

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Board of Zoning Adjustment

Application Nos. 18852 & 18853 of SB-Urban, LLC pursuant to 11 DCMR §§ 3103.2 and 3104.1, for variances from the side yard requirements in § 775.1, the court width requirements in § 776.3, the parking requirements in § 2101.1, and the lot occupancy requirements in § 2604.2 of the Zoning Regulations and special exceptions for parking for a historic resource under § 2120.6 and for roof structure standards under § 411.11 of the Zoning Regulations to allow the construction of two apartment buildings that will function as one building in the C-2-A District at premises 90 and 91 Blagden Alley NW (Square 368, Lots 164 & 165).

HEARING DATES: December 2, 2014 & January 27, 2015

DECISION DATE: February 24, 2015

DECISION AND ORDER¹

Preliminary Matters

Application. The application was initially filed by SB-Urban, LLC (“**Applicant**”) as two applications: one for each property. The application for 90 Blagden Alley NW (the “**M Street Property**”) (Case No. 18852) was filed pursuant to 11 DCMR §§ 3103.2 and 3104.1 for variances from the court width requirements in § 776.3 and the lot occupancy requirements in § 2604.2 and for special exceptions for parking for a historic resource under § 2120.6 and for roof structure standards under § 411.11 to permit the construction of a multifamily apartment building. (Exhibits 1-16 for Case No. 18852). The application for 91 Blagden Alley NW (the “**9th Street Property**”) (Case No. 18853) was filed pursuant to 11 DCMR §§ 3103.2 and 3104.1 for variances from the side yard requirements in § 775.1, the parking requirements in § 2101.1 and for a special exception for roof structure standards under § 411.11 to construct a multifamily apartment building with a small amount of ground floor retail. (Exhibits 1-16 for Case No. 18853). The zoning relief requested in this application was self-certified pursuant to 11 DCMR § 3113.2. (Exhibit 5 for both cases). The applications included photographs of the property and plans and elevations depicting the proposed buildings.

The Applicant filed a letter requesting that applications be heard and decided together because the buildings will be connected and will function as one residential building (the “**Project**”). (Ex. 16). The Board granted this request.

Notice of Application and Notice of Public Hearing. By memoranda dated August 19, 2014, the Office of Zoning sent notice of the applications to the Office of Planning (“**OP**”); Advisory

¹ Unless otherwise specified, all references to exhibits in the record refer to the record for Case No. 18852.

Neighborhood Commission (“ANC”) 2F, the ANC for the area within which the subject properties are located; the single-member district representative for ANC 2F06; the Councilmember for Ward 2; and the District Department of Transportation (“DDOT”). (Exhibits 18-22.)

A public hearing was scheduled for November 5, 2014. Pursuant to 11 DCMR § 3113.12, the Office of Zoning mailed notice of the public hearing to the Applicant, the owners of property within 200 feet of the subject property, and ANC 2F on August 21, 2014. (Exhibit 25.) Notice of the public hearing was also published in the D.C. Register on _____.

On October 1, 2014, the Applicant filed a motion for a continuance of the public hearing so that it could have additional time to work with the ANC. (Exhibit 32.) The Board granted the motion and continued the public hearing to December 2, 2014.

Finally, the Applicant confirmed by affidavit that it had posted notice of the public hearing on the subject properties on November 13, 2014. (Exhibit 34.)

Public Hearing. The Board held a public hearing on the applications on December 2, 2014. At the end of the hearing, the Board closed the record except for two filings that it requested: transportation demand management studies from the Applicant and a revised letter from the ANC. The Board scheduled a continuation of the hearing limited to the information it requested. The continuation hearing was scheduled for January 27, 2015, when it was held.

Requests for Party Status. In addition to the Applicant, ANC 2F was automatically a party in this proceeding. Barbara Shauer filed a party status request on January 5, 2015. (Ex. 50). Ahmed Ait-Ghezala filed a party status request on January 11, 2015. (Ex. 51.) The Board denied these requests for being untimely. (1/27/15 Hearing Transcript (“1/27 Tr.”) at _____.)

Applicant’s Case. The Applicant provided testimony and evidence from Devon Perkins, the Project’s architect, Jami Milanovich, the Project’s traffic engineer, and Michael Balaban, a representative of SB-Urban, LLC. The Applicant and its witnesses described the project, explained the need for the various forms of zoning relief requested, and addressed issues regarding potential adverse impact. (Ex. 15, 36, & 37.) At the December 2, 2014 public hearing, at the Board’s request, the Applicant’s team presented testimony on the issues related to only the parking variance and parking special exception. (12/2/14 Hearing Transcript (“12/2 Tr.”) at 110-28.) Following the December 2, 2014 public hearing, at the Board’s request, the Applicant filed additional information relating to transportation demand management (“TDM”) studies. The Applicant filed this information about the TDM studies on January 20, 2015. (Ex. 53.) The Applicant’s transportation engineer testified about the applicability of these studies to the Project at the January 27, 2015 public hearing (1/27 Tr. at _____.)

Government Reports. By report dated November 21, 2014 and through testimony at the public hearing, OP recommended approval of the applications. (Exhibit 39; 12/2 Tr. at 128-30.) OP found that the application satisfied all the criteria for the requested relief, including that the properties are affected by an exceptional condition resulting in a practical difficulty and that there would be no impact from the parking relief, and recommended approval of the application. Despite

critiques of the OP report from opponents, the Board finds the OP report convincing because of the thoroughness of the report and because of the specialized knowledge OP has for assessing variances and special exceptions.

DDOT filed a report, dated November 25, 2014, stating that it had no objection to the requested parking relief and found the following:

- A robust public transit network exists near the Properties;
- The Properties are not within the District's Residential Permit Parking ("RPP") system and are not eligible to be;
- On street parking is either limited to RPP holders or is metered, and is therefore unsuitable for long-term parking by the Project's residents;
- The Project will generate minimal new vehicle trips; and
- Residents are likely to heavily use non-automobile modes of travel. (Exhibit 26.)

DDOT's report also included four conditions of approval to which the Applicant agreed. Despite critiques of the DDOT report from opponents, the Board finds the DDOT report convincing and credible because of the thoroughness of the report and because of the technical expertise DDOT has in assessing the transportation impacts of proposed projects, generally, and parking variances, specifically.

ANC Report. At a regularly-scheduled and duly-noticed public meeting held October 1, 2014 with a quorum present, ANC 2F voted 6-0-1 to support the side yard variance, open court variance, lot occupancy variance, and roof structure special exception. At a regularly-scheduled and duly-noticed public meeting held on November 5, 2014 with a quorum present, ANC 2F voted 4-3-0 to support the parking variance and parking special exception. At the Board's request, the ANC filed a revised report. (Ex. 49.) The ANC concluded that the Applicant was highly responsive to ANC and community concerns and agreed to numerous conditions of approval. The ANC also concluded that the characteristics of the Project and its likely residents means that the residents will be unlikely to own cars, that the proffered TDM program will increase non-automobile travel, and, ultimately, that the Project will not have a substantial detriment to the public good or to the zone plan. (Ex. 49.) Despite critiques of the ANC's report from opponents, the Board finds the ANC report convincing and credible because of the thoroughness of the report and because of the unique perspective that the ANC has on the community, in general, and on this Project, in particular.

Two representatives from ANC 2F also testified at the hearing: one of which was the Chair of the ANC's Community Development Committee, and the other was the Single Member District representative for the Properties. They reiterated the conclusions in their report and testified that the Project will be a benefit to the community because it will not add traffic in the alley and because it was created in collaboration with the community. (12/2 Tr. at 136-42.)

Persons in support. The Board heard testimony and received evidence from persons in support of the application. Cheryl Court from the Coalition for Smarter Growth and Alexis Lefebvre testified in support of the application. (12/2 Tr. at 143-49; 1/27 Tr. at ____.) The Board also received two letters in support of the application. (Ex. 38, 40.)

Persons in opposition. At the December 2, 2014 public hearing, the Board heard testimony in opposition from eight people. The Board also received written submissions in opposition. (Ex. 33, 43, 44). At the January 27, 2015 public hearing, the Board heard testimony from three people, two of whom testified at the December 2, 2014 public hearing. (1/27 Tr. at ____.) At the January 27, 2015 public hearing, the Board granted a request to accept into the record additional materials in opposition. The Applicant opposed accepting these materials into the record both in writing and at the January 27, 2015 public hearing. (Ex. 55; 1/27 Tr. at ____.) The Board accepted multiple documents into the record. (Ex. 54, 56-61, 63).

Post-hearing submissions. At the conclusion of the January 27, 2015 public hearing, the Board closed the record except for the Applicant's rebuttal to the opponents' additional submissions and the Applicant's draft findings of fact and conclusions of law. (1/27 Tr. at ____.) On February 13, 2015, the Applicant submitted its rebuttal responding to the contested issues raised by the opponents and its proposed findings of fact and conclusions of law. (Ex. ____).

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property includes two parcels of land. The M Street Property, 90 Blagden Alley, is located midblock along M Street NW (Square 368, Lot 165). The 9th Street Property, 91 Blagden Alley, is located midblock along 9th Street NW (Square 368, Lot 164) (together with the M Street Property, the "**Properties**"). (Ex. 36, 37; 12/2 Tr. ____.)
2. The M Street Property is rectangular in shape and contains approximately 15,976 square feet of land area. It is bounded by the Blagden Alley system to the west, north, and east. The 9th Street Property is irregularly shaped and contains approximately 8,303 square feet of land area. It is bounded by the Blagden Alley system to the west and south. The Properties are oriented perpendicular to each other but separated by Blagden Alley. (Ex. 36, 37; 12/2 Tr. ____.)
3. Blagden Alley is active and is improved with a mix of building types that are used as small offices, retail shops, and residential dwellings, as well as rear access points to commercial and residential buildings that front on the surrounding streets. Blagden Alley connects to M Street as well as 9th Street adjacent to the Properties. Portions of Blagden Alley adjacent to the M Street Property, including the portion of Blagden Alley between the Properties, are 30 feet wide. The portion of Blagden Alley to the west of the M Street Property is only 15 feet wide. The portion of Blagden Alley to the south of the 9th Street Property is only 10 feet wide. (Ex. 36, 37; 12/2 Tr. ____.)

4. The Properties are located in the Blagden Alley/Naylor Court Historic District. The Applicant testified that the Project received concept approval from the District of Columbia Historic Preservation Review Board. (Ex. 36.)
5. The M Street Property is improved with a one-story former garage located at the rear of the parcel and surface parking. This structure is a contributing building in the Blagden Alley/Naylor Court Historic District. The 9th Street Property is unimproved and used as a surface parking lot. (Ex. 36, ____.)
6. To the south of the M Street Property, across M Street, is a 10-story condominium building. To the east of the 9th Street Property, across 9th Street, is the Washington Convention Center. Parcels along M Street to the east of the M Street Property and the south of the 9th Street Property are improved with rowhouse dwellings and flats. To the north are primarily retail and office establishments and new apartment buildings. (Ex. 36, 37.)
7. The Properties are zoned C-2-A. The C-2-A Zone District permits multifamily residential dwellings as well as retail uses as a matter of right. Surrounding properties to the west and north are also located in the C-2-A Zone District. Other properties in Square 368 to the west, south, and east are located in the R-4 Zone District. (Ex. 13.)

The Applicant’s Project

8. On the M Street Property, the Applicant proposes to construct an addition to the existing historic garage building (“**M Street Building**”). On the 9th Street Property, the Applicant proposes to construct a new building (“**9th Street Building**”) that connects to the M Street Building through a pedestrian walkway over Blagden Alley. Although separate structures for zoning purposes, the Applicant proposes to operate the structures as one apartment building with shared amenities, lobby, common spaces, and building services. The Project includes approximately 123 dwelling units, including approximately 79 units in the M Street Building and approximately 44 units in the 9th Street Building. The 9th Street Building also contains a small retail space. (Ex. 36; 12/2 Tr. at ____.)
9. The Applicant testified that the residential units would consist entirely of small, furnished studio apartments (each approximately 395 square feet) that are targeted at single professionals seeking living accommodations in walkable, transit-oriented neighborhoods proximate to the central business district as well as urban amenities. (Ex. 36; 12/2 Tr. at ____.)
10. The apartments will be fully-furnished not only with furniture but also with linens, kitchen supplies, and televisions, thereby allowing residents to move-in with little more than clothes and small personal items. (Ex. 36; 12/2 Tr. at ____.)
11. Although the individual living units are small, the Project includes significant shared common amenity areas and living spaces that are located primarily in the converted historic garage. (Ex. 36; 12/2 Tr. at ____.)

12. The Applicant testified and provided evidence that the Properties are located within three blocks (approximately 800 feet) of the entrance to the Mount Vernon Square-Convention Center Metrorail Station, along a Metrobus corridor, within a quarter-mile of two Capital Bikeshare stations, and within walking distance of many restaurants, drug stores, grocery stores, gyms, and other retail and service establishments. (Ex. 15, 36; 12/2 Tr. __.)
13. The Project does not include any vehicular parking spaces. The Project includes approximately 42 bicycle parking spaces within a large, secure bicycle storage room that is equipped with bicycle maintenance facilities. (Ex. 36, 37.)
14. The Project includes affordable housing units consistent with the requirements of the Zoning Regulations. (Ex. 36.)
15. Each building has a height of 50 feet and a FAR of 3.0, which are within the permitted height and FAR in the C-2-A Zone District for a residential multi-family building subject to Chapter 26 of the Zoning Regulations. The proposed multifamily residential and retail uses are permitted in the C-2-A Zone District. The Applicant requested relief from certain other provisions of the Zoning Regulations as set forth below. (Ex. 37.)

Zoning Relief

9th Street Building—Variance Relief

16. Side Yard. No side yard is required in the C-2-A Zone District, but if one is provided, the side yard must have a minimum width based on the height of the building. The Applicant proposed a side yard for the 9th Street Building in order to effectively widen the 10-foot wide alley and to create an area for pedestrians to walk out of the vehicular right-of-way. The Applicant proposes a side yard of 6 feet, which is less than the required 8 foot-4 inch side yard required under the Zoning Regulations and requested variance relief from the side yard width requirement in Section 775.5 of the Zoning Regulations.
17. Parking. The Zoning Regulations require 1 space per 2 dwelling units, or 22 parking spaces, for the 9th Street Building. The Applicant does not propose any vehicular parking for the 9th Street Building and requested variance relief from the parking requirement in Section 2101.1 of the Zoning Regulations.

9th Street Building—Special Exception Relief

18. Roof Structures. The Zoning Regulations generally require that each building enclose all penthouses and mechanical equipment within a single enclosure of uniform height that is set back one-to-one from all exterior walls. The Applicant proposes two separate roof structures of unequal height on the 9th Street Building; the front roof structure measures 13 feet-6 inches and encloses mechanical equipment and a stairway penthouse; the rear roof structure varies in height from 13 feet-6 inches to 5 feet, with mechanical equipment and a stairway penthouse in the taller portion and the elevator penthouse in the shorter portion. Both roof

structures are generally set back as required by the Regulations, except that the second roof structure is only set back 9 feet-7 inches from the central open court. The Applicant requested special exception approval for multiple structures of unequal height and for not meeting the setback requirements under Section 411.11 of the Zoning Regulations.

M Street Building—Variance Relief

19. Lot Occupancy. In the C-2-A Zone District, the Zoning Regulations permit a maximum lot occupancy of 75% for portions of the building devoted to residential use. The Applicant proposes to occupy 89% of the lot only at the ground floor level. The upper stories will occupy less than 75% of the lot and will therefore comply with the Regulations, so the Applicant requested variance relief from the lot occupancy requirements in Section 2604.2 of the Zoning Regulations.
20. Courts. No courts are required in the C-2-A Zone District, but if courts are provided, the courts must have a minimum width of 4 inches per foot of height of the court. The Applicant proposes two courts on the west and east sides of the M Street Building to provide additional light and air to the residential units; however, the western court has a width of approximately 5 feet, and the eastern court has a width of approximately 7 feet-2 inches to 12 feet-7 inches, both of which are less than the required 16 foot-8 inch court width required under the Zoning Regulations, so the Applicant requested variance relief from the open court width requirements in Section 776.3 of the Zoning Regulations.

M Street Building—Special Exception Relief

21. Parking. Parking is required for additions to historic buildings when the addition increases the gross floor area of the resource by 50% or more. Accordingly, the Zoning Regulations require 1 space per 2 dwelling units, or 40 parking spaces, for the M Street Building. Again, the Applicant does not propose any vehicular parking for the M Street Building, and it requested special exception relief from the parking requirement for additions to historic buildings pursuant to Section 2120.6 of the Zoning Regulations.
22. Roof Structures. The Zoning Regulations generally require that each building enclose all penthouses and mechanical equipment within a single enclosure of uniform height that is set back one-to-one from all exterior walls. The Applicant proposes two separate roof structures of unequal height on the M Street Building; the front roof structure will measure 13 feet-6 inches and enclose mechanical equipment and stairway penthouses; the rear roof structure will measure 5 feet and enclose the elevator penthouse. Both roof structures are adequately set back from all exterior walls. The Applicant requested special exception relief for multiple structures of unequal height pursuant to Section 411.11 of the Zoning Regulations.

Review of Variance Relief Pursuant to Section 3103.2 of the Zoning Regulations

23. Section 3103.2 of the Zoning Regulations authorizes the BZA to approve variances from the Zoning Regulations when an applicant sufficiently demonstrates (i) the property is affected

by an exceptional or extraordinary situation or condition; (ii) that the strict application of the Zoning Regulations will result in a practical difficulty to the applicant; and (iii) that the granting of the variance will not cause substantial detriment to the public good or substantially impair the intent, purpose or integrity of the zone plan. As required by Section 3103.2 and based on evidence and testimony provided by the Applicant, OP, DDOT, and ANC 2F, the Board finds that the Project satisfies the conditions for variance relief for the reasons set forth below.

24. The Board finds that the M Street Property is affected by an exceptional condition.
 - a. The Board finds that this property is affected by an exceptional condition because of a confluence of factors: an existing building that is contributing to the historic district, the long and narrow dimensions of a lot considerably larger than many other in the square, and the presence of Blagden Alley on three sides. The historic garage's location at the property's rear makes it an unusual condition for constructing an addition to a building that must be retained elsewhere on the lot. The garage is one story, but it is built to the north, west, and east lot lines; it also occupies a significant portion of the lot. Furthermore, the lot is very narrow (69 feet) compared to its length (233 feet). In addition, it is bounded on three sides by a historic alley, which is a rare condition for any property, particularly in this neighborhood. Further, the Board previously found, in Case Nos. 17403 and 17403A, that the M Street Property has an exceptional condition that gives rise to a practical difficulty in complying with the Zoning Regulations. (Ex. 36, 37; 12/2 Tr. at 110-12.)
 - b. OP concurred that the M Street Property is affected by a confluence of factors that give rise to an exceptional condition. (Exhibit 39.)
 - c. The Board acknowledges the opponents' contention that the M Street Property is not unique, but the Board is convinced by the evidence presented by the Applicant and OP that the M Street Property is affected by an exceptional condition.
25. The Board finds that the exceptional condition affecting the M Street Property gives rise to a practical difficulty that would affect the Applicant from strict application of the lot occupancy and open court requirements.
 - a. The Applicant explained the practical difficulty in complying with the strict application of the open court width requirements results from the tension between providing light and air to units while providing an internal corridor that is sufficiently wide and units that are functionally large enough for residents. Because the property is long and narrow with an alley on the east and west sides, setbacks are necessary to provide light and air through windows that are not on the property and alley line. In particular, the cellar units need the setbacks (courts) to accommodate the light wells, and units with windows on the alleys will need setbacks to buffer these windows from the alleys, which do not otherwise provide a separation from automobile traffic like sidewalks do for streets. In

addition, the western court will help maintain a view of the historic garage by pulling back the new structure to reveal the old when viewed from M Street. These setbacks will not run the length of the building, so they will both be open courts. (Ex. 36, 37, __)

- b. The Applicant explained and demonstrated with illustrations that, if the courts were conforming widths, then the units throughout and the corridor would be squeezed and unworkable for an apartment building. The core cannot be in another location because of the historic building, but it would hamper circulation in a narrow building. Also, the corridor must be a minimum width to function well for units on both sides, and widening the courts would force a constriction of the corridor to approximately five feet in width, which is functionally too narrow. Further, if the courts were widened, then the widths of the units decrease. Since the Property is long and narrow, the most efficient layout is to have the double-loaded corridor in the center of the building running north-south. The long and narrow configuration of the property already limits the unit layout, and more constriction on such layout would result in infeasibility. While the building program calls for small units, narrowing them any more to create conforming courts on both sides of the building would result in units so narrow that they could not accommodate all necessary functions (kitchens, bathrooms, closets) in an efficient or livable way. Therefore, the Board finds that the Applicant would face a significant design and functionality burden if the building were to comply with the minimum court width requirements. (Ex. 36, 37, __.)
- c. The Applicant explained and demonstrated with illustrations the practical difficulty in complying with the strict application of the lot occupancy requirements for the first floor that results from the retention of the historic garage. Above the first floor, the building complies with the lot occupancy limit. However, on the first floor, the building exceeds the lot occupancy limit because of the footprint of the existing historic garage. Due to historic preservation requirements, the garage must be retained, which consumes a large portion of the lot, particularly once the new structure is added. The garage occupies 29% of the lot, which would leave only 46% of the lot for a conforming first floor. (Ex. 36, 37, __.)
- d. The Applicant explained and demonstrated with illustrations that, if the first floor were to conform to lot occupancy, then the Applicant would be unable to create an efficient design. It is not practical to shrink the footprint of the first floor of the new structure without shrinking the footprint of the rest of the new structure because of core and plumbing alignments. This would result in a building with considerably less FAR than permitted (0.88 FAR – nearly 1/3 of what is permitted – would be lost), which would be an extremely uneconomical use of the land. Further, shrinking the footprint of the upper floors would require narrowing of the corridors, and such shrinking would render the units so small that they would be non-functional. Finally, constructing such a small structure on such large lot would be economically inefficient based on the fixed land costs and fixed construction costs; therefore, it would not be viable to construct the

building if the first floor were to conform to the lot occupancy requirement. (Ex. 36, 37, ____.)

- e. OP concurred that, because of the exceptional condition that affects the property, a practical difficulty for the Applicant would result from strict application of the open court width and lot occupancy requirements. OP noted that a double-loaded corridor with compliant court widths would result in unusually narrow units, and a single-loading corridor would be an inefficient design rarely seen in residential buildings. OP also noted: “The volume of the garage structure must be preserved, which means that new structure can generally not be placed on top the garage” and that providing a conforming lot occupancy “would not create a street wall along M Street and would be out of character with that street.” (Exhibit 39.)
- f. The Board credits the contention of the opponents that the Applicant would not be burdened by a practical difficulty from strict application of the open court width and lot occupancy requirements, but, ultimately, the Board is persuaded by the evidence and testimony from the Applicant and OP, and disagrees with the opponents.

26. The Board finds that the open court width and lot occupancy variances for the M Street Building will not result in substantial detriment to the public good and will not impair the integrity of the zone plan.

- a. The Applicant explained that with the open court variance, the Project will allow for adequate light and air. As described in Section 101 of the Zoning Regulations, the purpose of courts is to provide adequate light and air. Granting of the open court variance will not restrict light or air because the courts open parallel onto the alley, and they provide more open space than if they were not provided at all. Courts are not required in this zone. (Ex. 36, ____.)
- b. The Applicant explained that the lot occupancy variance will not result in overcrowding of land. The purpose of lot occupancy, as described in Section 101 of the Zoning Regulations, is to prevent the overcrowding of land. Granting of the lot occupancy variance will not permit overcrowding of land because the overall height and density (FAR) of the building will be within the permitted zone limit, and the upper stories of the building will remain well within the lot occupancy limit. (Ex. 36, ____.)
- c. OP concurred that granting of the open court width and lot occupancy variances will not result in substantial detriment to the public good and will not impair the integrity of the zone plan. OP noted that the design would provide significant courts that result in a definitive visual and structural break in the building mass and a setback from the adjacent alleys. OP also noted: “The increase in lot occupancy would not impact light and air available to nearby properties,” and the scale of the building is not out of character with the neighborhood. (Exhibit 39.)

d. The Board acknowledges the contention of the opponents that granting of the open court width and lot occupancy variances would result in substantial detriment to the public good and will impair the integrity of the zone plan. However, the Board is not persuaded by the opponents' arguments. A theoretical redesign of the building does not prove that these particular variances will cause a detriment to the public good. The neighbors do not sufficiently explain how the lot occupancy and court width variances would directly cause substantial detriment to the public good. That some building, in theory, could be designed without these variances does not mean that there is a detriment to the public good by granting the actual variances requested in this case since the Board must evaluate the actual plan proposed. The Applicant is not required to demonstrate that there are alternate ways to construct the building which may have greater or lesser impacts on the design; instead, the Applicant is only required to demonstrate that the variances will not cause adverse impacts. Therefore, the Board finds the testimony of the Applicant and OP more persuasive and disagrees with the opponents. (Exhibit 36, ____.)

27. The Board finds that the 9th Street Property is affected by an exceptional condition.

- a. The Board finds that the property is affected by an exceptional condition because of a confluence of factors: the irregular shape, narrow width, boundary on two sides by historic Blagden Alley, and inclusion as part of a project that includes another lot (M Street Property). Only three other lots in the entire square are larger than the 9th Street Property (one of which is the M Street Property), and no others in the square have the all of the identified characteristics. (Ex. 36, 37, ____.)
- b. OP concurred that the 9th Street Property is affected by a confluence of factors that give rise to an exceptional condition. (Exhibit 39.)
- c. The Board credits the arguments of the opponents that the property is not affected by an exceptional condition, but it is not persuaded. The Board is persuaded by the testimony of the Applicant and OP.

28. The Board finds that the exceptional condition affecting the 9th Street Property gives rise to a practical difficulty that would affect the Applicant from strict application of the side yard width and parking requirements.

- a. The Applicant explained and demonstrated with illustrations that the practical difficulty in complying with the side yard width requirement results from the property's adjacency to a vehicular-trafficked 10-foot wide historic alley. The building design will incorporate the side yard along the alley to provide a pedestrian separation. Since the Project lobby will be accessed from the alley into the M Street Building, residents of the Project and patrons of the retail establishments within the square will frequently bike or walk in the alley. The side yard will allow cyclists and pedestrians to safely move out of the automobile right-of-way, even in the absence of a traditional sidewalk. Creating a

conforming side yard, either by eliminating it or by widening it, would result in a practical difficulty for the Applicant. Eliminating the side yard, which is not required in this zone, would create a conforming condition. However, it would produce a more dangerous situation for pedestrians and cyclists, particularly residents of the Project, who would have to walk in the narrow automobile right-of-way of the 10-foot alley.

Widening the side yard to a conforming width would compromise the viability of the Project by making the units excessively small. Such units would not allow for an efficient or livable layout and would render the Project infeasible. (Ex. 36, 37.)

- b. OP concurred that, because of the exceptional condition that affects the property, a practical difficulty for the Applicant would result from strict application of the side yard width requirements. OP noted that “if a conforming side yard were proposed, the dimensional change would be small in absolute terms (6’ to 8’4”), but would have a significant impact on the relatively small units within the project.” (Exhibit 39.)
- c. The Applicant explained and demonstrated with illustrations that the practical difficulty in complying with the parking requirements results from the shape and narrowness of the lot and the proximity to the historic alley. The shape and narrowness of the lot cannot efficiently accommodate parking spaces, ramps, and drive aisles without digging deeply for many parking levels at great expense. Providing underground parking results in an extraordinarily high rate of inefficiency - 78% would be dedicated to circulation - that would require multiple below-grade levels of parking. Because so many levels would be necessary to comply, the construction cost per parking space would be prohibitively high, and such parking would add an unnecessary cost to the Project. Constructing parking that will go unused will lead to unnecessarily higher rents that would ultimately render the Project non-viable. Also, excavating to such a great depth on such a narrow lot would be extraordinarily difficult. Because the lot is so long and narrow, locating excavators in or near the site in a way that they could dig the entire lot would be a logistical challenge that may not even be feasible. (Ex. 36, 37, __.)
- d. Further, the Applicant explained that providing parking would unnecessarily and detrimentally add cars in the alley. Providing a few surface parking spaces at the rear of the property would create automobile-pedestrian conflicts. Since this is a highly pedestrian alley, that condition would harm the historic character of Blagden Alley by introducing unnecessary surface parking that is not typical of the historic period. Further, if underground parking were provided, then the entrance would have to be off the alley, which would introduce automobile traffic in Blagden Alley and would be to the detriment of the historic alley character that historically accommodated many types of non-automobile forms of transportation. Therefore, providing parking ultimately would create a practical difficulty for the Applicant because of the Property’s proximity to Blagden Alley. (Ex. 36, 37, __.)

- e. OP concurred that, because of the exceptional condition that affects the property, a practical difficulty for the Applicant would result from strict application of the parking requirements. OP noted that “there would need to be three levels of parking to meet the requirement and the levels would be extremely inefficient.” (Exhibit 39.)
- f. Despite the claim of the opponents, the Board finds that a car elevator/automated parking system is not a viable alternative for parking that would eliminate a practical difficulty for the Applicant. The Applicant explained that, while a car elevator/automated system may allow better access to an underground garage, it cannot change the high inefficiency of the layout of the garage in this case because parking spaces and drive aisles still must satisfy the minimum dimension requirements in Sections 2115.1 and 2117.5 of the Zoning Regulations. Also, variance relief would still be required to use a car elevator/automated parking system. Thus, the Applicant would still face a practical difficulty with a parking elevator/automated parking system. (Ex. ____)
- g. The Board credits the contention of the opponents that the Applicant would not face a practical difficulty through strict application of the side yard and parking requirements. However, the Board disagrees and is persuaded by the testimony from the Applicant and OP. The Applicant explained that, even if some of the property’s characteristics – considered individually – may be favorable for development, the combination of characteristics is not favorable for this development to comply with the side yard and parking requirements. It is not valid to compare this lot to residentially-zoned single-family dwelling and flat lots in the square because of the different development and use standards that affect this property due to its commercial zoning. The highest and best use of the lot (the apartment building proposed by the Applicant) results in a situation where parking and a conforming side yard cannot be provided without significant inefficiency in design. It is this resulting inefficiency in design and uneconomical use of land that results in a practical difficulty for the Applicant.

29. The Board finds that the side yard variance for the 9th Street Building will not result in substantial detriment to the public good and will not impair the integrity of the zone plan.

- a. The Applicant explained that the side yard will be entirely adjacent to the alley, so it will not impact nearby properties that could otherwise be affected if they shared a property line. In addition, the width of the side yard will not create a condition that will restrict light and air into the units in the building. That the building could be constructed without a side yard – which would be more restrictive to light and air – demonstrates that there will be no adverse effect on adjacent properties or the zone plan by having a side yard with a substandard width along an alley. Further, the condition requiring the recordation of an easement to preserve the side yard will ensure no adverse impact. (Ex. 36.)
- b. The Applicant explained that with the side yard variance, the Project will allow for adequate light and air. As described in Section 101 of the Zoning Regulations, the

purpose of side yards is to provide adequate light and air. Granting of the side yard variance will not restrict light or air because the courts open parallel onto the alley, and it will provide more open space than if it were not provided at all. Side yards are not required in this zone. (Ex. ___.)

- c. OP concurred that there would be no substantial detriment to the public good or the zone plan by granting the side yard variance. OP noted that the provided side yard will improve the public good by providing a pedestrian refuge. (Exhibit 39.)
- d. The Board acknowledges the contention of the opponents that granting of the side yard variance would result in substantial detriment to the public good and will impair the integrity of the zone plan. However, the Board is not persuaded by the opponents' arguments. A theoretical redesign of the building does not prove that this particular variance will cause a detriment to the public good. The neighbors do not sufficiently explain how the side yard variance would directly cause substantial detriment to the public good. That some building, in theory, could be designed without this variance does not mean that there is a detriment to the public good by granting the actual variance requested in this case since the Board must evaluate the actual plan proposed. Therefore, the Board finds the evidence and testimony of the Applicant and OP more persuasive and disagrees with the opponents.

30. The Board finds that the parking variance for the 9th Street Building will not result in substantial detriment to the public good and will not impair the integrity of the zone plan. Based on testimony and ample evidence provided by the Applicant's traffic engineer concerning parking demand, automobile use/ownership rates, transportation options, and the Applicant's proffered transportation demand management plan, the Board finds that granting the variance from the parking requirement will not adversely affect on-street parking availability in the neighborhood, will not create adverse traffic conditions in the neighborhood, and will not overburden the public transit modes in the neighborhood.

- a. The Applicant's traffic engineer explained that, because of the property's location near the central business district (downtown), it is likely to have low residential parking demand. The Applicant provided evidence demonstrating regional and national trends toward non-auto transportation options and reduced auto ownership. Further, the Applicant cited a study in which the data suggest that sites within the city core with have the lowest parking utilization rates. (Ex. 15, ___.)
- b. The Applicant's traffic engineer demonstrated, with data, that proximity to transit and amenities/services correlates with lower residential parking demand, and residents without cars tend to choose such locations. Accordingly, the Applicant explained that, since the property has high transit access, it is likely to have low parking utilization. (Ex. 15, ___.)

- c. The Applicant explained that, based on data, parking demand decreases as a walk score increases. Therefore, because of the property's high walk score, it is highly likely that there will be low demand for parking at the Project. (Ex. 15, ____)
- d. The Applicant explained that, based on data, a greater supply of residential parking correlates with a higher demand for parking. Therefore, providing parking is more likely to encourage car ownership than the absence of parking for the Project. (Ex. ____.)
- e. The Applicant explained that, because of the ample transit options and high walk score for the property, it is highly unlikely that residents in the Project would want or bring cars and that there would be very little – if any – demand for parking from Project residents. (Ex. 15, ____.)
- f. The Board credits the opponents' assertion that the studies regarding car ownership rates and usage cited by the Applicant are not valid or applicable to the Project. However, the Board disagrees with the opponents and finds that the studies support the Applicant's contention that Project residents are likely to have low rates of car ownership and usage. The opponents offered no evidence to rebut or invalidate these studies. The Applicant's traffic engineer cited four recent studies that demonstrate trends toward reduced car ownership rates and reduced car usage. These studies were published by reputable organizations that study travel behavior and transportation characteristics, and trends in Washington, D.C. region are consistent with this data. The Project's neighborhood has comparatively low automobile ownership rates, and the Applicant explained that these rates are likely to continue to decline with national trends. The Applicant also cited local studies to provide applicable regional data in addition to the national data. (Ex. 15, ____.)
- g. The Board acknowledges the opponents' assertion that transit options are insufficient to accommodate Project residents and mitigate impacts. However, the Board disagrees and finds that the car-share, bike-share, and other public transportation options are sufficient to accommodate potential demand from Project residents, so they will mitigate any potential impacts from the absence of parking. The Applicant explained that the significant public transportation options will have sufficient capacity for the Project residents, that the Applicant will commit to funding a new bike-share station to offset increased demand, that an adequate supply of car-share cars are within close proximity to the Project, and that the use of car-share services by Project residents will not sap the supply of on-street parking. (Ex. 15, ____.)
- h. The Board credits the opponents' assertion that the trip generation rates in the Applicant's traffic study are not appropriate, but the Board disagrees. The Board finds that the trip generation rates were appropriate for this site and applicable to the Applicant's traffic study. The trip generation estimates provided in the Applicant's traffic study are based on accepted industry methodology that DDOT vetted and accepted, and are based on sound principles that the Applicant explained. The

assumptions used in the Applicant's traffic study are further substantiated by a study of a similar site in another city. (Ex. 15, __.)

- i. The Board acknowledges the opponents' contention that the TDM studies submitted by the Applicant are not applicable to the study, but the Board does not agree. The Board finds that the TDM studies are applicable to the Project and demonstrate the effectiveness of TDM plans like that proposed by the Applicant. The Applicant explained that the studies of other projects in the region demonstrate how TDM plans are effective in decreasing automobile use by residents. Further, the Applicant explained that the fact that the studied projects provided parking demonstrates strong support for a conclusion that a TDM plan for a project without parking is likely to have an even greater impact on reducing automobile use. (Ex. 53, __.)
- j. The Board credits the opponents' argument that the conditions of approval (including the TDM plan) are not likely to be effective or enforceable, but the Board disagrees. The Board finds that conditions will be effective and enforceable because of enforcement sanctions that the Applicant would face for violating the conditions. First, the numerous conditions imposed on the Project will prevent residents from parking on the street because avoiding such conditions will be highly costly to residents. Second, residents will not be able to obtain RPP passes under any circumstances because the Project addresses are ineligible. Third, the Project's addresses cannot be changed. Fourth, parking on the street without a RPP pass will be nearly impossible without significant investments of time and money. Fifth, the Project's leases will include terms that prohibit residents from obtaining any sort of on-street parking passes, and the Applicant will have a strong incentive to enforce these terms because of the assured vigilance of the neighborhood in monitoring Project resident parking. Fifth, the Applicant will record a covenant on the Properties that will prohibit residents from long-term parking on the street and from obtaining any sort of parking pass or permit. Sixth, the Applicant will be vigilant in its own monitoring of the Project residents to assure compliance with the conditions. (Ex. __.)
- k. The Board believes that the Office of the Zoning Administrator enforcement mechanisms are sufficient to ensure compliance by the Applicant and the Project residents because that is the established mechanism for BZA Orders. The Board did not receive any testimony or evidence that the Office of the Zoning Administrator does not or cannot enforce conditions in BZA Orders. (Ex __.)
- l. OP concurred that there would be no substantial detriment to the public good or the zone plan by granting of the requested parking variance. OP noted that it is unlikely that residents would own cars and that there are ample transit options nearby. (Ex. 39; 12/2 Tr. at 129-30.)
- m. DDOT concurred that there would be no significant negative impact to the transportation network from the requested variance relief from the parking requirement. DDOT noted

that, because of the property's proximity to transit and pedestrian/bicycle infrastructure, the Applicant's commitment to a strong TDM program, the inability of residents to obtain RPP, and the provision of adequate bicycle parking, the Project will lead to low levels of auto ownership and use. (Ex. 41; 12/2 Tr. at 131.)

Review of Special Exception Relief Pursuant to Section 2120.6

31. Under Section 2120.6 of the Zoning Regulations, the Board may grant relief from all or part of the parking requirements of Section 2120 if the owner of the property demonstrates that, as a result of the nature or location of a building that is contributing in a historic district, providing the required parking will result in significant architectural or structural difficulty in maintaining the historic integrity and appearance of the historic building.
32. The Board finds that the appearance and integrity of the historic garage on the M Street Property would be compromised if the Applicant were required to provide parking under the M Street Building or parking access through the M Street Building.
 - a. The Applicant explained and demonstrated with illustrations that, because of the alley widths and configurations along the sides of the M Street Property, entrances to parking on either side of the property would result in a greatly inefficient and impractical building, ramp, and garage configuration. (Ex. 36, __.)
 - b. The Applicant explained and demonstrated with illustrations that adding a parking entrance at the property's rear through the historic garage would compromise the historic appearance and integrity of the garage. The existing openings at the garage's rear are not wide enough to accommodate a parking entrance because at least 20 feet of width is required to provide a code-compliant entrance. Adding or expanding openings in the garage to accommodate a parking entrance would severely damage the historic appearance of the garage, would remove a significant amount of historic fabric within the garage, and most likely would not be permitted by the Historic Preservation Review Board and/or the Historic Preservation Office. Further, such an entrance through the garage would still not change the highly inefficient layout of the parking level underground. (Ex. 36, __.).
33. The Board finds that the application and the M Street Building satisfy the criteria for special exception relief under Section 2120.6 of the Regulations.
 - a. Pursuant to Section 2120.6(a), the maximum number of guests reasonably expected to use the proposed building at one time is likely to be significantly less than 79, which is the approximate number of expected residents. The Applicant explained that other than building staff members, residents guests are unlikely. Because the residential units are small, most residents will choose to socialize on-site with other residents in the amenities spaces or elsewhere at any of the many amenities or other social venues located in close proximity to the Project. (Ex. 36.)

- b. Pursuant to Section 2120.6(b), the amount of traffic congestion existing and/or that the redevelopment of the historic resource can reasonably be expected to add to the neighborhood is likely to be nominal. As the Applicant explained with testimony and evidence, and as found in Findings of Fact no. 31, the Project is not likely to have an adverse impact on traffic and parking in the neighborhood. (Ex. 15, 36, __)
- c. Pursuant to Section 2120.6(c), adequate off-site parking facilities in the neighborhood are expected to be available when the Project is complete. The Applicant explained that there are approximately 41 public parking facilities available to the public within ½ mile of the property, and these facilities have available capacity. However, as the Applicant previously explained, it is very unlikely that residents of the Project will own cars and need parking. (Ex. 15, 36.)
- d. Pursuant to Section 2120.6(d), the property is in close proximity to multiple public transportation options with high availability. The Applicant explained with testimony and evidence that the property is close to Metro, bus, Circulator, and Capital Bikeshare, all of which can accommodate the residents of the Project. (Ex. 15, __; 12/2 Tr. at 118)
- e. OP concurred that the application and the M Street Building satisfy the special exception criteria under Section 2120.6. (Ex. 39.)

Review Pursuant to Section 3104 of the Zoning Regulations for the Special Exception under Section 2120.6

- 34. The Applicant must also meet the general special exception requirements of 3104.1 of the Zoning Regulations. Pursuant to Section 3104.1, the Board finds that the proposed special exception under Section 2120.6 will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Zoning Regulations intend for the provision of adequate parking where required. In this case, as explained above in Findings of Fact no. 31, the Board finds that parking is not necessary for the Project. The Applicant has demonstrated compliance with the requirements of Section 2120.6, and, accordingly, approval of the application is in harmony with the Zoning Regulations and Map.
- 35. Pursuant to Section 3104.1, the Board finds that the proposed special exception under Section 2120.6 will not tend to affect adversely the use of neighboring property. As described in Finding of Fact no. 31, the Board finds that the proposed Project will not substantially impair traffic or parking availability in the neighborhood, and it will not substantially impair the District's transportation network.

Review of Special Exception Relief Pursuant to Section 411.11

- 36. Under Section 411.11 of the Zoning Regulations, the Board may grant relief from the location, design, number, and all other aspects of roof structures regulated under Sections 411.3 through 411.6 if the owner of the property demonstrates that compliance with such requirements would be impracticable because of operating difficulties, size of building lot,

or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable.

37. The Board finds that providing a single roof structure with walls of uniform height for both the M Street and 9th Street Buildings would be unnecessarily restrictive to the Applicant. The Applicant explained that two roof structures with walls of differing heights on each building are necessary to accommodate Building Code and building programming while avoiding the creation of one unnecessarily large roof structure on each building. Also, the Historic Preservation Review Board approved the two-roof structure design for each building, so deviating from it to create one overly large penthouse would likely face resistance from the Historic Preservation Office. (Ex. 36.)
38. The Board finds that providing an adequate setback from the open court for one roof structure on the 9th Street Building would be unnecessarily restrictive and unreasonable. The Applicant explained that the location of this roof structure is driven by the size of the lot and the necessity of locating the elevator overrun and electrical equipment in a particular location to accommodate building programming. Providing a complying setback for the roof structure would result in an impractical building design. (Ex. 36.)
39. OP concurred that the application and Project design satisfies the criteria for special exception relief under Section 411.11. (Ex. 39.)

Review Pursuant to Section 3104 of the Zoning Regulations for the Special Exception under Section 411.11

40. The Applicant must also meet the general special exception requirements of 3104.1 of the Zoning Regulations. Pursuant to Section 3104.1, the Board finds that the proposed special exception under Section 411.11 will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The intent of the roof structure requirements is to minimize the visual appearance of roof structures. The Applicant demonstrated that the proposed roof structures will minimize appearance greater than one conforming roof structure on each building would. Also, the inadequate setback for one roof structure on the 9th Street Building will not noticeably increase its appearance from the street. (Ex. 36.)
41. Pursuant to Section 3104.1, the Board finds that the proposed special exception under Section 411.11 will not tend to affect adversely the use of neighboring property. As the Applicant explained, the Board finds that the proposed roof structures will not substantially light or air to neighboring properties, and they will not create visual intrusions in the neighborhood. (Ex. 36.)

CONCLUSIONS OF LAW AND OPINION

Variance Relief

The Applicant seeks variances, pursuant to Section 3103.2, from the open court width, lot occupancy, side yard width, and parking requirements to allow the construction of two buildings that will be one project operating as one building.

The Board is authorized under Section 8 of the Zoning Act (D.C. Code § 6-641.07(g)(3)) to grant variances, as provided in the Zoning Regulations, “[w]here, 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 any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; provided, that the 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.

For the reasons set forth above, the Board concludes that the Applicant has met the burden of proof under Section 3103.2. For the reasons stated below, the Applicant is entitled to the requested variance relief as a matter of law.

First, the Applicant has demonstrated that the both M Street Property and the 9th Street Property are each affected by an exceptional condition arising from a confluence of factors on each property. An exceptional condition affecting a property can arise from many factors – including history, shape, and location – and a confluence of factors may combine to give rise to the exceptional condition. *Gilmartin v. D.C. Bd. of Zoning Adj.*, 579 A.2d 1164, 1168 (D.C. 1990). In addition, it is not necessary that the property be unreservedly unique to satisfy the “exceptional condition” standard. Rather, the applicant must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood. *Id.* In this case, the confluence of the identified features on each of the M Street Property and 9th Street Property satisfy this legal standard for the exceptional condition affecting it because they lead to a practical difficulty for the Applicant in complying with the Zoning Regulations.

Second, the Applicant has demonstrated that strict application of the open court width, lot occupancy, side yard width, and parking regulations would result in a practical difficulty to the Applicant due to the exceptional condition affecting each of the M Street Property and the 9th Street Property. The Applicant demonstrated with sufficient evidence and testimony that strict application of the Zoning Regulations would result in an inefficient and uneconomical building design. Indeed, economic or efficiency burdens are among those that the Board may evaluate as legitimate practical difficulties imposed by Zoning Regulations on the owner of a property. *Palmer v. D.C.*

Bd. of Zoning Adj., 287 A.2d 535, 542 (D.C. 1972). Further, it is legally proper for the Board to grant a variance where it would result in a more economic and efficient use of property. *See Wolf v. D.C. Bd. of Zoning Adj.*, 397 A.2d 936 (1979). Therefore, the demonstrated inefficient use of the Properties and inefficient design of the buildings that would result from the compliance with the parking, side yard width, open court width, and lot occupancy regulations would impose a practical difficulty upon the Applicant. As a matter of law, these demonstrated inefficiencies constitute a practical difficulty that justifies variance relief.

Third, The Applicant has demonstrated that the variance relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan. The Applicant demonstrated with significant data, illustrations, and explanations that the variances can be granted without significant impact. Particularly with respect to the parking variance, the Applicant sufficiently demonstrated with numerous studies that a need for parking at the Project is unlikely, that the conditions and enforcement mechanisms will prevent residents from parking on the street, and that ultimately, the District's transportation network is unlikely to be adversely affected by the granting of the variance. The Board considered the arguments of the opposition to the contrary, but ultimately found that the evidence weighs heavily in favor of the Applicant. Accordingly, the Applicant satisfied its legal burden that warrants the granting of the parking variance.

Furthermore, the Applicant sufficiently demonstrated that the side yard width, open court width, and lot occupancy variances can be granted without substantial detriment to the public good or the zone plan. While the opponents offered alternative designs, the Applicant proved that the requested variances for the Applicant's design are not likely to have adverse impacts. As a matter of law, an applicant for a variance is not required to prove that its proposed design is the sole potential design for the property. *Washington Canoe Club v. D.C. Zoning Com'n*, 889 A.2d 995, 999 (2005). In general, the BZA does not consider alternative designs when determining whether the proposed design would have a substantial negative impact on the surrounding neighborhood. *Gilmartin*, 579 A.2d at 1170-71, 1172; *Wolf*, 397 A.2d at 945. The inquiry into potential impacts on the surrounding neighborhood from a proposed design occurs after the applicant has demonstrated uniqueness and practical difficulties. *Id.* Thus, the proper role of the Board is to analyze only the potential effect of the proposed design, not other putative design alternatives. By proving that the side yard width, open court width, and lot occupancy variances for the Project are not likely to cause substantial detriment to the public good or zone plan, then the Applicant has satisfied its burden that warrants variance relief.

Special Exception Relief

The Applicant seeks a special exception pursuant to Section 2120.6 to allow no parking at the M Street Building, which is improved with a historic building that will be part of the new building. The Applicant also seeks a special exception pursuant to Section 411.11 to allow multiple roof structures of multiple heights and for an inadequate setback for one roof structure.

The Board is authorized under Section 8 of the Zoning Act (D.C. Code § 6-641.07(g)(2)) 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 § 3104.1.*

With regard to the special exception under Section 2120.6, the Applicant has demonstrated with sufficient evidence and the Board found that the M Street Building cannot accommodate underground parking without compromising the appearance and integrity of the historic garage. The Board also found that the Applicant sufficiently demonstrated its satisfaction of the criteria in Sections 2120.6(a) – 2120.6(d), which creates a presumption that the special exception should be granted. In so finding, the Board has specifically considered the impacts of no parking at the M Street Building and found that, despite the arguments of the opponents, the requested special exception relief is unlikely to cause adverse impacts to traffic and parking conditions in the neighborhood. Therefore, the Applicant is entitled to the special exception relief.

With regard to the special exception under Section 411.11, the Applicant has demonstrated that compliance with the single structure, uniform wall height, and setback requirements for the roof structures would be impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable. The Board found that the Applicant sufficiently demonstrated how creating one roof structure on each of the buildings would create an unreasonably large roof structure that would tend to cause more adverse visual impacts. Also, the Board found that the Applicant sufficiently demonstrated that setting back one roof structure from the open court on the 9th Street Building would be unduly restrictive on the building's design efficiency. Therefore, the Applicant is entitled to the special exception relief.

Based on the findings of fact and for the reasons discussed above, the Board also concludes that the requested special exceptions 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 so doing, the Board concludes that the absence of parking in the M Street Building and the roof structures on each building are consistent with the zone plan.

Additional Considerations

The opponents asserted that loading facilities are required for the M Street Building. The application for the M Street Building was self-certified; in so doing the Applicant assumes the risk that it requested the proper relief. Accordingly, the Board shall not consider relief that the Applicant did not request. Based on its confirmation with the Zoning Administrator that loading is not required, the Applicant did not request relief from the loading requirements. (Ex. ___.) Therefore, it is not proper for the Board to consider whether loading is required for the M Street Building, and it declines to do so now.

The Board has accorded ANC 2F the “great weight” to which they are entitled as the affected ANC under D.C. Official Code § 1-309.10(d). The Board credits the ANC report and the testimony of the ANC representatives at the public hearing. In doing so, the Board fully credited the unique vantage point that ANC 2F holds with respect to the impact of the requested zoning relief on the ANC’s constituents.

In reviewing a special exception application, the Board is also required under D.C. Official Code § 6-623.04 to give “great weight” to OP recommendations. For the reasons stated in this Order, the Board concurs with OP’s recommendations.

Based on the findings of fact, and having given great weight to the recommendations of OP and ANC 2F, the Board concludes that the requested zoning relief can be approved.

For the reasons stated above, the Board concludes that the Applicant has satisfied the requirements for variances from the open court width, lot occupancy, side yard width, and parking requirements, as well as the requirements for a special exception for parking for a historic resource under Section 2120.6 and for a special exception for roof structures under Section 411.11 (Square 368, Lots 164 & 165). Accordingly, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of the applications for variances and special exceptions, subject to the approved plans, as shown on Exhibit No. 37 of the record, and subject to the following conditions:

1. Prior to the issuance of a Certificate of Occupancy for the buildings, the Applicant shall:
 - a. Record an easement with the Recorder of Deeds for 91 Bladgen Alley NW that will preserve the six-foot side yard along the alley for pedestrians and prevent future development in that area;
 - b. Pay the cost of installing a new Capital Bikeshare station (27 docks and 14 bikes), and one year of its operating expenses, within ¼ mile of the Project site at an exact location to be determined by DDOT; and
 - c. Record a covenant with the Recorder of Deeds for both properties that prohibits the Project and its residents from eligibility for Residential Permit Parking and for any other temporary parking passes or permits.
2. The Applicant shall implement a transportation demand management (TDM) plan that includes the following:
 - a. Designate a member of the property management team as the Transportation Management Coordinator (TMC), who will be responsible for disseminating information to tenants. This position may be part of other duties assigned to that person.
 - b. Notify residents that they are not eligible for a Residential Parking Permit (RPP). Include a provision in all leases that residents are not eligible for RPP and they are prohibited from applying for or obtaining any short term, temporary, or visitor

parking passes. The Applicant will work with DDOT to ensure that these restrictions are enforced.

- c. Provide information and/or links to the following programs and services on the property management website:
 - i. Capital Bikeshare,
 - ii. Car-sharing services (ZipCar, Enterprise Carshare, Car2Go, etc.),
 - iii. Uber,
 - iv. Ridescout,
 - v. DDOT's DC Bicycle Map,
 - vi. goDCgo.com,
 - vii. WMATA,
 - viii. Commuter Connections Rideshare Program,
 - ix. Commuter Connections Guaranteed Ride Home, and
 - x. Commuter Connections Pools Program.
- d. Provide two electronic displays – one in each building – in a common, shared space to provide real time availability information for nearby trains, buses, and other transportation alternatives.
- e. Offer covered, convenient, and secure bike parking facilities inside the Project for at least 42 bicycles.
- f. Provide a bicycle repair facility near the bike parking facilities.
- g. For the life of the Project, provide all new residents Capital Bikeshare memberships for the terms of their initial leases.
- h. Provide at least 10 shared bicycle helmets for use by the residents.
- i. For the life of the Project, provide all new residents car-share memberships for the terms of their initial leases.
- j. Host an annual bicycle training event conducted by the Washington Area Bicycle Association or similar organization for residents.

3. The Applicant shall implement a loading and delivery management plan that includes the following:
 - a. A member of the property management team will be designated as the loading coordinator, who shall be responsible for coordinating the limited loading activities in the building and informing residential tenants of the guidelines and procedures for loading and delivery operations.
 - b. Include a provision in all leases that, for tenants who need temporary loading, tenants will be required to notify, at least three weeks in advance, the loading coordinator before moving in or out so that the loading coordinator can assist in the establishment of curb-side loading consistent with DDOT policies and procedures.
 - c. The project shall include a clearly marked package delivery room accessible to delivery vendors directly from 9th Street. The property management team shall direct all private courier services (UPS, FedEx, DHL, Peapod, etc.) to park in the provided loading spaces on 9th Street, and to observe signs which applicant shall post and

maintain on and near the building entrance in the alley stating, “NO DELIVERY PARKING. DELIVERY PARKING ONLY IN LOADING SPACES PROVIDED ON 9TH STREET. DELIVERIES MAY BE LEFT AT PACKAGE DELIVERY ROOM ON 9TH STREET.” The final locations of and language on the signs shall be subject to DDOT approval.

4. All trash pickup will occur from M Street. No trash containers shall be kept outside of the building. Trash haulers shall bring the trash containers outside when they arrive for pickup, and the trash haulers shall return the trash containers to inside the building once they have collected the trash.
5. The Applicant shall have flexibility to modify the design of the buildings to address any comments from the D.C. Historic Preservation Review Board or Historic Preservation Office staff during final review of the Project, so long as such modifications do not require any additional areas of relief or have a substantial impact on the final plans approved by the BZA.

VOTE: _____

Vote taken on February 24, 2015

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member has approved the issuance of this Decision and Order.