of the Property, Advisory Neighborhood Commission ("ANC") 1B, and the Office of Planning ("OP"). The Applicant posted placards at the subject property regarding the application and public hearing and timely submitted an affidavit to the Board to this effect.

The Applicant's Case. The Applicant was represented by Meridith H. Moldenhauer Esq., of Griffin, Murphy, Moldenhauer & Wiggins, LLP. Sia Madani testified on behalf of the Applicant. The Applicant presented three witnesses in support of the application: Jeff Goins, Partner at PGN Architects; Emily Eig, President of EHT Traceries; and Erwin Andres, Principal at Gorove/Slade. The Board qualified Emily Eig as an expert in Historic Preservation and Erwin Andres as an expert in Traffic Engineering and Transportation Planning and Analysis.

ANC 1B. The Property is located within the area served by ANC 1B, which is automatically a party to this application. ANC 1B filed a letter and resolution, dated October 3, 2013 indicating that ANC 1B, at its regularly scheduled meeting on October 3, 2013, which was properly advertised and where a quorum was present, voted unanimously, 7-0-0, in support of the application. *See* ANC Report.

Office of Planning (OP) Report. OP submitted a report dated October 1, 2013, indicating they were not opposed to the Application, based on OP's conclusions that the application was in conformance with the criteria for granting the requested area variances and special exception relief requested in this case. At the hearing, OP indicated they recommended approval of the project, withdrawing any objection to the roof deck and pointing out only that the project had not, at the time of the hearing, obtained approval from the Historic Preservation Review Board ("HPRB").

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 18632
PAGE NO. 3

65 feet directly above any property line adjacent to a residential district or any alley separating the property from a residential district, 11 DCMR § 1902.2.

8. The maximum permitted floor area ratio ("FAR") for a property located in the CR/ARTS District that provides at least 3.0 FAR of residential use, 11 DCMR 1904.3, and meets the Inclusionary Zoning requirements, 11 DCMR 2604 and 1909.1(d)(1), is 7.7 FAR. The Applicant is not seeking any relief from the applicable FAR requirements.
9. The proposed uses are consistent with the Property's CR/ARTS zoning designation.
10. The Property is partially improved with two vacant, historic structures and a parking lot. The first is a three-story historic structure previously having the address of 1921-1923 14th Street (the "Historic 14th Street Building"). The Historic 14th Street Building was most recently used as a barber shop and dentist's office and has a long history of commercial use with previous Certificates of Occupancy for an electronics retail store and sale of fireworks. The second is a historic, two-story apartment building previously having the address 1351 Wallach Place (the "Wallach Place Apartment Building"). The Wallach Place Apartment Building address had a prior Certificate of Occupancy for an employment agency and later as a flat. The lot previously having the address 1925 14th Street was most recently used as a parking lot with a one-story framed structure, which will be razed.
11. The Property is located within the Greater U Street Historic District and both the Historic 14th Street Building and the Wallach Place Apartment Building (collectively referred to as the "Historic Buildings") are on the DC Inventory of Historic Sites.
12. The Property is located in a transit rich area with a variety of mass transit and other transportation options available to residents and visitors.
13. The Property is located approximately 1.5 blocks (.2 miles) from the U Street Metro entrance.

The Applicant's Project

14. The Applicant proposes to rehabilitate and renovate the existing historic structures on the Property and construct a residential building with ground floor retail and service uses. The space between the Historic Buildings (the "Infill Space") will be filled in with a three-story structure (the "Infill Structure").
15. The development will include a total of approximately 58,466 square feet of gross floor area, which will be comprised of 56 residential units and approximately 9,398 square feet of new retail space.
16. The development will also include covered and secure long term bicycle spaces in the building and additional short term spaces.

Exceptional Circumstance

17. As confirmed by Emily Eig, an expert in historic preservation, proper historic preservation includes not just maintaining the structures but also refraining from encroaching on the air space above them and providing a proper setback. Furthermore, the Applicant's proposed Infill Structure between the two historic structures is not only compatible, but desirable and appropriate to properly incorporate the historic structures into the new design. Finally, Ms. Eig testified that the steps required to construct a parking garage below the Historic Buildings (underpinning,

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 18632
PAGE NO. 4

excavating below, permanently supporting, and constructing parking beneath them) jeopardizes the structural integrity of the historic structures and is not viable economically. *See* Emily Eig Testimony.

18. The Property is located in an area with a high water table. The Applicant would encounter poor soil conditions at the foundation bearing elevation of a multilevel underground garage. As stated in a letter from ECS Mid-Atlantic, LLC, *see* Prehearing Statement at Exhibit D, there are "additional design and higher cost implications of building more than one below-grade level due to loose and soft soils and the presence of ground water at lower bearing elevations."
19. The Property abuts several narrow rights-of-way, which greatly impacts the Applicant's ability to provide below grade parking spaces.
20. Property is contaminated by oils, solvents and chemicals due to the extended use as an automotive repair shop. The Applicant will incur burdensome environmental remediation including excavation and removal of contaminated soil as well as hauling and dumping fees. *See* ECS Environmental Sampling Report, Prehearing Statement at Exhibit C.

Practical Difficulty

21. Due to the Infill Structure, as recommended by the architect for the project, historic preservation consultant, and during informal discussions with the Historic Preservation Office to enhance the historic preservation effort, there is no space on Wallach Place to locate the public space.
22. The limited available frontage along 14th Street cannot reasonably accommodate a public space without substantial design changes to the location and layout of key features including the location and orientation of the stairway and elevator core as well as the size, shape and number of units.
23. Retail use in the Historic Wallach Place Apartment Building, which would allow for 100% commercial lot occupancy on the first story, would be difficult with respect to design, layout and configuration and inappropriate on residential Wallach Place NW.
24. The 10% lot occupancy relief for the second story is directly related to the 10% of the lot occupied by the Infill Space, which allows for proper preservation of the Historic Buildings.
25. Because Wallach Place Apartment Building is listed on the DC historic inventory, providing a rear yard, which would require razing $\frac{3}{4}$ of the structure, would not be possible or feasible.
26. As demonstrated by the letter from ECS, *see* Prehearing Statement at Exhibit D, and testimony by an expert witness from Gorove/Slade at the hearing, providing a one-story underground parking garage in the narrow remaining portion of the lot not encumbered by the Historic Buildings results in a parking garage with undesirable parking geometrics, a highly inefficient use of space, and a significant cost of construction per parking space.
27. Due to the slope of the Property, the only feasible place to locate the ramp in the parking garage is at the southern end of the Property adjacent to the historic Wallach Place Apartment Building.
28. Due to a combination of the size and shape of the lot, the requirements of the historic preservation office, and the setback requirements in the ARTS Overlay district, the Applicant is subject to the inclusionary zoning set aside requirements but is unable to utilize the bonus FAR.

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 18632
PAGE NO. 3

65 feet directly above any property line adjacent to a residential district or any alley separating the property from a residential district, 11 DCMR § 1902.2.

8. The maximum permitted floor area ratio ("FAR") for a property located in the CR/ARTS District that provides at least 3.0 FAR of residential use, 11 DCMR 1904.3, and meets the Inclusionary Zoning requirements, 11 DCMR 2604 and 1909.1(d)(1), is 7.7 FAR. The Applicant is not seeking any relief from the applicable FAR requirements.
9. The proposed uses are consistent with the Property's CR/ARTS zoning designation.
10. The Property is partially improved with two vacant, historic structures and a parking lot. The first is a three-story historic structure previously having the address of 1921-1923 14th Street (the "Historic 14th Street Building"). The Historic 14th Street Building was most recently used as a barber shop and dentist's office and has a long history of commercial use with previous Certificates of Occupancy for an electronics retail store and sale of fireworks. The second is a historic, two-story apartment building previously having the address 1351 Wallach Place (the "Wallach Place Apartment Building"). The Wallach Place Apartment Building address had a prior Certificate of Occupancy for an employment agency and later as a flat. The lot previously having the address 1925 14th Street was most recently used as a parking lot with a one-story framed structure, which will be razed.
11. The Property is located within the Greater U Street Historic District and both the Historic 14th Street Building and the Wallach Place Apartment Building (collectively referred to as the "Historic Buildings") are on the DC Inventory of Historic Sites.
12. The Property is located in a transit rich area with a variety of mass transit and other transportation options available to residents and visitors.
13. The Property is located approximately 1.5 blocks (.2 miles) from the U Street Metro entrance.

The Applicant's Project

14. The Applicant proposes to rehabilitate and renovate the existing historic structures on the Property and construct a residential building with ground floor retail and service uses. The space between the Historic Buildings (the "Infill Space") will be filled in with a three-story structure (the "Infill Structure").
15. The development will include a total of approximately 58,466 square feet of gross floor area, which will be comprised of 56 residential units and approximately 9,398 square feet of new retail space.
16. The development will also include covered and secure long term bicycle spaces in the building and additional short term spaces.

Exceptional Circumstance

17. As confirmed by Emily Eig, an expert in historic preservation, proper historic preservation includes not just maintaining the structures but also refraining from encroaching on the air space above them and providing a proper setback. Furthermore, the Applicant's proposed Infill Structure between the two historic structures is not only compatible, but desirable and appropriate to properly incorporate the historic structures into the new design. Finally, Ms. Eig testified that the steps required to construct a parking garage below the Historic Buildings (underpinning,

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 18632
PAGE NO. 5

Zoning Relief Requested

Variances

Public space at ground level requirement (§633)

29. Section 633 requires that 10% of the total lot area, 954 square feet in this case, be devoted to public use.
30. The proposed project provides no public space at ground level.
31. As further explained in Findings of Fact Nos. 21 and 22, there is no space to put the required public space as a result of the historic structures without making a significant number of design changes to the interior configuration of the building, including the location and orientation of the stairway and elevator core as well as the size, shape and number of units.

Lot occupancy on the first and second story (§634)

32. The maximum lot occupancy permitted is 80% for residential and 100% for commercial in the CR/ARTS District and pursuant to §1909.1(d).
33. The first story, which is devoted primarily to commercial use but preserves the residential use in the Wallach Place Apartment Building, occupies 100% of the lot.
34. The second story, devoted primarily to residential use and a courtyard, occupies 90% of the lot.
35. Both contain residential uses and thus must meet the 80% lot occupancy requirement.
36. All other floors comply with the lot occupancy requirement with many of the upper floors occupying far less than the maximum lot occupancy permitted.
37. As further explained in Findings of Fact Nos. 23 and 24, the relief requested is a direct result of the need to maintain the residential nature of the historic Wallach Place Apartment Building and the Infill Structure required for proper preservation of the Historic Structures.

Rear yard setback (§636.2)

38. The Applicant has requested complete relief from the rear yard requirement, which in this instance is 25 feet.
39. Because a rear yard must extend for the full width of the lot,¹ the location of the Wallach Place Apartment Building constitutes an existing nonconformity with respect to rear yard.
40. As further explained in Findings of Fact No. 25, compliance with the rear yard setback would require demolition of a large portion of the Wallach Place Apartment Building.

¹ The rear yard definition states that “[t]he rear yard shall be for the full width of the lot and shall be unoccupied” 11 DCMR 199.1 (emphasis added).

Special Exceptions

Parking Requirement for Historic Structures (§2120.6)

41. The Applicant amended the plans for the project to request complete relief from the parking requirement.
42. The number of residential units was decreased from 78 units to 56 units.
43. The retail space was amended to 9,398 square feet.
44. Accordingly, pursuant to §2120, the parking requirement was 22 spaces rather than the 26 spaces stated initially.
45. The proposal provides 0 parking spaces.
46. Providing a one-story, underground parking garage in the narrow portion of the lot not encumbered by the Historic Buildings is not viable due to the undesirable parking geometrics, highly inefficient use of space, and the cost of construction per parking space. The Applicant cannot provide additional levels of below-grade parking due to the groundwater and poor soil conditions of the Property.
47. The project will result in a significant amount of transit and pedestrian access to the Property, resulting in a decrease in the number of vehicle trips that would otherwise be generated, and a decrease in the number of off-street parking spaces that would be needed if the Property were not in such close proximity to public transportation.
48. The Board accepts the findings made in the Technical Memorandum submitted by the Applicant, *see* Prehearing Statement at Exhibit F, that no parking is necessary at the Property due to a number of factors, including: (1) the extremely close proximity to the U Street/African American Civil War Memorial/Cardozo Metrorail station; (2) the Property is serviced by several public transportation services, including Metrorail, Metrobus, and the DC Circulator bus system, as well as biking and pedestrian networks; (3) there are several existing Capital Bikeshare locations within walking distance including at the intersection of 14th & V Street NW and 13th & U Street NW; (4) the project will include 36 bicycle parking spaces; and (5) the Property has a high "walkability score" as calculated by WalkScore.com.
49. The Applicant has committed to incorporating a number of transportation demand measures into operation of the building, as set forth in the Transportation Management Plan.
50. DDOT fully supported the reduction in parking for the transit-oriented development and concluded that the requested parking relief is appropriate due to the wealth of mass transit options for residents and visitors.

ARTS Overlay setback requirement (§1902.2)

51. In the CR/ARTS Overlay, a building located on a lot that abuts a street, alley, or zone district boundary with a Residence District has a setback requirement.

Zoning Relief Requested

Variances

Public space at ground level requirement (§633)

29. Section 633 requires that 10% of the total lot area, 954 square feet in this case, be devoted to public use.
30. The proposed project provides no public space at ground level.
31. As further explained in Findings of Fact Nos. 21 and 22, there is no space to put the required public space as a result of the historic structures without making a significant number of design changes to the interior configuration of the building, including the location and orientation of the stairway and elevator core as well as the size, shape and number of units.

Lot occupancy on the first and second story (§634)

32. The maximum lot occupancy permitted is 80% for residential and 100% for commercial in the CR/ARTS District and pursuant to §1909.1(d).
33. The first story, which is devoted primarily to commercial use but preserves the residential use in the Wallach Place Apartment Building, occupies 100% of the lot.
34. The second story, devoted primarily to residential use and a courtyard, occupies 90% of the lot.
35. Both contain residential uses and thus must meet the 80% lot occupancy requirement.
36. All other floors comply with the lot occupancy requirement with many of the upper floors occupying far less than the maximum lot occupancy permitted.
37. As further explained in Findings of Fact Nos. 23 and 24, the relief requested is a direct result of the need to maintain the residential nature of the historic Wallach Place Apartment Building and the Infill Structure required for proper preservation of the Historic Structures.

Rear yard setback (§636.2)

38. The Applicant has requested complete relief from the rear yard requirement, which in this instance is 25 feet.
39. Because a rear yard must extend for the full width of the lot,¹ the location of the Wallach Place Apartment Building constitutes an existing nonconformity with respect to rear yard.
40. As further explained in Findings of Fact No. 25, compliance with the rear yard setback would require demolition of a large portion of the Wallach Place Apartment Building.

¹ The rear yard definition states that “[t]he rear yard shall be for the full width of the lot and shall be unoccupied” 11 DCMR 199.1 (emphasis added).

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 18632
PAGE NO. 7

52. No part of the building may project above a plane drawn at a 45 degree angle from a line located 65 feet directly above the property line on each such street, alley, or zone district boundary line. 11 DCMR §1902.2.
53. In this instance, the eastern property line of 1351 Wallach Place and 1925 14th Street are subject to this additional height restriction.
54. A small portion of the top floor projects above that plane.
55. The Applicant has carefully designed the structure – including the “U” shape courtyard facing Wallach Place, deference to the historic structures on the Property, and concentration of massing along the 14th Street – to ensure that proper light and air are available to neighboring properties.

CONCLUSIONS OF LAW

Variance Relief

Standard of Review

The Board is authorized under §8 of the Zoning Act of 1938, D.C. Official Code §6-631.07(g)(3), to grant variance relief where, "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property," the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. (See 11 DCMR §3103.2.)

The District of Columbia Court of Appeals has held that "an exceptional or extraordinary situation or condition" may encompass the buildings on a property, not merely the land itself, and may arise due to a "confluence of factors." See *Clerics of St. Viator v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974); *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

The Applicant is seeking a variance from the court requirements of § 776.3, a variance the requirements regarding public space at the ground level (§633), lot occupancy on the first and second story (§634), and rear yard setback (§636.2). As discussed below, the Board concludes that the Applicant has met its burden of proof for the requested area variances in this case.

Exceptional Circumstance

The Board, agreeing with the Office of Planning, concludes that based on a confluence of factors an exceptional circumstance exists at the Property. The Property has two historic structures, the Historic 14th Street Building and the Wallach Place Apartment Building, which are being rehabilitated, renovated, and incorporated into the new structure. Both historic structures are listed on the DC Inventory of Historic Sites. The Property is also subject to a high water table below the surface of the Property. Due to the high water table and loose sandy soils, providing more than one level of parking would require costly dewatering and stabilization measures. Additional levels are parking are also infeasible due to width of the required drive aisles and ramps. The Property abuts several narrow rights-of-way, which greatly

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 18632
PAGE NO. 8

impacts the Applicant's ability to provide below grade parking spaces. The Property is also subject to several contradictory limitations on development as a result of the Property's location in the Greater U Street Historic District, the ARTS Overlay, the CR District, and Inclusionary Zoning Requirements. Due to a combination of the size and shape of the lot, historic preservation requirements, and the setback requirements in the ARTS Overlay district, the Applicant is subject to the inclusionary zoning set aside requirements but is unable to utilize the bonus FAR.

Practical Difficulty

The Board concludes that the confluence of these exceptional and extraordinary conditions creates practical difficulties for the Applicant in complying with the requirements regarding public space at ground level, lot occupancy on the first and second story, and the rear yard.

Public space at ground level requirement (§633)

The Board agrees with the Office of Planning and concludes that strict application of public space at ground level requirement would impose a practical difficulty. Due to the Infill Structure, as recommended by the architect for the project, historic preservation consultant, and during informal discussions with the Historic Preservation Office to enhance the historic preservation effort, there is nowhere along Wallach Place to locate the public space.

The existing Historic 14th Street Building occupies 30 feet of frontage along 14th Street. The available frontage along 14th Street is further reduced by the residential lobby. The remaining frontage along 14th Street cannot reasonably accommodate a 954 square foot public space without substantial design changes to the location and layout of key features including the location and orientation of the stairway and elevator core as well as the size, shape and number of units.

Lot occupancy on the first and second story (§634)

The Board agrees with the Office of Planning and concludes that strict application of lot occupancy requirements on the first and second story would impose a practical difficulty. The 100% lot occupancy on the first story would have been permitted as a matter of right if the floor plan was devoted entirely to retail use. However, retail use in the historic Wallach Place Apartment Building would be difficult with respect to design, layout and configuration and inappropriate on residential Wallach Place NW. The 10% lot occupancy relief for the second story is directly related to the 10% of the lot occupied by the Infill Space, which, as stated, allows for proper preservation of the Historic Buildings.

Rear yard setback (§636.2)

The Board agrees with the Office of Planning and concludes that strict application of the rear yard setback requirement would result in a practical difficulty. Given that the Wallach Place Apartment Building is listed on the DC Inventory of Historic Sites, razing $\frac{3}{4}$ of the structure would not be possible or feasible. Thus, regardless of the manner in which the Property is developed, compliance with the rear yard requirement would require area variance relief for a 100% deviation from the rear yard requirement. Strict application of the rear yard requirement would result in a practical difficulty due to the development constraints associated with preserving the Historic Buildings and the Infill Space, which together occupy roughly one-third of the lot.

52. No part of the building may project above a plane drawn at a 45 degree angle from a line located 65 feet directly above the property line on each such street, alley, or zone district boundary line. 11 DCMR §1902.2.
53. In this instance, the eastern property line of 1351 Wallach Place and 1925 14th Street are subject to this additional height restriction.
54. A small portion of the top floor projects above that plane.
55. The Applicant has carefully designed the structure – including the “U” shape courtyard facing Wallach Place, deference to the historic structures on the Property, and concentration of massing along the 14th Street – to ensure that proper light and air are available to neighboring properties.

CONCLUSIONS OF LAW

Variance Relief

Standard of Review

The Board is authorized under §8 of the Zoning Act of 1938, D.C. Official Code §6-631.07(g)(3), to grant variance relief where, "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property," the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. (See 11 DCMR §3103.2.)

The District of Columbia Court of Appeals has held that "an exceptional or extraordinary situation or condition" may encompass the buildings on a property, not merely the land itself, and may arise due to a "confluence of factors." See *Clerics of St. Viator v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974); *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

The Applicant is seeking a variance from the court requirements of § 776.3, a variance the requirements regarding public space at the ground level (§633), lot occupancy on the first and second story (§634), and rear yard setback (§636.2). As discussed below, the Board concludes that the Applicant has met its burden of proof for the requested area variances in this case.

Exceptional Circumstance

The Board, agreeing with the Office of Planning, concludes that based on a confluence of factors an exceptional circumstance exists at the Property. The Property has two historic structures, the Historic 14th Street Building and the Wallach Place Apartment Building, which are being rehabilitated, renovated, and incorporated into the new structure. Both historic structures are listed on the DC Inventory of Historic Sites. The Property is also subject to a high water table below the surface of the Property. Due to the high water table and loose sandy soils, providing more than one level of parking would require costly dewatering and stabilization measures. Additional levels are parking are also infeasible due to width of the required drive aisles and ramps. The Property abuts several narrow rights-of-way, which greatly

No Detriment to the Public Good or Zone Plan

The Board concludes that there will be no substantial detriment to the public good and no substantial impairment to the intent, purpose, and integrity of the zone plan by approving the project as proposed.

The public space at ground level relief does not cause substantial detriment to the public good or zone plan. Competing policy goals of the CR and ARTS Overlay indicate the tradeoffs necessary for development in urban areas. The decrease in public space is offset by the preference for a pedestrian friendly and active retail streetscape created by the proposed project.

The lot occupancy relief sought on the first and second floor does not cause substantial detriment to the public good or zone plan. The massing and setback of the proposed structure allows for sufficient light and air to all residential units and neighboring properties. As stated, the Applicant is not utilizing its entire matter-of-right FAR.

The rear yard requirement is intended to provide light and air to the building. While no rear yard is provided, the Property is a corner lot, surrounded on three sides by 14th Street, Wallach Place, and a public alley. The substantial space surrounding the lot serves the purpose of the rear yard with respect to light and air. Furthermore, the substantial setback of the upper floors allows for additional light and air to the units abutting the alley and neighboring properties. Variance relief from the rear yard requirement also allows the Applicant to preserve the historic Wallach Place Apartment Building.

Special Exception Relief

The Applicant is seeking special exception relief from the parking requirement for historic structures (§2120.6) and the ARTS Overlay setback requirement (§1902.2). "Special exceptions, unlike variances, are expressly provided for in the Zoning Regulations. The Board's discretion to grant special exceptions is limited to a determination whether the exception sought meets the requirements of the regulation. . . . In sum, the applicant must make the requisite showing, and once he has, the Board ordinarily must grant his application." *See Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973); *see also Gage v. District of Columbia Bd. of Zoning Adjustment*, 738 A.2d 1219, 1221 (D.C. 1999).

The Board concludes that the requested special exceptions from the parking requirement for historic structures and ARTS Overlay setback requirement are in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and do not tend to affect adversely the use of neighboring property. 11 DCMR §3104.1.

Parking Requirement for Historic Structures (§2120.6)

Pursuant to §2120.6, the Board may grant special exception relief from all or part of the parking requirements of §2120 if the owner of the property demonstrates that, as a result of the nature or location of the historic resource, providing the required parking would result in significant architectural or structural difficulty in maintaining the historic integrity and appearance of the historic resource. The July 2007 text amendment amending §2120, Z.C. Order 06-33, provides clarity to the parking requirements for historic structures and reaffirms a clear policy objective that prioritizes "appropriate adaptation and rehabilitation of historic structures through compatible development" over strict application of the off-street parking requirements. Additionally, §2120.6 provides four factors to consider in determining whether the requested relief can be granted without adversely affecting the use of the neighboring property.

Section 2120.6: Providing the required parking would result in an architectural and structural difficulty as a result of the nature and location of the historic resource

The Applicant cannot provide parking beneath the Historic Buildings due to the difficulty of underpinning, excavating, permanently supporting, and constructing parking beneath them. Additional levels of below-grade parking cannot be provided, under the Historic Buildings or otherwise, because the Property is located in an area with a high water table. See Letter from ECS, Prehearing Statement at Exhibit D.

The Applicant analyzed the feasibility of constructing a single below-grade level of parking on the remaining narrow lot unencumbered by the Historic Buildings and unequivocally confirmed that it is not a viable option. Providing a one-story underground parking garage results in an architecturally and structurally challenging layout. The parking layout is undesirable due to narrow entry and limited maneuverability and results in a highly inefficient use of space. Additional problems include sight distance into the alley, the creation of a speed ramp, and safety concerns for vehicles, pedestrians, and bikers. See Walker Parking Garage Entry and Maneuverability Studies, Prehearing Statement at Exhibit G. Furthermore, if an underground parking garage were required the speed ramp would put the property across the alley at risk. As described by the project architect, relocating or setting the parking garage ramp further back on the lot, or to the north, is not a viable option due to the topography of the lot and resulting increase to the slope of the ramp. The inefficiency of a one-story underground parking garage has been clearly demonstrated and has been supported with several exhibits and ample documentation. *Id.*; see also John Reid Garage Space Indicators and Estimate, Prehearing Statement at Exhibit H.

The Applicant has also demonstrated in detail that, based on the following criteria, the Applicant has met the standard for special exception relief under §2120.6.

Section 2120.6 (a): Maximum number of students, employees, guests, customers, or clients who can reasonably be expected to use the proposed building or structure at one time

The Applicant testified that due to the location, unit mix, unit size, and anticipated tenants, the residents of this project will not likely to own cars and will utilize public transportation. Furthermore, the residential component of the project was greatly decreased in size as a result of an amendment to the application after filing. The number of residential units was decreased from 78 units to 56 units. The retail component will be largely occupied by a neighborhood serving retail leased at a decreased rent to attract the type of establishment desired by the neighboring community. Neighborhood serving retail will serve nearby residents rather than attracting patrons from other parts of the city. Thus, patrons will likely arrive by foot or through non-automobile modes of transportation and will not need off-street parking. Aspects of the Applicant's Transportation Management Plan; including 36 covered bicycle parking spaces, digital display showing real-time transit information, and incentives for alternative modes of transportation; will further facilitate non-automotive transportation and decrease demand for off-street parking.

Section 2120.6(b): Amount of traffic congestion existing and/or that the redevelopment of the historic resource can reasonably be expected to add to the neighborhood

The Board concludes that the amount of added traffic congestion, if any, created by the project will not adversely affect the neighboring properties. As supported by the technical memorandum prepared by the Applicant's traffic engineer, no parking is necessary at the Property because the site is located near ample transit services. See Gorove/Slade Report, Prehearing Statement at Exhibit I. DDOT agreed concluding that the available transit options, in conjunction with the Applicant's mitigation measures, limits the likelihood of residents owning vehicles and the demand for parking. See DDOT report. The Board

No Detriment to the Public Good or Zone Plan

The Board concludes that there will be no substantial detriment to the public good and no substantial impairment to the intent, purpose, and integrity of the zone plan by approving the project as proposed.

The public space at ground level relief does not cause substantial detriment to the public good or zone plan. Competing policy goals of the CR and ARTS Overlay indicate the tradeoffs necessary for development in urban areas. The decrease in public space is offset by the preference for a pedestrian friendly and active retail streetscape created by the proposed project.

The lot occupancy relief sought on the first and second floor does not cause substantial detriment to the public good or zone plan. The massing and setback of the proposed structure allows for sufficient light and air to all residential units and neighboring properties. As stated, the Applicant is not utilizing its entire matter-of-right FAR.

The rear yard requirement is intended to provide light and air to the building. While no rear yard is provided, the Property is a corner lot, surrounded on three sides by 14th Street, Wallach Place, and a public alley. The substantial space surrounding the lot serves the purpose of the rear yard with respect to light and air. Furthermore, the substantial setback of the upper floors allows for additional light and air to the units abutting the alley and neighboring properties. Variance relief from the rear yard requirement also allows the Applicant to preserve the historic Wallach Place Apartment Building.

Special Exception Relief

The Applicant is seeking special exception relief from the parking requirement for historic structures (§2120.6) and the ARTS Overlay setback requirement (§1902.2). "Special exceptions, unlike variances, are expressly provided for in the Zoning Regulations. The Board's discretion to grant special exceptions is limited to a determination whether the exception sought meets the requirements of the regulation. . . . In sum, the applicant must make the requisite showing, and once he has, the Board ordinarily must grant his application." *See Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973); *see also Gage v. District of Columbia Bd. of Zoning Adjustment*, 738 A.2d 1219, 1221 (D.C. 1999).

The Board concludes that the requested special exceptions from the parking requirement for historic structures and ARTS Overlay setback requirement are in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and do not tend to affect adversely the use of neighboring property. 11 DCMR §3104.1.

Parking Requirement for Historic Structures (§2120.6)

Pursuant to §2120.6, the Board may grant special exception relief from all or part of the parking requirements of §2120 if the owner of the property demonstrates that, as a result of the nature or location of the historic resource, providing the required parking would result in significant architectural or structural difficulty in maintaining the historic integrity and appearance of the historic resource. The July 2007 text amendment amending §2120, Z.C. Order 06-33, provides clarity to the parking requirements for historic structures and reaffirms a clear policy objective that prioritizes "appropriate adaptation and rehabilitation of historic structures through compatible development" over strict application of the off-street parking requirements. Additionally, §2120.6 provides four factors to consider in determining whether the requested relief can be granted without adversely affecting the use of the neighboring property.

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 18632
PAGE NO. 11

acknowledges that the current parking utilization is high, but finds that the Applicant has demonstrated that there will not be a detrimental impact to street parking conditions due to the close proximity to the U Street Metrorail Station and aggressive Transportation Management Plan.

Furthermore, the vast majority of Wallach Place residents have off-street parking in the rears of their houses offsetting the potential effect that parking relief would have. *See Wallach Place Outreach Update.* While two Wallach Place residents oppose the project, the Applicant has obtained twelve letters in support from residents of Wallach Place. In addition, the adjacent neighbor on Wallach Place, Michael Hochman, submitted a personalized letter in support following the hearing indicating that he is in favor of the project and recommending approval of the parking and other zoning relief. In that letter, he specifically referenced the negative impact a parking garage would have on his property. *See Hochman Letter in Support.*

Section 2120.6(c): Quantity of existing public, commercial, or private parking, other than curb parking, on the property or in the neighborhood that can reasonably be expected to be available when the redevelopment is complete

The quantity of existing private parking in the neighborhood is high and will increase by the completion of this project. The vast majority of those most impacted, namely the Wallach Place residents, have parking at the rear of their properties. These circumstances are unlikely to change as each of the Wallach Place homes are contributing structures to the Greater U Street Historic District. Moreover, at a new mixed-use development across the street, the Applicant has leased 91% of the 125 residential units but only 15% of the 75 parking spaces. With this project, and others coming online shortly, new parking options will likely be available. Furthermore, due to the close proximity to metro, availability of other forms of public transportation, walkability and bikeability of the surrounding area, and 36 covered bicycle spaces provided by the Applicant, the quantity of available public, commercial, and private parking will be sufficient when the redevelopment is complete.

Section 2120.6(d): Proximity to public transportation, particularly Metrorail stations, and availability of either public transportation service in the area, or a ride sharing program approved by the District of Columbia Department of Transportation.

The Property is located in a transit rich area with a variety of mass transit and other transportation options available to residents and visitors. The Property is located approximately 1.5 blocks (.2 miles) from the U Street Metro entrance. Moreover, Metrobus routes 52, 53 and 54 stop along 14th Street, including at 14th and T Street and 14th and U Street, and routes 90, 92, 93, 96, and X3 stop at the intersection of 14th Street & U Street NW. The DC Circulator (DC98) also stops at 14th Street and U Street NW. In addition, the Property is within close proximity to a number of the District's bikesharing and carsharing programs. Capital Bikeshare stations are located at 14th Street & V Street NW (27 docks) and 14th Street and R Street NW (15 docks). A number of Zipcar spaces are located within walking distance including a 24 vehicle lot at 14th & Corcoran as well as spaces at 13th Street & T Street NW, 1929 12th Street NW and 13th & U Street NW. Another local car-sharing program, Car2Go, reported in July 2013 that the use of the company's car-sharing service in the District had reached over 25,000 and that the fleet was expanded from 300 vehicles to 400 vehicles to accommodate increasing demand. The Property has a walkscore of 100, the highest possible score, and is classified as a "walker's paradise" and a bikescore of 95 and is classified as a "biker's paradise."

For these reasons, the Board concludes that the Applicant has met the special exception standard for relief from the parking for historic structures requirement.

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 18632
PAGE NO. 12

ARTS Overlay setback requirement (§1902.2)

Pursuant to §1906.1 of the Zoning Regulations, the Board may grant relief from the requirements of the Arts Overlay as a special exception, provided certain criteria are met. The Applicant has met the criteria provided in §1906.1 of the Zoning Regulations.

Section 1906.1(a): The uses, buildings, or features at the size, intensity, and locations proposed, will substantially advance the purposes of the ARTS Overlay District and will not adversely affect neighboring property or be detrimental to the health, safety, convenience, or general welfare of persons living, working, or visiting in the area.

The Applicant has carefully designed the structure in a “U” shape, with a courtyard facing Wallach Place, to ensure that proper light and air are available to neighboring properties. In deference to the Historic 14th Street Building and Wallach Place Apartment Building on the Property, the massing of the new structure is concentrated on the north end of the lot and on 14th Street NW.

Section 1906.1(b): Exceptional circumstances affecting the property make compliance with the requirements of this chapter difficult or impossible, or the development provides alternative public benefits in lieu of the excepted uses or features that are of comparable value to the public in achieving the purposes of this chapter and of the Comprehensive Plan.

The features of the proposed structure provide substantial benefit to the public and help achieve the intentions of the ARTS Overlay and Comprehensive Plan. The Property is uniquely affected by the presence of two historic properties that are being incorporated into the new structure, the high water table below the surface of the Property, the narrow rights-of-way abutting the Property, and contradictory limitations on development as a result of the Property's location in the Greater U Street Historic District, the ARTS Overlay, the CR District, and Inclusionary Zoning Requirements.

In fact the gross floor area proposed is 14,993 square feet smaller than is permitted under the FAR requirements as a matter of right, largely the result of compliance with the setback requirement and limitations resulting from preservation of the air rights above the Historic Buildings. Conformance with respect to the top floor creates a practical difficulty for the Applicant because the roof structure, which houses the elevator shaft and mechanical equipment, must be sufficiently setback from 14th Street based on the roof structure requirements.

Section 1906.1(c): The architectural design concept of the project will enhance the urban design features of the immediate vicinity in which it is located; provided, if a historic district or historic landmark is involved, the Board shall refer the application to the State Historic Preservation Officer for review and report.

The proposed setback massing will enhance the quality of life in the Arts Overlay District. The Applicant's design concept has been developed in collaboration with the Historic Preservation Office Staff and with a specific focus on the preservation and rehabilitation of the Historic Buildings. The proposed setback and massing of the project complies with its goal of preserving the Historic Buildings, provides a complimentary Infill Structure between the Historic Buildings, and respects the air space above the Historic Buildings.

Section 1906.1(d): Vehicular access and egress are located and designed so as to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions.

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 18632
PAGE NO. 11

acknowledges that the current parking utilization is high, but finds that the Applicant has demonstrated that there will not be a detrimental impact to street parking conditions due to the close proximity to the U Street Metrorail Station and aggressive Transportation Management Plan.

Furthermore, the vast majority of Wallach Place residents have off-street parking in the rears of their houses offsetting the potential effect that parking relief would have. *See* Wallach Place Outreach Update. While two Wallach Place residents oppose the project, the Applicant has obtained twelve letters in support from residents of Wallach Place. In addition, the adjacent neighbor on Wallach Place, Michael Hochman, submitted a personalized letter in support following the hearing indicating that he is in favor of the project and recommending approval of the parking and other zoning relief. In that letter, he specifically referenced the negative impact a parking garage would have on his property. *See* Hochman Letter in Support.

Section 2120.6(c): Quantity of existing public, commercial, or private parking, other than curb parking, on the property or in the neighborhood that can reasonably be expected to be available when the redevelopment is complete

The quantity of existing private parking in the neighborhood is high and will increase by the completion of this project. The vast majority of those most impacted, namely the Wallach Place residents, have parking at the rear of their properties. These circumstances are unlikely to change as each of the Wallach Place homes are contributing structures to the Greater U Street Historic District. Moreover, at a new mixed-use development across the street, the Applicant has leased 91% of the 125 residential units but only 15% of the 75 parking spaces. With this project, and others coming online shortly, new parking options will likely be available. Furthermore, due to the close proximity to metro, availability of other forms of public transportation, walkability and bikeability of the surrounding area, and 36 covered bicycle spaces provided by the Applicant, the quantity of available public, commercial, and private parking will be sufficient when the redevelopment is complete.

Section 2120.6(d): Proximity to public transportation, particularly Metrorail stations, and availability of either public transportation service in the area, or a ride sharing program approved by the District of Columbia Department of Transportation.

The Property is located in a transit rich area with a variety of mass transit and other transportation options available to residents and visitors. The Property is located approximately 1.5 blocks (.2 miles) from the U Street Metro entrance. Moreover, Metrobus routes 52, 53 and 54 stop along 14th Street, including at 14th and T Street and 14th and U Street, and routes 90, 92, 93, 96, and X3 stop at the intersection of 14th Street & U Street NW. The DC Circulator (DC98) also stops at 14th Street and U Street NW. In addition, the Property is within close proximity to a number of the District's bikesharing and carsharing programs. Capital Bikeshare stations are located at 14th Street & V Street NW (27 docks) and 14th Street and R Street NW (15 docks). A number of Zipcar spaces are located within walking distance including a 24 vehicle lot at 14th & Corcoran as well as spaces at 13th Street & T Street NW, 1929 12th Street NW and 13th & U Street NW. Another local car-sharing program, Car2Go, reported in July 2013 that the use of the company's car-sharing service in the District had reached over 25,000 and that the fleet was expanded from 300 vehicles to 400 vehicles to accommodate increasing demand. The Property has a walkscore of 100, the highest possible score, and is classified as a "walker's paradise" and a bikescore of 95 and is classified as a "biker's paradise."

For these reasons, the Board concludes that the Applicant has met the special exception standard for relief from the parking for historic structures requirement.

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 18632
PAGE NO. 13

All vehicular access and egress occurs through an existing public alley and is designed to minimize conflict with principal pedestrian pathways, function efficiently, and avoid dangerous or otherwise objectionable traffic conditions. Moreover, a special exception from the setback requirement will have no impact on vehicular access and egress. Furthermore, because the criteria in §1906.1(d) is not relevant to the relief sought the Board need not apply this criteria pursuant to §1906.1.

Section 1906.1(e): The Board may impose requirements pertaining to design, appearance, signs, size, landscaping, and other such requirements as it deems necessary to protect neighboring property and to achieve the purposes of the ARTS Overlay District.

The relief requested from the setback requirement is modest. The structure will be significantly set back from adjacent property lines and public thoroughways so that it will not be readily visible from public space. The modest setback relief requested will not necessitate any additional requirements or conditions from the Board beyond those imposed by the HPO.

CONCLUSION

Based upon the record before the Board, and having given great weight to the ANC, OP, and DDOT reports filed in this case, the Board concludes that the Applicant has met the burden of proof for variance relief pursuant to 11 DCMR §3103.2 from the requirements regarding public space at the ground level (§633), lot occupancy on the first and second story (§634), and rear yard setback (§636.2); and for special exception relief, pursuant to 11 DCMR §3104, from the parking requirement for historic structures (§2120.6) and the ARTS Overlay setback requirement (§1902.2) to allow the Applicant renovate two historic structures and build a new residential building with ground floor retail in the CR/ARTS District at premises 1921-1923 14th Street NW (Lot 180, Square 237), 1925 14th Street NW (Lot 196, Square 237), and 1351 Wallach Place NW (Lot 806, Square 237).

Accordingly, it is therefore **ORDERED** that the application is hereby **GRANTED SUBJECT** to the following **CONDITIONS**:

1. The Applicant shall restrict those residential units, subject to the parking relief requested, from applying for residential parking permit (RPP) stickers from the District of Columbia. In accordance with the above stated restriction, the Applicant shall include language in the leases or sales documents, or record a covenant as is required by law.
2. The Applicant shall provide the first occupant of each residential unit a \$100 car sharing membership, or a \$150 Capital Bikeshare membership, or a \$200 *Smart Trip* card.
3. The Applicant shall provide 36 covered and secure long term bicycle spaces in the building and additional short term spaces.
4. The Applicant shall install a digital display in the lobby showing real-time transit information.
5. The Applicant shall designate a member of the property management team as the Transportation Management Coordinator (TMC) to ensure that information identifying programs and incentives for using alternative modes of transportation is disseminated to tenants of the building.
6. The Applicant shall have the flexibility to modify the design and internal layout of the building to address any comments from the Historic Preservation Office and the Historic Preservation

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 18632
PAGE NO. 14

Review Board during review of the project so long as the modifications do not require any additional areas of zoning relief.

VOTE: ____ - ____ - ____ (_____)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member has approved the issuance of this order.

ATTESTED BY: _____

SARA BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.
PURSUANT TO 11 DCMR § 3130, 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 § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, 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 § 3205, 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,

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 18632
PAGE NO. 13

All vehicular access and egress occurs through an existing public alley and is designed to minimize conflict with principal pedestrian pathways, function efficiently, and avoid dangerous or otherwise objectionable traffic conditions. Moreover, a special exception from the setback requirement will have no impact on vehicular access and egress. Furthermore, because the criteria in §1906.1(d) is not relevant to the relief sought the Board need not apply this criteria pursuant to §1906.1.

Section 1906.1(e): The Board may impose requirements pertaining to design, appearance, signs, size, landscaping, and other such requirements as it deems necessary to protect neighboring property and to achieve the purposes of the ARTS Overlay District.

The relief requested from the setback requirement is modest. The structure will be significantly set back from adjacent property lines and public thoroughways so that it will not be readily visible from public space. The modest setback relief requested will not necessitate any additional requirements or conditions from the Board beyond those imposed by the HPO.

CONCLUSION

Based upon the record before the Board, and having given great weight to the ANC, OP, and DDOT reports filed in this case, the Board concludes that the Applicant has met the burden of proof for variance relief pursuant to 11 DCMR §3103.2 from the requirements regarding public space at the ground level (§633), lot occupancy on the first and second story (§634), and rear yard setback (§636.2); and for special exception relief, pursuant to 11 DCMR §3104, from the parking requirement for historic structures (§2120.6) and the ARTS Overlay setback requirement (§1902.2) to allow the Applicant renovate two historic structures and build a new residential building with ground floor retail in the CR/ARTS District at premises 1921-1923 14th Street NW (Lot 180, Square 237), 1925 14th Street NW (Lot 196, Square 237), and 1351 Wallach Place NW (Lot 806, Square 237).

Accordingly, it is therefore **ORDERED** that the application is hereby **GRANTED SUBJECT** to the following **CONDITIONS**:

1. The Applicant shall restrict those residential units, subject to the parking relief requested, from applying for residential parking permit (RPP) stickers from the District of Columbia. In accordance with the above stated restriction, the Applicant shall include language in the leases or sales documents, or record a covenant as is required by law.
2. The Applicant shall provide the first occupant of each residential unit a \$100 car sharing membership, or a \$150 Capital Bikeshare membership, or a \$200 *Smart Trip* card.
3. The Applicant shall provide 36 covered and secure long term bicycle spaces in the building and additional short term spaces.
4. The Applicant shall install a digital display in the lobby showing real-time transit information.
5. The Applicant shall designate a member of the property management team as the Transportation Management Coordinator (TMC) to ensure that information identifying programs and incentives for using alternative modes of transportation is disseminated to tenants of the building.
6. The Applicant shall have the flexibility to modify the design and internal layout of the building to address any comments from the Historic Preservation Office and the Historic Preservation

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 18632
PAGE NO. 15

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.

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 18632
PAGE NO. 16

BZA APPLICATION NO. 18632

As Director of the Office of Zoning, I hereby certify and attest that on _____, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, or delivered by electronic mail in the case of those ANC's and SMD's that have opted to receive notices thusly, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Meridith H. Moldenhauer, Esq.
Griffin, Murphy, Moldenhauer & Wiggins, LLP
1912 Sunderland Place, NW
Washington, DC 20036

Commissioner Tony Norman, Chair
Advisory Neighborhood Commission 1B
533 Gresham Place, NW
Washington, DC 20001

Commissioner Zahra Jilani
Single Member District Commissioner 1B12
2013 New Hampshire Avenue, NW #405
Washington DC 20009

Jim Graham, Councilmember
Ward One
1350 Pennsylvania Avenue, N.W., Suite 105
Washington, DC 20004

Melinda Bolling, Esq.
General Counsel
Department of Consumer and Regulatory Affairs
1100 4 1/2 Street, S.W., 5th Floor
Washington, DC 20024

ATTESTED BY: _____

SARA BARDIN
DIRECTOR, OFFICE OF ZONING

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 18632
PAGE NO. 15

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.