

**BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA**

In Re Application Of: :
: **BZA Case Number 19450**
D.C. Department of General Services : **Presiding Officer: Frederick L. Hill**
Ward 3 Homeless Shelter Project : **Chairperson**
3320 Idaho Avenue, NW :

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
OF NEIGHBORS FOR RESPONSIVE GOVERNMENT**

Neighbors for Responsive Government (“NRG”), by and through undersigned counsel, respectfully submits the following Proposed Findings of Fact and Conclusions of Law.

Application No. 19450 of the District of Columbia Department of General Services (“DGS”), pursuant to 11 DCMR X § 1000.1 for (i) a variance from the prohibition of two primary structures on one lot in C § 302.2; (ii) a variance from the height and number of story limitation requirements for in Zone RA-1 in F § 303.1; (iii) a variance from the loading berth requirements in C § 901.1; and, pursuant to X § 901.2 for (iv) a special exception under U § 420.1(f) to allow construction of an emergency shelter for 185 residents in Zone RA-1 at premises 3320 Idaho Avenue, N.W. (Square 1818, Lot 849); and (v) a special exception under U §203.1(j) to permit the creation of a temporary parking lot for the Second District Police Station during construction of the emergency shelter, at premises 3320 Idaho Avenue and the adjacent property, Square 1818, Lots 849 and 848.

FINDINGS OF FACT

I. PRELIMINARY MATTERS

A. Applicant’s Application

1. DGS submitted a self-certified application on January 3, 2017, seeking the variances identified in clauses (i), (ii), and (iii) above, and “special exception relief from the minimum parking requirement (C § 701.5) to allow construction of an emergency shelter in the RA-1 Zone District (U § 420.1(f)),” all at 3320 Idaho Avenue, Square 1818, Lot 849. Ex. 1.

2. On February 8, 2017, Applicant filed its Prehearing Statement in which it notified the Board of Zoning Adjustment (“BZA” or the “Board”) that it was no longer seeking special exception relief related to parking, because it had decided to build a three-level (called “two-story”) parking deck on the Property. Ex. 75.

3. On February 16, 2017, Applicant filed a revised self-certification seeking special exception relief under U § 203.1(j) to temporarily relocate accessory parking for the Metropolitan Police Department on the tennis courts located on an adjacent lot during construction of the project. Ex. 108. Applicant's revised self-certification did not mention the adjacent property at Square 1818, Lot 848, despite the fact that two of the three tennis courts that were to be used for accessory parking are located on that lot. Ex. 2, Tab A; Ex. 7 at Slide 4 of 17, GO.02.

4. On February 21, 2017, Applicant filed supplemental drawings which included a contextual image of the parking deck and showed changes to the location of the dumpsters and playground. Architectural plans for the three-level parking garage were not included in this filing. Exs. 165, 165A.

5. On February 27, 2017, with its Reply Prehearing Statement, Applicant filed a 52-page Power Point presentation. It also did not include architectural plans or scaled driveways for the parking garage. Exs. 202B1, 202B2.

6. On March 1, 2017, Applicant was directed by the Board to submit, on or before March 10, certain supplementary materials. Ex. 240, Tr. at 288-304.

B. Notice of Application and Notice of Hearing

7. By memoranda dated January 5, 2017, the Office of Zoning sent notice of the filing of the application to the D.C. Office of Planning ("OP"); the D.C. Department of Transportation ("DDOT"); the D.C. Department of Human Services ("DHS"); Advisory Neighborhood Commission ("ANC") 3C, the ANC within which the subject property is located; the Commissioner for ANC 3C06, the Single Member District in which the subject property is located; and the Council Member for Ward 3, the Chairman of the Council and the four At-Large Members of the Council. On February 2, 2017 DGS submitted plans for concept review to the U.S. Commission on Fine Arts. A public BZA hearing was scheduled for March 1, 2017. The Office of Zoning published notice of the hearing on the application in the D.C. Register, and on January 5, 2017 sent such notice to Applicant, ANC3C, and property owners within 200 feet of Square 1818, Lot 849, the property that was the subject of the initially filed application. Not all property owners within 200 feet received this notice. Ex. 180.

C. Request for Party Status

8. Neighbors for Responsive Government ("NRG"), an organization representing immediate neighbors of the subject property, including 17 neighbors within 200 feet of Square 1818, Lot 849, was granted party status in opposition to the application. ANC 3C filed a report in opposition to significant parts of the requested relief and was automatically granted party status.

D. Government Reports and Letters

9. The Office of Planning submitted a report with the Board on February 17, 2017, essentially tracking the position and arguments of DGS. Ex. 124. Other departments and agencies of the District of Columbia government, including the Metropolitan Police Department (“MPD”), the D.C. Homeland Security and Emergency Management Agency (“HSEMA”), the D.C. Fire and EMS Department (“FEMS”), DDOT, and D.C. Public Schools, filed letters supporting DGS’s application as originally filed. FEMS filed a second letter on February 28, 2017. The agencies have not commented on DGS’s plans for a three-level parking deck or its plans for temporary accessory parking.

E. ANC Report

10. ANC3C submitted a resolution to the Board dated February 21, 2017. Ex. 170. The resolution found that the proposal to co-locate the Ward 3 shelter with the Second District police station raises issues regarding the need to plan for the future of the police station and the potential degradation of the Newark Street playground, tennis courts and the Community Garden. The report further expressed concerns about the loss of light and air from the proposed six-story building; the potential incompatibility of placing two critical public uses on one lot; the overtaxing of resources at John Eaton Elementary School; the aesthetic of an above-ground parking structure, the design of which has not been provided to the ANC; noise from the shelter playground; and multiple per week trash pickups adjacent to single family residences. The ANC resolution further stated that the ANC’s ability to assess the reasonableness of the proposal had been hampered by the unwillingness of the District to provide evidence of a search for alternative shelter sites or to explain why DGS, in April 2016, had concluded that the police station was not an appropriate site for the shelter. The Resolution opposed the granting of a height variance; recommended the development of a master site plan for the property, and recommended, given the needs for renovation of the police station, that all needed improvements be conducted simultaneously to mitigate disruption in the community and to the families that may reside in the shelter; and opposed the granting of a special exception for temporary tennis court parking. In addition, ANC 3C Chair Nancy MacWood, and ANC 3C06 SMD Commissioner Angela Bradbery appeared at the hearing to testify in person in opposition to the requested relief and submitted written testimony. Exs. 229, 232.

F. The United States Commission of Fine Arts

11. On February 2, 2017 DGS submitted plans to the U.S. Commission of Fine Arts (“CFA”) for concept review. The Commission reviewed the concept designs for the proposed shelter at its meeting on February 16, 2017 and submitted a letter to the Board on February 24, 2017. Ex. 206. The Commission expressed significant concerns about several aspects of the project including its view that the height of the building was “too tall for its immediate context of single-family houses and a low-rise police station” and “that the intervention required to make the facility possible – a three-level open parking garage – may have a substantial effect on the neighborhood and on the federal property adjacent to it.” CFA requested further information about the parking deck, recommended that the entire project be analyzed as a master plan, requested further study of various elements of

the project, and said that it anticipates the submission of a new concept design for this project that responds to its comments. *Id.*

G. Persons and Organizations in Support

12. The Board received numerous letters in support of the application from individuals and organizations. The letters in support were overwhelmingly from letters that did not address the zoning issues presented to the Board and were overwhelmingly from individuals and organizations located a half-mile or more from the Property. See Ex. 212 (Letter in Opposition of Bruce Joseph, demonstrating, among other things, that of the 91 letters in support that had been filed for which a location could be determined, 72 were from persons or organizations located a half mile walking distance or more from the shelter, including 48 located a mile or more away). Those that lived within a half mile were virtually all located to the north of the Property (farther away from the shelter) and on or across Wisconsin Avenue, which is a major artery. *Id.*

H. Persons and Organizations in Opposition

13. The Board received numerous letters in opposition to the application from individuals and organizations, the majority of which lived in close proximity to the Property. Among the letters in opposition was a letter from 74 residents of Newark Street, McLean Gardens and Neighboring Streets. Ex. 205. The letters in opposition, among other things, identified adverse impacts that would be caused by the project and in particular by the height and the density it would add to the neighborhood; demonstrated that the cost of the project had ballooned to \$30 million, or about \$600,000 per unit, before consideration of programmatic or operating costs; and raised concerns about the impact on the adjacent community gardens and the potential large influx of children on John Eaton, the neighborhood public school, which is already overcrowded.

I. Board of Zoning Adjustment Hearing

14. The Board convened a hearing on the application on March 1, 2017. The following witnesses testified:

In Support:

Laura Zeilinger, Director, DHS
Greer Gillis, Director, DGS
Rashad M. Young, City Administrator
Joe McNamara, Ayers Saint Gross, Project Architect
Nicole White, Symmetra Design
Maxine Brown-Roberts, Office of Planning
Evelyn Israel, District Department of Transportation

Citizens:

Anne Collin, 4405 38th Street, NW
Rabbi Aaron Alexander, 2829 28th Quarter Street, NW

Latia Barnette, resident of D.C. General
Kate Covingtree (Ward 5 resident)
Maria Casarella, 3526 Quebec Street, NW
Jeffrey Davis, 3409 Newark Street, NW

In Opposition:

On Behalf of NRG:

Brian A. Powers, president, NRG, 3212 38th Street, NW
Patricia H. Wittie, 3847 Macomb Street, NW (within 200 feet of the affected site)
Christopher Sweeney, 3304 Idaho Avenue, NW (within 200 feet of the affected site)
Tara A. Stanton, 3821 Macomb Street, NW (within 200 feet of the affected site)
Yvonne Thayer, 3308 Idaho Avenue, NW (within 200 feet of the affected site)
Arnold P. Lutzker, 3215 Idaho Avenue, NW
Nora Stavropoulos, 3124 38th Street, NW (owns property at 3310 Idaho Avenue, NW, which is within 200 feet of the affected site)

On behalf of ANC3C:

Nancy MacWood, Chair, ANC3C

Others in Opposition:

Angela Bradbery, SMD 3C06 Commissioner
Nancy Sullivan, 3831 Newark Street, NW

15. At the conclusion of the hearing on March 1, 2017, the Board closed the record, except as follows: Applicant was asked to submit, by March 10, 2017, a drawing from the vantage point of the south showing the relative size of the shelter and single-family homes; a description of how the Community Advisory Team (“CAT”) was selected, and its membership; plans for the CAT going forward; and information concerning whether Applicant was continuing to seek the requested special exception under U § 203.1(j). Applicant and NRG were asked to submit proposed findings of fact and conclusions of law on March 17. The ANC was offered the opportunity to respond to Applicant’s supplemental materials by no later than March 21, 2017. NRG objected to the closing of the record due to the late filing of materials by Applicant and the lack of opportunity to respond to those materials. The Board scheduled the case for deliberation on March 22, 2017. Ex. 240, Tr. at 288-304. On March 10, Applicant submitted minutes reflecting the composition and history of the Local Advisory Team and its scheduled future meetings and another drawing from the north. Ex. 235 at Tabs A and D. It did not submit the requested drawing from the south or notify the Board concerning the status of its request for special exception under U § 203.1(j).

16. Because the hearing transcript was not released to the parties until March 15, 2017, the Board issued an order extending the date for proposed findings and conclusions and closing statements until March 31, 2017, and scheduling the case for deliberation on April 5, 2017.

II. BACKGROUND

A. The Homeless Shelter Replacement Act

17. In February 2016, Mayor Bowser announced her intention to propose legislation to close D.C. General, a former hospital, now used to house approximately 270 homeless families, and replace that facility with smaller shelters throughout the city. Oral Test. of Phil Mendelson, Tr. at 16:1-5; Oral Test. of Rashad Young, Tr. at 28:17-19. The proposed legislation was denominated Bill B21-620. This announcement had been preceded by more than a year of planning including a public Solicitation for Offers issued by DGS on September 26, 2014, seeking proposals from real estate developers who would provide shelters via long-term leases to the City. Ex. 164A2 at Ex. 8; Oral Test. of Greer Gillis, Tr. at 48:20-25, 49:1-10.

18. Although characterized as an “All Eight Ward Approach,” the proposal actually provided for shelters in only seven wards and one of those, the 29-unit shelter in Ward 1, is actually a replacement for a shelter closing on Spring Road N.W. Ex. 225 at 6.

19. The Mayor’s plan, and the Solicitation for Offers, called for the District to lease sites owned by private developers, with the cost of development being paid for as part of the lease price. At the conclusion of the lease term, the property was to revert fully to the developer. *Id.* at 7.

20. As proposed by the Mayor, each shelter in Wards 3, 4, 5 and 6 would be built by a private developer according to the specifications provided by the District, then leased to the District for varied initial terms, with renewals, for up to 20 years in Wards 3, 4, and 5, and 25 years in Ward 6. *Id.*

21. Following receipt of offers from a number of developers, the site selected by DGS for Ward 3 was located at 2619 Wisconsin Avenue, NW. This Wisconsin Avenue shelter was to consist of 38 units, occupying 3 stories and a height of 40 feet for a building situated in an R-1-B zoned district. No variances were needed for this site, but a special exception was required due to the number of residents that would be housed in the proposed shelter. *Id.* at 6.

22. The sites proposed by the Mayor engendered considerable community opposition. A 12-hour hearing was conducted on March 17, 2016 by the D.C. Council’s Committee of the Whole. Critics of the sites that were selected raised, among other objections, concerns about the cost of the long-term leases. Ex. 224 at 1.

23. At the Council’s March 17, 2016 Hearing, Rashad Young, City Administrator, Brenda Donald, Deputy Mayor for Health and Human Services, Laura Zeilinger, Director of DHS, and Christopher Weaver, Director of DGS, all testified on behalf of the Mayor’s plan in support for Bill 21-620, expressing the view that the Mayor’s plan was well conceived, required no revision, that the lease costs were reasonable and that each site selected was appropriate for its intended purpose. In other words, many of the

same witnesses who testified in this case that a 50-unit site with six floors on Idaho Avenue was essential, had testified enthusiastically at the Council hearing in favor of the 38-unit three-story Ward 3 site as proposed by the Mayor on Wisconsin Avenue, N.W. Ex 225 at 18. On May 17, 2016, the Committee of the Whole voted down the Mayor's proposal and marked-up and adopted, in a first reading, an alternative bill of its own directing the Mayor to utilize District-owned sites to construct the shelters in Wards 3, 5, 6, 7 and 8 and for the Mayor to acquire sites in Wards 1 and 4, if not by purchase, then by utilization of eminent domain. The Council affirmed four of the sites identified by the Mayor and identified alternative sites in three other wards, including in Ward 3. *Id.* at 1.

24. The new site identified by the Council for Ward 3 was 3320 Idaho Avenue, NW. DGS did not select the Idaho Avenue site. To the contrary, when asked about it by Ward 3 Council Member Mary Cheh, Christopher Weaver, the then director of DGS, responded:

The site at 3320 Idaho Avenue, Northwest, is District-owned land, but it is currently the site of the Metropolitan Police Department (MPD) Second District Police Station, a park, and a Department of Public Works (DPW) refueling station. In order to use this site for the Ward 3 site, we would need to lease a facility to relocate the Second District, which would require additional operating dollars. Alternately, the District would either need to identify suitable District-owned land for the relocation, as well as additional capital funds in order to construct or renovate a new facility for MPD, or identify additional capital funds in order to renovate the existing MPD building to also support the Ward 3 site...Finally, the loss of the park at that location may interfere with the Department of Parks and Recreation's (DPR) master plan for park availability for this neighborhood. These complicating factors create an unknown delay and thus make this site unsuitable for our purposes. Ex. 164A2, ex. 11.

25. The Idaho Avenue site was one of several sites suggested for Ward 3 by citizens who during the Committee of the Whole hearing on March 17, 2016 opposed the Wisconsin Avenue site that had been selected by DGS. Oral Test. of Phil Mendelson, Ex. 240, Tr. at 17:18-25; Oral Test. of Laura Zeilinger, Ex. 240, Tr. at 79:13-23.

26. On May 31, 2016, the Council had the final reading of Bill B21-620. It was passed with an amendment stating that the Ward 3 shelter was to house "up to fifty units." The Bill was signed by the Mayor in June 2016. Ex. 225 Supplemental Report on Bill 21-260 (June 21, 2016) at 1-2.

27. Bill B21-620 authorized a total of 328 family shelter units in 7 Wards, of which the 29 units in Ward 1 were not intended to be replacement units for D.C. General. The 299 D.C. General replacement units authorized in the Bill exceeds the number of units

needed to close D.C. General, which was reported to be 270 in Ex. 224 at 1 and “at approximately 280” in Ex. 227 at 2. *See also* Oral Test. of Laura Zeilinger, Ex. 240, Tr. at 35:7; Oral Test. of Phil Mendelson, Ex. 240, Tr. at 16.

B. The District’s Failure To Conduct Any Systematic Search for Potential Sites To Purchase

28. DGS is the District department with the expertise and mission to execute real property acquisitions in the District by purchase or lease. According to its website, the Contracts and Procurement Division of DGS is a “forward leaning, multi-faceted acquisitions operation committed to advancing transparent, accountable, and efficient procurement practices in support of DGS’s mission. See <http://dgs.dc.gov>.

29. A Solicitation for Offers (“SFO”) was issued on September 26, 2014 by DGS. Ex. 164A2 at Ex. 8. This open solicitation was specifically and exclusively directed at leasing sites. It did not seek, and by law could not have accepted, proposals for the sale of property to the District. The SFO provided that, “Currently DHS is looking to lease properties in Washington D.C to meet an increasing demand for services which addresses at risk families.” *Id.* at 2. The SFO further explained under the heading “Criteria for Evaluation” that the “Developer is required to deliver a completed turn-key project to the District; which includes responsibility for any repairs and maintenance of the property.” It further provides that “[t]he District will enter into a ground lease of 10 years with two 5 year options to renew” and asks for the “rental rate . . . [to] be reflective of the competitive market value.” *Id.* at 3.

30. The single SFO issued on September 26, 2014, only solicited sites to be leased and contains no reference to purchasing sites. The District has not come forward with any other SFO in connection with the Homeless Shelter Replacement project. The current Director of DGS, Greer Gillis, confirmed that there was only a single SFO issued in connection with the replacement shelter project, which was directed to all wards and was expressly limited to leasing. Oral Test. of Greer Gillis, Ex. 240, Tr. at 279:4-13 and 106;13-16. This was the only public open solicitation process undertaken in connection with the Homeless Shelter Replacement Project.

31. The DGS search for sites to lease from private developers in Ward 3 resulted in six possible locations, of which only one, 2619 Wisconsin Avenue, N.W. was deemed suitable. Ex. 226 at 2.

32. DGS Director Gillis testified that DGS looked at city-owned inventory first to determine whether there was a city-owned site meeting the criteria of the shelter, including footprint, square footage, access to public transportation, and availability for use. Oral Test. of Greer Gillis, Ex. 240, Tr. at 49:11-17. Director Gillis explained that the investigation of city inventory was not a public process. *Id.* at 265:22-25; 266:1-19. No report or other documentation was introduced reflecting a DGS search for city-owned property. As noted, the search of city inventory by DGS for Ward 3 did not reveal Idaho Avenue as a suitable site.

33. Director Gillis and City Administrator Young stated that DGS also searched for sites to purchase in connection with family homeless shelters, Oral Test. of Greer Gillis, Ex. 240, Tr. at 48:22-24; Oral Test. of Rashad Young, *id.*, Tr. at 27:6-8. The District retained a broker to search for potential shelter sites including sites to purchase. Ex. 226 at 2. However, the District failed to introduce any reports, records, letters or other documentary evidence of any search for properties to purchase undertaken by DGS or by a broker. No records of any kind were introduced to show the scope of the search to acquire land by DGS or the broker including the criteria for the search, the duration of the search, or the price parameters of the search. The record is silent as to when the broker was retained, when and to what extent the broker searched for property to purchase, the specific instructions given to the broker, the price parameters and other criteria that the broker was instructed to work within, and any information concerning the results of the search that the broker undertook. Further, whatever the broker or DGS did to search for sites to purchase, this was not an open solicitation process.

C. The Failure of the Council to Conduct a Systematic Search for Sites in Ward 3

34. As part of their efforts to oppose the Wisconsin Avenue site for the Ward 3 shelter, opponents of that site sought to identify alternative sites to their Council Member Mary Cheh. Oral Test. of Laura Zeilinger, Ex. 240, Tr. at 79:13-18. Chairman Mendelson testified that several alternate Ward 3 sites were proposed by opponents during the course of the 12-hour hearing conducted by the Council's Committee of the Whole on March 17, 2016. Ex. 224 at 1. Council Member Cheh stated that three alternative sites "percolated up." Ex. 211. Test. of Brian Powers at 7, ¶35.

35. Following the Public Hearing on March 17, 2016, Ward 3 Council Member Cheh sent a letter dated April 6, 2016 to DGS Director Weaver, asking about the suitability of the three sites that had "percolated up" from opponents of the Wisconsin Ave, site. These three sites were 3320 Idaho Ave. NW; 3101 Albemarle St. NW, and 4100 River Road NW. Ex. 164A2 at Ex. 10. Director Weaver's letter of April 29, 2016 stated that the complicating factors relating to the Idaho Ave location "make this site unsuitable for our purposes." Ex. 164A2, ex. 11.

36. City Council Chairman Phil Mendelson stated that the Council considered the same three sites that were the subject of Council Member Cheh's letter to DGS Director Weaver. Ex. 224 at 2. Chairman Mendelson also mentioned a fourth site, Fort Reno, which is owned by the federal government, occupied by a park, and deemed to be unavailable, Oral Test. Of Phil Mendelson, Ex. 240, Tr.18: 21-22. Of these four sites, 3320 Idaho Avenue was found to be the "best" by the Council as it was already owned by the District, was the largest site, and had proximity to fewer homes. *Id.* Specifically, Mr. Mendelson testified that the Idaho Avenue site would be "the least expensive" alternative. Oral Test. of Phil Mendelson, Ex. 240, Tr. at 18:16-17.

37. There was no public meeting concerning the selection of the Idaho Avenue site by the Council. Oral Test. of Phil Mendelson, Ex. 240, Tr. at 21:3-14. There is no evidence of any consultations with the Council and DGS, the agency with the expertise and

responsibility for land acquisitions by the District, aside from the April 29, 2016 letter from Director Weaver advising that the Idaho Avenue site was “unsuitable.” DGS Director Gillis wrote that the Council conducted its “own search” of city-owned land when it selected the Idaho Avenue site. Ex. 226 at 3; *see also* Oral Test. of Maxine Brown-Roberts, Ex. 240, Tr. 113: 4-8.

38. There is no record evidence that DGS subsequently changed its view that the Idaho site was unsuitable. As stated by the current DGS Director, it was the Council that selected the designated District-owned site in Ward 3. In other words, in the view of DGS officials, the Council imposed this site as a *fait accompli*. At public ANC hearings, DGS representatives stated that the Idaho Avenue site was selected by the Council. Ex. 211, Test. of Brian Powers at 8.

39. There is no record evidence that the Council performed a systematic search for alternative sites. Chairman Mendelson testified that there was no search for alternative sites by the Council. Oral Test. of Phil Mendelson, Ex. 240, Tr. at 18:8 – 21:14. DHS Director Gillis, on the other hand, testified that the Council conducted its own search. Oral Test. of Greer Gillis, *id.* Tr. at 49:23-25.

40. There is no record evidence that DHS was consulted by the Council before the Idaho Avenue site was selected. DGS Director Gillis confirmed that the Idaho Avenue site was chosen by the Council “and we moved forward.” Oral Test. of Greer Gillis, Ex. 240, Tr. at 81:24-25.

41. There is no record evidence that the Council conferred with DGS about earlier DGS alleged efforts to locate sites to purchase in Ward 3 or that the Council inquired about earlier DGS efforts to examine the feasibility of city owned sites in Ward 3 for the shelter.

42. Despite testimony by City officials that they consulted an outside broker before the Idaho Avenue site was selected. Oral Test. Of Greer Gillis, Ex. 240, Tr. at 49: 3-5, there is no record evidence that the results of such consultations were transmitted to the Council.

43. The record does not show that there was any public solicitation, Solicitation for Offers, or Request for Proposals conducted by or on behalf of the Council before the Idaho Avenue site was selected. In fact, Chairman Mendelson made clear in his testimony that the Council did not conduct or request any such process. Oral Testimony of Philip Mendelson, Ex. 240, Tr. at 21:15-24 (responding that “[y]ou’d have to ask the execut[ive]” when asked if the Council conducted any RFP or SFO).

44. There is also no evidence that DGS or the Council ever engaged in discussions with the owner of the Wisconsin Avenue site to acquire the site by purchase, despite the opinion of DGS that this was the most suitable site for a Ward 3 shelter on the basis of their search. The Wisconsin Avenue site had a fair market value for purchase of only \$2.5 million, according to the report of the Council’s consultant in its report

considered by the Council in May 2016. Ex. 225 at 9. The relevant portion of that report is an attachment to the testimony of Patricia Wittie included in Ex. 211.

45. DGS Director Gillis testified that the City looked for sites that were “economically feasible.” Oral Test. of Greer Gillis, Ex. 240, Tr. at 49:15-17.

46. The costs associated with the Idaho Avenue site have dramatically increased, and DGS representatives estimated at an ANC 3C meeting that the current estimated all-in cost related to the construction of the shelter and associated construction-related costs will be approximately \$30 million. The Council’s budget for construction of the Ward 3 shelter when it passed the Act was \$12.5 million. Ex. 211, Test. of Patricia Wittie and attachment thereto. The \$30 million price tag includes not only the building of the shelter (now estimated by DGS at \$18.5 million), but also (i) the building of a three-level parking garage for the police station to accommodate parking required for the shelter under applicable zoning regulations, and also parking for the police that will be lost as the result of the construction of the shelter; (ii) construction of a temporary parking structure where the community tennis courts are now located in Lots 848 and 849; (iii) construction of a temporary road across the Community Garden next to a neighborhood playground used by young children, to access the temporary parking on the tennis courts; and (iv) the cost of restoration of the tennis courts and the removal of the temporary road, along with restoration of the area where the temporary road was constructed. *Id.* This does not include any operational or maintenance funds.

47. The rapidly escalating costs associated with the Idaho Avenue shelter project greatly exceed the combination of the market value of the land on Wisconsin Avenue (estimated to be \$2.5 million) (Ex. 225 at 9) and the \$12.5 million initial construction budget. Translated into dollars per unit built at the shelter, the cost is now \$600,000 per unit, which is triple the cost of the Wisconsin Avenue site on a per unit basis, and which far exceeds any reasonable price for basic bedrooms with no kitchen and without private bathrooms. No reasonable developer would build such a unit, and no reasonable purchaser would buy it. Ex. 212, Letters of Opposition from Bruce Joseph at 4 and Steven Lamm at 2.

48. Of that \$600,000, some \$200,000 is attributable exclusively to the need to deal with parking for the police, an issue that was not present at the Wisconsin Avenue site and would not be present at any alternative site. Oral Test. of Patricia Wittie, Ex. 240, Tr. at 185:23-25.

49. The enormous cost associated with the Idaho Avenue shelter project greatly expands the universe of alternative sites that would be competitive at or near that cost level. However, there is no evidence that the search for alternative sites has continued or been renewed by either DGS or the Council due to these cost increases.

50. Shortly after the passage of the bill calling for the Ward 3 shelter to be situated on Idaho Avenue, ANC3C held a community meeting and adopted Resolution 2016-031, asking the Council to provide all documents relating to, *inter alia*, consideration and analysis of alternative sites. Ex. 164A2, ex. 7 at 5.

51. The Council has not responded to this ANC resolution, and no claim has been made or evidence introduced of any search for alternative sites conducted since the Idaho Avenue site was selected.

52. As discussed in a statement by former Montgomery County planner Rob Klein, a city planner with more than 30 years' experience, open solicitations and transparency in the selection of sites, including the identification of alternate sites and opportunities for public comment and involvement, are essential for good city planning. Ex. 186 at 1.

53. Similarly, City Auditor Kathy Patterson issued a report condemning the huge cost overruns of more than \$100 million relating to the Duke Ellington High School renovation process, which makes the same point. The Report finds that DCPS, DGS, and the Mayor were not transparent when considering alternate sites for Duke Ellington — “sites that might have cost less and/or better served the needs of the student population.” The Report goes on to state that “The Mayor should direct DCPS and DGS to conduct all substantial discussions and negotiations involving site selection, educational specifications and architectural designs [for modernizations of DCPS schools] in a fully transparent manner so that District taxpayers and community residents may know why decisions are made and who made them.” Ex. 212, Letter in Opposition from Alice L. Powers at 1-2, quoting Report of the Office of the District of Columbia Auditor on the Duke Ellington Modernization Report.

D. NRG’s Lawsuit Against the Council and the Mayor

54. The Council designated the Idaho Avenue site as the location of the proposed shelter without notifying ANC 3C, without providing ANC 3C with an opportunity to make recommendations, and without giving great weight to the recommendations made by the ANC. Ex. 164A2, ex. 7 at 3.

55. On June 20, 2016, ANC 3C adopted Resolution 2016-031 objecting to the failure of the Council and the Mayor to give notice to the ANC of the designation of the new Site or to give the ANC an opportunity to make recommendations, questioning the selection of the Site, and calling upon the Council and the Mayor to give great weight to its recommendations. Ex. 164A2, ex. 7.

56. On August 23, 2016, NRG and 21 individuals filed a complaint in D.C. Superior Court against the Council and the Mayor alleging failure to comply with the ANC Act, D.C. Code §1-309.10. *Neighbors for Responsive Government et al., v. Mayor Muriel Bowser, District of Columbia, et al.*, Case No. 2016 CA 006290. Both the Council and the Mayor moved to dismiss, arguing that the Council’s designation of the site was merely preliminary and that the Board had full authority to reject the site if the City’s plans did not meet zoning requirements. Ex. 164A2, exs. 2 and 3. Their arguments were successful. *Id.*, ex. 4. In other words, the Court ruled that the Council’s designation of the 3320 Idaho Avenue site for the proposed shelter was merely preliminary and *not mandatory*.

57. For example, the Council argued:

Section 3(a)(2) of the Shelter Act **does not direct the construction of a shelter at the Idaho Avenue Site or any other location**, nor does it specify that some set number of housing units be established within the bounds of the ANC. **Instead, it authorizes, but does not require**, the Mayor to use the funds that have been appropriated for capital project HSW03C to construct a shelter of up to 50 units at the Idaho Avenue Site.

Id., ex. 2 at 19 (underlined emphasis in original; bolded emphasis added).

58. The Mayor presented a similar view:

Because “[t]he Homeless Shelter Act only authorizes preliminary actions, none of which would allow the construction complained of, no notice was required. An action that only sets forth how a construction project may proceed but does not authorize construction is not final.... The Homeless Shelter Act only *authorizes* mayoral actions rather than commanding them, and those actions are only ones that must be made *prefatory* to any decision to begin construction of the various shelters. See the Homeless Shelter Act, § 3(a)(2), Compl. (Dkt. No. 1) Ex. 1 at 2-3 (“The Mayor is authorized to use funds ... provided, that the contract” be approved by the Council). **No final decision has been made about construction of a shelter at the Police Station site because none has been authorized.**

Id. at Ex. 3 at 21-22 (italicized emphasis in original; bolded emphasis added).

59. The Council made clear to the Court that it considered its site selection to be **subject to full zoning review by the BZA**, that that review must not be influenced by the Council’s authorization of the use of the Property, and **that the issue of the potential use of an alternative site or sites were all open questions before the BZA:**

The ANC is correct that constructing a shelter containing up to 50 housing units at the Idaho Avenue Site, which is zoned RA-1, see <http://maps.dcoz.dc.gov/zr16>, will require the District to obtain zoning relief from the Board of Zoning Adjustment. See 11-U DCMR § 420.1(f).... The concerns raised by the ANC in its Resolution No. 2016-031, regarding a potential change in use of the Idaho Avenue Site, such as co-location of a shelter with the existing police station, parking, **and the potential use of an alternative site or sites (Exhibit 2 to Complaint at ¶ 4)**, all fall within the ambit of the factors that the BZA must consider in determining whether to permit the required special

exception. Moreover, as noted above, the ANC objected to, and the Council removed from the introduced version of the Shelter Act, language that would have expressed the “sense of the Council” that it “supports the approval by the Board of Zoning Adjustment of such special exceptions and variances as needed for each of the projects....”

Id. at Ex. 2 at 20-21, n. 58 (emphasis added).

60. The Council represented to the Superior Court that it “has taken no position on, and in any event the BZA remains free to grant or deny, a special exception for the construction of a shelter containing up to 50 housing units at the Idaho Avenue Site.” *Id.* The Council went even further and expressly told the Court that the Council “has no authority over zoning matters.” *Id.* at 21, n. 59. “The Zoning Commission’s jurisdiction over zoning matters is therefore exclusive. . . [and] the BZA’s role is to ‘assure that the regulations adopted by the Zoning Commission are followed.’” *Id.* (citations omitted). The Council therefore concluded that “to the extent Plaintiffs’ comments and recommendations relate to the potential change in use of the Idaho Avenue Site, they should not have been directed to the Council in the first instance, but rather to the appropriate zoning authority, in this case the BZA.” *Id.*

61. The Council’s and the Mayor’s arguments were successful, and the Superior Court granted the motions to dismiss in part on the ground that

As noted at oral argument, no final actions have been taken; the Shelter Act only authorizes preliminary actions by which the construction project may proceed. See, e.g. Foggy Bottom Ass’n v. D.C. Zoning Ass’n, 979 A.2d 1160, 1165-66 (D.C. 2009). The Shelter Act authorizes Mayoral actions; no final decision has been made regarding the Police Station site. *Id.* at Ex. 4 at 14 (emphasis added).

II. THE PROPERTY AND THE SURROUNDING NEIGHBORHOOD

62. The Second District Police Station at 3320 Idaho Avenue is located in the Cathedral Heights neighborhood of Washington D.C. The site, Lot 849 in Square 1818, is zoned RA-1, which is for neighborhoods of primarily single family homes, low rise garden apartments and row homes. The RA-1 zoning permits buildings that are no more than 40 feet and three stories high.

63. Moreover, directly south of the police station, Idaho Avenue and Macomb Street change to even lower density zoning, zone R-1-B, which requires a quiet residential neighborhood of primarily single family homes and moderate-sized lots.

64. The character of this particular neighborhood, which has been remarkably stable, results from its relative quiet, low density, old-growth trees, absence of jostling

crowds on the streets and proximity to the large open space that includes the Newark Street Community Garden, the heavily-used Newark Street Playground, a dog park and tennis courts, and the absence of nearby tall buildings. Ex. 211, Test. of Brian Powers at 3, Test. of Patricia Wittie at 2, 6-7. Portions of the Community Garden, dog park, playground and two of the three tennis courts are on Lot 848, land owned by the Federal government's National Park Service. The Community Garden is a beloved green space in the neighborhood which the City has repeatedly insisted it wishes to preserve. Ex. 2 at 7; Ex. 75 at 9. The nearby McLean Gardens has a park-like setting dating back 75 years. Ex. 211, Test. of Brian Powers at 3; Test. of Tara Stanton at 1.

65. The police station building is a 1971 low-rise modernist building in the Mies van der Rohe style. Behind the police station is an impoundment lot and parking for police officers for approximately 157 vehicles. There is also a small parking lot in front of the building for visitors. Immediately to the north of the station, also on Lot 849, there is a city refueling depot that is used for police cruisers and other city vehicles including fire department vehicles and ambulances. Ex. 211, Test. of Brian Powers at 3.

66. The police station complex is bounded by a wall that runs behind the police parking lot and then to the border of the single-family homes to the south and up to the northern end of the property beyond the fuel depot area. Behind the wall is the Community Garden. *Id.* at 4.

67. The existing parking for police is inadequate, forcing overflow parking on the front lawn, even on days when no special events are occurring. *Id.*

68. Across Idaho Avenue from the police station are eight three-story townhomes, which are part of the Cathedral Commons development and which act as a screen separating Idaho Avenue and the nearby single family homes from the rest of that project. *Id.* at 2. The mixed residential/commercial/retail use Cathedral Commons was constructed as a Planned Unit Development (PUD) only after a decade long process involving intense community debate and rigorous scrutiny from the Zoning Commission. Cathedral Commons includes a Giant grocery store and other retail stores fronting on Wisconsin Avenue, a commercial corridor. In a compromise with the community, the loading dock for Giant on Idaho Avenue was set far back from the street. *Id.* at 2-3.

69. The earlier Vaughan Place PUD fronting on Wisconsin Avenue to the north of the police station site was also the result of a rigorous zoning process. The high-rise apartment and commercial building, nine stories on Wisconsin Avenue, tapers downward so the portion of the building (housing WTOP) across Newark Street from the north end of the police station site is actually the lowest part of the building at five stories and provided the height cue for the Cathedral Commons mixed-use buildings. *Id.* at 2; Ex. 229 at 2. Even that property is a substantial distance from the houses in the R-1-B zone south of the police station, and is visually screened from those houses. Oral Test. of Yvonne Thayer, Tr. at 193:5-10; Oral Test. of Patricia Wittie, Tr. at 183:6-8. These PUDs were approved deviations from the Zoning Plan, not intended to set a precedent for higher rise development in the neighborhood. Oral Test. of Brian Powers, Ex. 240, Tr. at 180:16-181:3; Oral Test. of Angela Bradbery, Ex. 240, Tr. at 231:1-5. Accordingly, reference to

and reliance upon these structures as comparison to the proposed shelter building is inappropriate and misleading. Oral Test. of Brian Powers, Ex. 240, Tr. at 180:11-181:3.

III. APPLICANT'S PROPOSED PROJECT AND ITS INCOMPLETE, UNTIMELY APPLICATION

70. The City has proposed placing a 50-unit emergency shelter for 185 persons plus 27 staff on the same lot as the very busy Second District Police Station, which protects the citizens of at least one quarter of the city, including all of Ward 3, the National Cathedral, parts of Wards 1, 2 and 4, including the important embassy district, and much of downtown including federal and local government buildings. Ex. 211, Test. of Brian Powers at 4.

71. The proposed 69 foot, six-story shelter building would be constructed on the south part of the lot, currently used for police parking. The police station and shelter building would allegedly be accessed by a shared driveway, Ex. 165A2 at Slide 4 (filed by Applicant on Feb. 27, 2017), although subsequent filings by the Applicant suggest that the original design of a divided driveway is still the Applicant's actual plan. Ex. 238 at Slide 6 ("Applicant's Updated Plans in the Record," filed by Applicant on March 13, 2017).

72. No one considered where the police would park during construction, until after the Council selected the site. Oral Test. of ANC Commissioner Nancy MacWood, Ex. 240, Tr. at 122:20-23. The loss of parking for the police would be replaced by a three-level parking garage (to be shared with the shelter), constructed to the rear of the station pursuant to plans that either remain uncompleted or undisclosed in the record of this case.

73. Applicant concedes that its plans for temporary parking for the police during construction of the three-level parking garages are still in flux. Oral Test. of Greer Gillis, Ex. 240, Tr. at 102:11-25.

74. The 50 residential units, 10 per floor on five floors, would be dormitory rooms without cooking facilities. Oral Test of Laura Zeilinger, Ex. 240, Tr. at 96: 1-25. The majority of the rooms would share bathrooms accessed from the hall. Id at 44: 1-9.; Oral Test. Of Joseph McNamara, Ex. 240, Tr. 58: 8-11. Meals will be delivered by van twice a day and served to residents in a 40-seat dining room on the first floor. The facility will offer limited services such as counseling, but, critically, no child care. A playground for the estimated 100 children will be built behind the shelter building and, according to revised plans, next to two dumpsters. Oral Test. Of Joseph McNamara, Ex. 240, Tr. at 57:3-11. There is no provision for a loading dock.

75. The RA-1 zoning applicable to the site permits an emergency shelter for up to 4 persons and, by special exception, for 5 to 25 persons if certain conditions are met. A further special exception with rigorous preconditions is required for any shelter for more than 25 residents. Variances are needed to exceed the permitted 40 feet and three stories height limit to allow two primary structures on one lot, and to build without a loading dock. In addition, according to the latest iteration of the Application, a special exception is required for Applicant's late proposed plan for temporary parking during construction.

76. The District's original plan was to build a two-level parking garage behind the police station. But its original filing package contained no architectural plans for that garage, no drawings of the structure or how it will look or fit into the neighborhood; no information concerning how the plans will eliminate problems caused by headlights shining on neighboring houses at all hours; and no sun studies, Ex. 7, page A1.10, demonstrating the effect of the garage on neighboring properties,¹ including the Community Garden, which Applicant admits "must be preserved" and is "an important source of pride for the city and surrounding community," Ex. 75 at 9, 6. In short, the design of the proposed garage was an undefined element of the project. This plan envisioned a substantial shortfall in the number of parking spaces required for a special exception approval under C §701.5 and U §420.1(f)(2).

77. Applicant substantially revised its plans on February 8, 2017 to increase the size of the proposed parking garage to three-levels, in order to provide the required number of spaces for the shelter. Thus, the revised garage is an integral part of the proposed development. Yet, **Applicant admits that the three-tier parking deck was not even designed as of February 8, 2017, the deadline for disclosing plans for the project and any amendments to it.** Ex. 75 at 3, n.1. Nor has Applicant provided the required plans and details since that time, including up to the date of this submission.

78. Thus, the District's February 8 filing did not provide any details of its plan to build a 3-level parking deck – and it certainly did not "clearly illustrate" its plan as required by Y § 300.8(c). Like Applicant's first filing, the February 8 filing included no architectural plans for the new parking facility; no drawings of the new, higher structure, what its height and mass would be, and how it will look or fit into the neighborhood; no plans concerning how the shared driveway between the shelter and police station would be designed; no information concerning how the plans will eliminate problems caused by headlights shining on neighboring houses at all hours; and no sun studies demonstrating the effect of the higher parking building on the Community Garden.

79. On February 21, 2017, Applicant filed supplemental drawings, including "contextual image of two-story, three level parking deck" and showing a change in the location of the proposed playground and dumpsters. Ex. 165 at 1. This filing, like the others, did not contain architectural plans or scaled drawings for the parking garage. Applicant also notified the Board that it had made changes to the design to lower the height of the shelter building from 72 feet to 69 feet. *Id.* at 2.

80. Applicant then filed a Power Point presentation on February 27, 2017, just two days before the hearing. That Power Point included three renderings of the garage, but no architectural plans or scaled drawings for the garage or its access. Ex. 202B2 at slides 29-31; accord Test. of Nancy MacWood, Ex. 229 at 2 ("DGS has not presented plans or given the ANC and community reliable dimensions of the parking structure"). Moreover, the renderings in the Power Point do not show building materials, landscaping or screening.

¹ See Ex. 7, page A1.10 (original drawings, including sun studies that are limited to the shelter building).

81. There are NO similar garages in the entire ANC area. Oral Test. of ANC Commissioner Nancy MacWood, Ex. 240, Tr. at 118:3-4. Aerial images project a building that is materially larger in footprint than either the police station or the proposed shelter. *Id.* at 118:4-5. *See also* Ex. 237, Slide 5.

82. As the affected ANC Single Member District Commissioner Angela Bradbery testified, "...just last week we saw in the city's most recent filing a sketch of the three-deck parking garage, which appears to be bigger than the police station. We have no plans, no dimensions, no explanation for how it will comply with zoning." Ex. 232 at 4.

83. On February 16, 2017 Applicant amended its application to seek a further special exception, under U § 203.1(j), to allow parking during construction on the adjacent tennis courts. Applicant's revised self-certification (Ex. 108) did not mention the adjacent property at Square 1818, Lot 848, despite the fact that two of the three tennis courts that were to be used for accessory parking are located on that lot (which is owned by the Federal Government). It also said that it needed access to this parking and was considering the need to convert the asphalt walkway on Lot 848 that runs next to the Newark Street Playground and the main section of the Community Garden into an access road suitable for high volumes of police traffic.

84. In its February 16 submission, Applicant did not even attempt to show that it is entitled to this special exception under the requirements of U § 203.1(j). Its submission contains no details concerning its requested exception, no plans, no drawings of either the parking area or the access road, no studies to show that the requested special exception will have no adverse effect on the neighborhood due to runoff; safety risks related to the use of a road for high-volume, high-speed police activity next to a children's playground; nuisance caused by headlights shining on neighboring houses at all hours; nuisance from accumulated exhaust fumes from about 70 police vehicles; and noise.

85. Applicant has not provided evidence of the DDOT review and report of its request for accessory parking as required by U 203.1(j)(11), and in fact there has been no such review.

86. Applicant first identified this need for parking during construction in the context of its new decision to build a three-level parking garage, but Applicant presented no explanation or evidence for why the need for temporary parking during construction of the garage was not apparent and disclosed when the plan was for a two-level garage. Applicant subsequently asserted that it had planned to have the displaced officers park on neighborhood streets, despite the fact that parking in the neighborhood was already overcrowded. Ex. 202A at 16-17. Applicant had not previously disclosed this plan to the community.

87. The addition of Lot 848 to Applicant's zoning request extends the 200 foot line to the west of 39th Street. Applicant provided no evidence and no statement to show that notices had been sent to the residents west of 39th Street affected by this new proposed special exception.

88. As of the date of the March 1 hearing, Applicant had submitted no additional information to support its February 16 amendment and its request for a special exception under U § 203.1(j). Neither Applicant’s February 21, 2017 supplemental drawings nor its February 27, 2017 Power Point presentation (Exs. 202B1 and 202B2) included any plans or drawings related to the request for a special exception for accessory parking, or attempted to meet the evidentiary requirements of U § 203.1(j).

89. Nancy MacWood, Chair of ANC 3C, testified that “...ANC 3C felt hampered throughout [its] consideration of this zoning proposal. We often didn’t have information, or it was slow in coming, and even now there is much of significance that we do not know.” Ex. 229 at 4.

IV. NON-COMPLIANCE WITH THE DISTRICT OF COLUMBIA COMPREHENSIVE PLAN

A. The Comprehensive Plan Requires That New Development Be Designed In Such a Way That It Will Protect and Enhance the Existing Scale, Function, and Character of the Neighborhood

90. D.C. Code §1-306.01(b) states:

The purposes of the District elements of the Comprehensive Plan for the National Capital are to:

(1) Define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;

(2) Guide executive and legislative decisions on matters affecting the District and its citizens;

(4) Guide private and public development in order to achieve District and community goals; ...

(6) **Assist in conservation, stabilization, and improvement of each neighborhood** and community in the District (emphasis added).

91. D.C. Code §1-306.40 states:

Nothing in this part shall obviate the requirement that **zoning shall not be inconsistent with the Comprehensive Plan...** (emphasis added)

92. Comprehensive Plan Policy LU2.1.1, Neighborhood Revitalization, states:

Maintain a variety of residential neighborhood types in the District, ranging from low-density, single family

neighborhoods to high-density, multi-family mixed use neighborhoods. **The positive elements that create the identity and character of each neighborhood should be preserved and enhanced in the future (emphasis added).**

93. Comprehensive Plan Policy LU-3.4.1, Reasonable Accommodation of Group Homes, states:

Recognize the importance of group homes to providing a positive, healthy environment for many residents of the District of Columbia. Ensure that the District's planning, zoning, and housing codes make reasonable accommodation for group homes **without diminishing the character or fundamental qualities of its residential neighborhoods (emphasis added).**

94. Comprehensive Plan Policy RCW-1.1.1 Neighborhood Conservation, states:

Protect the low density, stable residential neighborhoods west of rock Creek Park and recognize the contribution they make to the character, economy, and fiscal stability of the District of Columbia. **Future development in both residential and commercial areas must be carefully managed to address infrastructure constraints and protect and enhance the existing scale, function, and character of these neighborhoods (emphasis added).**

95. Comprehensive Plan Policy RCW-1.2.10, Community Based Residential Facilities, states:

Encourage the development of **small-scale** community-based residential facilities on scattered sites within the Planning Area.... Additional group homes and community based residential facilities should be accommodated **provided that such facilities are consistent with the area's low-density character (emphasis added).**

96. Comprehensive Plan Policy H-4.2.8, Neighborhood-Based Homeless Services, states:

Encourage the provision of homeless services through neighborhood-based supportive housing and single room occupancy (SRO) units, rather than through institution-like facilities and large-scale emergency shelters. The smaller service model can reduce the likelihood of adverse impacts

to surrounding uses, improve community acceptance, and also support the reintegration of homeless individuals back into the community.

B. Facts Bearing on Non-Compliance with the Comprehensive Plan

97. The positive elements that create the identity and character of the neighborhood around the proposed site of the shelter include, among other things, its relative quiet; the low density; the large old-growth trees; the absence of jostling crowds on the streets and sidewalks; proximity to the large open space that includes the Community Garden, playground, and tennis courts; and the absence of nearby tall buildings. Ex. 211, Test. of Patricia Wittie at 2; Oral Test. of Nancy McWood, Ex. 240, Tr. 118:20-25; 119: 1-10.

98. The neighborhood has been stable for 75 years. Exhibit 211, Testimony of Brian Powers at 3. The nearby McLean Gardens has a park-like setting, and the adjoining neighborhoods are largely single-family homes. Ex. 211, Test. of Tara Stanton at 1.

99. Because of the downward slope of Idaho Avenue toward Macomb Street, nearby neighbors to the south of the property do not see the taller buildings a few blocks away along Wisconsin Avenue that Applicant claims are comparable to the proposed shelter in height and size. Oral Test. of Patricia Wittie, Ex. 240, Tr. at 182:14-183:15.

100. The proposed shelter will be six stories tall, but the shelter location is zoned RA-1, where buildings are limited to three stories. Ex. 202B1 at 10; Ex. 4 at 1.

101. The proposed shelter will be 69 feet tall, plus a 6-foot tall mechanical screen, but the shelter location is zoned RA-1, where buildings are limited to 40 feet in height. Ex. 202B1 at 22; Ex. 4 at 1.

102. The proposed shelter will tower over the surrounding single-family homes and the police station; it will block the sight lines, light, and air of neighboring single-family residents, and will create a totally different landscape for the people living in the community. It is out of character for the neighborhood, and will compromise the aesthetics of the neighborhood. Ex. 164A2 at Ex. 5; Ex. 61; Ex. 64; Ex. 71 at 1; Ex. 77; Ex. 143 at 1; Ex. 190; Ex. 197 at 1; Ex. 198 at 2; Ex. 204 at 3; Ex. 208 at 1; Ex. 220 at 2; Ex. 211, Test. of Arnold Lutzker at 3; Ex. 211, Test. of Nora Stavropoulos at 2; Ex. 211, Test. of Yvonne Thayer at 1; Ex. 212, Letter from Scott Jaeckel at 1; Ex. 212, Letter from Donna Sweeney at 2; Ex. 212, Letter from Linda Fisher at 1; Ex. 218 at 1; Ex. 219; Ex. 232 at 1. Oral Test. of Nancy McWood, Ex. 240, Tr. at 119: 14-16.

103. The massing of the program of ten families per floor has resulted in a design that is too tall for its immediate context of single-family houses and a low-rise police station. Ex. 206 at 1.

104. The intervention required on the site in order to make the facility possible – a three-level open parking garage – will have a substantial effect on the neighborhood and on the federal property adjacent to it. Ex. 201; Ex. 206 at 1; Ex. 211, Test. of Patricia

Wittie at 7. There are no comparable parking garages in the entire ANC3C area. Oral Test. of ANC Commissioner Nancy MacWood, Tr. at 118:3-4.

105. The drawings provided by the City and attached to the Application are drawn from a misleading vantage point, distorting the height of the shelter vis-à-vis the neighboring buildings and trees. Ex. 164A2 at Ex. 5; Ex. 197; Ex. 211, Test. of Yvonne Thayer at 2; Ex. 212, Letter from Susan Lutzker at 1-2; Oral Test. of Patricia Wittie, Ex. 240, Tr. at 182:24-183:15. From the viewpoint of the neighbors living in single-family homes to the south of the site, because of the downhill slope the 6-story shelter will appear to be 7 or 8 or 9 stories tall. Oral Test. of Patricia Wittie, Ex. 240, Tr. at 182:11 – 183:15.

106. The shelter will have beds for 185 people, and 27 staff persons will work there. Ex. 125 at 1. An apartment building of the same size could only include a small fraction of that number of people in the equivalent amount of space; D.C. law prohibits more than two people to a bedroom in an apartment, and this proposed shelter will regularly house four or even five people in a single bedroom, without a living room or kitchen, and in most cases without a private bathroom. Ex. 211, Test. of Patricia Wittie at 3.

107. The proposed shelter will increase, rather than preserve and enhance, the existing density of the neighborhood, which is zoned for low-density dwellings. The increase in density will adversely affect the neighborhood. Ex. 64; Ex. 198 at 2; Ex. 211, Test. of Yvonne Thayer at 2; Ex. 212, Letter from Susan and Ken Weinstein at 1; Ex. 232 at 1.

108. The proposed shelter will be inconsistent with the scale of the neighborhood, which consists of single-family houses and low-rise apartment buildings of three stories and less than 40 feet in height. Oral Test. of Nancy McWood, Ex. 240, Tr. at 119: 14-16.

109. The numerous tall trees on the single-family lots adjacent to the shelter on its south side do not buffer noise from the police station; despite the trees, adjoining property owners can hear voices and laughter from the police parking lot where the shelter is to be built. Ex. 211, Test. of Patricia Wittie at 1. These occasional noises would be vastly magnified by the addition of 185 persons plus staff members to the site.

110. Existing traffic on Idaho Avenue is already heavy, and safety – particularly pedestrian safety – is a legitimate concern. Ex. 88; Ex. 211, Test. of Christopher Sweeney at 2; Ex. 211, Test. of Tara A. Stanton at 2 (“I have found that backing out of my driveway on Idaho Avenue is already a serious problem and a hazard”); Ex. 212, Letter from Donna Sweeney at 1-2; Ex. 212, Letter from Scott Jaeckel at 1. The police regularly drive out of their driveway, with tires screeching and sirens wailing. Oral Test. of Patricia Wittie, Ex. 240, Tr. at 185:3-7. ANC3C Chair Nancy MacWood testified that “if you’ve ever watched how those police vehicles are driven out of 2D, you would understand our concern” about safety. Oral Test. of ANC Commissioner Nancy MacWood, Ex. 240, Tr. at 140:13-141:2. A pedestrian was recently struck by a car in the same block of Idaho Avenue as the proposed shelter site. Ex. 212, Letter from Donna Sweeney at 1; Ex. 79; Ex. 90; Ex. 194.

111. The proposed shelter will create additional traffic and congestion, which is a further adverse impact on the neighborhood. Ex. 57 at 1; Ex. 59 at 1; Ex. 60; Ex. 195; Ex. 212, Letter from Susan and Ken Weinstein at 1; Ex. 220 at 1. The neighborhood is maxed out. Ex. 88 [better cite?]; Ex. 205 at 2.

112. Nearby neighbors will suffer a loss of privacy, due to the fact that a 6-story building will have windows looking down into their homes and backyards. Ex. 212, Letter from Brian Wilkinson at 1; Ex. 212, Letter from Donna Sweeney at 2; Ex. 211, Test. of Yvonne Thayer at 1; Ex. 211, Test. of Nora Stavropoulos at 2.

113. The Community Garden adjacent to the proposed shelter site is a significant community asset, providing a tranquil and unique vista that is largely uninterrupted in the direction of the National Cathedral. That vista will be destroyed by construction of the six-story shelter and the 3-story garage building. Ex. 201; Ex. 211, Test. of Patricia Wittie at 6-7; Ex. 232 at 3.

114. Shade from the proposed shelter building will adversely affect multiple garden plots in the adjacent Community Garden, reducing the number of hours of direct sun and inhibiting the gardeners' ability to grow flowers and vegetables. In addition, the City proposes to take down part of the wall between the gardens and the police station during construction, and that will effectively destroy multiple garden plots. Ex. 211, Test. of Patricia Wittie at 6-7; Ex. 232 at 4.

V. APPLICANT'S REQUEST TO BUILD AN EMERGENCY SHELTER FOR 185 RESIDENTS IN ZONE RA-1

A. The Proposed Shelter Far Exceeds the Number of Residents Permitted in Zone RA-1 As of Right and the Number Generally Contemplated by Special Exception

115. The maximum size emergency shelter permitted as of right in zone RA-1, is a shelter for 4 residents. U §401.1(a); U §301.1; U §202.1(h). The regulations allow a special exception for a shelter designed to house 5 to 25 residents if certain defined conditions are met. U §420.1(f).

116. The proposed 185 residents is 46 times the number of residents permitted as of right, and more than 7 times the number of residents contemplated by special exception.

117. Putting 185 residents on a footprint of about 8,000 square feet (Ex. 211, Test. of Patricia Wittie at 4) would result in a far higher density than any other building in the area. *Id.*

B. Applicant Has Not Shown that a Smaller Shelter Will Not Meet the District's Programmatic Needs

118. The rationale given by the District for its need for the proposed shelter is that the proposed shelter is needed to close D.C. General. Ex. 227 at 4; Ex. 228 at 3.

119. The District claims that only a shelter with 50 units at the Site will allow it to meet this goal, but it offers no details, just conclusory assertions. Statement of the Applicant, Ex. 2 at 3; Test. of Laura Zeilinger, Ex. 227 at 7.

120. Counsel for Applicant asserts that “this is really a numbers game.” Ex. 240, Tr. at 66:13. But the District’s numbers do not add up.

121. The District has testified that it needs “approximately” 280 replacement units for DC General. Oral Test. of Laura Zeilinger, Ex. 240, Tr. at 35:7.

122. In 2016 testimony before the Council, the Deputy Mayor for Health and Human Services testified that the city needed only 270 units to close D.C. General, not the 280 that is now asserted by Ms. Zeilinger. Ex. 225, Attachment 2, Test. Of Deputy Mayor Brenda Donald at 4, available at <http://lims.dccouncil.us/Download/35335/B21-0620-CommitteeReport1.pdf>. No reason is given for this discrepancy.

123. Aside from Ward 3, the Homeless Shelter Replacement Act, D.C. Act A21-0412, authorizes shelters of 29 units in Ward 1, 49 units in Ward 4, and 50 units in each of Wards 5, 6, 7, and 8. D.C. Act A21-0412; Ex. 225 at 26. That is a total of 278 units even with no units in Ward 3.

124. The Committee Report asserts that the 29-unit shelter in Ward 1 is not part of the plan to replace D.C. General, but rather is a replacement for another existing shelter. Ex. 225 at 6. There is no D.C. General replacement shelter in Ward 2. In other words, neither Ward 1 nor Ward 2 is participating in the effort to replace D.C. General. Contrary to the testimony of Mr. Young, this is not an “8 Ward strategy.” Ex. 228 at 3. It is only a 6-Ward strategy.

125. As a matter of simple mathematics, even if the 29 units in the Ward 1 shelter are excluded from the list of replacement shelters, there are 249 D.C. General replacement units in Wards 4 through 8. That means that even crediting the District’s asserted needs, the programmatic needs claimed by the District could be met at an appropriate location with a shelter of 21 units in Ward 3 to reach 270, or 31 units to reach 280.

126. DGS Director Gillis testified that if the City were to reduce the height of the proposed shelter building and thereby reduce the number of families below the City’s goal of 50 families, “we wouldn’t have enough units across our system to accomplish the goal” of replacing approximately 280 family units. Oral Test. of Greer Gillis, Ex. 240, Tr. at 109:5-8. This is not a true statement, since a maximum of only 21 (or 31) units in Ward 3 is needed to meet that goal.

127. In other words, the City agreed to place administrative offices for these shelters in a basement (below ground level), with some family units on the first floor. Oral Test. of ANC Commissioner Nancy MacWood, Ex. 240, Tr. at 124:11 – 125:2. *See also*, e.g., BZA Case No. 19289 at Ex. 36B, pp. A-05 and A-08, showing a basement level with a warming kitchen and eating area for residents, and a ground floor level with administrative offices and six family units. If the City took a similar approach at the Idaho Avenue site, it could place the warming kitchen and administrative offices below ground

level and then provide 30 units in 3 stories above ground, limited to 40 feet in height, without the need for a height variance. Combined with the 249 units in the other wards, this would be sufficient to meet the City's stated goal of approximately 280 units.

128. The City has refused to discuss this or other options for reducing the height of the shelter with the ANC. Oral Test. of ANC Commissioner Nancy MacWood, Ex. 240, Tr. at 124:11 – 125:24.

129. The City has stated that ground water prevents it from excavating below ground at the police station site. However, all buildings in the neighborhood have been built in light of the ground water issues. Ground water is not an impediment to excavating below grade at this site. Oral Test. of ANC Commissioner Nancy MacWood, Ex. 240, Tr. at 124:22 - 125:2. Indeed, the second District MPD station immediately adjacent to the proposed shelter consists of two stories above ground and one story below ground. Ex. 211, Test. of Brian Powers at 3. The Applicant introduced no engineering or hydrology reports or studies of any kind that would substantiate a claim that ground water was an impediment to construction of a full basement.

130. Finally, Applicant has not provided more than conclusory assertions that it could not satisfy its needs by operating smaller shelters at this or other locations. Ms. Zeilinger asserted only that operating two shelters would “double our operating costs practically.” Oral Test. of Laura Zeilinger, Ex. 240, Tr. at 260:13. But it is self-evident that with fewer residents at such shelters, one would need fewer security personnel and fewer case workers per site; that utility and maintenance costs would be reduced per site; and real costs would not double. Moreover, Applicant did not even assert, much less demonstrate, that personnel could not be shared among multiple sites.

131. More generally, the cost of operating one shelter compared to two or more shelters was – which bears on the reasonableness of providing zoning relief for this shelter at this proposed location – was never stated or even estimated. No budgets were provided. Thus, there is no evidence in the record demonstrating that the Applicant could not satisfy its needs with a smaller shelter.

C. Applicant Has Not Shown that there Are No Reasonable Alternative Sites

132. In making the decision to designate the police station as the site for the Ward 3 shelter, the Council did not conduct a systematic search for potential sites to purchase, and did not issue any public request for proposals or solicitation for offers for sites to purchase. *See supra*, Part I.C.

133. The evidence similarly does not reveal a systematic search for sites to purchase, or any request for proposals or solicitations for offers for sites to purchase for the Ward 3 shelter by Applicant. *See supra*, Part I.B.

134. The mounting costs of the proposed project at the Property means that the range of potential reasonable alternative sites for Applicant to acquire has widened

substantially. The record does not include any evidence that Applicant considered those costs in considering potential alternative sites. *See supra*, Part I.B.

135. ANC 3C explicitly found “that the ability to assess the reasonableness of this placement in comparison to others as required by the zoning code has been hampered by the unwillingness of the District to provide evidence of an exhaustive search for a shelter site or explain why DGS concluded in April 2016 that the Second District police station was not an appropriate site for a shelter.” Ex. 170 at 3.

136. ANC 3C Chair Nancy MacWood reiterated that there was much of significance that even as of the March 1, 2017 hearing ANC 3C did not know, including that it “can’t say that DGS did an exhaustive search and this is the only site in Ward 3 that meets DHS program goals.” Ex. 229 at 4.

D. Applicant Has Not Shown that the Proposed Shelter Will Not Have Adverse Effects on the Neighborhood; In Fact, it Will

137. One of the conditions set forth in U §420.1(f) is that “[t]he facility shall not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area.”

138. The record is replete with testimony relating to the adverse impact the proposed shelter will have on the community.

1. *The proposed shelter will exacerbate an already serious traffic situation in the neighborhood and further endanger pedestrians.*

139. Applicant asserts that the average “family” in this shelter will be a single mother with two or three young children, most of whom are younger than school age. Ex. 227 at 3-4; Oral Test. of Laura Zeilinger, Ex. 240, Tr. at 36:18 – 37:1.

140. Day care is not available at the site. Ex. 202B1 at 6. Thus shelter residents will have to travel elsewhere for day care. Applicant provided no information about the availability of nearby childcare for residents of the shelter. Ex. 2; Ex. 164A1.

141. Applicant asserts that most families will elect to keep their school-age children in the schools they are currently attending, rather than transferring to the local elementary school (John Eaton). Oral Test. of Laura Zeilinger, Ex. 240, Tr. at 273:8-10. Thus shelter residents and their children will have to travel to other areas of the city in order to take their children to school. The DDOT review asserts that “children enrolled in DC Public Schools (DCPS) are eligible for DC One Card, which allows students to ride transit free.” Ex 125 at 4.

142. The Transportation Assessment by Symmetra Design asserts that the number of shelter residents who own cars is negligible, and accordingly it is anticipated that residents will utilize non-automobile transportation options (transit/bike/walk) to access the site. Ex. 37, Memo at 1. Ms. White, speaking on behalf of Symmetra Design, testified

that she had no independent basis for these conclusions, and offered no support for them. Oral Test. of Nicole White, Ex. 240, Tr. at 276:10-21.

143. The Transportation Assessment identifies Bus Routes 31, 33, 37, 30N, and 30S as being available means of transportation in the vicinity of the shelter. Ex. 37, Memo at 7-8.

144. According to Councilwoman Mary Cheh, these routes are inadequate and unreliable for current residents of the area. In a Letter to the Editor published on February 15, 2017, just two weeks before the hearing in this matter, Ms. Cheh explained that the Washington Metropolitan Area Transit Authority proposes to cancel Route 37; and she further asserted that “although Metro proposes that affected individuals may use the Wisconsin Avenue 30 buses [i.e., 31, 33, 30N, and 30S] and the D1 and D2 routes in lieu of the 37, service on the D routes during snow is often discontinued **and the 30 buses are plagued by overcrowding and delays....** [T]hose neighborhoods along the Wisconsin Avenue corridor that are not serviced by Metrorail **are forced to depend exclusively on transit service that is inadequate and unreliable.**” Ex. 211, attach. to Test. of Patricia Wittie. (emphasis added)

145. Public transportation to this site is sporadic and inadequate to meet the needs of residents. Ex. 58; Ex. 204 at 2.

146. The Transportation Assessment asserts that there are three metro stations within “less than a mile” of the site, and that “such distance is easily walkable.” Ex. 37, Memo at 7. This statement is unsupported and does not address the typical family in this shelter, which consists of a single mother and two or three very young children. The Assessment does not discuss how a single mother with two or three very young children will walk a mile in all kinds of weather in order to get to a subway stop. *Id.*

147. The Transportation Assessment states that there are “two car share stations located near the site” available for use of the shelter residents. Ex. 37, Memo at 12. Applicant has provided no evidence that residents of this homeless shelter will be able to make use of car share services. Ex. 211, Testimony of Patricia H. Wittie at 6.

148. The Transportation Assessment identifies “one Capital Bikeshare station near the site.” Ex. 37, Memo at 15. The Department of Transportation’s (DDOT’s) review estimated that residents of this proposed shelter would make zero trips via bicycle. Ex. 125 at 4. No single mother with two toddlers is going to try to ride a Bikeshare bicycle to take them to daycare, or anywhere else. Ex. 211, Testimony of Patricia Wittie at 6.

149. The scarcity of on-street parking is a constant problem in the neighborhood of the proposed shelter. Ex. 211, Testimony of Patricia Wittie at 5-6; Ex. 211, Testimony of Arnold Lutzker at 5; Ex. 212, Letter from Julie A. Lazar; Ex. 212, Letter from Brian Wilkinson.

150. The Transportation Assessment performed a “survey” of parking occupancy in the neighborhood of the proposed shelter, on a single evening from 6 to 10 PM, and concluded that on-street parking is generally available in the neighborhood. Ex. 37 at 19.

The single-point-in-time survey is insufficient to support the Assessment's much broader conclusion.

2. *The proposed shelter will create additional noise in the neighborhood.*

151. The proposed shelter will create additional noise in the neighborhood, and there is no way to adequately buffer that noise, thus interfering with the neighbors' quiet enjoyment of their properties.

3. *The proposed shelter will create a trash problem that has not been adequately planned for.*

152. The District has not adequately planned for trash disposal for a facility housing 185 persons and 27 staff. There is no evidence that the dumpsters are of adequate size for this facility and even whether trash trucks can navigate the corridor between the street and the dumpsters. Ex. 211, Testimony of Arnold Lutzker at 5; Ex. 195.

153. There has been no study that will explain how refuse will be managed to prevent rat, rodent, deer, vermin and other infestation. Trash disposal is a major concern among neighboring residents because of the already significant rodent problem in the community. Ex. 211, Testimony of Arnold Lutzker at 5; Testimony of Yvonne Thayer at 2; Test. of Nora Stavropoulos at 2. Given the number of shelter residents who are likely to be toddlers or infants in diapers, proper trash removal will be a particularly acute problem.

154. In an attempt to address community concerns about noise, Applicant proposes to move the dumpsters and playground to the rear of the property. However, this will result in a situation where rats infesting the trash can easily scale the wall and enter the playground. Oral Test. of Arnold Lutzker, Tr. at 201:10-12, 220:9-13.

4. *Applicant Has Failed to Consider or Plan for the Impact of the Project on John Eaton School.*

155. Despite the urging of ANC 3C in June 2016, Ex. 164A1, ex. 7 at 4, Applicant has not planned for the impact of a potential large influx of children on the already overcrowded and overtaxed in-boundary elementary school, John Eaton. Ex. 229 at 3; Oral Test. of Angela Bradbery, Ex. 240, Tr. at 232:7-16; Ex. 160 at 1.

156. John Eaton has a current enrollment of 483 students with a building capacity of 405 students and is not scheduled to be renovated until 2022, the last school in Ward 3 on the renovation schedule. Ex. 160 at 1.

157. Instead, Applicant relies on the assertion that "often" families will elect to keep their children in the schools they are currently attending, rather than transferring to John Eaton. Oral Test. of Laura Zeilinger, Ex. 240, Tr. at 273:8-10. Applicant does not provide support for this assertion, and, in fact, data indicating that most children will attend their home school "is based on the current DC General model with no higher performing school in the neighborhood and is flawed." Ex. 160 at 1. *See also* Oral Test. of Nancy

MacWood, Ex. 240, Tr. at 121:19-122:6 (“The education component of the shelter is deflected by DHS statements that most families will [choose] to stay in current schools no matter where they are located. While this may be true, the converse could also be true, and the community is very concerned that there is no plan to provide the schools the tools and information it needs to plan for program needs, classroom size, or additional resource assistance prior to the beginning of the school year. It would be very [unfortunate] if the public good of offering emergency temporary shelter resulted in unanticipated challenges and adverse effects at another public institution providing a public good”).

158 There is no specific plan in place for addressing the potential increased enrollment at John Eaton from the shelter. Oral Test. of Laura Zeilinger, Ex. 240, Tr. at 275:1-9.

5. *The absence of responsible and thorough planning makes it impossible to assess the effect of the operations of the proposed shelter on the existing police station.*

159 ANC 3C has called for Applicant to develop a master site plan for the property (“ANC 3C believes strongly in the need for the city to develop a master site plan for the property. Co-locating two critical public uses on one lot raises potential concerns about compatibility.”) Ex. 170 at 4.

160 The CFA has called for the development of a master plan: “To best accommodate the program to this site, [CFA members] recommend that the entire property be analyzed as a master plan in order to determine how different uses can coexist on the parking lot of the police station, and within the existing single-family neighborhood.” Ex. 206 at 1.

VI. THE REQUESTED VARIANCES AS TO HEIGHT AND NUMBER OF STORIES WOULD RESULT IN A STRUCTURE COMPLETELY OUT OF SCALE WITH THE NEIGHBORHOOD

A. The Proposed Shelter is Twice As High as is Permitted in Zone RA-1 Under F §303.1

161 A height of 40 feet and three stories is permitted as of right in zone RA-1. F §303.1.

162 The proposed shelter is 69 feet high and six stories plus a screen for the mechanical penthouse. In its revised plans submitted on February 21, 2017, Applicant revised the building design to reduce the proposed height of the shelter building from 72 to 69 feet. Ex. 165 at 2; Ex. 237 at slide 12 of 20. But 69 feet is still nearly twice as high as is permitted without a variance, and the shelter is still double the number of stories as permitted by right.

B. Applicant Has Failed to Show That a Shelter That Conforms to the 40-Foot, Three-Story Zoning Limit Will Not Meet the District's Programmatic Needs

163 The rationale given by Applicant for its need for the proposed shelter is that the proposed shelter is needed to close D.C. General.

164 Applicant claims that only a shelter with 46-50 units will allow it to meet this goal. However, as explained above, Applicant has not established that it needs a building with 50 units nor has it shown that a smaller shelter will not meet the District's programmatic needs.

165 Even if a shelter with 50 units were necessary to meet the City's goals, Applicant been unwilling to consider alternative designs that could result in a lower building that could still accommodate 50 units. Oral Test. of ANC Commissioner Nancy MacWood, Ex. 240, Tr. at 124:11 – 125:25; Ex. 229 at 2. ANC3C Chair MacWood's efforts to meet with the architect have been met with silence. Oral Test. of ANC Commissioner Nancy MacWood, Ex. 240, Tr. at 134:6 – 135:14.

C. The Proposed Shelter Will Tower Over the Surrounding Single-Family Homes and the Police Station and Will Be Inconsistent with the Scale of the Neighborhood

166 Applicant's description of the neighborhood as "very built up" is erroneous. Oral Test. of ANC Commissioner Nancy MacWood, Ex. 240, Tr. at 118:23 – 119:6.

167 The property is bordered to the south by single-family homes zoned R-1-B (low density single family housing); to the east by eight rowhouses (zoned RA-1 (PUD C-2-A) and the entrance to the set backed and enclosed Giant loading dock; to the west, by city and National Park Service property improved with a playground, dog park, tennis courts and Community Garden plots, all zoned RA-1; and to the north, by McLean Gardens condominiums, zoned RA-1, and Vaughan Place, zoned RA-1 underlying an R-5-B/C-2-A/C-2-B PUD. Ex. 170 at 1; Oral Test. of ANC Commissioner Nancy MacWood, Ex. 240, Tr. at 118:23 – 119:10.

168 Applicant repeatedly uses Vaughan Place as a point of reference to support its contention that the proposed building is not out of character with the neighborhood. However, Vaughan Place fronts Wisconsin Avenue, a commercial corridor, and is across Newark Street, to the north of Lot 849 and away from the south end of the lot where the shelter is to be built. Vaughan Place is removed by distance and topography from the R-1-B zoned single family homes that will sit next to and directly below the shelter. Ex. 232 at 2, Oral Test. of Yvonne Thayer, Ex. 240, Tr. at 192:9 – 195:2.; Oral Test. of Patricia Wittie, Ex. 240, Tr. at 183:6-8; Oral Test. of Angela Bradbery, Ex. 240, Tr. at 231:1-5; Oral Test. of ANC Commissioner Nancy MacWood, Ex. 240, Tr. at 119:6-10 and 128:14-21.

169 Vaughan Place is part of a PUD that was the result of a complex process lasting many years which included significant community input, intensive regulatory

oversight and compromise to minimize community impact. Ex. 164A1 at 14; Ex. 211, Test. of Brian Powers at 2; Oral Test. of Brian Powers, Ex. 240, Tr. at 180:11 – 181:5.

170 The Vaughan Place PUD has three different classifications. The five-story portion is the one that Cathedral Commons, also part of a PUD, took its cues from. Ex. 229 at 2; Ex. 211, Test. of Brian Powers at 2; Oral Test. of ANC Commissioner Nancy MacWood, Ex. 240, Tr. at 119:6-10.

171 Applicant's photographs and sketches view the proposed shelter only from the north, northeast, and northwest, and therefore do not provide the ability to see the proposed shelter from all relevant vantage points. In fact, from the south side, it will look like a huge monolith, particularly in relation to the exclusively single family residences abutting the site. Because these properties are downhill from the site, the proposed six-story structure will look more like a seven, eight or nine story building. Oral Test. of Patricia H. Wittie, Ex. 240, Tr. at 182:14-23.

172 An elevation drawing included with NRG's Prehearing Statement correctly shows the juxtaposition of the proposed shelter to the nearby single-family homes, from due east. Ex. 164A2, Ex. 5.

173 Applicant was directed by the BZA to provide a rendering of the shelter from the south vantage point where the single-family houses are located. Miller, Tr. at 298:17-25. Applicant failed to do so, providing only yet another rendering from the northeast. Ex. 235 at 57. Accordingly, NRG has provided a rendering from the south vantage point, and it will be included in the record.

D. A Six-Story Building Would Result in Loss of Light and Air and Privacy to the Nearby Homes

174 The proposed shelter will tower over the nearby single-family homes, depriving them of their privacy and cutting off their sunlight, air and open sight-lines. Oral Test. of ANC Commissioner Nancy MacWood, Ex. 240, Tr. at 119:11-16; Ex. 211, Test. of Yvonne Thayer at 1; Ex. 164A2 at Ex. 5; Ex. 211, Test. of Nora Stavropoulos at 2.

175 Shelter residents will be able to look down on the decks and yards into the windows of the nearby single-family homes. Ex. 211, Test. of Yvonne Thayer at 1; Ex. 211, Test. of Nora Stavropoulos at 2.

176 The lights from the shelter building will intrude into the adjacent houses. Ex. 211, Test. of Tara A. Stanton at 2; Ex. 211, Test. of Nora Stavropoulos at 2.

E. ANC 3C Has Objected to the Requested Height Variance, and Its Objections Must be Given Great Weight

177 On February 21, 2017 ANC 3C adopted Resolution 2017-007 (Ex. 170)), which objects, *inter alia*, to the requested height variance.

178 The ANC Resolution states:

ANC 3C believes a shorter building would be more appropriate given the nearby single-family homes and townhomes and the site's zoning. ANC 3C finds that permitting an increase in height from 40 feet to 72 feet and three stories to six stories would substantially impair the intent, purpose and integrity of the zoning plan, because the height is not within the range of a low-to moderate-density zone. Because of the lot size, the applicant could have designed a lower building that still met development standards and programmatic needs." **For that reason, the ANC opposes this variance.**

Id. at 4, (footnotes omitted, emphasis added).

F. The U.S. Commission of Fine Arts Objected to the Proposed Height, and It Would Be Highly Unusual for the District to Proceed in Light of its Objections

179 In its review of concept drawings for the project, the CFA stated: "... the programmatic ideal of ten families per floor has resulted in a design that is too tall for its immediate context of single-family houses and a low-rise police station." Ex. 206 at 1.

180 The CFA suggested "more flexibility in the programmatic guidelines for the building itself, commenting that other configurations – such as a two-wing floor plate with clusters of seven to ten units separated by common spaces – could allow for a lower building with a larger footprint." *Id.* at 2.

181 DGS Director Gillis indicated that there are instances where the DCRA, the "permitting arm," "discerns that CFA recommendations are unnecessary, or inappropriate, in which case they may issue the permit in light of outstanding CFA recommendations." Oral Test. of Greer Gillis, Ex. 240, Tr. at 249:10-15. However, the CFA is sensitive to programmatic goals and its review should not be dismissed as having been conducted in a design vacuum. In fact, the CFA expressed support "for the goal of building transitional housing for homeless families in established residential neighborhoods." Ex. 206 at 1.G.

G. There Are Alternatives to the Design of the Proposed Shelter, but Applicant Has Refused to Consider Them, Based Primarily on Unsupported Assumptions as to Cost

182 ANC 3C Chair Nancy MacWood asked repeatedly without success to meet with the project's architect and DGS to discuss alternate designs. Oral Test. of ANC Commissioner Nancy MacWood, Ex. 240, Tr. at 124:11 – 125:25 and 134:6 – 135:14.

183 Among the options suggested by the ANC was excavation of more of the building footprint so the basement can be used for administrative functions, thereby freeing the first floor to be used for residential units. Ex. 170 at 4, n. 2.

184 Other shelters recently approved under the current D.C. General replacement program have plans that call for housing administrative functions in the basement with living units on the first (ground) floor. *See e.g.*, BZA No. 19289, Ex. 36B at A-05 and A-08, describing the Ward 4 shelter, which has administrative functions in the basement and living units on the first (ground) floor. Applicant rejects the idea for the Ward 3 facility, based on the inconsistent claim that it is a mandatory programmatic requirement to have administrative offices on the first (ground) floor. Oral Test. of Joe McNamara, Ex. 240, Tr. at 133:3-21; Oral Test. of Laura Zeilinger, Ex. 240, Tr. at 254:16-20. The Applicant also rejects the idea of excavating the full basement and using it for administrative functions, based on the unsupported claims that ground water in the neighborhood makes it impractical. Oral Test. of ANC Commissioner Nancy MacWood, Ex. 240, Tr. at 124:11 – 125:2; Oral Test. of Greer Gillis, Ex. 240, 1 Tr. at 98:6-15. Citing site constraints, DHS Director Greer Gillis speculated that Applicant “could be looking at several million dollars to excavate further or expand the footprint further.” Oral Test. of Greer Gillis, Ex, 240, Tr. at 98:16-22. Other than this speculative statement, the record contains no estimates of what the engineering and cost factors would be.

185 The entire neighborhood has ground water. Neighboring property owners build knowing that there is groundwater; it is not an impediment to construction or excavation. Oral Test. of ANC Commissioner Nancy MacWood, Ex. 240, Tr. at 124:23 – 125:2. The second District MPD station that already occupies this site consists of two stories above ground and one story below ground. Ex. 211, Test. of Brian Powers at 3.

186 Applicant has repeatedly rejected the idea of building two smaller shelters in Ward 3, but has made only the conclusory assertion that two smaller shelters would double operating costs. There are no analyses in the record to support this claim.

VII. A VARIANCE TO ALLOW THE SHELTER TO BE BUILT WITHOUT A LOADING DOCK WOULD HAVE AN ADVERSE IMPACT ON THE NEIGHBORHOOD

187 Under C §901.1, an emergency shelter use with a gross floor area between 30,000 and 100,000 square feet must provide one loading berth and one service/delivery space.

188 The proposed shelter, which exceeds 30,000 square feet, does not provide a loading berth or a service-delivery area. *See* Ex.202B1, Slide 21, showing building dimensions as approximately 130 feet x 58 feet, or 7540 square feet per floor, times 6 floors, for a total of 45,240 square feet.

189 Applicant relies on its Transportation Assessment (Ex. 37) to support its claim that no loading dock is necessary. However, that assessment has no supporting evidence or analysis and is wholly silent about the many needs that a loading dock serves. Ex. 37 at 24.

190 Applicant denies that it will be receiving large shipments or deliveries. However, it is reasonable to assume that a shelter designed for 180 or more persons will

have such needs. Ex. 211, Test. of Arnold Lutzker at 6. For example, the operation of the shelter building will need loading/unloading facilities for deliveries, vehicles for maintenance of large systems, furniture replacements and especially trash pick-ups. *Id.*

191 Applicant has failed to show that the proposed locations for loading and unloading will be accessible to large vehicles and trash trucks.

192 The absence of a loading dock will push more of the activity onto the street, creating traffic congestion and hazardous conditions. Ex. 211, Test. of Arnold Lutzker at 6.

VIII. A VARIANCE TO ALLOW TWO PRIMARY STRUCTURES ON ONE LOT WOULD JUXTAPOSE TWO ENTIRELY DIFFERENT AND INCOMPATIBLE USES

193 Under C §302.2, each new primary structure must be erected on a separate lot of record in the RA-1 District.

194 Applicant proposes a second primary structure to be built on Lot 849 where the Second District police station, an existing primary structure, is currently located. The police station is operational. This location is unique in that it is the only proposed shelter site with an existing public use. Oral Test. of Nancy MacWood, Ex. 240, Tr. at 117: 3-7.

195 The Second District police station is a two-story building with one additional story below ground. Ex. 211, Test. of Brian Powers at 3.

196 Adjacent to the police station and to the north, is a District fueling station area that fuels City owned vehicles. *Id.*

197 Behind the police station is a parking lot that accommodates about 157 vehicles related to police operations. *Id.*

198 The police station complex is surrounded on two sides by a brick wall. Oral Test. of Joe McNamara, Ex. 240, Tr. at 54:13-15. The remainder of Lot 849 lies west of the wall and is utilized as the Community Garden, which consists of small plots for urban farmers who grow vegetables and flowers. *Id.* at 55:6-8.

199 Applicant seeks an area variance to be excused from complying with the requirements of C §302.2 in order to build the proposed family homeless shelter to the south of the police station.

200 The two primary structures would have two entirely different and incompatible uses, operating separately “for obvious reasons.” Oral Test. of Joe McNamara, Ex. 240, Tr. at 268:8-9.

201 The police station is dedicated to providing public safety to about one third of the City including the embassy area and much of the downtown core. During emergencies, police cars roar out of the parking lot with their sirens blaring. Oral Test. of

Patricia Wittie, Ex. 240, Tr. at 185:4-7; *see also* Oral Test. of ANC Commissioner Nancy MacWood, Ex. 240, Tr. at 140:25 – 141:2.

202 Applicant's own architect conceded, in response to a question from Applicant's counsel, that the two structures are fundamentally incompatible and operate for entirely different purposes. Asked why the structures cannot be connected, Mr. McNamara testified that "They operate separately for obvious reasons. They don't want to be crossing paths." Oral Test. of Joe McNamara, Ex. 240, Tr. at 268:8-13. In his written Testimony, Mr. McNamara confirmed that connecting the two structures "would be practically difficult and not in the best interest of both uses." Ex. 164A1 at 11.

203 Not only does Applicant propose to build a second primary structure on Lot 849, it proposes to build a large three story parking structure immediately behind the police station to accommodate the police parking that will be lost due to the locating of this shelter on the property, but also to afford parking for shelter staff and visitors.

204 The proposed use of the Idaho Avenue site by the Council was deemed unsuitable by then DGS Director Weaver because the site was already occupied by an operating police station and the related District fuel depot. Ex. 164A2 at Ex 11.

IX. APPLICANT'S PROPOSED TEMPORARY PARKING LOT WILL ADVERSELY AFFECT NOT ONLY THE TENNIS COURTS BUT ALSO THE COMMUNITY GARDEN, THE PLAYGROUND AND THE NEIGHBORHOOD

205 The City proposes to pave over the tennis courts in the Community Garden to be used as temporary parking for the police during construction of the parking garage. A road must be constructed from Newark Street to the tennis courts, possibly adjacent to the existing community playground, in order for the police to drive into this temporary parking lot. Oral Test. of ANC Commissioner Nancy MacWood, Ex. 240, Tr. at 122:7 – 123:13.

206 One of the possible locations for the road is directly next to a playground for small children, which creates multiple safety issues. Ex. 212, Letter from Brian Wilkinson at 4; Ex. 212, Letter from Susan Lutzker at 2; Ex. 232 at 3; Oral Test. of ANC Commissioner Nancy MacWood, Ex. 240, Tr. at 140:25 – 141:2.

207 The tennis courts currently do not currently have any lights. Oral Test. of Patricia H. Wittie, Ex. 240, Tr. at 184:4-5. However, lights from police cars driving into and out of their temporary parking on the tennis courts will shine directly into the windows of the neighboring houses. Ex. 211, Test. of Patricia H. Wittie at 7.

208 Oil/gasoline runoff from the temporary parking lot on the tennis courts will run directly downhill onto the neighboring properties, potentially damaging trees and other plantings. In addition to destroying the tennis courts to turn them into temporary parking, use of those courts and the need to build a road to get to them will destroy multiple garden plots, will cut the gardens in two, and will diminish the gardeners' quiet enjoyment of the gardens and adjacent picnic area. Ex. 211, Test. of Patricia Wittie at 7; Ex. 218 at 1.

209 At the March 1, 2017 hearing, DGS Director Gillis testified that the City is looking for an alternative to the use of the tennis courts as a temporary parking lot, and expected to report back to the BZA “in the next couple of days” or by March 10 with a more definitive answer as to its plans. Oral Test. of Greer Gillis, Ex. 240, Tr. at 105;6-9 and 301:19 – 302:3.

210 The City has not reported back to the BZA on an alternative solution or with more definitive plans. The oral proposal to use the tennis courts has not been presented in writing, has not been documented with drawings, and no request for zoning relief involving Lot 848 where two of the three tennis courts are located has been submitted to the Board.

X. COMMUNITY OUTREACH HAS BEEN INADEQUATE

A. The Local Advisory Team Is Not Inclusive and Its Scope Is Too Narrow

211 Applicant points repeatedly to the Local Advisory Team as evidence of the extent to which the community has had input into the proposed shelter project. Ex. 75 at 18; Ex. 227 at 9. The goal of the advisory team is “to discuss a myriad of topics concerning the Project and disseminate information through the community members.” Ex. 75 at 18. Although Applicant states that the process has been “robust,” Oral Test. of Laura Zeilinger, Ex. 240, Tr. at 47:8-9, neighbors do not agree and feel excluded. Oral Test. of Tara Stanton, Ex. 240, Tr. at 218:1-4 (“I actually have not been allowed to go to any of the advisory committee meetings, because I was told they’re not open to the public”).

212 The Local Advisory Team was put into place after the site was selected, and site selection was not within its purview. Oral Test. of Laura Zeilinger, Ex. 240, Tr. at 78:15-21; Ex. 239 at 2. The Team began meeting in September 2016. Ex. 227 at 9. Addressing the concerns that the community had about whether or not Idaho Avenue was an appropriate location for the shelter was “absolutely not ... the purpose of the advisory team.” Oral Test. of Laura Zeilinger, Ex. 240, Tr. at 78:15-21.

213 The function of the Local Advisory Team has been unclear. Oral Test. of Nancy MacWood, Ex. 240, Tr. at 131:25 – 132:15. The ANC understood that the function of the Local Advisory Team was to work out Good Neighbor Agreements and did not realize that it would be asked to comment on design. *Id.* Had the ANC understood the function of the Local Advisory Team, it would have recommended very different members. *Id.*

214 The Chair of ANC 3C never saw the initial statement of purpose for the meetings of the Local Advisory Team. Oral Test. of Nancy MacWood, Ex. 240, Tr. at 137:19-20.

215 The Local Advisory Team’s opportunity to comment on design issues has been largely limited to reviewing different exterior finishes for the building. Ex. 235, Comments of Laura Zeilinger in Minutes of Advisory Committee Meeting Sept. 20, 2016 at 3.

216. The exclusiveness of the Local Advisory Team has prevented broad community input. Oral Test. of Tara Stanton, Ex. 240, Tr. at 218:1-4, 18-20.

217. The meetings of the Local Advisory Team were not open to the public and were not publicized in advance. *Id.*

B. Good Neighbor Agreements Will Not Resolve Community Concerns

218. Applicant contends that strict policies regarding the operation of the shelter can be put in place via a Good Neighbor Agreement. Oral Test. of Laura Zeilinger, Ex. 240, Tr. at 225:15-24; 258:15-19. Issues to be addressed in such an agreement include noise, staff shift changes, maintenance of property, community safety and neighborhood codes of conduct and mutual respect. *Id.* at 225:15-24; Ex. 228 at 5.

219. The process of negotiating a Good Neighbor Agreement has not yet begun. Oral Test. of Angela Bradbery, Ex. 240, Tr. at 242:10-19.

220. If zoning relief is granted, the community will have no leverage in negotiating a Good Neighbor Agreement.

221. The precedent of the Good Neighbor Agreement executed in connection with the Cathedral Commons project shows that such an agreement cannot be relied on or enforced to address community concerns. Oral Test. of Yvonne Thayer, Ex. 240, Tr. at 215:23-216:10.

CONCLUSIONS OF LAW

I. THE APPLICATION MUST BE DENIED BECAUSE IT IS FATALLY INCOMPLETE, ON ACCOUNT OF APPLICANT'S MATERIAL FAILURE TO COMPLY WITH THE BOARD'S PROCEDURES.

1. The Board's Rules require an Applicant, in its Application, to provide: "Architectural plans and elevations in sufficient detail to clearly illustrate any proposed structure to be erected or altered, landscaping and screening, and building materials, and where applicable, parking and loading plans." Y §300.8(c) (emphasis added).

2. The deadline for completion of an application, including all supplemental submissions, is 21 days prior to a scheduled hearing. *Id.* at § 300.15. That deadline passed on February 8, 2017.

3. The duty to comply with these regulations falls on the Applicant. Opponents have no duty to ask to defer a hearing if Applicant has violated these rules.

4. The requirement that an application be completed in a timely manner is not a mere technicality. *It is the essence of due process in the context of any zoning proceeding.* Adjudicating an application is severely hampered by a moving target and incomplete information. In this case, the ANC's review of the application was also significantly hampered by the continued lack of required information.

5. The application was not complete as of the pre-hearing filing deadline, February 8. The application lacked any of the required information enumerated in Y §300.8(c) concerning the proposed three-level parking garage, which is a “proposed structure to be erected” and essential to Applicant’s “parking plans.”

6. Although the Applicant made additional late filings to supplement its application on February 21, 2017, and February 27, 2017, none of those filings included the missing required materials. The application still does not contain scale drawings or architectural plans of the parking garage, drawings or plans concerning access to the parking garage, and no information concerning building materials and only a vague statement concerning landscaping. Applicant’s Prehearing Statement conceded that the parking garage had not even been designed yet. Ex. 75 at 3, n.1. Thus, Applicant has not complied with Y §300.8(c).

7. Moreover, F, Ch. 50 sets forth development standards governing accessory buildings in zone RA-1, including parking garages. Applicant has not provided any information to enable the Board to assess compliance with F, Ch. 50. As discussed below, the information provided points to the conclusion that the garage does not comply with that Chapter.

8. The parking garage is being built as an integral part of the shelter project in order to satisfy zoning requirements for parking applicable to the shelter project; it would not be built but for the shelter project. The parking garage provides necessary parking for the shelter; it is an accessory building for the shelter project. It is also intended to serve as an accessory building for the police station

9. Applicant has failed to provide the requisite information, plans, and drawings to determine if the parking garage requires zoning relief, and the Self-Certification Form 135 (Ex. 108) does not include the parking garage.

10. In addition to the parking garage, Applicant’s request for a special exception under U § 203.1(j) to provide temporary parking on lot 848 is also incomplete and untimely. It was filed 8 days after the deadline and less than 21 days prior to the scheduled hearing.

11. The temporary parking application is incomplete because the Applicant provided no drawings, plans, information concerning materials, or any information concerning the effect of the requested parking on the neighborhood.

12. Pursuant to U § 203.1(j)(6), Applicant bears the burden of supporting its request for a special exception with a demonstration that:

- (A) The parking spaces shall be so located, and facilities in relation to the parking lot shall be so designed, that they are not likely to become objectionable to adjoining or nearby property because of noise, traffic, or other objectionable conditions; and
- (B) The present character and future

development of the neighborhood will not be affected adversely; and (C) The parking is reasonably necessary and convenient to other uses in the vicinity.

Applicant has not even attempted to make this demonstration.

13. Pursuant to U § 203.1(j)(11), an application for a special exception under U § 203.1(j) must be “referred to the District Department of Transportation for review and report.” Applicant has provided no evidence in the record that it has done this, and the record is devoid of any report from DDOT concerning this requested special exception. Similarly, the Office of Planning was not informed of the added request for this special exception, and did not address the issue in its report.

14. The February 16, 2017, request for a special exception under U § 203.1(j) applies to Lot 848, a lot that was not implicated in Applicant’s original application. In relevant part, Y § 401.2(d) requires that notice be given within 40 days prior to a public hearing on an application “to the owners of all property within two hundred (200) feet of the subject property.” Applicant has failed to demonstrate that such notice was provided.

15. For the foregoing reasons, the Application must be denied in all respects for the Applicant’s failure to timely file complete information to enable proper adjudication of it.

II. APPLICANT’S PROPOSED PARKING GARAGE DOES NOT MEET THE PARKING REQUIREMENTS FOR THE PROPOSED SHELTER.

16. Subtitle F, Chapter 50 sets forth the development standards for an accessory building in zone RA-1. Applicant’s proposed parking structure is an accessory building that must meet these requirements.

17. In the RA-1 zone, an accessory building is subject to the condition it must be “subordinate to” the building to which it is accessory. F § 5000.1(a). Further, the “accessory building must be “secondary in size compared to the principal building.” *Id.* § 5000.2

18. The “bulk of accessory buildings shall be controlled through the development standards in Subtitle F §§ 5001 through 5004.” *Id.*, § 5001.1. Among the required standards, is a requirement that “[t]he maximum permitted height for an accessory building shall be twenty feet (20 ft.) and two (2) stories.” *Id.*, § 5002.1.

19. Applicant’s “concept drawings” show that the parking garage is substantially larger in size than either the police station or the shelter. *See, e.g.*, Ex. 237 at pdf. 5, 17, 18, 20. It is not “secondary in size” and violates F § 5000.2.

20. Applicant’s architect testified that the garage is a three-level garage. Tr. 99 (McNamara). Thus, the garage violates F § 5002.1. As to height, there is insufficient

information in the record to determine whether the parking garage is within the 20' height limit of §5002.1.

21. The footprint of the garage must be included in the RA-1 zone lot occupancy requirement of 40% for the entire property. F § 5000.2. Due to Applicant's failure to submit the necessary scale drawings and plans, it is impossible to determine whether the proposed development satisfies this requirement. In addition, under F §5000.4.2, the garage must be taken into account in computing the green area ratio requirement for the property (40%) and the FAR minimum for the property (0.9). Again, Applicant has made no demonstration of compliance and provided no scale drawings from which compliance could be determined.

22. Applicant has not asked for and, in any event, cannot obtain a special exception to build the garage if it fails any applicable development standard. Special exceptions for accessory buildings in the RA-1 zone are subject to the limitations of F § 5201, which only permits special exceptions for accessory structures for "an addition to an existing residential building" or a new or enlarged structure accessory to an existing residential building. F §§ 5005.1, 5201.2. In addition to being accessory to the proposed shelter, the proposed parking garage is accessory to a police station, which is not a residential building. Nor is the proposed shelter an "existing" residential building.

23. Without the parking garage, Applicant does not meet the minimum parking requirement for the shelter under C § 701.5 of 23 spaces. Moreover, without the garage, Applicant cannot meet the mandatory parking condition of U § 420.1(f)(2), which requires "adequate, appropriately located, and screened off- street parking to provide for the needs of occupants, employees, and visitors to the facility." Accordingly, the Application must be denied in all respects.

III. APPLICANT BEARS THE BURDEN OF PROVING ALL ELEMENTS NEEDED TO QUALIFY FOR ANY SPECIAL EXCEPTION AND ANY VARIANCE; IT IS NOT ENTITLED TO AVOID ZONING REQUIREMENTS OR TO A LESSER STANDARD BECAUSE IT IS THE GOVERNMENT.

24. To obtain a special exception, an applicant must demonstrate, with competent evidence, that the requested exception: "(a) [w]ill be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps; (b) [w]ill not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and (c) [w]ill meet such special conditions as may be specified in this title." X §§ 901.2, 901.3.

25. The Applicant has the full burden of proof regardless of whether evidence is presented in opposition. *Id.* § 901.3.

26. The Zoning Regulations establish the requirements for the granting of a variance. To qualify for a variance, the Applicant must meet the burden of proof to

establish each of the requirements with competent evidence in the record, even if no contrary evidence is presented. X § 1002.2.

27. For all variance applications, the Applicant must show 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.” *Id.*, § 1000.1.

28. The specific standard of hardship differs depending on whether Applicant seeks a use variance or an area variance. To qualify for an area variance, an Applicant “must prove that, as a result of the attributes of a specific piece of property described in X § 1000.1, the strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to the owner of property.” *Id.*, § 1002.1(a). To qualify for a use variance, Applicant “must prove that, as a result of the attributes of a specific piece of property described in X § 1000.1, the strict application of a zoning regulation would result in exceptional and undue hardship upon the owner of the property.” *Id.*, § 1002.1(b). The attributes “described in X § 1000.1” are: “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.” As the Court of Appeals said in *Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990) (emphasis added), “[t]he critical point is that the extraordinary or exceptional condition **must affect a single property**”.

29. Variance caselaw in the District has established a “three-prong” test for when grant of an area variance is proper – i.e., when the Board:

finds three conditions: (1) the property is unique because, *inter alia*, of its size, shape, or topography; (2) the owner would encounter practical difficulties if the zoning regulations were strictly applied; (3) the variances would not cause substantial detriment to the public good and would not substantially impair the integrity of the zoning plan.

French v. District of Columbia Board of Zoning Adjustment, 658 A.2d 1023, 1035 (1995).

30. As discussed below in the context of specific requested variances, Applicant’s programmatic goals are not exceptional conditions that affect a single property. Nor is the fact that Applicant is voluntarily engaging in other continuing uses of the property.

31. Applicant argues that, because it is “a public service,” it is entitled to a “more flexible” standard for the grant of variances. Ex. 75 at 4-5; Ex. 216 at 5-7 (Reply Statement). It relies on *Monaco v. BZA*, 407 A.2d 1091 (D.C. 1979), *National Black Child*

Development Institute v. BZA, 483 A.2d 687 (D.C. 1984) (hereinafter “NBCDI”), and *Draude v. BZA*, 527 A.2d 1242 (1986), for this proposition. Ex. 75 at 4-5.

32. Applicant significantly overstates the reach of those cases. In *Monaco* and *NBCDI*, a non-profit institution sought to expand or continue an existing previously authorized use on land that it owned. *Monaco*, 407 A.2d at 1095-96; *NBCDI*, 483 A.2d at 689.

33. In *Monaco*, the case that first adopted the standard that Applicant seeks to reply upon, the Court of Appeals defined the flexible standard quite narrowly. The Court held when a public service has inadequate facilities and applies for a variance “to expand into an adjacent area in common ownership which has long been regarded as part of the same site, then the Board of Zoning Adjustment does not err in considering the needs of the organization as possible “other extra-ordinary and exceptional situation or condition of a particular piece of property.” 407 A.2d at 1099.

34. In *NBCDI*, the Court of Appeals applied the doctrine to apply to property already owned and being lawfully used by the owner for offices, who faced a hardship because the zoning laws had changed after its temporary certificate of occupancy had expired. As the Court said, “the great expense of operating offices at another site would cause serious detriment to the Institute,” which it found would “cause undue hardship.” 483 A.2d at 690.

35. In *Draude*, the Court of Appeals reiterated this narrow formulation of the more “flexible” standard.

Moreover, we have held that **the need to expand an existing building** may constitute the kind of exceptional condition of the property that justifies a variance:

[W]hen a public service has inadequate facilities **and applies for a variance to expand into an adjacent area in common ownership which has long been regarded as part of the same site**, then the Board of Zoning Adjustment does not err in considering the needs of the organization as [a] possible “other extraordinary and exceptional situation or condition of a particular piece of property.”

Draude, 527 A.2d at 1255 (quoting *Monaco*, 407 A.2d at 1099) (emphasis added).

36. Here, there is no need to expand an existing use into an adjacent area of common ownership. Nor is there any claim that Applicant need zoning relief to continue an existing use that was previously allowed. Applicant’s attempt to shoe-horn a new use onto an existing site that is fully used is not a comparable situation. The BZA cases cited by Applicant’s Reply Ex. 202A at 7-8 are similarly inapposite. In each of cases number 18240, 18272, 17973, 16916 and 17609, the applicant sought to expand ongoing,

continuing uses at its existing property, and demonstrated that it had no practical alternative. Thus, the cited cases provide no support for Applicant.

37. Further, in both *Monaco* and *NBCDI* there were strong equities favoring the zoning relief that was sought, due to circumstances that unlike here, were beyond the control of the applicant.

38. In *Monaco*, the Republic National Committee had acquired the property and improved an adjacent lot with implicit assurances from both the Zoning Commission and House of Representatives Office Building Commission that it could place its offices on the site. 407 A.2d at 1099. The Court concluded “that good faith, detrimental reliance on the zoning authorities’ informal assurances may be taken into account in assessing intervenors’ undue hardship under variance law.” 407 A.2d at 1101.

39. The Court found that “the previously constructed buildings and the contiguous subject site can be considered together in applying the test especially because the past acts of the zoning authorities led intervenors to rely in good faith on their eventual consent to the final stage of the building.” 407 A.2d at 1100

40. In *NBCDI*, the Institute had purchased its property and improved it for offices at a time when there was a rule allowing social service organizations to use the space for their purposes. The zoning rules were changed two years later to eliminate that provision, which would have left the Institute unable to use the land it had purchased and improved for the purpose it had purchased and improved it. The Board found that “the use NBCDI made of its property has not changed in scope of character since 1976 when it purchased the property and received a temporary certificate of occupancy under the current zoning regulations.” 483 A.2d at 691 n.8.

41. There are no similar equities here. Applicant is not relying on any prior assurances of zoning authorities and has did not invest in developing adjacent land in reasonable anticipation of approval. Nor is Applicant seeking to continue an existing use that was made unlawful by a change in the law.

42. Moreover, the “flexibility” sought by Applicant would not justify giving the Applicant the latitude to violate zoning requirements to the extent requested in this case. As the Court of Appeals has held, “[t]he need to expand does not, however, automatically exempt a public service organization from all zoning requirements.” *Draude*, 527 A.2d at 1256.

43. Rather, the Court has held that where a public service organization invokes the *Monaco* rule to seek to expand its facilities, it must show: “(1) that the specific design it wants to build constitutes an institutional necessity, not merely the most desired of various options, and (2) precisely how the needed design features require the specific variance sought.” *Draude*, 527 A.2d at 1256.

44. In adopting that rule, the Court of Appeals made clear that the institution seeking a variance must prove “institutional necessity.” That institutional necessity encompasses proof, as in *NBCDI*, that “the great expense of operating offices at another

site would cause serious detriment to the Institute,” which it found would “cause undue hardship.” *NBCDI*, 483 A.2d at 690.

45. In short, Applicant was obliged under these cases to prove that building the shelter at another site would cause it serious detriment. Applicant has not made that showing.

IV. THE REQUESTED RELIEF IS INCONSISTENT WITH THE COMPREHENSIVE PLAN AND WITH THE ZONING REGULATIONS AND MAP, AND MUST BE DENIED IN ITS ENTIRETY.

46. Variance and special exception relief both require an applicant to demonstrate that the requested relief is consistent with the “general purpose and intent of the Zoning Regulations and Zoning Maps” or, in the case of a variance, “without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.” X § 1000.1.

47. Under this standard, the Board is to assess the impact of the requested relief against the Comprehensive Plan to ensure that its intent, purpose and integrity are protected and ensured.

48. The Comprehensive Plan recognizes the need to:

Protect the low density, stable residential neighborhoods west of rock Creek Park and recognize the contribution they make to the character, economy, and fiscal stability of the District of Columbia. Future development in both residential and commercial areas must be carefully managed to address infrastructure constraints and protect and enhance the existing scale, function, and character of these neighborhoods.

Comprehensive Plan Policy RCW-1.1.1 (emphasis added). Policy LU-2.1.1 similarly recommends the preservation of residential neighborhoods.

49. The Comprehensive Plan further requires that, although small-scale community-based residential facilities may located on “scattered sites” west of Rock Creek Park, they must be “consistent with the area’s low-density character.” Comprehensive Plan Policy RCW-1.2.10. Policy H-4.2.8 similarly recommends small-scale rather than large, institution-like homeless shelters in established neighborhoods.

50. The proposed shelter is not consistent with the scale, function or low-density character of the surrounding neighborhood.

51. Zone RA-1 is intended to “provide[] for areas predominantly developed with low- to moderate-density development, including detached dwellings, rowhouses, and

low-rise apartments.” F § 300.2. There must necessarily be some limit to the size of an emergency shelter that can be allowed in the RA-1 Zone. The proposed shelter is not low-to-moderate density, and is not a detached dwelling, rowhouse, or low-rise apartment.

52. In addition, the proposed shelter is located directly adjacent to properties zoned R-1-B, a low-density zone that is designed to protect quiet residential neighborhoods of primarily single family homes and moderately sized lots. D §§ 300.1, 300.3. The proposed shelter is wholly inconsistent with zone R-1-B.

53. Applicant claims that the proposed shelter is consistent with the Comprehensive Plan because the Plan includes a goal of co-location of multiple community services in the same facility “provided that the uses are functionally compatible with each other and are also compatible with land uses and activities on surrounding properties.” Ex. 202A at 11-12 (Applicant’s Reply). That argument is misguided.

54. The services involved here – police station and homeless shelter - are not being located in the “same facility.” That is quite intentional; they are not functionally compatible with each other. As Applicant’s architect testified: “They operate separately for obvious reasons. They don’t want to be crossing paths.” Tr. 268 (McNamara). Nor is co-locating the homeless shelter with the police station compatible with the residential use of surrounding properties, for all the reasons previously expressed.

55. For the foregoing reasons, the proposed shelter is not consistent with the general purpose or intent of the Comprehensive Plan, the Zoning Regulations and the Zoning Maps and will substantial impair the intent, purpose and integrity of the zone plan.

56. Accordingly, all aspects of the requested zoning relief must be denied.

V. APPLICANT’S CLAIM THAT THE SELECTION OF THE SITE IS MANDATED BY LAW IS FALSE, AND DOES NOT SUPPORT ZONING RELIEF.

57. Applicant’s need for zoning relief stems entirely from the District’s choice of this site for its Ward 3 shelter. Indeed, much of Applicant’s arguments are centered around its claim that the selected site has been mandated by the District Council, so it has no choice but to place the Ward 3 shelter on this site.

58. Applicant’s claim is erroneous, and is belied by the District’s own words before the D.C. Superior Court. There, the Executive and the Council persuaded the Court that the Council’s designation of the Site was merely preliminary and was not final or binding. Specifically, the Council and the Mayor argued that the Shelter Act “does not direct the construction of a shelter at the Idaho Avenue Site or any other location.” Rather, it “authorizes, but does not require” that action, and the Court agreed. Ex. 164A2, exs. 2-4.

59. The language of the Shelter Act itself makes clear that the construction of a shelter on the Site is not mandated, but is only authorized. The statute states that “[t]he Mayor is authorized to use funds appropriate for capital project HSW03C-Ward 3 Shelter

to construct a facility to provide temporary shelter for families experiencing homelessness containing up to 50 DC General Family Shelter replacement units on District-owned land at 3320 Idaho Avenue, N.W.” D.C. Law 21-141, § 3(a)(2) (emphasis added).

60. Moreover, the Council made clear its view that the issue of the propriety of the site and the need to look for alternative sites “all fall within the ambit of the factors that the BZA must consider in determining whether to permit the requires special exception.” Ex. 164A2, ex. 2 at 20-21 n.58. And the Council recognized that it had no authority over zoning matters, and removed a provision from the legislation stating that it was “the sense of the Council” that the requested zoning relief should be approved. See Ex. 225 at 12.

61. DGS’s argument to the contrary before this Board is flatly inconsistent with positions that the District, including the Executive, successfully advanced before the District Court. DGS may not now be heard to advance a contrary position. DGS is estopped from advancing this position before the Board.

62. In light of the clear record, and the plain language of the Shelter Act, the Board rejects Applicant’s claim that it “must” build a shelter on the Property.

63. The Shelter Act does not provide any basis for the zoning relief sought by Applicant.

VI. THE REQUEST FOR A SPECIAL EXCEPTION TO BUILD AN EMERGENCY SHELTER FOR MORE THAN 25 RESIDENTS IN ZONE RA-1 IS DENIED.

64. The maximum size emergency shelter permitted as of right in zone RA-1, is a shelter for four residents. U §401.1(a); U §301.1; U §202.1(h). The regulations allow a special exception for a shelter designed to house 5 to 25 residents if certain defined conditions are met. U §420.1(f).

65. To obtain a special exception to place an emergency shelter with more than four residents in zone RA-1, Applicant must show, among other things, that the “facility shall not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area.” U §420.1(f)(4).

66. An applicant may seek a special exception to place a shelter that exceeds 25 residents only upon proof with competent evidence that “the program goals and objectives of the District of Columbia cannot be achieved by a **facility of a smaller size** at the subject location and **there is no other reasonable alternative to meet the program needs of that area of the District.**” U § 420.1(f)(6)(Emphasis added).

67. The conditions set forth in U §420.1(f) are **mandatory** and are not, in turn, subject to exception. The Regulations make clear that, to be granted, the special exception “will meet such special conditions as may be specified in this title.” X § 901.2. The conditions are written as absolute requirements; the regulations do not provide for a test of degree, a sliding scale, or exceptions to the condition.

A. The Proposed Shelter Does Not Meet the General Requirements for a Special Exception

68. For the reasons discussed in Part IV, above, the proposed shelter is not “in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.” Therefore, the application must be denied.

69. For the reasons discussed in Part IV, above, the proposed shelter will “tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.” Therefore, the application must be denied.

70. The area closest to the proposed shelter is solidly residential, and low-density to moderately low density, consisting of townhouses to the east of the Property, recreational land to the west, low-rise garden apartments to the north, and single-family, R-1-B zoned lots to the south, which are closest to the proposed shelter. To the extent that there is denser development, it is along the Wisconsin Avenue corridor, which is buffered from the Property and the surrounding residential zones.

B. The Proposed Shelter Does Not Comply with U § 420.1(f) for an Emergency Shelter for More than 25 Residents in Zone RA-1

1. The Proposed Shelter Is Beyond the Range of Sizes Reasonably Permitted by U § 420.1(f) in Zone RA-1.

71. Section 420.1(f) does not contemplate that an emergency shelter for 185 residents may be placed in zone RA-1. The requested shelter is 46 times the size of a shelter permitted as of right in the zone, and more than 7 times the size of the contemplated special exception.

72. A shelter of 185 residents stretches the authority provided in U §420.1(f)(6) beyond the breaking point, and may not be allowed. Therefore, the application must be denied.

73. Applicant’s claim that the special exceptions granted in Board Case Nos. 19287, 19288, and 19289 (Wards 7, 8, and 4, respectively) provide valid precedent. Those cases were uncontested, and the issue of the maximum size for an emergency shelter in zone RA-1 was not raised. Tr. 277-78 (Gills). Accordingly, those cases do not support Applicant’s case.

74. In any event, the massive deviation of the proposed shelter from the ordinary maximum contemplated by U §420.1(f) means that the conditions set forth in that section must be strictly met by detailed, clear and convincing evidence. Conclusory assertions are not sufficient.

2. Applicant Has Failed To Meet its Burden of Proving that the District’s Program Goals and Objectives Cannot Be Met by a Facility of Smaller Size, as Required by U § 420.1(f)(6).

75. Applicant has not demonstrated that the program goals and objectives cannot be achieved by a facility of a smaller size. The record shows the contrary to be true. Accordingly, the application must be denied.

76. The only programmatic requirement identified by Applicant is the need to close DC General. But the record makes clear that a shelter substantially smaller than 50 units at the Site would enable the Applicant to close DC General. Specifically, in light of the number of D.C. General replacement shelter units being built in other Wards, a shelter of between 21 and 31 units in Ward 3 would enable DGS to fulfill its goal of 270 to 280 units that it asserts are needed to close D.C. General. Indeed, DGS supported a shelter of 38 units at the original Wisconsin Avenue location in Ward 3.

77. Applicant has not demonstrated that it would be cost-prohibitive to build more than one shelter in Ward 3. The Applicant provided only conclusory testimony that operating expenses would be higher to operate two shelters. It did not provide even a ballpark estimate of the expenses to operate the proposed shelter, let alone evidence to demonstrate the cost increase of operating two shelters in Ward 3, to allow the Board to evaluate those costs in the context of other costs of the project or the entire budget.

78. The Applicant has not shown that it is unable to build a larger shelter in Ward 1 than the proposed 29-unit shelter, or that it cannot build a shelter for this program in Ward 2 to further reduce the number of units needed in Ward 3.

79. The Applicant is not legislatively required to build a shelter of 50 units at the proposed site. The applicable statute does not mandate any shelter at the proposed site. and, at most, provides authority for a shelter of up to 50 units at the Site. For the foregoing reasons, the Applicant has failed to demonstrate that it could not meet its programmatic needs with a shelter smaller than the size proposed at this Site.

3. Applicant Has Failed To Meet its Burden of Proving that there Is No Reasonable Alternative Site for a Ward 3 Shelter, as Required by U § 420.1(f)(6).

80. Applicant has not demonstrated that there is no reasonable alternative site for a Ward 3 shelter that would not raise the multitude of zoning violations in need of relief and unique costs presented by the Site. Under U §420.1(f)(6), these circumstances necessitate a systematic search by the applicant for alternative sites. *See*

81. Moreover, the absence of such a “reasonable alternative” can only be demonstrated by showing, not telling, that a respectable effort was made by the District to find a “reasonable alternative” site, and that the effort was unavailing.

82. A reasonable systematic search for property to acquire requires at least the issuance of a public request for proposals (RFP) or solicitation for offers (SFO). The only such solicitation that was made requested proposals to develop and construct a shelter and to lease it to the District.

83. It is clear from the record that, although there are conclusory statements from various government officials, there is no evidence *in the record* to support the assertion that a search for reasonable alternative sites for the District to purchase was made. The site was identified by the Council based on *ad hoc* suggestions from opponents of the Mayor's proposed site at 2619 Wisconsin Avenue. Such *ad hoc* citizen input does not equate with the kind of systematic search required by U § 420.1(f)(6).

84. It is also clear from the record that no RFP or SFO was issued by either DGS or the Council seeking properties to acquire. The only SFO that was issued by DGS sought properties to lease from a developer that would build a shelter.

85. When DGS was asked to evaluate the Idaho Avenue Site by Council Member Cheh in April 2016, it responded in writing with its conclusion that the site was "unsuitable for our purposes" because of the multiple uses already located on the site. Ex. 164A2, ex. 11. DGS has never explained the discrepancy between this position and the position it now takes. DGS's freely expressed position, before it became an advocate in support of the current plan, supports the conclusion that the requested zoning relief is not appropriate.

86. In its written submissions in this case, Applicant neither cited nor offered any evidence to demonstrate that any search for alternative sites was made, much less a reasonable, public, or systematic search. Rather, it has sought consistently to avoid or misrepresent the issue. In the letter accompanying its application, Applicant simply asserted, without citing any evidence, that an "exhaustive search" was made, but also asserted the legally incorrect position that the issue of site selection "is not germane to the zoning standard before the Board." Ex. 75 at 10 & n.2. In its Prehearing Statement, Applicant was wholly silent about the issue, except that in discussing its request for a variance for two primary structures on one lot, Applicant incorrectly asserted that "pursuant to [the Replacement Shelter Act], the short term family shelter in Ward 3 must be located at the Property." Ex. 75 at 18, 11 (emphasis added). Applicant cited and presented no evidence of any search and wrongly asserted that the issue of site selection was "tangential at best," and has "no relevance to this proceeding and should be disregarded." Ex. 202A at 14-15.

87. Nevertheless, in the other BZA cases related to the Homeless Shelter Replacement Act, DGS recognized the need to demonstrate that the "reasonable alternative" requirement required consideration of other locations. Ex. 164A1 at 20-21; Ex. 164A2, ex. 6.

88. ANC 3C explicitly found "that the ability to assess the reasonableness of this placement in comparison to others as required by the zoning code has been hampered by the unwillingness of the District to provide evidence of an exhaustive search for a shelter site or explain why DGS concluded in April 2016 that the Second District police station was not an appropriate site for a shelter." Ex. 170 at 3. Indeed, there has been no evidence provided of any systematic search that resulted in the selection of the Site.

89. ANC 3C was entitled to information concerning the site selection process and the nature of the search for alternate sites in Ward 3, in order to assess the reasonableness of DGS's decision to build the proposed shelter on the Site. The concern expressed by ANC 3C must be given great weight. The failure of DGS to provide the requested information concerning its site selection warrants rejection of the requested zoning relief.

90. The importance of the absence of evidence to demonstrate that Applicant engaged in a systematic, public search for properties to purchase in Ward 3 is heightened by the ballooning costs of the project at the Property. Initially, the Shelter Act, when introduced, proposed leasing private property at 2619 Wisconsin Avenue. That market value of that property was determined by the Council to be \$2.5 million. When this idea was scrapped by the Council due to cost considerations, the Police Station Site was its replacement. The costs of developing the Idaho Avenue site now far exceed the market value of acquiring the initial site. The costs at the Idaho Avenue Site have now ballooned to \$25-30 million, due in large part to the need to construct a parking structure for nearly \$10 million, a cost that would not have been necessary but for the co-location of the shelter and the police station, and the other costs and complexities of making this Site functional for two incompatible uses.

91. The prospect of these great, unanticipated costs, bears directly on the statutory criteria of examining reasonable alternatives to the chosen site – had Applicant reasonably considered the drawbacks and added costs needed at this site, many other sites may have become reasonable to purchase and build on, without the problems caused by co-location

92. Given the roughly \$10 million in costs that are imposed by the complexities of the Site, the Board cannot conclude that a reasonable or systematic search has been conducted for an alternative, more zone-appropriate site. Moreover, Applicant issued no public solicitation for offers or request for proposals seeking land to acquire. Accordingly, Applicant has failed to meet its burden of proving an absence of any reasonable alternative site, and the application must be denied.

4. Applicant Has Failed To Meet its Burden of Proving that it Will Provide "adequate, appropriately located, and screened off-street parking to provide for the needs of occupants, employees, and visitors to the facility," as Required by U § 420.1(f)(2).

93. Applicant proposes to meet its burden to provide adequate parking, as required by U § 420.1(f)(2) by building an accessory parking structure for the shelter and the police station.

94. As discussed in Part II, above, Applicant has not shown that it is entitled to build the proposed parking structure, and has not provided the required plans, drawings or other information to support the building of that garage.

95. Accordingly, Applicant has failed to demonstrate that it will provide the requisite parking for the shelter. Because Applicant has failed to meet a mandatory condition of U § 420.1(f)(2), the application for a special exception must be denied.

5. Applicant Has Failed To Meet its Burden of Proving that the Proposed Shelter “Shall Not Have an Adverse Effect on the Neighborhood Because of Traffic, Noise or Operations,” as Required by U § 420.1(f)(4); The Record Is to the Contrary.

96. The Applicant has failed to show that the proposed shelter “shall not have an adverse impact on the neighborhood because of traffic, noise, or operations” as required by U § 420.1(f)(4). To the contrary, NRG has demonstrated that such adverse impacts are likely.

97. NRG has shown that the operation of the proposed shelter is likely to have the following adverse impacts on the neighborhood: (i) increased traffic; (ii) increased noise; (iii) increased population density and congestion; (iv) exacerbation of scarce parking; (v) problems with trash and vermin; (vi) loss of privacy; (vii) increased overcrowding at John Eaton Elementary School; and (viii) further disruption due to the lack of a master site plan for the shelter and the police station.

98. Accordingly, because Applicant does not satisfy U § 420.1(f)(4), the application must be denied.

VII. The Requested Variances Are Denied Because There Is No Exceptional Situation or Condition Giving Rise to a Cognizable Hardship or Practical Difficulty on the Property.

99. Applicant is not entitled to variance relief in connection with the Property because the record demonstrates that there is no “exceptional situation or condition” giving rise to a hardship or practical difficulty at the Property.

100. To qualify for an area variance, an applicant “must prove that, as a result of the attributes of a specific piece of property described in X § 1000.1, the strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to the owner of property.” *Id.*, § 1002.1(a) (emphasis added). The fact that applicant is already making a different productive use of a lot does not constitute a cognizable practical difficulty.

101. All of the variances requested by the Applicant can be traced directly to the existence of multiple other uses already being made by Applicant (or other DC agencies) on the Property. But for the police station, refueling station, impound lot, Community Garden and tennis court, the Property is more than amply sized to build a shelter that is three stories high and contains the required loading berth, using a design with two wings and a common area on each floor, as suggested by CFA. Ex. 206 at 2. And but for the police station, there would be no need for a variance to build a second primary structure.

102. The existence of these other uses by the Applicant cannot justify a variance. There would be little left of variance law if an owner could make one use on a property, occupying part of the useful space, and then assert that his or her own use constituted an exceptional circumstances leading to a hardship or practical difficulty, permitting an entirely different and unrelated second use of the remainder of the lot in violation of either area or use requirements. There would be no meaningful limit to such a doctrine.

103. The ability of an owner to rely on its own uses of a property to justify a variance would also be inconsistent with the requirement that an exceptional circumstance relate uniquely to a particular property. *Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990) (“[t]he critical point is that the extraordinary or exceptional condition **must affect a single property**”) (emphasis added). Any property could be subjected to an owner desiring to make a second use on a non-conforming part of already used property.

104. Moreover, such a rule would make no sense in light of the reason that variances are granted in the first place. As the Court of Appeals has reasoned, area variances have a lower bar than use variances in order to prevent “the prospect of a lot remaining permanently vacant in a street devoted to residential use[, which] is scarcely calculated to enhance the neighborhood, as abandoned lots tend to become overgrown with weeds or dumping grounds for trash and garbage.” *A.L.W., Inc. v. District of Columbia Bd. of Zoning Adjustment*, 338 A.2d 428, 432(1975). This reasoning is wholly inapplicable when an owner is already making extensive use of a lot. There is no risk of the Property going vacant or being abandoned; it is already fully used, and will continue to be fully used if the requested variances are denied.

105. Nor does Applicant’s preferred shelter design add to Applicant’s claim for variance relief. That design is not an exceptional circumstance affecting only this property, it applies wherever Applicant might choose to build a shelter. And it is not a hardship or practical difficulty – it is a desire to build a shelter a certain way, nothing more. But a variance cannot be based on a preferred design. *See, e.g., Barbour v. District of Columbia Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C.1976) (denying area variance where alternative but more costly designs that complied with zoning requirements were available).

106. Even with the police station, the lot at 3320 Idaho Avenue, N.W., is more than adequate for a three-story homeless shelter for 50 families, with two wings and a common area on each floor, as suggested by the CFA. Ex. 206 at 2. In either configuration, there would also be plenty of room for the required loading dock.

107. Further, the other uses of the Property exacerbate the requested variances. But for those other uses, even Applicant’s preferred six-story design could be implemented in a way that had a less significant impact on the neighborhood, with ample parking, a loading berth, and much enlarged setbacks and additional landscaping to minimize impacts on neighboring residences.

VIII. THE REQUESTED VARIANCES ARE DENIED BECAUSE THEY ARE THE RESULT OF SELF-IMPOSED HARDSHIP AND SELF-IMPOSED DIFFICULTY

108. It is well settled that a use variance may not be granted when the claimed hardship is self-imposed. *Foxhall Community Citizen's Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 524 A.2d 759, 761 (1987) (use variance); *Oakland Condo. Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 22 A.3d 748, 755 (D.C. 2011); *Taylor v. District of Columbia Bd. of Zoning Adjustment*, 308 A.2d 230, 235 (1973) (hybrid use-area variance); *NBCDI, supra*, 403 A.2d at 680; *Salisbury v. District of Columbia Bd. of Zoning Adjustment*, 357 A.2d 402, 404 (D.C. 1976); *A.L.W., Inc. v. District of Columbia Bd. of Zoning Adjustment* 338 A.2d 428, 431 (D.C. 1975).

109. The selection of a site with knowledge that zoning relief is needed is a quintessential self-imposed hardship that precludes zoning relief. *E.g., Foxhall*, 524 A.2d at 762; *Taylor*, 308 A.2d at 236.

110. Moreover, the fact that a practical difficulty is self-imposed as a result of site selection is one factor to be considered in considering an area variance. *Gilmartin, supra*, 579 A.2d at 1171; *A.L.W., Inc., supra*, 338 A.2d at 431-32 (knowledge of a site's zoning noncompliance when the property is acquired is one factor that may be taken into account in exercising discretion to grant or deny an area variance).

111. The Court of Appeals in *A.L.W., Inc.* explained why a self-imposed harm does not *per se* preclude an area variance (as opposed to a use variance):

The reason for this distinction [in the application of the self-inflicted harm doctrine between an area variance and a use variance] is not hard to fathom. Unless the applicant himself - as a result perhaps of some prior conveyance - is responsible for the irregular shape of the property, he cannot as a practical matter improve the lot in any way that would enable him to realize income or sell it to a purchaser for value. The prospect of a lot remaining permanently vacant in a street devoted to residential use is scarcely calculated to enhance the neighborhood, as abandoned lots tend to become overgrown with weeds or dumping grounds for trash and garbage. Thus, many municipal boards have permitted the owners of substandard lots to erect some kind of building not inconsistent with the rights of abutters to light and ventilation space.

338 A.2d at 432.

112. This rationale set forth by the Court of Appeals in *A.L.W.* does not apply in this case. There is no risk of the lot remaining vacant and unimproved, of becoming

overgrown with weeds, or a dumping ground for trash. Rather, the lot is already fully used, if not overused (due to overflow police parking). Accordingly, the doctrine of self-inflicted harm applies with particular force here, with respect to both use variances and area variances.

113. Because the relief that is sought is from self-imposed hardship and self-imposed practical difficulty, the requested variances are denied.

VIII. The Requested Variance for Two Primary Structures on One Lot Is Denied.

114. Applicant's request for a variance to place two primary structures with incompatible uses on one lot is a request for a use variance. Variance types are as specified in X §1001. An area variance is a request to vary from an area requirement. X §1001.2. Under the specific examples in X §1001.3 (a) and (b), the loading variance being sought is an area variance, but a variance from the one-primary-structure-per-lot requirement is not among the other examples of area variances.

115. A use variance is for a use that is not permitted as of right or as a special exception in the zone, X §1004.1(a), or is for a use expressly prohibited in the zone. X §1004.1(b). A second primary structure on one lot is not permitted as of right and such use is not pursued here by special exception. Hence what is sought is, by definition, a use variance.

116. This conclusion is reinforced by the fact that the two uses proposed for the site are wholly incompatible. Applicant contends that the two-structure variance would not have been needed if the two structures had been architecturally connected. But, asked why the two structures were not connected, Applicant's architect made clear that it was because the two uses were entirely incompatible: "they operate separately for obvious reasons." Tr. at 268 (McNamara). Thus, the need for the variance relates directly to the incompatible nature of the proposed uses.

117. The Court of Appeals has explained why an area variance differs from a use variance. Its reasoning bolsters the conclusion that Applicant seeks a use variance. As the Court of Appeals explained, the reason for a lesser standard to approve an area variance, as opposed to a use variance, is to make sure that zoning law does not lead to "the prospect of a lot remaining permanently vacant in a street devoted to residential use" because that is scarcely calculated to enhance the neighborhood, as abandoned lots tend to become overgrown with weeds or dumping grounds for trash and garbage." *A.L.W., Inc.*, 338 A.2d at 432. "Thus, many municipal boards have permitted the owners of substandard lots to erect some kind of building not inconsistent with the rights of abutters to light and ventilation space." *Id.*

118. As discussed above, these considerations are irrelevant to the second-structure variance requested by Applicant – there is no risk that this lot will remain vacant. If anything, it is at risk of over-use. In short, the concerns that animate a lesser standard of

proof for area variances have nothing to do with the two-primary structure variance requested by Applicant.

119. If the variance sought by Applicant is not a use variance, it is at minimum a hybrid use-area variance. The Court of Appeals in *Taylor* found that a variance that did not fit neatly into either the use or area category was a hybrid use-area variance. The two-use variance sought by Applicant is at least as substantial a change to the character of the neighborhood as the variances sought in *Taylor* and *Palmer v. District of Columbia Board of Zoning Adjustment*, 287 A.2d 535 (D.C. 1972). In both of those cases, the Court of Appeals held that the requested variance was a hybrid use-area variance.

120. As discussed above, if Applicant seeks a use variance, or a hybrid use-area variance, that variance must be denied, because it selected the site for its shelter with actual or constructive knowledge of the existing use and the need for the requested variance. Moreover, Applicant has not even attempted to satisfy the requirements of a use variance or a hybrid variance – it has only made an argument for an area variance.

121. But even if Applicant is correct that it is seeking an area variance, the self-inflicted harm standard still precludes the relief sought.

122. Further, Applicant has not justified the relief it seeks. Applicant's sole argument in support of its requested variance relief is that the Shelter Act requires the use of this Site and Applicant cannot use this site without the requested variance. Ex. 2 at 12; Ex. 75 at 11. This argument is wrong. The Homeless Shelter Act does not require the use of this site – rather it authorizes DGS to proceed, **subject to the need to obtain zoning relief under applicable zoning standards**. In short, Applicant has failed to show that it needs or is entitled to the variance to place two principal structures on Lot 849, even if it were not subjected to the self-imposed hardship rule.

123. Moreover, the Applicant successfully argued to the Superior Court that the Shelter Act did not mandate construction at this site, and that the Council's selection of the site was only preliminary. It would be manifestly unjust to allow Applicant to take the opposite position before this Board or for this Board to credit that contradictory position. Applicant made its case before the Superior Court, and its position there was deemed correct by the Court. Accordingly, Applicant has not justified its need for the requested variance.

124. Indeed, Applicant's argument is entirely circular and would gut the concept of zoning. Applicant is arguing that it needs zoning relief to place a shelter on Lot 849, which it selected knowing that the lot already contained a working police station, whose presence precludes building the shelter without zoning relief. In essence, Applicant says it is entitled to zoning relief because it selected a site that requires it to obtain zoning relief. That theory would mean that zoning rules are meaningless; it cannot be the basis for a variance. Accordingly, the requested variance is denied.

IX. THE REQUESTED HEIGHT VARIANCE IS DENIED

125. Applicant is seeking a height variance because it selected a Site that does not allow it to meet its asserted programmatic needs in a way that complies with applicable zoning regulations. But Applicant has made no showing that it must place its shelter on this Site – indeed, it did not even look for or consider other sites where lesser or no height relief would be needed. For that reason, any asserted difficulty is a self-imposed hardship that alone justifies variance denial.

126. Moreover, the requested height variance cannot be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan. The Site is zoned RA-1, which in this circumstance is a surrounding neighborhood that consists primarily of single-family homes and low rise garden apartments, and row homes that are no more than 40 feet and three stories high. Indeed, the maximum height permitted in the zone is 40 feet and 3 stories. Moreover, directly south of (and immediately adjacent to) the planned shelter, Idaho Ave and Macomb Street have even lower density zoning, zone R-1-B, which is designed to protect quiet residential neighborhoods of primarily single-family homes on moderate-sized lots.

127. As discussed above, the proposed shelter would be essentially twice as high as is permitted in the zone. The proposed building will be located just a few yards from an existing two-story single-family residence. It will loom over not just that residence, but all of the nearby single-family homes, depriving them of their privacy, and cutting off their sunlight, air and open sight-lines. These are factors that zoning laws exist to protect. *See, e.g., Draude, supra*, 527 A.2d at 1252 (quoting the predecessor regulation to A § 101.1). *See also Ex. 164A, ex. 5.*

128. In these circumstances, the requested height variance cannot be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan.

129. ANC 3C objected to the proposed height variance. Ex. 170 (ANC 3C Resolution); Ex. 229 (Written Testimony of Nancy Macwood, Chair ANC 3C); Ex. 232 (Written Testimony of Angela Bradbury, ANC 3C06 SMD Commissioner). As we must, we give the ANC's objections great weight. We agree with its conclusion concerning the height variance.

130. The U.S. Commission on Fine Arts similarly concluded that the proposed shelter was “too tall for its immediate context of single-family houses and a low-rise police station.” Ex. 206. The CFA is an expert body that provides credible independent advice regarding architectural design. Its views are persuasive, and we find them persuasive here.

131. Applicant implicitly recognizes the degree to which the proposed shelter is inconsistent with the existing properties to the south of the proposed shelter. Applicant has repeatedly failed to provide drawings showing the view of the shelter from the south, despite a specific request from the Board to provide such a drawing. Tr. 289-90. *See Ex.*

235 (Applicant's Supplemental Submission) (including additional drawings from the north, which appear to be out of scale, but no drawing showing the view from the south).

132. Rather, Applicant's attempt to justify its requested variance simply ignores these properties – the ones most directly and seriously affected by the proposed shelter, and instead argues that the new shelter is not out of scale with Vaughan Place (including WTOP). Ex. 75 (Applicant's Revised Statement) at 4, 13. But those buildings are across Newark Street, to the north of Lot 849 – well away from the south end of the lot where the shelter is being built, and shielded by distance and topography from the R-1-B zoned single-family homes that will sit immediately next to and directly below the shelter. See Tr. 183 (Wittie Testimony).

133. Even the Cathedral Commons building across Idaho Avenue, which is prominently marked on the Applicant's drawings, is in better scale to the neighborhood than the proposed shelter. The Giant, CVS buildings and loading dock, along with the apartments above the CVS and the townhouses fronting Idaho Avenue, are all in proper proportion to the height of the other residential properties near the shelter – essentially three floors from above the street, not six as proposed for the shelter.

134. Moreover, the buildings cited by DGS were the result of PUD processes, which included significant community input, intensive regulatory oversight, and compromise to minimize community impact. Ex. 212 (Testimony of Brian Powers). There has been nothing of the sort here. The buildings that came out of that PUD process were carefully limited in their location, and should not be allowed to serve as precedent for further overly large development. *Id.* That would lead to a domino effect of over-development in violation of the Zone Plan and would allow the exception to become the rule.

135. Further, Applicant has not shown that there is a practical difficulty caused by the site that justifies the requested variance. To qualify for an area variance, an applicant “must prove that, as a result of the attributes of a specific piece of property described in X § 1000.1, the strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to the owner of property.” *Id.*, § 1002.1(a) (emphasis added).

136. The attributes “described in X § 1000.1” are: “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.”

137. The lot on which Applicant wishes to build is a large lot that contains ample room to build a facility that complies with the height limitations of the zone. No attributes of the land limit the Applicant to a 6-story shelter. Applicant simply asserts a program preference for having only ten families per floor on each level, rather than building a lower, multi-wing building. This program preference is not a practical difficulty caused by the Property; is simply a guideline that Applicant wishes to follow. See *Gilmartin, supra*, 579 A.2d at 1168 (“[t]he critical point is that the extraordinary or exceptional condition must

affect a single property”). Moreover, in *Gilmartin*, the exceptional conditions included legally valid easements in favor of third parties that limited applicant’s ability to use its property. *Id.*, 579 A.2d at 1168. *Gilmartin* does not support an argument that, as here, an applicant’s own voluntary use of other parts of a lot can create an exceptional condition.

138. Applicant’s program preference is just that, a preference. It is not mandatory. Nor is it a factor that uniquely affects the Property. Accordingly, Applicant does not satisfy the variance standard set forth in X § 1000.1

139. Nor can Applicant show that the specific design constitutes an institutional necessity. *See Draude*, 527 A.2d at 1256. Rather, it is merely a desired outcome out of various options. First, the site is large enough to accommodate a multi-wing design with a limited height. Applicant’s preference for a taller building is not an “institutional necessity.” Applicant asserts that a multi-wing building would be more expensive, [cite], but has not shown that it requires a design that cannot conform to the [height] requirement. *Id.* Second, Applicant has not shown that its needs cannot be met with a smaller shelter. Third, Applicant has not shown that its institutional needs cannot be met at another site, for the simple reason that it did not conduct a systematic search for such a site. Accordingly, Applicant does not satisfy even the lesser proof standard for an area variance applicable to a public service organization, as set forth in *Draude*.

140. For the foregoing reasons, the requested height variance is denied.

X. The Requested Variance To Dispense With a Loading Berth Is Denied.

141. Applicant is seeking a variance to permit it not to build a required loading berth because it alleges that the Property does not contain adequate room for a loading berth. But Applicant has made no showing that it must place its shelter on this Property – indeed, it did not even look for or consider other sites where lesser or no height relief would be needed. For that reason, as discussed above, any asserted difficulty is a self-imposed hardship that alone justifies variance denial.

142. Moreover, the requested loading dock variance cannot be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan. The Applicant’s Revised Prehearing Statement, Ex. 75 at 10-11, relies entirely on its Transportation Assessment (“TA,” Ex. 37) to support its claim that no loading dock is necessary. But the discussion in the TA is entirely conclusory and has no supporting evidence or analysis. Therefore, Applicant has failed to meet its burden of proof.

143. The TA’s discussion about the lack of need for a loading dock ignores the many needs that a loading dock serves, including repair and maintenance of large systems (e.g., boilers and HVAC systems), furniture replacements when new furniture is needed, and, notably, trash pick-up. In addition, while the TA parrots the Applicant’s assertion that residents will not have possessions that they may wish to take with them when offered the opportunity to stay in the shelter, there is no evidence supporting that assertion. Inclusion

of an unsupported assumption in a Transportation Assessment does not make it evidence. It remains an unsupported assumption.

144. Common sense dictates that a loading and service delivery dock is an absolute necessity for a facility proposing to house 185 residents who will be regularly coming and going with their possessions. Moreover, since residents will be eating in common dining facilities with meals provided by the shelter, food trucks and other service vehicles will arrive twice daily for deliveries. It must be anticipated that a facility this large will also experience emergency vehicles arriving to assist residents in distress. They, too, will need such a dock.

145. Applicant also relies on the TA's assertion (again, parroting Applicant), that a loading dock is not needed for trash pickup, which allegedly will be handled by two trash bins located at the rear of the project. Again, however, the TA offers no analysis of whether these bins will be sufficient, or how a trash pickup truck will be able to access the bins.

146. The proposed approach to trash is manifestly inadequate and threatens the public good. As shown on "Applicant's Updated Plans," Exhibit 237, pdf at 7, Applicant now proposes to provide two modest sized bins, located on a dead end driveway to the north of the shelter, directly adjacent to the play area. The two dumpsters in the drawing appear to occupy less room than the single parking spot shown on the drawing. It is not credible to suggest that such limited trash facilities would be adequate for a shelter with 185 residents, including babies in diapers and children, a staff of ten or more, visitors, twice daily food services, and other necessary trash considerations. Applicant has utterly failed to provide any analysis of (a) how trash will be safely stored on the premises, without hazard to children in the adjacent play area and the neighbors in immediate proximity to the garbage location; (b) how trash collection vehicles can safely access the dumpsters, particularly when cars are parked in the spaces along the back of the shelter; and (c) how rats, deer, raccoons, other animals and vermin will not infest the garbage site. Additionally, with the proposed location of the dumpsters at the rear of the premises, there is no traffic plan that assures that District garbage trucks can actually reach the containers and load their contents into their trucks. In light of the risks to the neighborhood of improper handling of trash, a detailed plan should have been provided. The failure of the Applicant to present such a plan is a failure to prove that the proposed development is consistent with the public good and is, itself, cause for denial of the application.

147. Further, Applicant has not shown that there is a practical difficulty caused by the site that justifies the requested variance. The attributes "described in X § 1000.1" are: "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."

148. The lot on which Applicant wishes to build is a large lot that contains ample room to build a facility that includes a loading berth. No attributes of the property prevent

that berth, except Applicant's desire to build a new use on a property that already contains multiple uses. This desire is not a practical difficulty caused by the land.

149. Nor can Applicant show that the specific design constitutes an institutional necessity. *See Draude*, 527 A.2d at 1280. Rather, it is merely a desired outcome out of various options. First, the site is large enough to accommodate a loading berth. Applicant's preference to confine its building to a particular part of the lot is not an "institutional necessity." Applicant asserts that expanding the design would be more expensive, but has not shown that a different design would cause such great expense that it would "cause serious detriment" to the Applicant. *See NBCDI, supra* 483 A.2d at 690. Second, Applicant has not shown that its institutional needs cannot be met at another site, for the simple reason that it did not conduct a systematic search for such a site. Accordingly, Applicant does not satisfy even the standard for a public service organization set forth in *Draude*.

150. For the foregoing reasons, the requested variance to dispense with a loading berth is denied.

XI. THE REQUESTED SPECIAL EXCEPTION FOR TEMPORARY PARKING DURING CONSTRUCTION IS DENIED

151. Applicant is seeking a special exception to permit accessory parking on an adjacent lot, Square 1818, Lot 848, during the construction of the parking structure. Applicant has failed completely to meet the requirements for this special exception.

152. As discussed in Part I, above, Applicant's request for this special exception was not filed in a timely manner. It was filed on February 16, 2017, less than 21 days prior to the scheduled March 1, 2017 hearing. Accordingly, Applicant's request violates Y § 300.15. Moreover, Applicant's request for this special exception applies to Lot 848, which is to the west of Lot 849, the subject of Applicant's original application. Applicant has never demonstrated that it notified all property owners located within 200 feet of Lot 848. Thus, Applicant has violated Y § 401.2(d).

153. Applicant has never provided any plans or drawings to support this requested special exception. Its submission is devoid of details concerning this requested exception – no plans, and no drawings of either the parking area or the proposed access road. Thus, Applicant has violated Y §300.8(c)

154. Similarly, Applicant has not even attempted to demonstrate that it meets the conditions of U § 203.1(j)(6), i.e., that its proposed parking lot is "not likely to become objectionable to adjoining or nearby property because of noise, traffic, or other objectionable conditions have." Among other things, Applicant has presented no evidence to show that the requested special exception will have no adverse effect on the neighborhood due to noise; runoff; safety risks related to the use of a road for high-volume, high-speed police activity next to a children's playground; nuisance caused by headlights shining on neighboring houses at all hours; or nuisance from accumulated exhaust fumes from about 70 police vehicles.

155. Nor has applicant met the condition of U §203.1(j)(11), which provides that an application for a special exception under U § 203.1(j) must be “referred to the District Department of Transportation for review and report.” Applicant has provided no evidence in the record that it has done this, and the record is devoid of any report from DDOT concerning this requested special exception.

156. In sum, Applicant has failed to carry its burden of proving that it is entitled to this special exception. The application for this special exception must be denied.

Respectfully submitted,



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Neighbors for Responsive Government

March 31, 2017

CERTIFICATE OF SERVICE

The Neighbors for Responsive Government, by and through the undersigned counsel, on March 31, 2017, served the foregoing Proposed Findings of Fact and Conclusions of Law by email on the attorney for the applicant, Meridith Moldenhauer, Esq., Griffin, Murphy, Moldenhauer & Wiggins, LLP, 1912 Sunderland Place, NW, Washington, DC 20036 MMoldenhauer@washlaw.com and ABigley@washlaw.com; DC Office of Planning, Maxine.brownroberts@dc.gov; D.C. Dept. of Transportation, evelyn.israel@dc.gov; the local ANC, Advisory Neighborhood Commission 3C, Nancy MacWood, Planning and Zoning Committee Chairperson, nmacwood@gmail.com and 3c@anc.dc.gov; and Angela Bradbery, Single Member District 3C06, 3C06@anc.dc.gov.

Respectfully submitted,



David W. Brown