

Application No. 19452 of DC Department of General Services, pursuant to 11 DCMR Subtitle X, Chapters 9 and 10, for special exceptions under the emergency shelter requirements of Subtitle U § 513.1(b)(6), the open court requirements of Subtitle G § 202.1, the lot occupancy requirements of Subtitle G § 404.1, the rear yard requirements of Subtitle G § 405.2, and the parking requirements of Subtitle C § 703.2, and variances from the FAR requirements of G § 402.1, the height requirements of Subtitle G § 403.1, and the loading requirements of Subtitle C § 901.1, to allow the addition to an existing building and operate an emergency shelter facility in the MU-4 Zone at premises 1700 Rhode Island Avenue N.E. (Square 4134, Lot 800) (the "Project").¹

HEARING DATE: March 1, 2017

DECISION DATE: April 5, 2017

DECISION AND ORDER

PRELIMINARY MATTERS

Self-Certification. The zoning relief requested in this case was self-certified pursuant to Subtitle Y § 300.6(b). (Exhibit ("Ex.") 3, 39, 43B).

Application. The application was filed by the Department of General Services (the "Applicant"). The application was filed pursuant to Subtitles X §§ 900 and 1000 for special exceptions to operate an emergency shelter use for more than 25 persons under Subtitle U § 513.1(b)(6), and from the open court requirements of Subtitle G § 202.1, the lot occupancy requirements of Subtitle G § 404.1, the rear yard requirements of Subtitle G § 405.2, and the parking requirements of Subtitle C § 703.2, and variances from the FAR requirements of G § 402.1, the height requirements of Subtitle G § 403.1, and the loading requirements of Subtitle C § 901.1. (Ex. 1-9).

Notice of Application/Notice of Public Hearing. By memoranda dated January 9, 2017, the Office of Zoning sent notice of the application to the Office of Planning ("OP"); Advisory Neighborhood Commission ("ANC") 5B, the ANC for the area within which the subject property is located; the single-member district representative for ANC 5B03; the Councilmember for Ward 5; the District Department of Transportation ("DDOT"), each of the four At-Large Councilmembers, the Chairman of the Council, and the Department of Human Services. (Ex. 10-20). A public hearing was scheduled for March 1, 2017. Pursuant to Subtitle Y § 402.1, the Office of Zoning mailed notice of the public hearing to the Applicant, the owners of property within 200 feet of the subject property, ANC 5B, and ANC 5C, which is located across the street from the subject property, on January 9, 2017.² (Ex. 21-25). Notice of the public hearing was also published in the D.C. Register on January 13, 2017. The Applicant confirmed by affidavit that it had posted notice of the public hearing on the subject property on February 14, 2017. (Ex. 41).

¹ The Applicant's February 13, 2017 submission (Ex. 39) revised the application to include variance relief from the height, FAR and loading requirements in the MU-4 zone. ZC case 08-06G - Technical Corrections to ZC 08-06A – that became effective on January 6, 2017, clarified that relief from height and FAR requires a variance, not a special exception.

² ANC 5C did not participate in the case.

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 19452

Public Hearing. The Board held a public hearing on the application on March 1, 2017. After hearing from the representative from CFRO that he had no objection, the Board also granted the Applicant's request for the Board to allow the Applicant to rely on testimony in the Case No, 19450 for issues that are "addressed in each ward uniformly, such as the guidelines, some issues regarding the legislation that aren't ward specific...all the more general testimony as it pertains to some of the more overarching issues." (Hearing Tr. at 19-20). At the end of the approximately four-hour hearing, the Board closed the record except for limited submissions from the Applicant and Party in Opposition, Citizens for Responsible Options ("CFRO") as well closing statements and drafts of fact and conclusions of law from the Applicant and CFRO. The Board initially scheduled a decision for March 22, 2017. CFRO requested a two-week extension to file proposed findings of fact and conclusions of law pursuant to Subtitle Y § 601.2. (Ex. 200). The Board granted CFRO's request and, accordingly, moved the decision date from March 22, 2017 to April 5, 2017.

Requests for Party Status. In addition to the Applicant, ANCs 5B and 5C were automatically parties in this proceeding. CFRO filed an advance-consideration party status request on January 24, 2017. (Ex. 27). Despite an objection to the party status request from the Applicant, the Board granted this request at the February 8, 2017 public meeting. (Transcript of 2/8 Hearing at 71-72).

Applicant's Case. Meridith Moldenhauer and Samantha Mazo of Griffin, Murphy, Moldenhauer & Wiggins LLP represented the Applicant. The Applicant provided testimony and evidence in support from Rashad M. Young, the District of Columbia City Administrator, Laura Zeilinger, the Director of the District of Columbia's Department of Human Services, Greer Gillis, the Director of the District of Columbia's Department of General Services, Ronnie McGhee of R. McGhee & Associates, the project architect, Ryan Moody of Moody Graham, the project landscape architect, and Daniel B. VanPelt, the Applicant's transportation consultant. Several witnesses were granted expert witness status at the hearing. Director Zeilinger was granted expert witness status in homeless services and operation of homeless facilities and programming, Ronnie McGhee was granted expert witness status for architecture, Ryan Moody was granted expert witness status in landscape architecture, and Daniel B. VanPelt was granted expert witness status for traffic. (Hearing Tr. at 17-19). The Applicant and its witnesses described the Project including the District's programmatic needs; explained the background on the selection of the site for the Project; explained the community outreach; addressed the need for the various forms of zoning relief requested; and addressed issues regarding potential adverse impact or detriment to the public good. (Ex. 7, 36, 94). Following the March 1, 2017 public hearing, at the Board's request, the Applicant filed additional information additional information requested by the Board on March 10, 2017. (Ex. 204A-D).

Government Reports.

OP Report. By report dated February 17, 2017 and through testimony at the public hearing, OP recommended approval of the application. (Ex. 49). OP found that the application satisfied all the criteria for the requested special exceptions and variances. In particular, OP determined that the Project meets the requirements for special exception approval for the emergency shelter use as well as the requirements for open court, lot occupancy requirements, rear yard, and parking. OP also determined that the Project meets the requirements for variance relief from the FAR, height,

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 19452

and loading requirements, and that the Applicant faces an exceptional situation resulting in a practical difficulty that will cause no substantial detriment to the public good, nor substantially harm the Zoning Regulations. The Board finds the OP report convincing because of its thoroughness and because of the specialized knowledge OP has for assessing relief in these instances. At the hearing, OP stood on the record of its report. (Hearing Tr. at 73).

DDOT Report. DDOT filed a report, dated February 16, 2017, stating that it had no objection to the requested relief. (Ex. 47). DDOT found that based on the Project's anticipated level of trip generation, a Comprehensive Transportation Review ("CTR") is not required because trip generation thresholds were not met and impacts to the surrounding network are expected to be minimal. DDOT's report indicates that the Applicant conducted a vehicle parking occupancy study that met DDOT's parameters and is consistent with the scale of the action. DDOT's report found that the on-street parking supply has the capacity to meet parking demand, that the loading and off-street parking is consistent with DDOT's standards and the site is well-served by transit. At the hearing, DDOT stood on the record, reaffirming its support for all areas of zoning relief. (Hearing Tr. at 73).

Other Government Reports: The Board received letters in support of the Project from the District of Columbia Fire and EMS Department (Ex. 40), District of Columbia Public Schools (Ex. 62), and Ward Five Councilmember Kenyan R. McDuffie (Ex. 180). A letter from the Commission of Fine Arts (the "CFA") with comments on a concept plan was submitted to the record. (Ex. 106). The Project's programmatic requirements were not, part of the design review by the CFA.

ANC Report. At a duly-noticed public meeting held March 17, 2017, with a quorum present, ANC 5B voted with a split vote of 3-2 to adopt a resolution introduced by Commissioner John Feeley, Jr. that recommended the following: denial of relief for an emergency shelter use, denial of rear yard relief, denial of loading relief, denial of floor-area-ratio relief, denial of height relief, denial of lot occupancy relief, denial of parking relief, and support for minimum open court width relief. (Ex. 208). The ANC also proposes a condition for "the Applicant to take additional steps in working with other District Government agencies to protect existing residential parking, especially for elderly residents. Such steps should include, but not be limited to: providing on-street; handicapped parking spaces for elderly/disabled residents; identifying certain streets as "Ward 5 Resident" parking only. (Ex. 208). Below, the BZA acknowledges the ANC's concerns and issues and elaborates with precision it's response to them.

Persons in support. The Board heard testimony and received letters from persons in support of the Application. First, Chairman of the Council of the District of Columbia Phil Mendelson spoke at the hearing in support of the application and, specifically, "the Council's support for the location of [sic] new emergency shelters for homeless families pursuant to D.C. Law 21-141." (Hearing Tr. at 9-13). Chairman Mandelson testified to the site selection process, stating, "When all of the factors, all of the factors... are taken together, all of the suggested locations, including the mayor's proposal, were less reasonable than the 1700 Rhode Island Avenue Northeast site", and that "by process of elimination, we felt that there was no reasonable alternative to 1700, and I'm here to say that the counsel supported it because that's what we specified in our legislation." (Hearing Tr. 13, 15). Three people testified in support of the Application. Among those testifying in support of the Project was Henry Makembe, a Commissioner for ANC 5B, the SMD Commissioner for the

Property, and a co-chair of the Ward 5 Advisory Team, who stated that “it is incumbent upon the entire community to ensure that all city youth have the basic needs met,” and that the height and density of the Project are not “out of line with the existing neighborhood.” (Hearing Tr. at 89-90). Amber Harding on behalf of the Washington Legal Clinic for the Homeless stated that D.C. General “is not a place that anyone should ever have to live, not even for a short period of time, and D.C has, for far too long, allowed homeless children and their parents to suffer from poor conditions, poor design, and poor services.” (Hearing Tr. at 93). Ms. Harding also noted that the Board often considers “Development where profit is the aim,” but, in this instance, “the Board is being asked to help “those who have been displaced, to soften the blow of unfettered development by building a safe, humane shelter for families. That is a worthy justification for zoning relief.” (Hearing Tr. at 95). Kate Coventry, a Senior Policy Analyst at the D.C. Fiscal Policy Institute and a member of the design principles committee of the Interagency Council on Homelessness (“ICH”), spoke about the programmatic requirements of 10 units per floor in the Project, calling this requirement “quite important” to the ICH, and stating that following the Relisha Rudd disappearance, such a design “would create a sense of community and safety, and sightlines to the bathroom was definitely a big priority.” (Hearing Tr. at 99). Ms. Coventry also acknowledged that the Project has 11 units on the second and third floor. Upon questioning by Commissioner Hart on the appropriateness of that unit count on the Project, Ms. Coventry testified that the ICH approved of the design because “The District also came forward and very much improved the sightlines and the number of bathrooms. So, that was also a factor in the 11 units being acceptable to advocates.” (Hearing Tr. At 103).

The Board also received more than 72 letters in support of the application. The letters – many from nearby residents – expressed a multitude of sentiments in support of the Project, including the importance of providing enough units to realize the goals of Homeward D.C., including shutting down D.C. General in favor of multiple, smaller-scale facilities; the belief that the placement of two buildings on the same lot will have minimal impacts on the neighborhood; the belief that the Project will not have an adverse impact on neighbors, the belief that the City has undertaken broad and comprehensive evaluations regarding increased parking and traffic concerns; the belief that the Project will fulfill the programmatic needs of shelter occupants; the belief that the site selection process was transparent and provided for community input; and the belief that the shelter is well-located for access to public transportation. (Ex. 37, 44-45, 48, 50-54, 56-59, 62, 80-81, 83, 89, 97-98, 107-108, 110, 116, 121-123, 125-127, 129, 131 (petition including 28 signatures from neighbors), 132-146, 151, 153, 155-157, 159, 163-167, 169, 171, 173-180, 190-191, 194-195).

Party in opposition. CFRO is a group that organized in June 2016 to fight the selection of the Property for the Project only after the Council voted to select it. (Hearing Tr. 162). Prior to becoming engaged in the BZA process, the CFRO had filed a lawsuit in the D.C. Superior Court challenging the selection of the Property. (Hearing Tr. 109). That lawsuit was dismissed by the Court. CFRO testified in opposition at the public hearing, and presented six witnesses, including Tom Kirlin, Faraz Khan, David Forest, Joseph Cassidy, John Iskander, Laura Weazner. CFRO alleged the following: the Board can “say no” to the Property selected for the Project; there was no adequate search for alternative sites for the Project; and that the Project should be on a different site “not near them.” (Hearing Tr. at 149, Lines 19-20). CFRO also alleges the Application does not satisfy the variance and special exception standards, the Project does not satisfy the special

exception requirements for an Emergency Shelter for more than 25 persons, the Project will adversely affect neighboring property in terms of traffic, parking, noise, operations, and similar facilities in the area; potential impact on elderly and handicapped neighbors, some neighbors leaving the block; the height and density of the Project are not within the character of the neighborhood based on certain language in the Comprehensive Plan, the Rhode Island Streetscape Plan and the 2011 Small Area Plan; the absence of a loading dock will have a negative impact on the surrounding neighborhood; the Project capacity is just “too big” for the surrounding neighborhood; the Applicant’s hardship is “self-created”; the proposed use does not meet the definition of “emergency shelter” in the Zoning Regulations; the Project must meet the minimum parking requirement to obtain a special exception for the emergency shelter use; the drive aisle accessing the parking spaces is not wide enough; the Property is “too small” for the proposed size of the Project; the Project inappropriately converts the previously-designated rear lot line into a side lot line; preservation of the existing police building; and loss of light and air to the adjacent condominium building and residential homes along 17th Street. (Hearing Tr. at 108-121, 123-126, 128, 131- 133, 138, *Specifically* Hearing Tr. 132, Lines: 18-19).

Persons in opposition. At the March 1, 2017, public hearing, the Board heard testimony in opposition from five people, Eric Lee, Theresa Perkins, Dan Kline, Jeff Stein, and Sandra Campbell. The testimony from individuals in opposition was based on the following: general opposition to the selection of the site, concerns about compliance with the Comprehensive Plan, complaints about the design of the Project, the site-selection process, the height of the Project, the density of the Project, the preservation of the existing police building, traffic and parking, the belief that the former police station should be considered historic, the size of the play area, and negative impacts to neighbors including loss of light, air, and privacy, and decreasing property values. (Hearing Tr. at 172-190).

The Board also received approximately 60 written submissions in opposition. The written submissions included concerns about the design of the Project, the site-selection process, the height of the Project, the preservation of the existing police building, traffic and parking, and negative impacts to neighbors (Ex. 60-61, 63-79, 82, 84-88, 90-91, 93, 95-96, 99-100, 102, 103 (petition including 291 signatures of ANC 5B residents), 104-105, 109, 111-115, 117-118, 120, 124, 128, 147-148, 152, 154, 158, 160-162, 168, 170, 181-182, 188-189, 197).

Post-hearing submissions. At the conclusion of the public hearing, the Board closed the record except for supplemental information, closing statements, and draft findings of fact and conclusions of law from the Applicant and CFRO. (Hearing Tr. at 224-226.) On March 10, 2017, the Applicant and CFRO submitted the supplemental information. (Ex. 201-204). On March 31, 2017, the Applicant and CFRO submitted closing statements and proposed findings of fact and conclusions of law. (Ex. ____).

FINDINGS OF FACT

The Subject Property

1. The subject property is located in the northeast quadrant of the District of Columbia at 1700 Rhode Island Avenue, NW (Square 4134, Lot 800) (the “Property”), which is located at the intersection of Rhode Island Avenue and 17th Street NE.

2. The Property contains 12,336 square feet of land area.
3. The Property is located in Ward 5 and ANC 5B.
4. The Property is not located within a historic district, and the existing building on the Property is not listed on the D.C. Inventory of Historic Sites.
5. The Property is an irregularly-shaped, corner lot that is bounded by Rhode Island Avenue to the south, 17th Street to the west, a new 6-unit multi-family building to the north and an alley ranging from 15 to 18 feet in width to the east.
6. The Property is owned by the District of Columbia and operated by the District's Department of General Services. (Ex. 7).
7. The Property is zoned MU-4, which is designated for moderate-density mixed-use development. (Subtitle G § 400.3(a)). Emergency shelters for more than four persons are permitted by special exception. (Subtitle U § 513.1(b)).
8. The Property is improved with a three-story former police station (the "Existing Structure"). The Existing Structure is three feet above grade, and the first floor is 13 feet, the second floor is 12 feet and the top floor is 11 feet tall. (Hearing Tr. at 43). Accordingly, the Existing Structure is already at 40 feet above the curb. The Existing Structure is currently unoccupied.
9. The Property also contains a 150-foot tall communications antenna (the "Antenna"), and approximately 360 square-foot concrete utility building supporting the antenna functions (the "Equipment Building"). (Hearing Tr. at 55). The Existing Structure, Antenna and Equipment Building have a lot occupancy of approximately 28%.
10. The Property is currently landscaped with a lawn area with shrubbery and a few large trees.

Surrounding Area

11. The surrounding area consists of a mix of uses, including commercial uses, multiple four to five story apartment houses and single-family homes. There are many conditions along Rhode Island Avenue where there are taller apartment houses along Rhode Island Avenue that are adjacent to, or across from single-family residences. (Hearing Tr. at 35).
12. The Property's only directly adjacent improvement is a newly constructed six-unit, four-story apartment building in the MU-4 zone. That building is built to that property's southern side lot line, adjacent to the Property's northern side lot line. That building has no windows along its side lot line. (Hearing Tr. at 159).
13. To the east, along Rhode Island Avenue, the Property is bordered by an automobile-related retail commercial use, which is buffered from the Property by a 15-foot alley. This adjacent

property, and the entire Rhode Island Avenue frontage is zoned MU-4 and could be developed up to 3.0 FAR and 75% lot occupancy as a matter of right.

14. To the west is 17th Street NE, which is a 90-foot right of way that separates the subject Property from single-family dwellings in the R-1-B zone. The nearest house is about 110 feet away from the front of the Project. (Hearing Tr. at 31). There was testimony that some of these houses are owned by elderly and handicapped individuals.
15. To the south, the Property is bounded by Rhode Island Avenue NE, a wide, highly trafficked, 130-foot right-of-way that is improved with commercial and apartment house uses, all within the MU-4 zone.
16. Numerous larger apartment houses, ranging from 4 to 5 ½ stories in height are located along Rhode Island Avenue and in the Property's immediate vicinity. (Ex. 7).
17. The Property is well serviced by a number of public transportation options including Metrobus, bikeshare, and carsharing services.
18. There are numerous Metrobus routes nearby on Rhode Island Avenue, NE, including 82, 83, 86, T14 and T18. Additional bus routes run along 18th Street, NE and Franklin Street, NE, including E2, B8, B9, and H6.
19. The Rhode Island Avenue Metrorail Station is located approximately 1.0 miles from the Project, and is accessible via Metrobus lines that run along Rhode Island Avenue, NE.
20. There are no other properties containing an emergency shelter in the same square or within a radius of 500 feet from any portion of the Property. Additionally, there are no similar facilities to the proposed emergency shelter in the nearby area. (Ex. 204, Tab B, Hearing Tr. at 205).

City's Goals and Objectives

21. In response to the critical need to address and reduce the District's homeless family population, the Mayor proposed an initiative to end homelessness by 2019-2020 in the City, "Homeward DC," which includes the closure of the large DC General Family Shelter and replacing it with short term, family housing facilities in all eight Wards in order to make homelessness "a rare, brief, and nonrecurring event."
22. D.C. General, a former hospital with approximately 70 units per floor, is overly large, which results in an inefficient and chaotic environment that does "little to alleviate the trauma that families experience upon becoming homeless." In turn, "the conditions at D.C. General are not good for families and they are very costly for" DHS. (Ex. 186; Hearing Tr. at 213).
23. Generally, the standards for each facility include that the facility is small, modern, safe and dignified with a maximum of fifty (50) units and that the facility is compatible with the surrounding community within which they are placed. (Ex. 186-187).

24. To complement the living units, each facility would include on-site services such as housing search assistance, social work, early childhood screening and school liaisons, education, training and employment services, health care, financial and management services and age appropriate recreation.
25. Each emergency shelter facility should have roughly 12,000 to 30,000 square feet of property, be located close to public transportation and other services, be economically feasible for the District, and allow the District to develop the site within a 24 to 30 month time frame. (Hearing Tr. at 28).
26. The goal of the program is to close DC General by the beginning of the 2019-20 hypothermia season. (Hearing Tr. at 219).
27. The District must provide 280 family units to achieve the goal of closing D.C. General. The required number of family units can only be achieved once all eight homeless shelters are constructed. So, all eight shelters need to be constructed before DC General can be closed. (Hearing Tr. at 210).
28. In summer 2016, the Board approved similar Emergency Shelter facilities, which are also part of the "Homeward D.C." initiative, in Wards 4, 7, and 8. As a result of the relief granted by the Board, construction will begin by summer 2017. (Hearing Tr. at 21). The approved shelters provide a total of 134 units, leaving the remainder of the units to be included in the remaining Wards, including the Project.
29. The temporal aspect of this goal is critical in implementing the plan from a cost perspective, as it costs approximately \$55,000 per family per year to house them in DC General. (Hearing Tr. at 213). Also, there are critical safety reasons necessary to close DC General as shown by the disappearance of Relisha Rudd, which Director Zeilinger stated, "called into question the conscience of this community that we need to do better by families." (Hearing Tr. at 213). (*See also* Ex. 186).

Legislation by the D.C. Council

30. The program requirements of the Project are driven by D.C. Council legislation, including D.C. Law 21-75 and D.C. Law 21-141.
31. The stated goal of the D.C. Council legislation is to close D.C. General by constructing 280 replacement shelter facilities through the District.
32. D.C. Law 21-75, the "Interim Eligibility and Minimum Shelter Standards Amendment Act of 2015," approved in December 2015, sets minimum standards for bathrooms including one private bathroom for every five units and requires a minimum of 280 DC General Family Shelter replacement units.
33. Under D.C. Law 21-75, each shelter unit must consist of "a private room that includes space to store and refrigerate food." See D.C. Code § 4-750.01(11A).

34. D.C. Law 21-75 further requires certain design standards for bathroom facilities. The law establishes that, at a minimum, shelters must provide “[a] private bathroom, including a toilet, sink, and bathtub or shower, in at least 10% of” units, and for every five shelter units “one private lockable bathroom that includes a toilet, sink, and bathtub and shall be accessible to all residents.” See D.C. Code § 4-750.03(3)(A-B).
35. D.C. Law 21-141, the “Homeless Shelter Replace Act of 2016,” approved in June 2016, authorizes the Mayor “to use designated funds, appropriated for the purpose of developing replacement shelter facilities for the DC General Family Shelter and to construct new emergency shelters “in Wards 1, 3, 4, 5, 6, 7, and 8.”
36. On March 17, 2016, the Council held an almost 12 hour public hearing in consideration of D.C. Law 21-141 and received suggestions on alternative sites from members of the public. A dozen alternative sites for the Ward 5 emergency shelter were placed on the record. (Hearing Tr. at 11). The Property had been reviewed by DGS as part of its initial property search, but found to be too small to accommodate both the Emergency Shelter and the Hoya medical clinic. (Ex. 186). The Property was suggested again by members of the Langdon Park Community Association and discussed at the March 17, 2016 public hearing. (Ex. 193).
37. On May 17, 2016, the Council voted unanimously to direct the Mayor to change three of the emergency shelter sites, including Ward 5, and to change the economic structure of the plan so that all the sites would be owned and not leased by the city. Also, the Council appropriated \$125 million capital budget for the plan. (Hearing Tr. at 11-12).
38. Accordingly, as to the Project on the Property, D.C. Law 21-141 authorizes the Mayor 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 1700 Rhode Island Avenue, N.E., Square 4134, Lot 800.” The legislation does not authorize the Hoya clinic on the Property.

Site Selection

39. DGS worked in partnership with the Department of Human Services (DHS) to develop relevant criteria, and released a Solicitation for Offers (SFO) based on those metrics in late-2014 to get viable proposals from the community. (Ex. 187).
40. DGS sought roughly 12,000 to 30,000 square feet per site, preferably close to public transportation and other services and amenities, and site that are economically feasible and able to be developed with a 24-30 month timeline.
41. DGS executed the SFO process as an open solicitation, so sites were evaluated when they were brought forward. (Case No. 19450 Hearing Tr. 279-280).

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 19452

42. In 2015, DGS started a property search by looking at District-owned properties in the city's inventory. DGS also engaged a broker to look for properties to purchase or lease only after they had exhausted their inventory.
43. In the summer of 2015, DGS hired a broker to help identify sites in Wards where they had not yet identified feasible sites, such as Ward 5.
44. All responses to the solicitations were directed to DGS.
45. Upon receipt of the developer's submission of proposals, potential sites were forwarded to DHS for evaluation. Upon initial review, it was determined that due to its size, the Property "will not it [sic] to produce the required number of units and accommodate the HOYA [medical] Clinic" (Ex. 187) because as the City Administer testified, "So, when you talked about 50 units for short- term family housing, plus the [Hoya] clinic, that footprint then made 1700 Rhode Island not practical." (Hearing Tr. at 208).
46. In Ward 5, DGS received two proposals with one site – 2266 25th Place NE – identified to be of adequate size as well as within close proximity to public transportation and capacity to satisfy the programmatic requirements. There was significant community opposition to this site from homeless rights advocates due to its proximity to industrial uses and distance from transit. (Ex. 184).
47. Representatives of the Langdon Park Community Association identified alternative locations in a March 8, 2016 letter to Mayor Bowser, including the Property. (Ex. 193). There was testimony regarding the Property during the March 17, 2016 public hearing. (Hearing Tr. at 12). The City Administrator testified that he "responded to that letter and talked about each of those locations that they suggested, and our evaluation of those locations." (Hearing Tr. at 209).
48. The D.C. Council conducted its own search of District-owned properties as well. (Hearing Tr. at 12-13). At that time, it was decided that the Hoya clinic would not be provided as part of the Project, "which then made 1700 Rhode Island a viable location for [the District] to consider". (Hearing Tr. at 208).
49. During public hearings for D.C. Law 21-141, the Council considered a number of suggested locations for the Project. Councilmembers considered two locations the most preferable: The Penn Center building located in Eckington, at 326 R Street, NE, and a former MPD precinct station located at 1700 Rhode Island Avenue, NE. For each, site acquisition would be easiest and cheapest, since the properties are already city-owned and there was community support for the Rhode Island Avenue site. (Hearing Tr. at 12-14).
50. However, the D.C. Council determined that the Penn Center building could not be utilized for the Project because the D.C. Public Libraries would be storing books in that building during the three-year renovation of Martin Luther King Library project that started in March 2017. (Hearing Tr. at 12-14).

51. Chairman Mendelson testified that “when all of the factors, including the ones just mentioned, are taken together, all of the suggested locations, including the Mayor’s proposal, were less reasonable than 1700 Rhode Island Avenue.” (Hearing Tr. at 13).
52. Chairman Mendelson also testified that, “Yes. That was the -- by process of elimination, we felt that there was no reasonable alternative to 1700, and I'm here to say that the counsel supported it because that's what we specified in our legislation., DGS and the D.C. Council conducted adequate searches for reasonable alternative sites for the Project.” (Hearing Tr. at 15).
53. City Administrator Young further testified that they District went through a “detailed and extensive process absent this Langdon letter and their sites, to evaluate sites in Ward 5... To determine the reasonableness of the alternative. We had an extensive process of our own.” (Hearing Tr. at 219).
54. Ward 5 citizens and residents participated in the site selection process and made recommendations. (Ex. 183, 184). Nothing in the record states that anyone from CFRO actively participated in this process except after the fact to object to the site.

Program Requirements

55. The programmatic needs for the Project are informed through the Interagency Council on Homelessness (“ICH”), a statutorily-created group comprised of experts in homeless services from the District government, federal government and other third-party service providers. See D.C. Code § 4-752.01.
56. The ICH was commissioned for the purpose of planning and developing programs for homeless services in the District, including outlining standards to replace D.C. General. The recommended guidelines were utilized by the Applicant and DHS in developing the Project design. (Ex. 185-186).
57. The ICH recommended that the Project incorporate 10 units per floor based on research that this size allows families to have “more privacy, less noise, less turbulence in the hallways, a more predictable environment and an appropriate community feel” as well as “to allow families to provide the proper amount of attention to young children”. (Ex. 186).
58. As a comparison, D.C. General has more than 70 units on one floor.
59. As Sharon McDonald, an expert in family homelessness wrote in a written submission, “The proposal to have ten families to a floor and fifty families to a building was endorsed by this group, which concluded it struck a reasonable balance of providing safety, privacy, comfort and efficiency.” (Ex. 127).
60. The programmatic requirement of ten units per floor also “permits the common rooms on each floor to feel more like community living than anonymous cafeterias or auditoriums.” (Ex. 186). Moreover, as ICH member and homeless advocate Kate Coventry testified, “the

10 families is quite important to us. And quite frankly, it was quite important because of the abduction of Ralisha Rudd. . . . And we're talking about children, we're talking about people who have experienced domestic violence.” (Hearing Tr. at 100)

61. The ICH recommended that a space for security and staff be located on each floor, with a view of common areas. (Ex. 186). This will ensure that only persons who are living on a floor are actually on the floor, that families have access to the common areas that they need and maintain an overall peaceful environment. (Ex. 186).
62. The programmatic requirements also include “[a] private bathroom, including a toilet, sink, and bathtub or shower, in at least 10% of” units and for every five shelter units “one private lockable bathroom that includes a toilet, sink, and bathtub and shall be accessible to all residents.” See D.C. Code § 4-750.03(3)(A-B). This was done to balance both costs and personal safety, which will allow for more flexibility because families will not be tied to specific restrooms, so that an open restroom will be available when it is needed. (Ex. 186). Also, sightlines to the bathroom was definitely a big priority for the homeless advocate community. (Hearing Tr. at 99).
63. The Project must also dedicate building space to on-site wrap-around services, which are also mandated by law. See D.C. Code § 4-753.01. D.C. Law 21-141 identifies these vital wrap-around services, noting that “[b]est practices suggest that children and families do best when short-term housing is provided in smaller-scale, service-enriched, community-based settings. . . .” It was testified that these wrap-around services are necessary because, “Families have complex needs. We need to have all kinds of services there and space for kids, because this is essentially a place for kids.” (Hearing Tr. at 100).
64. Wrap-around services offered on-site are designed to assist homeless individuals and families in quickly exiting the shelter and returning to permanent housing.
65. Wrap-around services include permanent housing programs, housing search assistance, social work assistance, early childhood screening and school liaisons, education, training, and employment services, health care, and financial and budget management counseling. The services are obtained by the provision of partnerships with community service organizations that help provide health and wellness, mentoring and tutoring, and programming and activities for children.
66. Program requirements include the provision of 24 Hour Staffing & Security.
67. Program requirements include the provision of administrative space, including office spaces, a staff lounge, locker area, bathroom, copy room, and mail distribution area.
68. Program requirements include the provision of ground floor common areas, including a lobby (large and welcoming), conference/programming room, computer lab, multi-purpose room/dining area w/ moveable wall, warming kitchen, and pantry.

69. Program requirements include the provision of communal, recreation space for adults and children.
70. Program requirements include the provision of 'per floor' requirements, including monitoring/assistance station with clear line of sight to all units, a microwave, sink, countertop, homework/study lounge, homework/study room, common area, laundry room, trash room or trash chute, janitor's closet, and storage room.
71. Program requirements include the provision of play space, crawl space for infants, indoor/outdoor play space for toddlers, and outdoor play space for older youth.

The Project

72. The Applicant proposes to construct an emergency shelter for 46 families on the Property. (Ex. 7). The Project will have the wrap-around services on the ground floor. Due to the existence of the Existing Structure, the Project will have 11 units on the first and second floors in addition to per floor bathrooms, laundry security and communal rooms. The other floors will have eight units and in addition to per bathrooms, laundry, security and communal space. (Hearing Tr. at 42). The Project will be LEED Gold. (Hearing Tr. at 38). Trash, loading, and parking will be accessed from the alley. (Hearing Tr. at 5).
73. The Project proposes a new six-story addition and adaptive re-use of the Existing Structure that will be composed of 47,465 square feet of residential space and a 3.51 FAR. The Project will be approximately 69.83' tall and have a 73% lot occupancy. The Project will be sited on the Rhode Island "edge" of the site, which is similar to the location of other taller apartment houses along the Rhode Island Avenue corridor. (Hearing Tr. at 34-35). The bulk of the Project will be separated from the houses along 17th Street by approximately 150 feet, and the shadows cast by the Project are not substantially different from those that would be cast by a matter of right structure on the Property. (Ex. 94A and 204D).
74. The Existing Structure is not historically landmarked but the applicant has worked, and will continue to work, with staff from the Historic Preservation Office ("HPO") and coordinated with Staff from CFA to design the addition to be contextual and historically harmonious with the Existing Structure. The Applicant's architect was accepted as an expert, and testified that he had extensive experience in working on DGS projects, balancing program requirements and that he had sat on the District's Historic Preservation Review Board as well as the board of the D.C. Preservation League. (Hearing Tr. at 30-31).
75. The Project will not remove or construct over the significant portion of the Existing Structure and will result in a restoration of many of the Existing Structure's exterior elements. (Hearing Tr. at 33). The new portion of the Project will attach to the 40-tall Existing Structure at the ground, first and second floor plates without causing major demolition. (Hearing Tr. at 43). The Project will be located comfortably behind the Existing Structure, and it's designed to be set back from the back rear of the Existing Structure. Each face is pulled in as per HPO direction, so that the "coining on the [Existing

Structure] is visible, the actual details of the [Existing Structure] will be visible all around the building.” (Hearing Tr. at 36-37). The Project will be designed to “attach” to the Existing Structure at the ground through third floors

76. The Project will feature a light and dark brick façade intended to complement the Existing Structure as well as to be similar in style and color to the surrounding apartment houses on Rhode Island Avenue. The design of the brick building was a result of engagement with the community and HPO. (Hearing Tr. at 36). The ground floor of the Project will feature storefront glass. The roof will be comprised of metal. (Ex. 204C).
77. The Antenna and Equipment Building will remain on the Property. The array of the Antenna will be raised by 15 feet, and the generators and other equipment currently on top of the Equipment Building will be removed and located inside the Project. (Hearing Tr. at 37). The locating of the antenna and equipment inside the project creations no objectionable conditions.
78. The location of the Antenna adjacent to the Project is “compliant” with rules adopted by the Federal Communications Commission, and as studied by SiteSafe, RF Compliance Experts. (Hearing Tr. at 37, Ex. 94A).

Project Design Satisfies Programmatic Needs

79. The Project is a public service because it implements the District’s plan to end homelessness – “Homeward D.C.”, which involves, among other things, constructing safe and dignified emergency shelters for families experiencing homelessness.
80. The Project’s design is impacted by the necessary duplication of facilities such as community rooms, laundry facilities, and common areas which must be provided on each floor to ensure a small, familial environment for the residents.
81. The Project’s design is also impacted by the need to provide social services to support the residents on-site. These specific site program and construction requirements result in a constrained floor plate and a requirement for additional building height. Meeting zoning requirements with relief would result in a loss of units and services on the site.
82. The Project will have space for support services such as dining rooms, conference room, case management area, computer lab, medical room, resident and staff lounges, study, laundry, storage, multipurpose room, warming kitchen, and indoor and outdoor play areas.
83. The first floor of the Project will contain the common spaces including a dining room, administrative space, play areas, family bathrooms and private bathrooms.
84. Floors two through six of the Project will contain residential units, common spaces, laundry facilities, family bathrooms and private bathrooms, and a security desk with a direct line of site down the floor’s single central hallway that will enable staff to monitor activities in common areas at all times. The Architect testified that a “double-loaded” corridor that is

common in many apartment houses is “not possible because we have to have this interior series of elements and amenities on each floor.” (Hearing Tr. at 41).

85. The Project will be limited access, and residents will be issued keys for their particular floor and will not have access to other floors.
86. A family-scale environment is a major priority for the Project because approximately 60% of residents will be children.
87. The Architect prepared many test fit attempts. As a result, the Project will have 11 units on the first and second floors to utilize the Existing Structure on two floors and the rest of the floors will have eight units. (Hearing Tr. at 42). It was determined that having 11 units on two of the floors would be acceptable to DHS and the ICH because “The District also came forward and very much improved the sightlines and the number of bathrooms” (Hearing Tr. at 102). But there was testimony that “if DHS and DGS had gone above 11 families, [Kate Coventry] would have sought legislation at the council to prevent them from doing that.” (Hearing Tr. at 99).
88. The Architect established that a shorter building than the proposed design would not allow the Applicant to meet the programmatic requirements for the Project. (Hearing Tr. at 214-215).
89. Emergency shelters are permitted in the MU-4 zone by special exception.
90. The Project fits the zoning definition of an emergency shelter. (Ex. 186).
91. Despite use of the promotional term “short-term housing facility”, the Project’s use meets the definition of “emergency shelter” as defined in the zoning regulations. (Ex. 186).
92. The Project will meet all applicable code and licensing requirements, which will be fully assessed at the time the Applicant obtains building permits and a certificate of occupancy.
93. The Project complies with the MU-4 development standards for front yard, side yard, GAR and penthouse requirements. The Project will feature a “green” roof area of 3,000 square feet.

Project Landscaping

94. The Project will satisfy the GAR requirement. The Project will improve the existing conditions by planting a new lawn along the 17th Street side and removing overgrown shrubs and chain-link fencing along Rhode Island Avenue to open views to the Existing Structure. This will permit publicly-accessible gardens within the public space along Rhode Island Avenue as well as carefully articulated screening, fences and walls that will help the transition between the Property and the road. Two large trees have significant prominence on the site. A large oak tree on 17th Street and a large spruce tree near the corner of Rhode Island Avenue and 17th Street are both valuable assets to the project and

will be protected. Opportunities to plant street trees at multiple locations around the site can further enhance the site canopy. (Hearing Tr. at 45-46)

95. The Project will provide accessible play and planted areas. The Project has two major play spaces. The courtyard along Rhode Island Avenue, and then a toddler area to the Northwest corner of the site, and then an adult or teen relaxation area between the proposed addition and the new multi-family building to the north. Gardens reduce stress. These facts underscore the importance of providing areas of play, relaxation, and healing within the family shelter gardens, using pocket planting, evergreen hedges, and carefully situated small trees, the current design provides visual and physical access to plants in each of the outdoor areas. Flexible play areas and opportunities for including elements such as a fountain, a color feature wall, hanging sculpture, and a ceiling mural are incorporated with the goal of reducing stress for families.
96. The fencing along Rhode Island Avenue will be along the property line, set back about 20 feet from the sidewalk. The proposed elements here would be a short brick retaining wall with a metal or other type of screen on top of that. So, providing some transparency through the garden, but also providing the security and privacy needed for the play areas. A wood privacy fence will be installed along the northeast and northern property lines. (Hearing Tr. at 46-49).

Parking

97. The Project will provide three parking spaces at the rear of the building along with a space for loading for van deliveries, which will be accessible from the alley. The parking spaces comply with the Zoning Regulations in terms of size and access. (Hearing Tr. at 200).
98. The parking spaces will be located under the overhand of the first story, so they will be tucked away.
99. The applicant has offered a Transportation Demand Management ("TDM") plan that includes the implementation of a TDM coordinator, on-site services, transit cards, and bicycle amenities. (Ex. 29).
100. The Project will provide 4 long-term bicycle parking spaces in the basement and 4 short-term spaces located near the front door.

Loading

101. Food deliveries would be made by van to the site twice per day and trash service would occur approximately three times per week.
102. The Applicant has dedicated one of the initial four parking spaces to loading, which is sufficient because the majority of all loading will be from van and cars. (Ex. 43).

103. The loading is in the same location as it was for the former police station use. (Hearing Tr. at 38). There is adequate space onsite and loading from the street would not be necessary.

Community Outreach

104. Between the Fall of 2016 and the full ANC meeting of March 17, 2017, the Applicant met with the Advisory Team, ANC, and District agencies on ten separate occasions. (Ex. 94B1, Ex. 186).

Contested Issues

105. Based upon the evidence in the record and the testimony at the March 1st hearing, the following are the contested issues for this application:

- The Applicant did not conduct a sufficient search for sites to locate the Project.
- The Applicant did not consider reasonable alternative sites that would meet the Project's programmatic needs.
- The Project is too large and tall, impacting nearby light and air.
- The Project will create an adverse impact on traffic, parking, noise, neighborhood use and enjoyment, and trash.
- The Project's operations will create an adverse impact on the neighborhood.
- The Project's proposed height is not compatible with the neighborhood.
- The Property is too small for 46 units.
- The Project is too large for the Existing Structure on the Property.
- The Project will over-use the alley due to lack of a formal loading berth and service/delivery area.

Zoning Relief

Variance Relief

106. Variance relief from the height, FAR and loading requirements of the Zoning Regulations is required for the Project for the reasons stated in Findings of Fact Nos. 107 and 108.

107. The maximum permitted building height in the MU-4 Zone District is 50 feet and the maximum FAR is 2.5. *See* Subtitle G §§ 503.1; Subtitle G § 502.1. The Project has a proposed maximum height of 69.83 feet and a proposed maximum FAR of 3.51.

108. Pursuant to Subtitle 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. The Project does not provide a compliant loading berth or a service-delivery area. Although, the Applicant will dedicate one of the on-site parking spaces as a loading area that will comply with the Applicant's needs and has been determined to be sufficient by DDOT.

Special Exception Relief

109. The Project will provide up to 46 emergency shelter units for families experiencing homelessness. The Project requires special exception relief pursuant to Subtitle U § 513.1(b), for construction of an emergency shelter in the MU-4 Zone District.
110. The Project will include three parking spaces. Under Subtitle C § 701.5, the Project requires special exception relief, as the Project does not 0.5 off-street parking spaces for every 1,000 s.f. of gross floor area for an emergency shelter use.
111. The Project's lot occupancy is proposed to be 73%, which will exceed the maximum permissible lot occupancy of 60% pursuant to Subtitle G § 404.1.
112. The Project will provide approximately 7.5 feet of rear yard on the ground floor and no rear yard setback above 25'. Thus, the Project will require special exception relief under Subtitle G § 405.5(a)(1) and (2) to construct a building that provides less than 15 feet of rear yard.
113. The Project will incorporate an open court with a width of 17 feet in diameter. Under Subtitle G § 202.1 the minimum court width must equal to 4 inches per foot of building height.

Factual Findings Pertaining to the Variance Relief Requested

Exceptional Conditions

114. Unique corner lot location bounded by 15-foot alley to the rear.
115. Significant 20-foot sidewalk public space along Rhode Island Avenue.
116. Significant 24-foot sidewalk public space along 17th Street;
117. The Applicant must retain the main building of the Existing Structure, and the Applicant may not build over the Existing Structure. Based on instruction from the Historic Preservation Office, "the actual details of the existing building will be visible all around the building," which means that the Project must be pulled in. (Hearing Tr. 36-37).
118. The Applicant must retain the previously-approved, existing 150'-communications antenna and approximately 360 s.f. control/equipment. (Hearing Tr. at 32).
119. The Existing Structure, antenna and control/equipment on the Property cumulatively account for approximately 1.0 FAR and 28% of the Property.
120. A Project design with significantly more than 10 units per floor would cause a hectic, less safe, and less family-friendly environment, which conflicts with the programmatic needs.
121. The Project's programmatic needs, determined legislatively by the D.C. Council, require the construction of "up to 50 units" at the Property, wrap-around services and a total of 280

replacement units District-wide, in order to close D.C. General by hypothermia 2019-2020.

Height Relief

Practical Difficulties

122. The proposed Project height of approximately 69.83' is necessary due to a confluence of factors, including the Existing Structure that cannot be constructed over, the antenna and equipment room that cannot be removed and the significant public space areas along both Rhode Island Avenue and 17th Street NE and the Project's programmatic needs, that create a practical difficulty in complying with the height requirement.
123. The first three floors of the Project are set higher to meet the floor plates of the Existing Structure because the ceiling heights of the first two floors of the Existing are 14 feet and 11 feet, respectively.
124. In addition, the Existing Structure's base is set at almost three feet above the level of the curb on 17th Street, N.E., and the Project's floor plates must match those of the police station.
125. Cumulatively, these physical features add six to eight feet of height as opposed to a design without the Existing Structure.
126. The Applicant is already proposing 11 units on the first and second floors, with eight units above. The Project's design is the only design option that can meet the programmatic requirements on the Property, not just the most desired of various options.
127. The Project architect stated that it would be practically difficult to construct a facility that incorporates the programmatic requirements while complying with the matter-of-right height in the MU-4 zone. (Hearing Tr. at 214-215).
128. Director Gillis had testified that redesigning would cause substantial practical difficulties in meeting all programmatic goals, including those relating to the timeline because delivery of the site would be pushed and the Applicant "would miss the 2019 timeframe." (Case No. 19450 Hearing Tr. at 252).
129. There is no evidence in the record that a Project satisfying the District's programmatic needs could be constructed on the Property as a matter-of-right without the requested variance from height.
130. Due to the confluence of exceptional conditions, the strict application of the zoning regulations regarding height would result in peculiar and exceptional practical difficulties to the Applicant because the Applicant would not be able to construct a building in satisfaction of the D.C. Council's legislation and District agency guidelines.

Public Good/ No Impairment to the Zone Plan

131. The bulk of the tallest portions of the Project are clustered on the east side of the Property, adjacent to the 15-foot alley, the auto repair uses and other property that is also zoned MU-4. Accordingly, due to the width of 17th Street, the bulk of the tallest portions of the Project will be separated from the single-family dwellings along 17th Street by the 90-foot right of way.
132. This separation is enhanced by the approximately 50-foot wide Existing Structure, the height of which will not be increased. Furthermore, additional landscaping and screening will provide additional separation between the Project and the surrounding properties.
133. As documented by the Applicant's sun studies, the light and air available to those nearby properties will not tend to be affected adversely over what could be constructed as a matter of right. (Hearing Tr. at 57-58; Ex. 204D).
134. Rhode Island Avenue's 130-foot right of way can support a building of this height and density.
135. The Project is compatible with the development pattern along Rhode Island Avenue, NE, which includes medium and low-rise buildings. This is documented by the contextual renderings of the Project at Ex. 204C.
136. The Project represents a step toward meeting the goal of the ICH strategic plan, "Homeward D.C.", which seeks to close DC General and make homelessness in the District rare, brief and non-recurring. The Project will provide up to 46 families who are experiencing homelessness with a safe and dignified shelter facility that will further assist families in stabilizing and returning to permanent housing. In this regard, the Project is a positive contribution to the community and the District as a whole.
137. Furthermore, the height of the Project aligns with the stated goals of the District's Comprehensive Plan to: "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. (Policy H-4.2.8: Neighborhood-Based Homeless Services, 10A DCMR § 516.14."
138. Director Gillis has testified that the CFA's comments on the Project's height are advisory in nature. CFRO did not attest to the contrary. (Hearing Tr. at 67-68). The CFA reviews only the Project's design, while this Board is charged with reviewing the District's programmatic needs as well as the other exceptional conditions and practical difficulties associated with the height variance test.

139. The Board has already concluded that a similar height for an Emergency Shelter in Ward 8 was not detrimental to the public good. *See* BZA Case No. 19288.

FAR Relief

Practical Difficulties

140. The proposed 3.51 FAR is directly related to the Existing Structure that cannot be constructed over and the antenna and equipment room that cannot be removed, which collectively account for approximately 1.0 FAR.

141. Also, the Property is constrained due to the significant public space areas along both Rhode Island Avenue and 17th Street NE that reduce the property size.

142. The Project's programmatic needs also require ground-floor wrap around services and duplication of services, study rooms, security and laundry on each floor also necessitate the FAR variance requested to accommodate the necessary bulk and massing of the Project.

143. Circulation, line of sight, bathroom requirements and inability to have a "double-loaded" corridor. also, drive the bulk of the building over what would be required in a multi-family use.

144. Due to the confluence of these exceptional conditions, the strict application of the zoning regulations regarding FAR would result in peculiar and exceptional practical difficulties to the Applicant because the Applicant would not be able to construct a building in satisfaction of the D.C. Council's legislation and District agency guidelines.

145. There is no evidence in the record that a Project that satisfies the District's programmatic needs could be constructed on the Property as a matter of right without the requested FAR variance.

Public Good/ No Impairment to the Zone Plan

146. The Applicant is retaining the Existing Structure, so that the bulk of the tallest portions of the Project are clustered on the east side of the Property, adjacent to the 15-foot alley, the auto repair uses and other property that is also zoned MU-4. Accordingly, due to the width of 17th Street, the bulk the Project will be separated from the single-family dwellings along 17th Street.

147. The buffer is enhanced by the approximately 50-foot wide Existing Structure, which will not be altered. This is documented by Applicant's contextual rendering at Ex. 204C.

148. The Project will provide up to 46 families who are experiencing homelessness with a safe and dignified shelter facility with the necessary, on-site wrap around services in the right scale necessary to assist families in stabilizing and returning to permanent housing. In this regard, the Project is a positive contribution to the community and the District as a whole, as well as the public good.

149. Furthermore, the density of the Project aligns with the stated goals of the District's Comprehensive Plan to: "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. (Policy H-4.2.8: Neighborhood-Based Homeless Services, 10A DCMR § 516.14."
150. A matter-of-right, multi-family building on the Property with Inclusionary Zoning would be permitted up to a 3.0 FAR.
151. Director Gillis has testified that the CFA's comments on the Project's density are advisory in nature. CFRO did not attest to the contrary. (Hearing Tr. at 67-68). The CFA reviews only the Project's design, while this Board is charged with reviewing the District's programmatic needs as well as the other exceptional conditions and practical difficulties associated with the FAR variance test.
152. Director Zeilinger also testified that constructing two, smaller facilities, with another on a different property, would not meet the Project's programmatic needs. (Hearing Tr. at 88-89, 260-261). Developing more smaller buildings around the city would increase operations costs and available funds to serve the families in crisis. (Hearing Tr. at 88-89, 260-261).
153. Director Gillis testified that a facility with fewer units will not meet the District's goals and objectives for this Project. (Hearing Tr. at 53).
154. The Board has found that the Ward 7 Emergency Shelter, with an FAR that is 1.48 above the maximum permitted FAR in that zone, could be granted without substantial detriment to the public good. *See* BZA Case No. 19287.

Loading and Service/Delivery Space

Practical Difficulties

155. The need for relief arises from the exceptional conditions on the Property including the corner lot condition, the rear alley and the street-side public space.
156. The need to retain the existing antenna and equipment building eliminates the ability to provide the required loading berths on the Property. Indeed, the antenna and the equipment building take up approximately 45 feet of the property's 90-foot alley frontage. Even if the parking spaces were to be removed, there would still only be 45-foot length, which is not sufficient space for a 30-foot loading berth and 20-foot service bay.

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 19452

157. Due to the need to retain the Existing Structure, the equipment building and the antenna, the footprint of the ground floor cannot be reduced without reducing the on-site wrap around services.
158. The District's programmatic needs drive the Project's overall size, which necessitates the loading relief.
159. There is no evidence in the record that a Project that satisfies the District's programmatic needs could be constructed on the Property as a matter of right without the requested loading variance.

Public Good/No Impairment to Zone Plan

160. The Project design provides adequate loading access. (Ex. 29, 43). The evidence established that the former police station conducted its loading from the alley. There was no evidence in the record that the police station's prior loading practices caused a substantial detriment to the public good or zone plan.
161. The dwelling units in the Project will be pre-furnished and residents will not have furniture or large quantities of personal belongings, decreasing the need for a zoning-compliant loading berth.
162. Meals will be delivered by van twice daily, which can be accomplished in the 19-foot service/delivery parking area. (Hearing Tr. at 52).
163. The Applicant will dedicate one of the on-site parking spaces along the alley as a loading area that will comply with the Applicant's needs, which has been determined to be sufficient by DDOT. (Ex. 47).
164. The Applicant only anticipates Daily Loading demand of 6.2 trips, for a total demand of 35 trips per week. Based on DDOT's truck and bus route system map, loading/service vehicles will access the alley abutting the site via Hamlin Street and egress the alley at Rhode Island Avenue, as that roadway itself is designated as a preferred truck route. (Ex. 29, 43)
165. The Applicant proposed the following Loading Management Plan:
- A loading manager will be designated by the building management. The loading manager will coordinate and schedule deliveries where possible, and will be on duty during delivery hours.
 - The loading operations will be limited to daytime hours of operation, with signage indicating these hours posted prominently at the loading zone.
 - Trucks using the loading zone will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine idling), the regulations set forth in DDOT's

Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System.

- The loading manager will be responsible for disseminating DDOT's Freight Management and Commercial Vehicle Operations document to drivers to encourage compliance with District laws and DDOT's truck routes. (Ex. 29, 43)

166. Final Loading Management plan will be determined with the Advisory Team as part of the Good Neighbor Agreement.

167. Other loading activities, such as resident loading will occur in a no parking zone on 17th Street in front of the site, where a curb cut currently exists.

168. Also, in Ward 8, the Board approved loading relief for a similarly-sized Emergency Shelter, finding that it could be granted without substantial detriment to the public good or impairment to the zone plan.

Factual Findings Pertaining to Special Exception Relief for Emergency Shelter with More Than 25 Persons

169. The application for a 46-housing unit emergency shelter to be located in the MU-4 Zone District requires special exception approval from the Board pursuant to Subtitle U §§ 513.1(b)(1)-(6).

170. The Project meets the zoning definition of "emergency shelter" because the Project will provide temporary and immediate housing to support families experiencing homelessness. (Ex. 186).

171. The definition of "emergency shelter" in the zoning regulations incorporates the definition of "temporary shelter" within the Homeless Services Reform Act of 2005. (Ex. 186).

172. The Homeless Services Reform Act of 2005 includes in its definition of "temporary shelter" the following: "any facility the primary purpose of which is to provide temporary shelter for the homeless in general or for specific populations of the homeless, which does not require occupants to sign leases or occupancy agreements." (Ex. 186).

173. There is no emergency shelter located in Square 4124 or within 500 feet of the Property. (Subtitle § 513.1(b)(1)).

174. The Project provides three off-street parking spaces. The number of residents who own cars will be negligible, and no residents would be permitted to park on the site. Therefore, the parking will be used by the staff. As determined in the traffic studies (collectively, the "Traffic Study") by the Applicant's Transportation experts Gorove/Slade, the proposed parking will be adequate for the needs of the Project, because there is 74% on-street parking vacancies in the peak hour. Therefore, there are up to 243 vacant, on-street parking spaces, which the Traffic Expert and DDOT have confirmed that the on-site parking spaces will be adequate to provide for the needs of occupants, employees, and visitors to the

facility. The parking spaces will be appropriately located in the alley, and the spaces will be covered. (Ex. 29, 43) (Subtitle 513.1(b)(2)).

175. The Project will meet all applicable code and licensing requirements (Subtitle U § 513.1(b)(3)).

176. 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. (Subtitle U § 513.1(b)(4)).

177. As to traffic, the Applicant submitted a detailed Traffic Study, which included a parking analysis. The Traffic Study concluded that the Project would not cause an adverse impact due to traffic. The Traffic Study conclusively established that the Property is well-served by transit, as it is directly served by three Metrobus routes along Rhode Island Avenue and is approximately 1.0 miles from the Rhode Island Avenue metro station. Moreover, detailed trip generation and split assumptions were prepared projecting less than 1% of residents and 70% of staff would access the Property via automobiles, generating 0-resident auto trips and a maximum of 23 staff auto trips in the afternoon peak hour. Accordingly, at most the Project would generate one, additional trip every two minutes during the afternoon peak hour. Fewer trips were projected to be generated during the Project's morning and night peak hours. During the "street" peak hour, only two Project-related trips are anticipated. (Ex. 29, 43).

178. Even in light of the minimal traffic impacts discussed above, the Applicant has proposed the following TDM Plan:

- Transportation Management Coordinator (TMC): Effective TDM programs require a coordinator to implement and manage them. An employee of the facility would be a point of contact and would be responsible for coordinating, implementing, and monitoring the TDM strategies. This would include the development and distribution of information and promotional brochures to employees regarding transportation facilities and services including transit, pedestrian, and bicycle facilities and linkages. The contact information for the TMC would be provided to DDOT/Zoning Enforcement with annual contact updates.
- On-Site Services: The TMC will make printed materials related to local transportation alternatives available to employees upon request.
- Bicycle Amenities: The Applicant will provide secure long-term bicycle parking inside the facility and short-term bicycle parking spaces along the perimeter of the site. The marketing program will include brochures on bicycling in the District and for Capital Bikeshare.
- Transit Cards: The facility will provide residents with transit subsidy (SmartTrip cards) for use when traveling between the facility and other areas of the District for compulsory appointments. Additionally, students enrolled in DC Public Schools or charter schools are eligible for a DC One Card, which allows students to ride free on Metrobus and Metrorail for school-related activities.

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 19452

179. DDOT conducted a detailed review of the Application, and determined that it had “No Objection” to the Project. Based on the low amount of projected traffic from the Project, DDOT stated that the “impacts to the surrounding vehicle network are expected to be minimal.” (Ex. 47).
180. “Research suggests that adding a facility of this type to a neighborhood rarely impacts property values or crime.” (Ex. 185).
181. Staff will be coming to and leaving the Project at times when most neighbors are going to or coming home from work. (Case No. 19450 Hearing Tr. at 255).
182. Noise emanating from the facility or the facility operations will not impact the neighborhood adversely.
183. The programmatic requirements of the Project will minimize noise. The Project will be staffed by security personnel at all times.
184. The building will be key-card accessible only, limiting those coming and going from the facility to residents, staff and third-party vendors.
185. The Project will be self-contained, with all necessary services provided on-site and a sufficient buffer between the Project and abutting residential properties.
186. The Project will function similarly to multi-family apartment buildings, and noise from the Property would not be any more than that from the multi-family residential buildings.
187. There will be a 7-foot tall privacy fence as well as a 20-foot wide planting area along 17th Street, which will reduce noise impact of the Project. (Hearing Tr. at 202).
188. The outdoor recreation space will be buffered by a planting area and will be accessible only during a certain range of hours.
189. On the topic of operations, both the City Administrator and Director Zeilinger testified that the Project’s operator would enter into a “Good Neighbor Agreement” with the adjacent neighbors that would establish operational frameworks that will limit any adverse impacts on the neighborhood. (Ex. 185-186). The Good Neighbor Agreement will address which will “set forth expectations and commitments regarding exterior facility and landscape maintenance, safety and security, mutual codes of conduct and respect, and clear and expedient process for communication and problem solving.” (Ex. 186). Furthermore, Director Zeilinger has testified that “Anecdotal, I’ve also met many people who don’t even realize that a homeless program is operating just down the street or right around the corner from their homes or offices.” (Ex. 186).
190. To orient the Project toward the more residential area, the main entrance of the building will face on 17th Street NE instead of the current entrance on Rhode Island Avenue NE. This will create a safer and more secure access point.

191. Finally, the evidence in the record establishes that there is no other Emergency Shelter within 500 feet, the square or the area. Subtitle U § 513.1(b)(5).
192. Also, there are no “similar facilities” near the Property. The nearby service facilities identified by CFRO do not house homeless residents on an emergency or temporary basis. (Ex. 202B).
193. The Applicant requests approval for a 46-unit Emergency Shelter, which will house an average of 138 persons. Under 513.1(b)(6), the Board “may approve a facility for more than twenty five (25) persons, not including resident supervisors or staff and their families, only if the Board finds 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 if there is no other reasonable alternative to meet the program needs of that area of the District.”
194. As to the first prong, the testimony in the record establishes that the Project’s goals and objectives cannot be achieved by a facility of a smaller size at the subject location. The District’s programmatic needs, goals and objectives are explained in Findings of Fact Nos. 55-71. In sum, the District needs to provide 280 replacement units in order to close DC General by 2020 and to create smaller, dignified emergency shelters for families, without significantly greater than 10 units per floor and necessary ground floor and per floor around services. The residential capacity of up to 50 units is legislatively mandated by the D.C. Council. The 46 units proposed for the Property are necessary for the District to meet its overall, legislated goal of providing 280 replacement units. Without the proposed number of units on the Property, the goal of closing D.C. General by 2020 may not be met.
195. The Project architect, Ronnie McGhee, testified in his expert capacity that he prepared many test fits for the Project (Hearing Tr. at 42) and constructing a shorter building would not meet the District’s programmatic needs. (Hearing Tr. at 214-215).
196. In case number, 19450 Director Zeilinger testified in her expert capacity that a building with a smaller capacity would not meet the District’s legislated goal of closing D.C. General. (Case No. 19450 Hearing Tr. at 41-42), and Director Gillis testified that a facility with fewer units will not meet the District’s goals and objectives for this Project. (Case No. 19450 Hearing Tr. at 53).
197. Director Zeilinger testified in her expert capacity that she “would absolutely not design case management services and the supportive services” to be placed in the basement which would be farther away from the people they are serving. (Case No. 19450 Hearing Tr. at 254).
198. Indeed, the Project architect in 19450 also testified in his expert capacity that “creating a bigger basement” is not reasonable because of the “lack of appropriate program to put in the basement.” (Case No. 19450 Hearing Tr. at 133).
199. Director Zeilinger also testified that constructing multiple smaller facilities, with another on a different property, would not meet the Project’s programmatic needs. (Case No.

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 19452

Hearing Tr. at 88-89, 260-261). Developing more, smaller buildings around the city would increase operations costs and available funds to serve the families in crisis. (Case No. 19450 Hearing Tr. at 88-89, 260-261).

200. Indeed, even CFRO's witness acknowledged that if the Project size was reduced, then the District would need to construct smaller facilities on different properties throughout Ward 5 "to meet the City's programming needs." (Hearing Tr. at 169-170).
201. Director Gillis testified that redesigning the project to make the changes suggested by the ANC, CFA and the opposition would cause delivery of the site to be pushed and they "would miss the 2019 timeframe." (Case No. 19450 Hearing Tr. at 252).
202. Furthermore, the evidence in the Record documents that the Applicant cannot construct a smaller building and satisfy the District's programmatic needs. Accordingly, the CFA's recommendations to this effect cannot be accomplished.
203. As to the second prong, the record establishes that there is no other reasonable alternative to meet the program needs of Ward 5. As set out in the Findings of Fact Nos. 36 and 49, both DGS and the D.C. Council took efforts to review alternative sites. No other reasonable alternative existed. As Chairman Mendelson, testified "when all of the factors, including the ones just mentioned, are taken together, all of the suggested locations, including the Mayor's proposal, were less reasonable than 1700 Rhode Island Avenue." (Hearing Tr. at 13).
204. The record documents that while the Property was initially not found to be suitable when the program included both the Emergency Shelter and the Hoya Clinic, the Property was found to meet the District's needs following to remove the Hoya Clinic. (Hearing Tr. at 207-208).
205. Moreover, there is significant evidence in the Record that there is no reasonable alternative because requiring a search for another property in Ward 5 would severely impact the District's timeframe ability to close DC General by 2019-2020.
206. City Administrator Young testified that in each Ward, the District has been told "we support the concept of the program but go somewhere else" to find another site and "Now that we're somewhere else, that community also says, go somewhere else." However, he went on to testify, "there really isn't an opportunity for us to hit the reset button again, go through, pick another location" because if the District needs to keep looking for site, then it will not be able to achieve the 280 replacement units necessary to close DC General, and "if we don't have the 280 [units], we don't have an ability to move forward with a program that makes any rational sense to deliver services and get people out of -- these families out of homelessness." (Hearing Tr. at 209-210).
207. Therefore, the Board finds that the program goals and objectives of the District of Columbia cannot be achieved by a facility of a smaller size at the subject loading and there is no other reasonable alternative to meet the program needs of that area of the District.

Factual Findings pertaining to Special Exception Relief from the Open Court Requirements

208. The Project has an open court on the southern side of the Property between the Existing Structure and the new addition. The largest circle that can be inscribed within the proposed open court would have a diameter of 17 feet. The Project will reach 69.83 feet, and accordingly the minimum court width should be 23.33 feet. Subtitle B § 100.2.
209. HPO requested that the Applicant leave open a view shed from Rhode Island Avenue, N.E. by retracting the projecting wing of the new construction in order that more of the historic police station could be seen. The practical effect of this was to reduce the court width. Therefore, the proposed open court is non-rectangular and will be 17 feet at its widest.
210. Courts are not required in this zone, but when they are provided the purpose is to allow for light and air into a structure and the surrounding structure. In this case, the court opens into Rhode Island Avenue's 25-foot "parking"/ sidewalk area to the south and the 15-foot public alley to the east. Therefore, the open area available to the Project and surrounding properties is actually larger by another 25 feet to the south and 15 feet to the east.
211. The court width, in addition to the large open area along Rhode Island Avenue will permit light and air. Also, it is located on the east side, adjacent to the public alley, away from the residential homes along 17th Street.
212. The court will be landscaped and new fencing will be provided to improve screening from Rhode Island Avenue.

Factual Findings pertaining to Special Exception Relief from the Lot Occupancy Requirements

213. The Project will reach 73% lot occupancy, but the maximum permitted lot occupancy in the MU-4 Zone District is 60%.
214. The Existing Structure and Antenna occupy approximately 28% of the subject Property. Therefore, if the Project was being constructed on an unimproved site, and the Existing Structure and Antenna were not being retained, the lot occupancy for the Proposed Project would not be as high.
215. Without the Existing Structure and Antenna, the lot occupancy of the Project would be 48%, well below the 60% permitted in the MU-4 Zone District.
216. If the Project were an apartment house, then 75% lot occupancy would be permitted as a matter of right, and no relief would be required.
217. By retaining the Existing Structure, the bulk of the Project's lot occupancy is clustered on the east side of the Property, adjacent to the 15-foot alley, the auto repair uses and other property that is also zoned MU-4. Therefore, due to the width of 17th Street, the bulk of

the Project contributing to the lot occupancy relief will be separated from the single-family dwellings along 17th Street by approximately 100' including the 90'-foot right of way and approximately 10'- front yard area. This separation is enhanced by the approximately 50-foot wide Existing Structure, the height of which will not be increased.

218. The Project also provides a 12-foot side yard setback, not required by the regulations, from the north property line, lessening potential impacts on the multifamily building currently under construction to the north.
219. As reflect in the Applicant's sun studies, due to this substantial separation of approximately 150 feet, the light and air available to those neighboring properties will not tend to be affected adversely. (Ex. 94, Tab C; 204D).
220. Due to the location of the Project, shade would only be cast on the properties along 17th Street in the morning. Even with that information, comparing the March 21 dates for both the matter of right massing at Ex. 204D, and the proposed Project at Ex. 94, Tab C, it is established that at 9 AM (the time of the most shade on the 17th Street residential properties), the matter of right scheme shows a shadow being cast across 2908- 2920 17th Street. The sun study at Ex. 94, Tab C shows a similarly-sized shadow cast across those same properties. Accordingly, the evidence in the record shows that the shadows cast by the proposed project are similar to those that would be cast by a matter of right massing.
221. Moreover, the sun studies show the same evidence in relation to the market-rate condominium building constructed at 2909 17th Street. As testified during the Hearing, those experienced developers chose to construct up to their side property line with a court open to that direction, and that they did not have any "no build" easement over the subject Property. Furthermore, a matter of right massing on the Property would cast a shadow onto that building's open court and structure, so there is no substantial impact caused by the Project that is any different on the adjacent property than would be created by the shadows cast by a matter of right massing. (Ex. 204D).

Factual Findings pertaining to Special Exception Relief from the Rear Yard Requirements

222. As 17th Street is the building's frontage, the rear lot line abuts the public alley to the east. The regulations state that where the rear yard abuts an alley, the rear yard can be measured from the centerline of the alley to the rear wall for that portion of the building below a horizontal plane 25 feet above the mean finished grade at the rear of the building.
223. The front of the Project along Rhode Island Avenue provides a substantial rear yard. The front of the Project along 17th Street provides a compliant rear yard between the rear of that portion of the Project to the alley. On the ground level, the front section of the Project will include three parking spaces and one loading space, which will set the rear of the building's footprint 19' back from the property line. This additional separation will increase the sense of rear yard on the ground floor level.
224. However, the east portion of the Project and the upper floors are constructed to the rear lot line, providing a 7.5-foot rear yard for this portion of the Project measured from the alley

centerline for that portion of the building below the 25-foot plane. No rear yard setback for the portions of the Project above the 25-foot plane.

225. The existing equipment room for the Antenna already intrudes upon the area that would have to be set aside for the rear yard. Accordingly, the existence of that structure is already non-conforming as to the rear yard. Accordingly, on the ground floor there will be no change to the existing condition to the neighboring property to the north.
226. The Applicant's design calls for building over the ancillary, equipment building and from there south along the public alley with surface parking spaces.
227. By permitting rear yards to be calculated from the centerline of alleys, the zoning regulations acknowledge that alleys can satisfy the same policy purposes as rear yards.
228. Given the fact that the Project must retain the Antenna equipment building in its existing location and provide three surface parking spaces and one, the provided rear yard is as large as possible on the Property.
229. There is no apartment window located within forty feet (40 ft.) directly in front of another building. (Subtitle G § 1201.1(a)).
230. There is no office window shall be located within thirty feet (30 ft.) directly in front of another office window, nor eighteen feet (18 ft.) in front of a blank wall (Subtitle G § 1201.1(b)).
231. The new, 6-unit condo building at 2909 17th Street has no window openings along the property line. Therefore, there are no angle of sight lines and the distance of penetration of sight lines into habitable rooms that need to be considered. (Subtitle G § 1201.1(c)). (Hearing Tr. at 159).
232. The Project provides provisions for service functions, including parking and loading access and adequate loading areas, as set forth in Findings of Fact Nos. 97-100. (Subtitle G § 1201.1(c)).

Factual Findings pertaining to Special Exception Relief from the Parking Requirements

233. The Project currently proposes three off-street parking spaces to be located under the building overhang on the eastern side of the subject property and accessed from the public alley. Pursuant to Table C § 701.5, an emergency shelter must provide 0.5 off-street parking spaces for every 1,000 s.f. of gross floor area developed on the subject property (22 parking spaces). Relief is necessary for 19 parking spaces.
234. The three, off-street parking spaces are the only parking spaces that the Project is physically able to provide on the Property. Although one addition parking space was initially proposed, at the direction of DDOT, that parking space will be dedicated to loading in order

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 19452

to address the Project's loading needs. The Property's physical inability to provide more parking spaces is due to the confluence of the Property's exceptional conditions described at Findings of Fact Nos. 114 to 129. In particular, the need to retain the antenna and equipment building restricts the use of 45' of the alley's 90-foot frontage. Also, the closure of the existing curb cut on 17th Street limits all parking access from the alley.

235. Parking spaces cannot be provided off-site within 600 feet of the lot in accordance with Subtitle C § 701.8, because the property to the east is owned by another property owner, and the property to the west across 17th Street is zoned R-1-B.
236. The Applicant's Traffic Study confirms that the Property is particularly well serviced by public transportation options.
237. Notably, the number of residents who are anticipated to own vehicles is negligible (less than 1%), as stated in the Traffic Study.
238. Meals will be delivered to the Property and other social services will be provided on-site, so the need for residents to have a vehicle will be greatly reduced.
239. The public transportation nearby alleviates the effects of off-street parking that does not meet the minimum requirement pursuant to the zoning regulations.
240. It is anticipated that 70% of the Project's Staff will commute via personal cars, with the rest commuting via transit or other methods. The Staff peak parking demand varies from approximately 19 parking spaces in the morning and night shift changes to 25 parking spaces in the afternoon shift change.
241. It is anticipated that 30% of the Project's Staff will access the Property via transit, walking or biking.
242. An on-street parking study was conducted within a 600 to 800 foot walkshed of the proposed development. An inventory of available on-street parking facilities was conducted that included tabulating the number of parking spaces by block face and identifying any relevant parking restrictions. A total of 377 parking spaces were inventoried within the study area. Of these, 38 require a Zone 5 Residential Parking Permit (RPP), 34 are time-restricted based on peak period directional flow of traffic, and 305 are unrestricted spaces.
243. Parking occupancy data was collected on Wednesday, December 7, 2016 from 5:00 PM to 11:00 PM to gather information on the parking occupancies of weekday evening conditions, when residential parking rates are at their highest.
244. It was determined that the parking peak occurs from 10:00 to 11:00 PM with an overall parking utilization of 36 percent (or 134 vehicles occupying the 377 available spaces).

APPLICANT’S PROPOSED DECISION AND ORDER
 BZA APPLICATION NO. 19452

Table 7: Weekday (Wednesday) Hourly Utilization Percentages

	5:00 PM	6:00 PM	7:00 PM	8:00 PM	9:00 PM	10:00 PM	11:00 PM
Occupancy	110	109	123	128	133	134	132
Total Spaces	377	377	377	377	377	377	377
Utilization	29%	29%	33%	34%	35%	36%	35%

Table 8: Peak Hour Inventory and Occupancy Summary

Space Type	Peak Period (10 PM - 11 PM)			
	Spaces	Occupancy	Utilization	Available
RPP	38	29	76%	9
Metered	0	0	NA	0
Loading*	0	0	NA	0
Carshare	0	0	NA	0
Time-restricted	34	2	6%	32
Unrestricted	305	103	34%	202
Handicap	0	0	NA	0
All On-Street Spaces	377	134	36%	243

245. In the peak period, from 10:00 pm to 11:00 p.m., approximately 64% of the on-street parking (243 parking spaces) was available. Accordingly, there are sufficient on-street parking spaces available to accommodate the Project’s projected 19 parking spaces needed at that time.

246. Parking utilization remained generally low throughout the entirety of the study period. An increase in the number of vehicles occupying parking spaces corresponded with typical patterns seen in residential areas, where parking utilization rates increase further into the night, representing residents returning home. However, even at its peak the majority of parking spaces are empty.

247. Given the RPP parking restrictions on 17th Street north of Rhode Island Avenue and the time restricted parking on Rhode Island Avenue abutting the site, it is most likely that staff that drive to work will park on Hamlin Street, Brentwood Road, Girard Street, and Irving Street in the near vicinity of the site. The results of the on-street parking study show that the area surrounding the site, where parking demand is most likely to increase as a result of the proposed development, has more than enough capacity to absorb any increase in parking demand that will be generated by the proposed development.

248. The Applicant has proposed a TDM Plan as set forth in Findings of Fact No. 178.

249. The Applicant is physically unable to provide the required additional 19 parking spaces on the Property for the reasons stated in Findings of Fact No. 233.

250. The reduction in the number of parking spaces is proportionate to the reduction in parking demand through the TDM measures and through the 30% of Staff members anticipated to access the Property via transit, biking or walking.

251. There is adequate available parking within the vicinity of the Property to absorb any additional demand for parking as generated by the Project. (Hearing Tr. at 51).

252. The Project is an Emergency Shelter, so all of the dwelling units are "affordable dwelling units."

253. In accord with the Applicant's Traffic Study, DDOT found that the on-street parking supply has the capacity to meet the parking demands generated by Project staff use. Therefore, DDOT has no objection to the requested special exception.

CONCLUSIONS OF LAW

The Variance Standard

The Board is authorized to grant variances from the strict application of the Zoning Regulations to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of the Zoning Regulations would "result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of the property...." D.C. Official Code § 6641.07(g)(3) (2008 Supp.), 11 DCMR Subtitle X § 1000.1. The "exceptional situation or condition" of a property can arise out of the structures existing on the property itself. See, e.g., *Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 293-294 (D.C. 1974). And, characterization of a use as a public service may also be significant in determining whether the requisite "exceptional situation or condition" exists. *Monaco v. D.C. Bd. of Zoning Adjustment*, 407 A.2d 1091, 1099 (D.C. 1979). Finally, relief can be granted only "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." D.C. Official Code § 6-641.07(g)(3) (2008 Repl.), 11 DCMR Subtitle X § 1000.1.

A showing of "practical difficulties" must be made for an area variance, while the more difficult showing of "undue hardship," must be made for a use variance. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case is requesting area variances, therefore, it had to demonstrate an exceptional situation or condition of the property and that such exceptional condition results in a practical difficulty in complying with the Zoning Regulations. Lastly, the Applicant had to show that the granting of the variance will not impair the public good or the intent or integrity of the zone plan as embodied in the Zoning Regulations and Map.

The theory of "self-created hardship" is not relevant to the Board's deliberations on the requested relief because the Applicant does not seek a use variance. It is well-recognized precedent that a self-created hardship is not a factor to be considered by the Board in an application for an area variance. See *Ass'n for Pres. Of 1700 Block of N St., NW & Vicinity v. Board of Zoning Adjustment*, 384 A.2d 674, 678 (1978); see also BZA Case Nos. 18651 and 17973; *Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1169 (D.C. 1990). ("Prior knowledge or constructive knowledge or that the difficulty or hardship is self-imposed is not a bar to an area

variance.”) The record reflects that the Applicant has requested three area variances and five special exceptions.

Similarly, even if there is a “self-created hardship” in this matter, the hardship was not caused by the Applicant’s own, affirmative act. On the contrary, the Board finds that there are, indeed, third parties that have established the Project’s programmatic needs and other important parameters for the Project, including the Mayor’s Office, the ICH, and the D.C. Council. Thus, there is sufficient evidence in the record establishing that if there is a “self-created hardship”, then third parties have caused that hardship.

To that end, previous “self-created hardships” considered by the Board and the Court of Appeals concern market-rate projects or commercial entities. See *DeAzcarate v. Board of Zoning Adjustment*, 388 A.2d 1233 (1978); see also *Oakland Condo Ass’n v. Board of Zoning Adjustment*, 22 A.3d 748 (2011); see also *A.L.W. v. Board of Zoning Adjustment*, 338 A.2d 428 (1975). Here, the Applicant is a District agency and the Project is part of a District policy initiative addressing homelessness, not a for-profit commercial entity. Accordingly, there is no evidence in the record that any alleged “self-created hardship” does not result in a financial benefit to the Applicant. Thus, previous cases concerning a “self-created hardship” are not instructive for the Board, and the Board disregards CFRO’s arguments.

Exceptional Conditions

The Board finds that the Property has exceptional conditions in satisfaction of the first prong of the variance test, as set out in Findings of Fact No 194. No evidence to the contrary was credibly presented by the Party in Opposition. Rather, the opposite is true: The main thrust of the Party in Opposition’s argument *is* that the Property is exceptional, and, therefore, in their perspective was not the correct site for the Project to be located. The Board does not find those claims to be relevant to this prong.

The Board also finds that the District’s extensive programmatic needs constitute an exceptional condition at the property. The Project’s programmatic needs were discussed above at Findings of Fact Nos. 55 to 71.

Finding an exceptional condition in the District’s programmatic needs is consistent with decisional law. In *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091 (1979), the Court of Appeals upheld use and area variances needed to allow the expansion of the Capitol Hill offices of the Republican National Committee. Among other things, the Monaco decision held that the needs of a non-profit group to expand its facilities may constitute the extraordinary and exceptional situation needed to satisfy the first prong. The Court specifically held that:

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 area of the same site, then the Board of Zoning Adjustment does not err in considering the needs of the organization as possible “other extraordinary and exceptional situation or condition of a particular piece of property. *Id.* at 1100.

A little more than a decade later, the Court of Appeals applied this principle in *Draude v. District of Columbia Bd. of Zoning Adjustment*, 582 A.2d 949 (1990), which affirmed, following a remand, the BZA’s grant of a variance to George Washington University (the “University”) that permitted the expansion of a medical office building to an adjacent property. In that case, the expansion was needed to eliminate over-crowding in the original building and to consolidate various ambulatory care services that existed in other University buildings scattered throughout the District. *See id.* at 951. The University’s design required housing critical mechanical equipment in a second penthouse structure, which, otherwise, would have taken away from clinical space within the building. *See id.* at 961. The Court of Appeals agreed with the BZA, stating that “the mechanical equipment contained in the penthouse structures is integral to the purpose of the Addition, and ... this particular exception is required by the purpose of the building.” *See id.* at 962.

Applying these principles here, the District’s programmatic needs are clear. The District needs to close DC General and construct 280 replacement units in dignified emergency shelters located in each ward. The emergency shelters cannot have significantly more than 10 units per floor with ground floor and per floor wrap around services. Finally, legislatively, the District needs to construct as close to 50 units on this site as possible. The proposed Project design is the only means by which these necessary programmatic goals can be accomplished. In addition, the design must also take into account the property-specific exceptional conditions discussed above that limit the usable area on site as well as the location of the Project on the Property. Thus, as in *Monaco* and *Draude*, the Applicant’s proven need to design the Project to satisfy the programmatic needs on this Property constitutes an exceptional condition and therefore satisfies the first prong of the test. Indeed, the CFRO appeared to concede that the District had specific programmatic needs. (Hearing Tr. at 170, 174).

Practical Difficulties

As to practical difficulty, the *Draude* Court of Appeals explained how the test may be applied to a public service, such as the Project, stating that the need to construct,

does not, however, automatically exempt a public service organization from all zoning requirements. Where a public service organization applies for an area variance in accordance with *Monaco*, 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. *See Draude v. District of Columbia Bd. of Zoning Adjustment*, 527 A.2d 1242, 1256 (DC 1979).

Here, the Applicant has demonstrated compliance with the elements set forth in the *Draude* decision. *See*, Finding of Fact No. 126). The Board finds that based on testimony regarding the detailed programmatic requirement and design guidelines, as well as the non-controverted evidence from the Applicant’s architectural witness, the Project, as designed, is an institutional necessity, not merely the most desired of various options. The Applicant also established how the Project’s design needs require the specific variances sought. In particular, the proposed six stories is institutionally necessary in order to meet onsite wrap around service spaces, as well as provide 46 units at the Property while limiting the units per floor to no more than 11 with an average of 9

units per floor. Furthermore, the building height is necessary to create a safe, dignified, small-scale, community-based, short-term housing facilities. The height is not just the most desired option but the minimum height to provide industry standard floor to ceiling respectful and habitable units. Moreover, the proposed 3.51 FAR is directly related to the existence of the existing police station structure, antenna and equipment room that cannot be removed and collectively account for approximately 1.0 FAR. To that end, the Board credits the Applicant's expert testimony that the Property's exceptional conditions combined with the programmatic need result in a practical difficulty to the Applicant as to the Project's height and bulk.

The Board also finds credible the Applicant's statements of practice difficulties associated with providing on-site loading. In particular, the need to retain the antenna and equipment building limit the area along the rear alley available for loading to only 45-feet: Less than the required 50 feet necessary for the loading and service berth. Furthermore, locating loading in that location would eliminate any on-site parking spaces.

Under *Monaco* the Board may be more flexible when it assesses a non-profit organization than when it assesses a business enterprise. 407 A.2d at 1098. The District asserts that it cannot satisfy the programmatic requirements and still comply with the Regulations. The Board has no cause to second-guess this assertion and no credible ones have been raised by the opposition. Accordingly, the Board finds that the second prong of the variance test has been satisfied.

No Substantial Detriment to Public Good or Impairment of Zone Plan

Although the Applicant would face serious practical difficulties in complying with the zoning regulations regarding height, FAR and loading, the additional height and density and lack of loading, the Applicant has made efforts to mitigate these variances. As to height and density, the Project is buffered by the width of the surrounding streets – Rhode Island is 130'-in width, while 17th Street has a 90'-right of way. Indeed, the Project is similar to other conditions along Rhode Island Avenue, where a taller apartment house sits at the southern end of a block, stepping down to shorter structures and single family residences moving north along the block, away from Rhode Island Avenue. Furthermore, in this instance, the depth of the front yards for the single-family residential buildings as well as the width of the existing police structure further separate the bulk of the Project from those homes by close to 150 feet. As such, the Applicant's sun studies demonstrate that the Project will not have substantially detrimental impact on the light and air to the surrounding properties over what could be constructed as a matter of right. This is true of the single-family dwellings along 17th Street as well as the new condominium building being constructed along the Property's side lot line, where a comparison of matter of right and proposed shadow studies show no additional shadows being cast on additional properties by the Project. Moreover, the Board finds the compliant court at the apartment building will be sufficient to provide light and air to those units. Indeed, even the owner of the new multi-family building to the north of the Project acknowledged that shadows from a matter of right building on the Property could be cast on his building. (Hearing Tr. at 158). Accordingly, the Board finds some of the arguments made by the opposition about potential decrease in light that would impact landscaping, vegetation and gardens to be speculative. Rather, the Board finds the Applicant's shadow studies credibly demonstrate that the Project's impact on light and air would not be more substantially adverse than any such impact from a matter of right structure on the Property. The Board finds

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 19452

further evidence of this lack of impact in the admission made by Mr. Kahn, the adjacent property's developer that "yeah" the Project would have no more impact on his building's landscape plan than would a matter of right structure (Hearing Tr. at 159), and that he does not have a "no build" easement across the subject Property. (Hearing Tr. at 158). Furthermore, as to FAR, up to 3.0 FAR would be permitted as a matter of right for a development with Inclusionary Zoning, and accordingly the requested 3.5 FAR results in no impairment to the zone plan.

As to loading, the Project proposes the use of one of the formerly identified parking spaces for loading. As loading will occur in a 9' x 19' van or truck, such loading space will be sufficient to satisfy most of the Project's loading needs, thereby addressing the public good. Furthermore, the evidence in the record documents that the Project will continue the police station's practice of conducting loading operations from the alley. Accordingly, there will be little to no change from the prior use, which had already been loading from the alley. Moreover, the Applicant has proposed a detailed Loading Management Plan that will also assist with limiting any potential impacts from the loading relief. DDOT has concurred in this analysis. The Board does as well, in light of the substantial evidence in the record and the lack of credible evidence to the alternative.

It should also be identified that this Board has concluded that similar height and FAR variance relief for other of the emergency shelter case, including BZA case numbers 19287, 19288, and 19289, finding that relief can be granted without impairment to the public good or zone plan. The legal requirement of "*stare decisis*" directs the Board to make the same finding here. *See Hensley v. D.C. Dep't of Empl. Servs.*, 49 A.3d 1195, 1203 (D.C. 2012) (internal citations omitted).

The Board acknowledges the comments made by CFRO and individuals in opposition regarding the concerns that approving the height, FAR and loading variances would create a "precedent" that could be followed by other developments on Rhode Island Avenue. The Board does not accept those arguments for the reasons that all variances are granted on a property-by-property basis and that as a public-service use, the Project is entitled to a lower standard of review than a market rate project. Furthermore, the Board is comfortable that the Project's relief is tailored sufficiently to satisfy the public-service area variance relief test established in *Draude*, as discussed above. But, in so doing, it automatically means that such relief would never be transferable to other, market-rate projects. Also, neither CFRO nor others in opposition have identified a situation in which a market-rate project was permitted to have additional relief based on the prior granting of such relief to a public service use. Accordingly, the Board finds that granting this relief will not cause substantial detriment to the public good or impairment of the zone plan due to a non-specific and speculative fear of creating a negative "precedent."

For these reasons, the Board concludes that the application meets all three prongs of the area variance test. The Property's exceptional conditions and the District's programmatic needs render impossible, the Applicant's ability to comply with the zone district's height and FAR requirement and the Zoning Regulation's loading requirement – accordingly, failure to grant this relief would result in a severe practical difficulty to the Applicant. The Project has been designed such that the proposed height and density will cause no substantial detriment to the public good or impairment of the intent and integrity of the Zoning Regulations and Zoning Maps. Similarly, with the proposed, dedicated loading space and loading management plan, the loading relief will cause no substantial detriment to the public good or impairment of the intent and integrity of the Zoning

Regulations and Zoning Maps. In so finding, the Board also notes the comments made by the CFA on the Project's height and density. The Board finds that the CFA's recommendations are advisory in nature, as conceded by CFRO. (Hearing Tr. at 68). The Board acknowledges that the CFA reviews only the Project's design, while this Board is charged with reviewing the District's important programmatic needs as well as the other exceptional conditions and practical difficulties associated with the height variance test. In light of this balancing test, as stated above, the Board finds that the Applicant has met the variance test here.

Special Exception Relief

The Applicant seeks special exception relief to operate an Emergency Shelter in the MU-4 zone (Subtitle U § 513.1(b)) and from the requirements for lot occupancy (Subtitle G § 404.1), open court minimum width (Subtitle G § 202.1), rear yard (Subtitle G § 405.5(a)(1) and (2)), and parking (Subtitle C § 701.5). The Board is authorized to grant a special exception where it finds the special exception:

1. Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
2. Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
3. Subject in specific cases to special conditions specified in the Zoning Regulations. 11 DCMR § X-901.2 and D.C. Code § 6-641.07(g)(2).

It is well settled that relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific requirements for the relief are met. In reviewing an application for special exception relief, "[t]he Board's discretion... is limited to a determination of whether the exception sought meets the requirements of the regulation." *First Baptist Church of Wash. v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

For the reasons set out in Findings of Fact Nos. 169 to 207, the Board finds that the Applicant has met its burden to satisfy the special exception criteria in this case, as described more fully below.

Special Exception Relief for Lot Occupancy, Open Court and Rear Yard

Pursuant to Subtitle G § 404.1, the maximum permitted lot occupancy in the MU-4 Zone District is 60%, while Subtitle G § 202.1 requires open court minimum width of 23.33 feet, and Subtitle G § 405.5(a)(1) and (2) requires rear yard a 15-foot rear yard, which can be taken from the centerline of the rear alley below 25 feet, and must be provided above that plane. The Project requires special exception relief from these requirements because the lot occupancy is 73%, the open court width is 17' and the maximum rear yard provided is 7.5 feet from the centerline of the alley.³

³ Although not expressly raised here, the Board finds that on a corner lot, such as the Property, the Applicant is permitted to select its front and rear lot line locations, as documented in long-standing precedent of interpretations

Pursuant to 11 DCMR § X-901.2, the Board finds that the proposed special exceptions for lot occupancy, open court and rear yard will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. As to lot occupancy, the Existing Structure, Antenna and Equipment Building account for 28% of the Property, so if those structures did not need to be retained, the lot occupancy percentage could be reduced as low as 48%. Furthermore, in this zone, an apartment house with inclusionary zoning could have up to 75% lot occupancy, meaning that the proposed Project would be compliant. As to open court, the undisputed findings of fact demonstrate that the open court design was directed by HPO, which requested the Applicant leave open a viewshed of the police station from Rhode Island Avenue, N.E. by retracting the projecting wing of the new construction. Furthermore, courts are not required in the MU-4 zone, but when a court is provided the purpose of the court is to allow for light and air into a structure. That is achieved in this Project because the court opens into Rhode Island Avenue's 25-foot "parking"/sidewalk area to the south and the 15-foot public alley to the east. Therefore, the open area available to the Project and surrounding properties is enlarged by another 25 feet to the south and 15 feet to the east, permitting additional light and air, as well as maintaining the viewshed.

Finally, the rear yard relief is also in harmony with the general intent of the Zoning Regulations. It is well accepted that an alley can serve the same purposes as a rear yard to provide light and air, as well as separation between the properties. Also, in this instance, the location of the equipment building, which directly abuts the alley, already creates a non-conforming situation that dictates the rear yard relief required here. It is noted that a substantial rear yard area is provided along Rhode Island Avenue and the Project's parking/loading spaces extend the rear yard condition on the ground floor.

Moreover, pursuant to 11 DCMR § X-901.2, the Board finds that the proposed special exceptions for lot occupancy, open court and rear yard will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. In terms of lot occupancy, the Applicant has credibly demonstrated that the Project is separated from the homes across 17th street by a substantial distance - more than 100 feet and that the buffer for the Project's largest mass is enhanced by the approximately 50-foot wide Existing Structure, the height of which will not be increased. Due to this substantial separation of approximately 150 feet, the light and air available to those properties will not be affected adversely as documented in the sun studies affirming that the Project will not adversely affect neighboring properties' light and air. (Ex. 94, Tab C; Ex. 204D). This Board has repeatedly held that the relevant analysis for sun studies is the difference between the shadows to be cast by the matter of right and proposed project,⁴ not between the existing structure, if any, and the proposed project. Indeed, the evidence is clear that a matter of right building does not increase the number of properties in shade when compared to the proposed Project. (Ex. 94, Tab C; 204D). For the open court width relief, the proposed court width is enhanced by the substantial public space area along Rhode Island

by the Zoning Administrator of both the Zoning Regulations and the 1910 Height Act supporting such a decision. For example *see* the Zoning Administrator's determination in 5333 Connecticut Avenue NW, an appeal of which was upheld by this Board in BZA Case No. 18615. Accordingly, the Board concludes that the proposed rear yard location is appropriate and permitted.

⁴ *See* BZA Case Nos. 16536, 18886, and 19230. *See also Draude v. Board of Zoning Adjustment*, 527 A.2d 1242, 1253 (1987).

Avenue, which will limit any impact on the neighboring properties by making the open area appear larger.

As shown in the landscape plans and discussed by the landscape architect, Ryan Moody, during the Hearing, the Applicant proposes substantial plantings and screenings for that area that will further limit any potential adverse effects on the use of neighboring properties. (Ex. 36A1). The net result of these factors is to minimize the Project's effect, if any, on neighboring properties. Finally, as to rear yard, the width of the alley will continue to provide light and air to the directly adjacent property to the east, which is currently a large, open lot that is minimally improved with a commercial auto-service/tire shop. Furthermore, the use of that property will not be affected adversely because the Antenna and equipment building will remain in their current location, and the rear yard area will not be impacted along Rhode Island Avenue.

Lastly, the Board finds that the requested rear yard relief satisfies the special conditions for rear yard relief under Subtitle G § 1201.1. The rear yard will face the public alley and all rear-facing windows will be more than 40 feet from another building. There will be no office windows on the Property and there are no habitable rooms that are within the site lines of the Project. Finally, the traffic study concluded that the service functions at the site will be well-managed with the proposed loading area and loading management plan. (Ex. 29).

Special Exception for Parking Relief

Subtitle C § 701.5 requires 0.5 space per 1,000 square feet for an emergency shelter which equals 22 spaces. The Project provides three, full-size parking spaces (in addition to a space dedicated to a loading van for deliveries). Accordingly, special exception under Subtitle C § 703.2 is required. Subtitle C § 703.2 permits the Board to grant "a full or partial reduction in number of required parking spaces, subject to the general special exception requirements of Subtitle X, and the applicant's demonstration of at least one (1) condition set forth in that subsection.

The Board finds that the Applicant has met its burden of demonstrating compliance with Subtitle C § 703.2 (a), (b), (d) and (f), thereby exceeding the requirement to satisfy "one" of the requirements. As demonstrated in Findings of Fact Nos. 235 and 242, the physical constraints of the site and the fact that no property within 600 feet are available result in the inability to provide the required number of parking spaces, and the Property is particularly well-served by transit being adjacent to a heavily trafficked Metrobus route and approximately one mile from the Rhode Island Metrorail Station. Also, the Traffic Study documented that the amount of traffic congestion that the Project can reasonably be expected to add to the neighborhood is nominal because most residents will not have personal vehicles and those who do will not be permitted to park cars at the Property. Therefore, DDOT did not require a comprehensive transportation review. (Ex. 47; Hearing Tr. at 199). Finally, the entire Project will be an Emergency Shelter, which by definition are affordable housing units. Accordingly, the Board also finds that subtitle (f) is satisfied here.

The Board also finds that the Applicant has met its burden of demonstrating compliance with subsections 703.3. As discussed in Findings of Fact No. 154, the Applicant has credibly demonstrated that it cannot locate more than three parking spaces on the Property due to the existence of the equipment building and antenna that reduce the usable length of the alley rear lot

line to only 45 feet. Moreover, while four 9' parking spaces could be located in this area, at DDOT's direction, the Applicant has dedicated one of the spaces to full-time loading, reducing the number of spaces available for parking to three. Moreover, the Applicant has demonstrated that the requested parking relief is proportionate to the reduction in parking demand by the applicant due to the proposed TDM measures, availability of on-street parking and limitation on residents owning cars. Furthermore, the Board agrees with the Office of Planning's conclusion that "the request to reduce the parking provided from twenty-two to 3 spaces is proportionate to the need, as based on the experience of the current facility at DC General, less than one percent of the residents own a vehicle and many staff persons use public transportation. It is envisioned that the situation would be similar at this proposed facility." (Ex. 49).

The Board further finds that finds that the Applicant has met its burden of demonstrating compliance with subsections 703.4. The Applicant has proposed significant TDM measures (Findings of Fact No. 178), and the implementation of those measures shall be a condition of this approval.

Pursuant to Subtitle X § 901.2, the Board finds that the proposed special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Zoning Regulations intend for the provision of adequate parking where required. In this case, the Board finds that parking is not necessary for the Project due to the reasons stated herein. Also, based on testimony and ample evidence provided by the Applicant's traffic engineer concerning parking demand, automobile use/ownership rates, transportation options, and the Applicant's proffered transportation demand management plan, the Board finds that the proposed special exception will not tend to affect adversely the use of neighboring property in satisfaction of Subtitle X § 901.2.

Granting the relief from the parking requirement will not adversely effect on-street parking availability in the neighborhood. The Applicant sufficiently demonstrated that more than 60% of the on-street parking spaces were available during the peak period – 10:00 to 11:00 p.m. in the evening. The Opposition questioned the validity of the Applicant's parking occupancy study, but offered no evidence to rebut or invalidate these studies other than anecdotal stories of difficulty finding parking.

Notwithstanding the Opposition's assertion, the Board finds that the Applicant's parking occupancy study to be credible. As explained by the Applicant's Transportation Expert, the study follows accepted industry methodology that DDOT vetted and accepted, and are based on sound principles that the Applicant explained. (Hearing Tr. 198-200). The assumptions used in the Applicant's Traffic Study are further substantiated by a study of a similar site in another city. DDOT agreed with the Applicant, stating that parking study "concluded that the on-street parking supply has the capacity to meet parking demands generated by the staff use", and DDOT found "the on-street parking supply has the capacity to meet the parking demand." (Ex. 47).

For these reasons, the Board finds that the Applicant satisfies the requirements for a special exception pursuant to Subtitle C § 703.

Special Exception for Emergency Shelter Use

Accordingly, the Applicant requests Special Exception relief from Subtitle U § 513.1(b), which permits Emergency shelter for five (5) to twenty-five (25) persons, not including resident supervisors or staff and their families. As an initial matter, the Board credits the testimony of the Applicant's expert in homeless services, Director Zeilinger, in establishing that the nature of the Project meets the zoning definition of an "emergency shelter" as it refers back to the Homeless Services Reform Act of 2005. The Board discredits any assertion by CFRO that the promotional name of Short-term Housing Facility changes the appropriate categorization of the Project as an emergency shelter for zoning purposes. The Board further finds that the Applicant has demonstrated compliance with the standards and requirements set forth in Subtitle U § 513.1(b), as follows:

Subtitle U § 513.1(b)(1): There shall be no other property containing an emergency shelter for seven (7) or more persons in the same square or within a radius of five hundred feet (500 ft.) from any portion of the subject property.

The Board finds that the Applicant satisfies the requirements for Subsection (1) because there are no other emergency shelters in the Property's square or within 500 feet. (see, Findings of Fact No. 191).

Subtitle U § 513.1(b)(2): There shall be adequate, appropriately located, and screened offstreet parking to provide for the needs of occupants, employees, and visitors to the facility.

As to Subsection (2), the Board credits the testimony of the Applicant's transportation consultant and agrees with the Office of Planning in finding that there shall be adequate off-street parking to provide for the needs of the occupants, employees and visitors. As set out in Findings of Fact No. 174, the Project will provide three off-site parking spaces and one off-site loading space. The Applicant's transportation expert demonstrated that there is more than sufficient on-street parking to accommodate the Project's parking demand over and above the off-street parking spaces. DDOT concurred finding, "the on-street parking supply has the capacity to meet parking demand." The Board concurs with these experts and has been provided no credible evidence to the contrary, and accordingly, finds this requirement satisfied.

Subtitle U § 513.1(b)(3): The proposed facility shall meet all applicable code and licensing requirements.

The Board finds that the Project shall meet all applicable codes and licensing requirements in satisfaction of Subtitle (3).

Subtitle U § 513.1(b)(4): 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.

Next, as to Subsection (4), the record contains ample credible evidence that the Project shall not have an "adverse impact" on the neighborhood due to traffic, noise, operations and number of similar facilities, as set forth in Findings of Fact No. 176. Accordingly, the Board finds that the Applicant satisfied this requirement.

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 19452

As to traffic, the Board credits the Applicant's transportation expert that as the number of residents with cars will be negligible and 30% of the Staff will arrive by alternative modes of transportation, the Project will generate a small number (23) of new traffic trips in the peak hour. This accounts for approximately one new trip every two minutes. The Board notes that DDOT agreed with this trip analysis and found that due to the "anticipated level of trip generation, a comprehensive vehicle traffic analysis is not required" and that it had no objection to the relief requested. CFRO provided no substantive evidence to prove that the Project would have an adverse impact in terms of traffic, except for anecdotal evidence from local residents.

As to noise, the Board credits the Applicant's experts in architecture, landscaping and homeless services that noise generated by the Project will not have an adverse impact. The testimony at the Hearing indicated that the Project will be LEED Gold, with screening fencing, and that residents will not enter and exit the facility at the same time as set out in Findings of Fact No. 132. No contrary testimony is in the record. Accordingly, the Board finds there will be no adverse impact due to noise.

As to operations, the testimony at the hearing stated that the Applicant would enter into a "Good Neighbor Agreement" that will address operational issues, including maintenance, safety, and security. In this respect, the record reflects that the Applicant has already engaged in a robust community outreach efforts through the Advisory Teams and that the on-going efforts will include the Good Neighbor Agreements. The Board finds, over CFRO's speculative concerns, the Applicant's testimony to be credible, and the Board agrees that such an agreement and plan will limit any potential impact of the Project.

Finally, the Board has reviewed the testimony and evidence presented by the Opposition and the Applicant as to the location of "similar facilities" in the area. While the Opposition pointed out that there are affordable housing, senior housing and service organizations nearby, the record does not reflect that any of the nearby programs are Emergency Shelters or that such programs house homeless persons for temporary/ emergency periods. Accordingly, the Board credits the Applicant's evidence (Ex. 204B) in documenting that there are no "similar facilities" nearby. Therefore, the Board finds that this prong of Subsection (4) is also satisfied.

Subtitle U § 513.1(b)(5): The Board of Zoning Adjustment may approve more than one (1) emergency shelter in a square or within five hundred feet (500 ft.) only when the Board finds that the cumulative effect of the facilities will not have an adverse impact on the neighborhood because of traffic, noise, or operations.

As stated in response to Subsection (1), the Board finds that the Applicant satisfies the requirements for Subsection (5) because there are no other emergency shelters in the Property's square or within 500 feet. (see, Findings of Fact No. 191).

Subtitle U § 513.1(b)(6): The Board of Zoning Adjustment may approve an emergency shelter for more than twenty-five (25) persons, not including resident supervisors or staff and their families, only if the Board of Zoning Adjustment finds 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 if there is no other reasonable alternative to meet the program needs of that area of the District.

Based on the ample evidence in the record, the Board finds that 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 if there is no other reasonable alternative to meet the program needs of that area of the District, and accordingly can approve the proposed Project size pursuant to Subsection (6).

As an initial matter, the Board notes that this subsection does not have a “cap” for the number of persons permitted through this Special Exception. Based on long standing tenets of statutory interpretation, the Board will not read any additional terms into the clear intent of this regulation. *See Davis v. United States*, 397 A.2d 951, 956 (1979).

As to the first prong of the Subsection (6), the Board credits the Applicant’s architectural expert and the testimony of the City Administrator and the Directors of the Department of Human Services and Department of General Services that the District’s programmatic needs cannot be met by a facility of a smaller size on the Property. Indeed, the Applicant’s architectural expert specifically testified that it would be practically difficult to incorporate the Project’s programmatic requirements while complying with the matter-of-right height in the MU-4 zone. (Hearing Tr. at 214-215). There is no contrary testimony in the record. Indeed, the Opposition did not even claim that a smaller building could satisfy the District’s programmatic needs. Rather, the Opposition’s position is that the District should reduce its programmatic needs based on the Property’s size. The Board does not find this position to be persuasive in light of the substantial evidence in the record documenting the District’s strong programmatic need for up to 50 units on this site in a timeline necessary to close DC General by hypothermia season 2019-2020.

Next, as to the second prong, the Board first notes that the Zoning Regulations does not require that a “search” for “reasonable” alternatives be conducted, and accordingly we do not read that requirement into the Regulations. *See Davis v. United States*, 397 A.2d 951, 956 (1979). The Board finds the extensive testimony by the City Administrator, the Director of the Department of General Services and D.C. Council Chair Mendelson about the site search prior to selection by the Council. These facts are discussed in Findings of Fact Nos. 36 to 53.

The ample evidence in the record documents that a search for a Ward 3 site began in 2014 and that DGS and the D.C. Council reviewed numerous sites during this time frame. All other sites were found not to be reasonable due to size, proximity to transit or property ownership. Ultimately, there were only two District-owned sites that fit the criteria, and one of those sites was already slated to be used during the Martin Luther King Library renovation. Therefore, the D.C. Council determined that the Property was the only reasonable alternative. CFRO asserts that the site selection process was inadequate and that other reasonable properties exist. The Board finds these arguments to be unpersuasive. The substantial evidence in the record supports the District’s search methodology and that given the necessary criteria, the Property was the only reasonable site that was available during the necessary timeframe. Also, the Board notes that very similar selection search

efforts by the District were found to be sufficient to satisfy the “no reasonable alternative” requirement in another Emergency Shelter case, BZA Case No. 15558.

For these reasons, the Board finds both 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 if there is no other reasonable alternative to meet the program needs of that area of the District. Accordingly, the Board can, and will, approve the 46-unit Emergency Shelter proposed at the Property.

Contested Issues

The Board has considered the contested issues set forth in Findings of Fact No. 106 as well as all other issues presented by CFRO, individuals in opposition, ANC 5B, and any other interested party. In consideration of the evidence in the record and the testimony presented at the hearing, the Board finds that the Applicant has met the standard for the variance relief and special exception relief requested as part of this application.

The Board also acknowledges certain comments made by CFRO and individuals in opposition regarding consistency of the Project with the Comprehensive Plan and other planning documents related to development along Rhode Island Avenue. As an initial matter, the Board states that consistency with the Comprehensive Plan is not a standard that must be met for either the Variance or Special Exception standards at issue in this case. However, if such were, which they are not, the Board notes that the Comprehensive Plan includes many, many recommendations, some of which are contradictory. Indeed, the Comprehensive Plan specifically encourages the provision of homeless services through smaller, neighborhood-based facilities “rather than through institution-like facilities and large-scale emergency shelters.” Moreover, Mr. Cassidy, the CFRO representative who discussed the Small Area Plan, himself stated that he was not “an expert on the small area plan,” (Hearing Tr. at 161). To that end, the Board relies on the determinations of the Office of Planning, the technical experts that the requested variances will not result in substantial detriment to the public good or substantial harm to the zoning regulations, and the requested special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. (Ex. No. 49).

As discussed above, the Board also notes the comments made by the CFA on the Project's height, density and design. The clear evidence of record documents that the CFA's recommendations are advisory in nature, as conceded by CFRO, (Hearing Tr. at 68), and that the CFA reviews only the Project's design. This Board's role is broader, as it must review the entire Project, including the important programmatic needs as well as the evidence in the record on the limited impact on the surrounding neighbors and lack of credible evidence to the alternative. Based on this review, the Board, respectfully, acknowledges CFA's comments but determines that the Applicant has met the necessary zoning standards to approve the Project and all requested relief as designed.

Great Weight

The Board is required to give “great weight” to issues and concerns raised by the affected ANC and to the recommendations made by OP. D.C. Official Code §§ 1-309.10(d) & 6-623.04 (2008

Supp.) Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive.

OP recommended granting all of the relief requested. The Board finds the OP report to be thorough, detailed and well-reasoned. The Board acknowledges that OP is a separate, independent agency within the District government and that OP is considered to be an expert in planning, and that its advice is well heeded by this Board. For those reasons, the Board finds the OP report to be persuasive, and the Board agrees with OP's position.

The Property is located within the jurisdiction of ANC 5B (the "ANC").⁵ The Applicant conducted extensive outreach, including presenting and/or attending three full ANC meetings. The Board notes the ANC had not taken a vote on the Application at the time of the hearing. Accordingly, no authorized ANC commissioner participated in the public hearing on the Application. Commissioner Henri Makembe, the single member district commissioner for the Project, testified as an individual generally in support of the Project. (Hearing Tr. at 89-90). Two ANC commissioners filed letters in opposition to the Project as a whole. (Ex. 117, 128). At the close of the Hearing, the Board closed the record but permitted the ANC to file a report. Thereafter, the ANC conducted a public meeting on March 17, 2017 for the purpose of voting on a resolution on the Project. The result of that meeting was the ANC's split vote – vote of 3 to 2 – to oppose the Project. The ANC's vote is memorialized in the ANC Resolution at Ex. 208. For the reasons discussed below, the Board disagrees with the ANC's position.

The D.C. Court of Appeals has interpreted the regulatory requirement to mean that the BZA must acknowledge those concerns and articulate reasons why those concerns and issues were rejected and the relief requested from the zoning regulations was granted. *See Metropole Condo Asso. V. Bd. of Zoning Adjust.* [need full cite] citing *Kopff v. District of Columbia Alcoholic Beverage Control Bd.*, 381 A.2d 1372, 1384 (D.C. 1977) ("We conclude that 'great weight' . . . means . . . that an agency must elaborate, with precision, its response to the ANC issues and concerns."); see also *Levy v. District of Columbia Bd. of Zoning Adjustment*, 570 A.2d 739, 746 (D.C. 1990) ("[T]he [Board] is required . . . to give issues and concerns raised by the ANC 'great weight' [through] 'the written rationale for the government decision taken.'"). However, the Court is clear that the Board is only required to give great weight to those issues and concerns that are "legally relevant" to the relief requested. *Bakers Local 118 v. D.C. Bd. of Zoning Adjustment*, 437 A.2d 176, 179 (D.C. 1981).

Turning now to the ANC's issues and concerns raised in the ANC report, the Board will deal with each one in turn.⁶

ANC Recommendation No. 1: The ANC opposes the Applicant's request for approval of a special exception for an Emergency Shelter pursuant to Subtitle U § 513.1(b). The ANC states that it

⁵ In this case, two affected ANCs were identified – ANC 5B and ANC 5C. Although the Applicant outreached to ANC 5C and provided them with copies of filings, that ANC chose not participate because the Property was not located within that ANC.

⁶ The Board notes that the ANC also included numerous "whereas" clauses that summarize the status of the legislation and the ANC's understanding of concerns raised by residents. The "whereas" clauses were reviewed by the Board, but are not entitled to "great weight", because those clauses are not part of the ANC's project-specific recommendation.

opposes the relief because it objected to the “site selection” and design process and because in the ANC’s opinion, the “particular input of those residents within 200 and 300 feet” of the Property were not “properly accommodated”. The Board disagrees with this position for numerous reasons. As an initial matter, on the issue of site selection, except for the limited purpose of determining that there is “no reasonable alternative to meet the program needs”, in satisfaction of Subtitle § 513.1(b)(6), the details and concerns raised regarding the level of community “input” on the site selection process are not legally relevant to this determination, and, therefore will not be afforded great weight. That said, for the reasons stated above and in Findings of Fact Nos. 39 to 53, the record has substantive and credible evidence of an appropriate site selection process, and accordingly, the Board does not adopt the ANC’s position. Furthermore, as documented in the record, many neighbors within 200 to 300 feet of the Property were parties to a lawsuit in the D.C. Superior Court challenging the site selection process. The record documents those neighbors raised their concerns in detail to the Superior Court, but that the case was dismissed. Next, as to concerns about the process for “design”, again the Board notes that “design” and community input in such design are not legally relevant to any of the subsections of Subtitle § 513.1(b)(6), and accordingly that concern is also not entitled to great weight. However, the Board disagrees with the ANC’s assertion that the neighbors were not “properly accommodated” in the “design” process, as there is ample evidence in the record of the Applicant’s community outreach efforts and work with the community on the design. Accordingly, for these reasons, the Board does not accept the ANC’s position on its Recommendation No. 1.

ANC Recommendation No. 2: The ANC supports the Applicant’s request for open court relief. Based on the record and Findings of Fact Nos. 208 to 212, the Board agrees with the ANC.

ANC Recommendation No. 3: On rear yard relief, the ANC opposes because of a concern that “the facility is being constructed near antenna equipment building.” The ANC notes that the record shows that the antenna equipment building is an existing condition on the Property. As such, the ANC’s concerns do not directly relate to matters that are legally relevant to the findings for a special exception for rear yard relief set out in Subtitle G § 405.5(a)(1), which relate to harmony to the zone plan, adverse impact on neighboring uses and views from neighboring property residential and office windows. Accordingly, the ANC’s concerns are not entitled to great weight. That said, the record includes evidence that the Project is designed appropriately in regard to the antenna. For these reasons, the Board disagrees with the ANC on its recommendation No. 3.

ANC Recommendation No. 4: The ANC opposed the request for a variance from the loading requirement due to its misunderstanding that the Applicant had not submitted a Loading Management Plan. The Board notes that the Applicant has submitted such a Loading Management Plan that has been reviewed and accepted by DDOT. That Loading Management Plan will be made a condition of approval of this Application. For these reasons, the Board disagrees with the ANC on its recommendation No. 4.

ANC Recommendation No. 5: The ANC opposes the Applicant’s request for FAR variance. The Board notes that the ANC’s concerns are summary in nature, and, therefore, may not be entitled to great weight. However, the Board grants this concern great weight and disagrees with the ANC. As detailed above, based on the Findings of Fact, the Board has determined that the Applicant satisfies the variance standards for the requested FAR relief due to the exceptional conditions,

programmatic needs, practical difficulties in meeting the programmatic needs and no substantial detriment to the public good or substantial impairment of the zone plan. Accordingly, the Board disagrees with the ANC's position on FAR relief.

ANC Recommendation No. 6: The ANC opposes the Applicant's request for a variance for height relief. The Board first notes that the permitted height in the MU-4 Zone District is 50 feet, not 40 feet as stated by the ANC. *See* Subtitle G § 403.1. Accordingly, the Applicant is requesting an increase in height from 50' to 69.88". Furthermore, the MU-4 Zone District specifically permits "moderate-density" development, (Subtitle G § 400.3) and is not a "low-to moderate density zone" as claimed by the ANC, and accordingly the Board disagrees with those characterizations. Next, the Board has found that granting similar height relief on other emergency shelter cases (BZA Case Nos. 19287-19289, 19451) is consistent with the "intent, purpose and integrity of the zoning plan. Accordingly, based on the doctrine of *stare decisis*, the Board is permitted to make the same finding in this case. Based on the ample and substantive evidence in the record that the Applicant cannot reduce the height of the building and still meet the programmatic goals, the Board disagrees with the ANC's suggestion that the Applicant reduce the height to five stories "while not reducing private living space of incoming families." The record is clear that such a suggestion simply cannot happen. There is no evidence to the contrary in the record on which the Board could make a different decision.

ANC Recommendation No. 7: The ANC opposes the Applicant's request for lot occupancy relief. The Board notes that the ANC's concerns are summary in nature, and, therefore, may not be entitled to great weight. However, the Board grants this concern great weight and disagrees with the ANC. As detailed above, based on the Findings of Fact, the Board has determined that the Applicant satisfies the special exception standards for the requested lot occupancy because such request is in harmony with the zone plan and will not tend to affect adversely the use of neighboring properties. In particular, the Board notes substantive evidence in the record documenting that without the existing structures on the site (the police station, antenna and equipment building) that need to be retained, the lot occupancy could be reduced by approximately 20% and that if the Project were constructed as an apartment house with Inclusionary Zoning, up to 75% lot occupancy would be permitted as a matter of right. Accordingly, the Board disagrees with the ANC's position on lot occupancy relief.

ANC Recommendation No. 8: The ANC opposes the requested parking relief based on "construction at the site" and parking that "will negatively impact elderly residents across the site." As an initial matter, this Board has held on numerous occasions that issues relating to construction are beyond the scope of the Board's review. Accordingly, that matter is not legally relevant to the request for special exception for parking relief and is not entitled to great weight. However, the Board is comfortable that issues relating to construction will be addressed in the "Good Neighbor Agreement", so nearby elderly neighbors will be able to have their concerns addressed by the Applicant. As to parking, for the reasons stated above and in Findings of Fact No. ____, the Board disagrees with the ANC that the Project will negatively impact parking for elderly or other residents. The Board credits the Applicant's Traffic Study in finding that at the peak period, more than 60% of on-street parking spaces are vacant. The Board is further convinced by DDOT's conclusion that "the on-street parking supply has the capacity to meet parking demands." (Ex. 47). However, while the Board finds the evidence shows the on-street parking to be adequate, the

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 19452

Board does not disagree with the ANC's additional recommendations regarding preserving existing residential parking for elderly residents: providing on-street handicapped parking spaces for elderly/disabled residents upon request and identifying certain streets as "Ward 5 Resident" parking only as directed by DDOT. Accordingly, the Board will make those requirements conditions to this approval.

ANC 5B's opposition to the Project was approved by a split vote of 3 to 2. The Board, after carefully analyzing the entire record in this case, and assessing all the ANC's concerns, must however disagree with its oppositions as discussed above.

For the reasons stated above, the Board concludes that the Applicant has satisfied the requirements for variances from the height, FAR and loading requirements and special exceptions for an Emergency Shelter for more than 25 persons, open court, lot occupancy, rear yard and parking for the Property at 1700 Rhode Island Avenue NE. Accordingly, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of the applications for variances and special exceptions, **SUBJECT TO THE APPROVED PLANS, AS SHOWN ON EXHIBIT NO. 36A1, 36A2, and 36A3 OF THE RECORD, AND SUBJECT TO THE FOLLOWING CONDITIONS:**

- 1) Interior partition locations, the number, size, and location of units, stairs and elevators are preliminary and shown for illustrative purposes only. Final layouts, design and interior plans may vary to the extent that such variations do not require additional relief from the Zoning Regulations and such that the variations do not change the external configuration or appearance of the building.
- 2) Flexibility to vary the final selection of exterior materials within the color ranges of the material types, based on the availability at the time of construction, without reducing the quality of materials or intent of the original design
- 3) Flexibility to make minor refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings trim, and windows that are otherwise necessary to obtain a final building permit to the extent that such changes do not require additional relief from the Zoning Regulations and such that the variations do not change the external configuration or appearance of the building.
- 4) The Applicant shall have flexibility to modify the design of the building to address comments from Commission of Fine Arts necessary to obtain final building permit, provided that any such modifications do not increase any of the areas of relief granted by the Board of Zoning Adjustment, or create any new areas of relief.
- 5) The Applicant shall implement a Transportation Demand Management plan that includes the following:
 - a. Transportation Management Coordinator (TMC): Effective TDM programs require a coordinator to implement and manage them. An employee of the facility would be a point of contact and would be responsible for coordinating, implementing, and monitoring the TDM strategies. This would include the development and

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 19452

distribution of information and promotional brochures to employees regarding transportation facilities and services including transit, pedestrian, and bicycle facilities and linkages. The contact information for the TMC would be provided to DDOT/Zoning Enforcement with annual contact updates.

- b. On-Site Services: The TMC will make printed materials related to local transportation alternatives available to employees upon request.
 - c. Bicycle Amenities: The Applicant will provide secure long-term bicycle parking inside the facility and short-term bicycle parking spaces along the perimeter of the site. The marketing program will include brochures on bicycling in the District and for Capital Bikeshare.
 - d. Transit Cards: The facility will provide residents with transit subsidy (SmartTrip cards) for use when traveling between the facility and other areas of the District for compulsory appointments. Additionally, students enrolled in DC Public Schools or charter schools are eligible for a DC One Card, which allows students to ride free on Metrobus and Metrorail.
- 6) The Applicant shall also implement the following TDM measures requested by ANC 5B:
- a. Coordinate with other District Government agencies to:
 - i. Ensure that on-street, handicapped parking spaces are provided when requested by eligible elderly/disabled residents, if permitted by DDOT.
 - ii. Identify certain streets as "Ward 5 Resident" only parking, if permitted by DDOT.
- 7) The Applicant shall implement a loading and delivery management plan that includes the following:
- a. A loading manager will be designated by the building management. The loading manager will coordinate and schedule deliveries where possible, and will be on duty during delivery hours.
 - b. The loading operations will be limited to daytime hours of operation, with signage indicating these hours posted prominently at the loading zone.
 - c. Vehicles using the loading zone will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine idling), the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System.
 - d. The loading manager will be responsible for disseminating DDOT's Freight Management and Commercial Vehicle Operations document to drivers to encourage compliance with District laws and DDOT's truck routes.

The Applicant and the Advisory Team will execute the Good Neighbor Agreement prior to issuance of the Certificate of Occupancy.

VOTE: 4-0-1 (Frederick L. Hill, Robert Miller, Leslyee White, and Carlton Hart Approve; one Board seat vacant.)

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 19452

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: April 5, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWOYEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR,

APPLICANT'S PROPOSED DECISION AND ORDER
BZA APPLICATION NO. 19452

RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.