

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

In Re Application Of: :
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D.C. Department of General Services : **BZA Case Number 19452**
Ward 5 Homeless Shelter Project : **Presiding Officer: Frederick L. Hill**
1700 Rhode Island Avenue, NE : **Chairperson**

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
OF CITIZENS FOR RESPONSIBLE OPTIONS**

Citizens for Responsible Options (“CFRO”), by and through its undersigned counsel, respectfully submits the following Proposed Findings of Fact and Conclusions of Law.

Application No. 19452 of the District of Columbia Department of General Services, pursuant to 11 DCMR X § 1000.1 is for (i) variances from the height, FAR and loading requirements in zone MU-4, and (ii) special exception relief under X § 901.2 to allow construction of an emergency shelter for 150 residents, for a reduction in court width, for increased lot occupancy, for a rear yard reduction, and for reduced on-site parking, 1700 Rhode Island Avenue, NE, Square 4134, Lot 800.

Preliminary Matters

Applicant’s Application DGS submitted a self-certified application on January 4, 2017 for special exception and variance relief to allow construction of an emergency shelter in the MU-4 Zone District (U § 513.1(b)) at 1700 Rhode Island Avenue, NE, Square 4134, Lot 800. Exs. 1-9.

Notice of Application and Notice of Hearing By memoranda dated January 9, 2017, the Office of Zoning sent notice of the filing of the application to the D.C. Office of Planning (“OP”); the D.C. Department of Transportation (“DDOT”); the D.C. Department of Human Services (“DHS”); Advisory Neighborhood Commission (“ANC”) 5B, the ANC within which the subject property is located; the Commissioner for ANC 5B03, the Single Member District in which the subject property is located; the Council Member for Ward 5, the Chairman of the Council and the four At-Large Members of the Council. Exs. 10-20. DGS submitted plans for concept review to the U.S. Commission on Fine Arts. A public hearing was scheduled for March 1, 2017. The Office of Zoning published notice of the hearing on the application in the D.C. Register, and on January 9, 2017, and sent such notice to Applicant, ANC5B, and property owners within 200 feet of Square 4134, Lot 800. Exs. 21-26.

Request for Party Status Citizens for Responsible Options, an organization representing immediate neighbors of the subject property, including seven neighbors within 200 feet of Square 4134, Lot 800, sought party status in opposition to the application on January 24, 2017. Party status was granted on February 8, 2017.

Government Reports and Letters The Office of Planning submitted a report to the Board on February 17, 2017, essentially tracking the position and arguments of DGS. Ex. 49. The D.C. Fire and EMS Department (“FEMS”) and DDOT, filed letters supporting DGS’s application. Exs. 40, 47.

ANC 5B Report. ANC5B submitted a resolution to the Board dated March 17, 2017. Ex. 208. By a vote of 3-2, the ANC expressed numerous concerns about the application. ANC5B resolved to oppose the application. Id. ANC5B further found that DGS was seeking zoning relief “not in keeping with the District’s Comprehensive Plan for Upper North East.” Id. at 22.

The United States Commission of Fine Arts The U.S. Commission of Fine Arts (“CFA”) reviewed the concept designs for the proposed shelter at its meeting on February 16, 2017 and submitted a letter to the Board on February 24, 2017. Ex. 106.

Persons and Organizations in Support The Board received about 70 letters in support of the application from individuals and organizations (seven of them were duplicates and one was submitted three times). A petition in support from 28 ANC5B residents was also submitted. Ex. 131.

Persons and Organizations in Opposition The Board received about 60 letters in opposition to the application primarily from individuals who reside within ANC 5B, and from organizations. A petition in opposition from 291 ANC5B residents was also submitted. Ex. 103. The President of the Brookland Neighborhood Civic Association expressed “grave concerns regarding the appropriateness of the size of this building at this site.” Ex. 61. Two “200 footers” who were not part of CFRO’s party status request submitted letters in opposition. Ex. 60, 144. No “200 footer” testified or submitted a letter in support.

Board of Zoning Adjustment Hearing The Board convened a hearing on the application on March 1, 2017. The following witnesses testified:

In Support:

Phil Mendelson, City Council Chairman
Laura Zeilinger, Director, DHS
Greer Gillis, Director, DGS
Rashad M. Young, City Administrator
Ronnie McGhee, Project Architect
Dan VanPelt, Gorove/ Slade Associates
Maxine Brown-Roberts, Office of Planning
Evelyn Israel, District Department of Transportation

Henry Makembe, SMD 5B03 Commissioner
Amber Harding, Washington Legal Clinic
Kate Coventry, D.C. Fiscal Policy Institute

In Opposition:

On Behalf of CFRO:

Thomas Kirlin, Community Resident
Faraz Khan, Abutting Property Owner
David Forrest, 200 Footer Resident
Joseph Cassidy, Community Resident
John Iskander, Community Resident
Jeff Steen, Community Resident
Sandra Campbell, Community Resident

Others in Opposition:

Lauren Wiesner, Community Resident
Theresa Perkins, Community Resident
Samuel Eric Lee, Community Resident
Daniel Klein, Community Resident

At the conclusion of the hearing on March 1, 2017, the Board closed the record, except for submission of the following: Additional photographs or architectural renderings from the parties showing neighborhood context; maps showing the location of other facilities in the neighborhood claimed to be similar in nature to homeless shelters; and revised shadow studies from the Applicant's architect. These additional materials were due on March 10, 2017, and timely submissions were made. Applicant and CFRO were asked to submit proposed findings of fact and conclusions of law on March 17, 2017. The ANC was offered the opportunity to file a report before the matter was decided, and did so on March 20, 2017. The Board scheduled the case for deliberation on March 22, 2017.

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

PROPOSED FINDINGS OF FACT

I. BACKGROUND

A. The Homeless Shelter Replacement Act

1. In February 2016, Mayor Bowser announced her intention to propose legislation to close D.C. General, a former hospital, now used to house approximately 270 homeless families, and replace that facility with smaller shelters throughout the City. Oral Test. of Phil Mendelson, Tr. at 9; Oral Test. of Rashad Young, Tr. at 28:17-

19.¹ The proposed legislation was denominated Bill 21-620. This announcement had been preceded by more than a year of planning including a public Solicitation for Offers issued by DGS on September 26, 2014. Oral Test. of Greer Gillis, 19450 Tr. at 48:20-25, 49:1-10.

2. Although characterized as an “All Eight Ward Approach,” the proposal actually provided for shelters in only seven wards and one of those, the 29-unit shelter in Ward 1, is actually a replacement for a shelter closing on Spring Road N.W. Ex. 184 at 6.

3. Bill 21-620, named the Homeless Shelter Replacement Act, called for the District to lease sites owned by private developers, with the cost of development being paid for as part of the lease price. At the conclusion of the lease term, the property was to revert fully to the developer. *Id.* at 7.

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

5. The site proposed for Ward 5 was located at 2266 25th Place, N.E. This shelter was to consist of 50 units. *Id.* at 12.

6. The sites proposed by the Mayor engendered considerable community opposition. A 12-hour hearing was conducted on March 17, 2016 by the Council Committee of the Whole. Critics of the sites that were selected raised, among other objections, concerns about the cost of the long term leases. Ex. 183 at 1.

7. At the March 17, 2016 Hearing, Rashad Young, City Administrator, Brenda Donald, Deputy Mayor for Health and Human Services, Laura Zeilinger, Director of DHS, and Christopher Weaver, Director of DGS, all testified on behalf of the Mayor’s plan in support for Bill 21-620 expressing the view that the Mayor’s plan was well conceived, required no revision, that the lease costs were reasonable and that each site selected was appropriate for its intended purpose. In other words, many of the same witnesses who testified before the Board that a 46-unit site with six floors on Rhode Island Avenue was essential had testified enthusiastically at the March 17 hearing in favor of Ward 5 site as proposed by the Mayor on 25th Place, N.E. Ex 184 at 18. On May 17, 2016, the Committee of the Whole voted down the Mayor’s proposal and marked-up and adopted, in a first reading, an alternative bill of its own, directing the Mayor to utilize District-owned sites to construct family shelters in

¹ The citation is to Mr. Young’s testimony in Case No. 19450. By agreement of the parties and with the consent of the Board, the general testimony of the District witnesses in Case 19450 was made applicable to this case. 19450 Tr. 18-19. Additional citations to the 19450 hearing transcript pursuant to this determination are cited as “19450 Tr. ____”.

Wards 3, 5, 6, 7 and 8, and for the Mayor to acquire sites in Wards 1 and 4 if not by purchase, then by utilization of eminent domain. The Council affirmed four of the sites identified by the Mayor and identified alternative sites in three other wards. *Id.* at 1.

8. Two possible new sites were identified by the Council for Ward 5: 1700 Rhode Island Avenue, N.E. and 326 R Street, N.E. (The Penn Center). DGS did not select the Rhode Island Avenue site.

9. On May 31, 2016, the Council had a final reading of Bill 21-620, and it was passed with an amendment stating that the Ward 5 shelter was to house “up to fifty units,” even though it appeared at the time that the site might not produce more than 35 units. Ex. 184 at 30, 33. The Penn Center alternative was dropped from consideration by the Council so that it could be used as library storage space. Ex. 184 at 41.

10. Bill 21-620 authorized a total of 328 family shelter units in 7 Wards, of which the 29 units in Ward 1 were not intended to be replacement units for D.C. General. The 299 D.C. General replacement units authorized in the Bill exceeds the number of units needed to close D.C. General, which was reported to be 270 in Ex. 183 at 1 and as “approximately 280” in Ex. 186 at 2. *See also* Oral Test. of Laura Zeilinger, 19450 Tr. at 35:7.

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

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

12. DCG issued a Solicitation For Offers (“SFO”) for homeless shelters in late 2014. Ex. 187 at 2. The District has not come forward with any other SFO in fulfillment of the Homeless Shelter Replacement Act. The current Director of DGS, Greer Gillis, confirmed that there was only a single SFO issued, which was directed to all wards and was expressly limited to leasing. Oral Test. of Greer Gillis, 19450 Tr. at 279:4-13 and 106;13-16. This was the only public open solicitation process undertaken in connection with the Homeless Shelter Replacement Act.

13. The DGS search for sites to lease from private developers in Ward 5 resulted in two proposals for one site – 2266 25th Place, N.E. Ex. 187 at 2.

14. DGS Director Gillis testified that DGS looked at City-owned inventory first to determine whether there was a City-owned site meeting the specified criteria, including footprint, square footage, access to public transportation, and availability

for use. Oral Test. of Greer Gillis, 19450 Tr. at 49:11-17. Director Gillis acknowledged that this was not a public process. *Id.* at 81-82. No report or other documentation was introduced reflecting a DGS search for City-owned property.

15. Director Gillis and City Administrator Young stated that DGS also searched for sites to purchase in connection with family homeless shelters, Oral Test. of Greer Gillis, 19450 Tr. at 48:22-24; Oral Test. of Rashad Young, 19450 Tr. at 27:6-8. The District retained a broker to search for potential shelter sites including sites to purchase. Ex. 187 at 2. However, the District failed to introduce any reports, records, letters or other documentary evidence of any search for properties to purchase undertaken by DGS or by a broker. No records of any kind were introduced to show the scope of the search to acquire land by DGS or the broker including the criteria for the search, the duration of the search, or the price parameters of the search. The record is silent as to when the broker was retained, when and to what extent the broker searched for property to purchase, the specific instructions given to the broker, the price parameters and other criteria that the broker was instructed to work within, and any information concerning the results of the search that the broker undertook. Further, whatever the broker or DGS did to search for sites to purchase, this was not an open solicitation process.

16. DGS was originally instructed by the Mayor's office to look for sites with a minimum land area of 30,000 sq. ft. to meet the program needs. Ex. 130 at 5, referencing "Ending Homelessness in the District." <https://mayor.dc.gov/sites/default/files/dc/sites/mayoromb/publication/attachments/Ending-Homelessness-Q-and-A.pdf>. The first deviation on record from this minimum requirement was provided in Ex. 187 at 2 where it was asserted that DGS was looking for 12,000-30,000 sq. ft. sites.

C. The Failure of the Council to Conduct a Systematic Search for Sites in Ward 5.

17. There was no public meeting concerning the selection of the Rhode Island Avenue site by the Council. There was only discussion among Councilmembers during a Council meeting. Oral Test. of Phil Mendelson, Tr. at 12. There is no evidence of any Council consultations with DGS, the agency with the expertise and responsibility for land acquisitions by the District. DGS Director Gillis testified that the Council conducted its own search of City-owned land when it selected the Rhode Island Avenue site. 19450 Tr. 48-49.

18. There is no record evidence that the Council performed a systematic search for alternative Ward 5 sites. Chairman Mendelson testified that Council only considered alternative locations identified by the Langdon Park Community Association. 19450 Tr. at 12.

19. There is no record evidence that DHS was consulted by the Council before the Rhode Island Avenue site was selected.

20. There is no record evidence that the Council in selecting the 1700 Rhode Island Avenue property as the Ward 5 shelter site in Bill 21-620, conferred with DGS about earlier DGS alleged efforts to locate sites to purchase in Ward 5 or that the Council inquired about earlier DGS efforts to examine the feasibility of city-owned sites in Ward 5 for the shelter.

21. There is no indication that the Council consulted with any outside experts, consultants, or real estate brokers before the Rhode Island Avenue site was selected. Nor have there been introduced to the record any reports or other contemporaneous documentation prepared by the Council explaining why the Rhode Island Avenue site was selected.

22. The record does not show that there was any public solicitation, Solicitation For Offers, or Request for Proposals conducted by or on behalf of the Council before the Rhode Island Avenue site was selected. In fact, Chairman Mendelson made clear in his testimony that the Council did not conduct or request any such process. 19450 Tr. at 21:15-24 (responding that “[y]ou’d have to ask the execut[ive]” when asked if the Council conducted any RFP or SFO).

23. The ANC5B Resolution notes that the Council changed the location of the Ward 5 homeless shelter to 1700 Rhode Island Avenue, N.E., “without sufficient notice to the ANC or any opportunity for residents to comment.” Ex. 208 at 1. The Resolution also notes that the existing structure on the property “was built by the renowned architect Albert L. Harris,” and “is eligible for historic status.” *Id.* The Resolution concludes that the process for site selection and design did not properly accommodate resident input, in particular the input of those residents within 200 and 300 feet of the proposed site, whose lives will be strongly impacted by the proposed project.” *Id.* at 2.

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

24. The Council designated the Rhode Island Avenue site as the location of the proposed shelter without notifying ANC 5B, and without providing ANC 5B with an opportunity to make recommendations to the Council before it adopted Bill 21-620. Ex. 55 at ex. 3 at 3.

25. In 2016, CFRO and a number of its members filed a complaint in D.C. Superior Court against the Council and the Mayor alleging failure to comply with the ANC notification requirements in the ANC Act, D.C. Code §1-309.10. *Citizens for Responsible Options et al., v. Mayor Muriel Bowser, District of Columbia, et al.*, Case No. 2016 CA 007512. Both the Council and the Mayor moved to dismiss, arguing that the Council’s designation of the site was merely preliminary and that the Board had full authority to reject the site if the City’s plans did not meet zoning requirements. Ex. 55, exs. 1 and 2. Their arguments were successful. *Id.*, ex. 3.

26. In particular, the Council argued:

Section 3(a)(4) of the Shelter Act **authorizes, but does not require**, the Mayor to use the funds that have been appropriated for capital project HSW05C to construct a shelter of up to 50 units at the Rhode Island Avenue Site.

Id., ex. 2 at 13 (underlined emphasis in original; bold emphasis added).

27. The Mayor presented a similar view:

Because the **Homeless Shelter Act only authorizes preliminary actions**, none of which would allow the construction complained of, no notice was required. An action that only sets forth how a construction project may proceed but does not authorize construction is not final.... **The Homeless Shelter Act only authorizes mayoral actions rather than commanding them, and those actions are only ones that must be made prefatory to any decision to begin construction of the various shelters.** See the Homeless Shelter Act, § 3(a)(4), Compl. (Dkt. No. 1) Ex. 1 at 3 (“The Mayor is authorized to use funds ... provided, that the contract” be approved by the Council). **Even as of the filing of this motion, no final decision has been made about construction of a shelter at the Police Station Site. In fact, none has been authorized.**

Id., ex. 3 at 18-19 (italicized emphasis in original; bold emphasis added).

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

Constructing a shelter containing up to 50 housing units at the Rhode Island Avenue Site, which is zoned MU-4, see <http://maps.dcoz.dc.gov/zr16>, will require the District to obtain zoning relief from the Board of Zoning Adjustment. See 11-U DCMR §513.1(b) (permitting only by special exception in zone MU-4 “[e]mergency shelter use for five (5) to 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”).

Id., ex. 2 at 14 n. 42 (emphasis added).

29. The Council’s and the Mayor’s arguments were successful, in that Superior Court granted the motions to dismiss in part on the ground that the Council’s lack of ANC notice was procedural injury, not injury in fact. *Id.*, ex. 4 at 7 (emphasis added).

II. THE PROPERTY AND THE SURROUNDING NEIGHBORHOOD

30. The 1700 Rhode Island Avenue site is Lot 800 in Square 4134. It is zoned MU-4 which is for moderate density mixed-use development. The MU-4 zoning permits as of right buildings that are no more than 50 feet high, with an FAR of no more than 2.5. Ex. 49 at 2-4.

31. The site contains 12,336 sq. ft. of land area, Ex. 36 at 3, and is currently improved by a no-longer-in-active-use 3-story police station, built in 1922, and designed by renowned district architect Albert L. Harris, a structure eligible for historic status. Ex. 208 at 1. The station has a footprint of 3506 sq. ft. Ex. 7 at 2. The building previously served as the Metropolitan Police Department Youth Division station. Ex. 128 at 1.

32. Also on the property is a 150-foot tall communications antenna and a supporting concrete building, neither of which is proposed to be relocated in connection with the project. Ex. 36 at 3-4.

33. Abutting the property to the north is a newly constructed four-floor condominium building ranging from 39-45 feet in height with six units. Across 17th Street, N.E., and further north on the same side of that street as the property in question are two-story single family homes. Ex. 203.

34. U §513.1(b)(4) addresses concern about neighborhood overconcentration of social services by mandating that emergency shelters should be located so as to avoid “an adverse impact on the neighborhood because of the number of other similar facilities in the area.” This would include locations other than emergency shelters that provide similar services to the homeless and disadvantaged. Four blocks away is Brookland Manor, a 20 acre, 19 building site with 535 low-income housing units – soon to be replaced by 1,760 residential units, including 200 senior plus 265 low-income housing units as the developer sets aside not 10%, but 20% “affordable units.” The National Center for Children and Families at 1438 Rhode Island Avenue is a referral facility which serves “homeless families, victims of domestic violence, and children and adolescents.” About two blocks from the site is the Veterans Administrations Community Resource and Referral Center, a “24/7 hub to combat homelessness among veterans.” Only 550 feet from the site are the 1545

Girard Street Apartments, advertised as 25 “affordable luxury apartments for seniors,” but which house “10 formerly chronically homeless individuals.” A church-run group home for the elderly sits 350 feet away from the site on Hamlin Street. Additional community-based residential facilities also exist within a four-block radius, including 1814 Hamlin Pleasant Hill, House of Togetherness and Andrus House. Ex. 119 at 23; Ex. 202.

III. APPLICANT’S PROPOSED PROJECT

35. The City has proposed for 1700 Rhode Island Avenue, N.E. a 46-unit emergency shelter for 150 persons plus a staff of anywhere from 10-27, depending on the time of day. Ex. 7 at 2-3.

36. The proposed 69.8 foot, six-story shelter building would be constructed as an addition to the police station building, whose one-story rear portion of the original structure would be razed. Oral Test. of Ronnie McGhee, 19450 Tr. 32.

37. The residential units would be dormitory rooms without cooking facilities. The majority of the rooms would share bathrooms accessed from the hall. Meals would be delivered by van twice a day and served to residents in a dining room on the first floor. The facility would offer limited services such as counseling, but, critically, no child care. The courtyard would serve as green space and a play area for the children. Id. at 38-43.

38. The MU-4 zoning applicable to the site permits an emergency shelter for up to 4 persons and, by special exception, for 5 to 25 persons if certain conditions are met. A further density increase to exceed 25 residents can be requested and is sought here. Variances are needed and sought to exceed the permitted 50 feet in height and 2.5 FAR, and to reduce the off-street loading and delivery space requirements. Special exception relief is needed and sought to exceed the 60% lot occupancy limit, to reduce the open court minimum width, to reduce the rear yard minimum, and to reduce the on-site parking requirement.

IV. Compliance with the District of Columbia Comprehensive Plan

39. D.C. Code §1-306.01(b) states:

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

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

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

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

...

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

40. D.C. Code §1-306.40 states:

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

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

Maintain a variety of residential neighborhood types in the District, ranging from low-density, single family neighborhoods to high-density, multi-family mixed use neighborhoods. **The positive elements that create the identity and character of each neighborhood should be preserved and enhanced in the future.** (emphasis added)

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

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

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

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

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

44. Comprehensive Plan Policy UNE 1.1.1, Neighborhood Conservation, states:

Protect and enhance the stable neighborhoods of Upper Northeast, such as Michigan Park, North Michigan Park, University Heights, Woodridge, Brookland, Queens Chapel, South Capital, Lamond Riggs, and Arboretum. The residential character of these areas shall be conserved, and places of historic significance, gateways, parks, and special places shall be enhanced.

45. Comprehensive Plan Policy UNE-2.54 Rhode Island Avenue Corridor, states:

Strengthen the Rhode Island Avenue corridor from 13th to 24th Street NE as a pedestrian oriented mixed use district that better meets the needs of residents in the Brentwood, Brookland, Woodridge, and South Central neighborhoods. Infill development that combines ground floor retail and upper-story office and/or housing should be encouraged.

B. Facts Bearing on Compliance With the Comprehensive Plan

46. DGS claims that "...the provision of a short-term family housing facility with 46 family units and wrap around services on-site is in harmony with the stated goals in the Comprehensive Plan's Housing Element to provide small-scale emergency shelters." Ex. 36 at 8. But the relevant provision, Policy H-4.2.8, explicitly discourages placement of "institution-like" emergency shelters in residential areas and there is nothing "small scale" about the impact of this proposed shelter on its immediate neighborhood.

47. The Small Area Plan for the Rhode Island Avenue Corridor, "The Diamond of the District," <https://planning.dc.gov/publication/rhode-island-avenue-diamond-district-small-area-plan>, provides context for interpretation of other elements of the District of Columbia's Comprehensive Plan. Therein, planning officials stated several goals for Rhode Island Avenue in general include creating "pedestrian-friendly centers" at several junctures along Rhode Island Avenue, including the segment from 17th to 24th streets, which is earmarked in that plan for a "Main Street" designation as well as an "Arts District" designation. In order to achieve a vibrant streetscape, "this plan recommends that new licenses for storefront churches, check-cashing services, addiction treatment facilities, and group residential facilities are extremely limited or prohibited". (p. 4). On the area that encompasses the 1700 and 1736 Rhode Island Avenue sites continuing back to Hamlin street, the plan recommend "mixed-income housing" with "parking as required". (p. 23).

Furthermore, it spells out that approval of plans for new construction should ensure that those projects “[m]ass and scale new construction to ‘fit in’ or architecturally reference existing neighborhood scale.” (p. 38) Ex. 119 at 16 (Letter of John Iskander). The proposed shelter does not fulfill any of these recommendations.

48. The Small Area Plan identifies “One of the key assets of the corridor [being] its fabric of existing historic buildings” and specifically recognizes the “Opportunity for the preservation of the Police Youth Station.” (p. 14). Ex. 119 at 28. Demolishing an integral part of the existing structure (it is *not* an “addition”) is not consistent with “preservation.”

V. Applicant’s Request To Build an Emergency Shelter for 150 Residents in Zone MU-4.

A. The Proposed Shelter Far Exceeds the Number of Residents Permitted in Zone MU-4 As of Right and the Number Generally Contemplated by Special Exception

49. The maximum size emergency shelter permitted as of right in zone MU-4, is a shelter for 4 residents. Subtitles U§512.1(a); U §401.1(a); U §301.1; U §202.1(h). The regulations allow a special exception for a shelter designed to house 5 to 25 residents if certain defined conditions are met. Subtitle U §513.1(b).

50. The proposed shelter is designed to house 150 residents. Ex. 47 at 1. That is 37 times the number of residents permitted as of right, and more than 6 times the number of residents generally contemplated by special exception in the MU-4 zone.

51. The proposal is to put the 150 residents in a 6-story building with a footprint of about 9,000 square feet. Ex. 55 at 13. This is density of 25 per floor or 60 sq. ft. per person, a far higher density than any other building in the area.

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

52. The rationale given by the District for its need for the proposed shelter is that the proposed shelter is needed to close D.C. General. Ex. 185 at 3; Ex. 186 at 2.

53. The District claims that only a shelter with 46 units at the Site will allow it to meet this goal, but it offers no details, just conclusory assertions.

54. The District has testified that it needs “approximately” 280 replacement units for DC General. Ex. 186 at 2.

55. In 2016 testimony before the Council, the Deputy Mayor for Health and Human Services testified that the city needed only 270 units to close D.C. General, not

the 280 that is now asserted by Ms. Zeilinger. Test. of Brenda Donald, attached to Ex. 184 at 4. No reason has been given for this discrepancy.

56. Aside from Ward 5, the Homeless Shelter Replacement Act, D.C. Act A21-0412, authorizes shelters of 29 units in Ward 1, 49 units in Ward 4, and 50 units in each of Wards 3, 6, 7, and 8. Ex. 184 at 26. That is a total of 278 units even with no units in Ward 5.

57. The Council's Committee Report asserts that the 29-unit shelter in Ward 1 is not part of the plan to replace D.C. General, but rather is a replacement for another existing shelter. Ex. 184 at 6. There is no D.C. General replacement shelter slated for Ward 2. In other words, neither Ward 1 nor Ward 2 is participating in the effort to replace D.C. General. Mr. Young testified that this is an "All 8 Ward Strategy," Ex. 185 at 3-4, but only 6 Wards are involved in the replacement plan.

58. Even excluding the Ward 1 shelter from the list of replacement shelters, there are 249 D.C. General replacement units in Wards 3, 4, 6-8. That means that even crediting the District's asserted needs, the programmatic needs claimed by the District could be met with a shelter of 21 units in Ward 5 to reach 270, or 31 units to reach 280.

59. DGS Director Gillis testified that if the City were to reduce the height of the proposed shelter building and thereby further reduce the number of families for Ward 5, "we wouldn't have enough units across our system to accomplish the goal" of replacing approximately 280 family units. Oral Test. of Greer Gillis, 19450 Tr. at 109:5-8. This is not a correct statement, since a maximum of only 21 (or 31) units in Ward 5 is needed to meet that goal.

60. Applicant has not provided more than conclusory assertions that it could not satisfy its needs by operating smaller shelters at this or other locations. Mr. Young asserted that operating two shelters would double operating costs (Oral Test. of Laura Zeilinger, 19450 Tr. at 88). But it is self-evident that with fewer residents at such shelters, one would need fewer security personnel and fewer case workers per site, and real costs would not double. Moreover, Applicant provided no explanation for there being no ability to share some personnel among multiple sites.

61. More generally, the cost of operating one shelter compared to two or more shelters were never stated or even estimated. No budgets were provided. Thus, there is no basis in the record to allow the Board to determine how much more in real dollars it would actually cost to operate smaller shelters compared to placing a 46-family shelter on this site.

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

62. In making the decision to designate the 1700 Rhode Island Avenue as the site for the Ward 5 shelter, the Council did not conduct a systematic search for

potential sites to purchase, and did not issue any public request for proposals or solicitation for offers for sites to purchase. See Parts I, Br. I.C., *supra*.

D. The Proposed Shelter Will Have Adverse Effects on the Neighborhood.

63. One of the conditions set forth in Subtitle U §513.1(b) is that “[t]he facility shall not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area.”

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

- Loss of community character, relationships and support networks. Ex. 119 at 3, 15.

- Noise and traffic congestion related to loading activities. Tr. at 180

- Congregations of visitors (who would not be permitted in the shelter) in the streets and sidewalks Ex. 119 at 5, 20.

- Loss of light and air from the dominating mass of the shelter addition Ex. 60. Ex. 119 at 13, 15, 21. Ex. 144. Ex. 130.

- As shown by the sun studies, Ex. 36A3, Tab A, the current loss of light and air due to the abutting condominium is minimal. However, the loss would become significantly greater if the shelter were constructed. In addition, the sun studies are based on an incorrect height of 50’ for the condominium vs. 45’ actual, as also incorrectly cited by the Office of Planning (Ex. 49 at 10), so the relative impact will be even greater than shown in these studies. Ex. 119 at 4.

- The abutting condominium building at 2909 17th St. would be most severely impacted; instead of a bright cheery southern sun exposure, the proposed shelter would offer a massive and morally depressing 70’ wall for the courtyard vista from the condos (living rooms, dining rooms, and kitchens of all six units). The residents would be deprived not only of direct sunlight but also of open sky because the shelter would loom an additional 25 feet above the highest unit. Ex. 119 at 3. The shelter’s shadow would also impact the life and growth of all the trees and shrubs in the condominium courtyard, built to a size to satisfy the Green Area Ratio. Ex. 197.

- Apparently DGS now agrees with CFRO that some loading/unloading from the alley parking is not viable and proposes to establish a no parking zone directly on 17th Street for this purpose. Tr. at 52. This moves these noisy and disruptive activities into the street and sidewalk of the residential area, with negative impact on a daily basis. Tr. At 180.

- Loss of on-street parking due to staff and visitors parking Ex. 119 at 4, 24, 29. and from a no parking zone that would be designated for loading. Tr. at 52.

- Loss of property value. Ex. 119 at 21. Ex. 130.

- Safety concerns with the lack of sidewalks on half of the nearby streets. Without adequate staff parking, elderly neighborhood residents AND shelter staff all risk being hit by cars as they go to work, shop, visit a neighbor or catch a bus. Ex. 119 at 24, 29.

- Safety concerns about how firefighters, from a 15' alley, would extend ladders up the side of a six-story building next to a 150' electrified communications tower. Ex. 119 at 24.

- Rhode Island Avenue neighbors and businesses are already detrimentally impacted by the relentless insertion of social services and subsidized housing: "The severe concentration of community-based residential facilities in the Northeast quadrant . . . [creates] a de facto service district which undermines the ability of community residents to achieve the goal of normalization and community integration." DC Dept. of Housing and Community Development, FY16 Consolidated Annual Performance Evaluation Report, p. 12, [https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/FY2016%20CAPER%20Final_3_0.pdf] and Ex. 119 at 17, 23.

65. Applicant asserts that the average "family" in this shelter will be a single mother with two or three young children, most of whom are younger than school age. Ex. 186 at 3-4; Oral Test. of Laura Zeilinger, 19450 Tr. at 36:18 – 37:1.

66. Day care is not available at the site. Ex. 186 at 6-7. Thus, shelter residents will have to travel elsewhere for day care. Applicant provided no information about the availability of nearby day care for residents of the shelter.

67. The proposed shelter playground for up to 90 children would only be 14' x 13', Ex.5. and would be insufficient to safely accommodate even a modest fraction of the resident children at peak times (e.g. after school). Ex. 119 at 13, 40.

68. The narrow strip of full shadow "relaxation" area for the shelter children and adult residents – in between the 70' north wall of the shelter and the 45' tall condominium – would be claustrophobic, not the happy relaxation space that DGS claims it would be.

69. Applicant asserts that most families will elect to keep their children in the schools they are currently attending, rather than transferring to the local elementary school. Oral Test. of Laura Zeilinger, 19450 Tr. at 273:8-10. Thus shelter residents and their children will have to travel to other areas of the city in order to take their children to school. The DDOT review asserts that "children enrolled in DC Public Schools (DCPS) are eligible for DC One Card, which allows students to ride transit free." Ex 47 at 4.

70. The Transportation Assessment by Gorove/Slade, Ex. 29, asserts that the number of shelter residents who own cars is negligible, and accordingly it is anticipated that residents will not use any automobile transportation to access the site. Ex. 29 at 9-10.

71. The Transportation Assessment states that there are four car share stations located near the site available for use of the shelter residents. Ex. 29 at 4. Applicant has provided no evidence that residents of this homeless shelter will be able to make use of car share services.

72. The Transportation Assessment identifies two Capital Bikeshare stations within a mile of the site. Ex. 29 at 3 & Fig. 3. But the Assessment estimates that residents of this proposed shelter would make zero trips via bicycle. Id

73. The Transportation Assessment performed a “survey” of parking occupancy in the neighborhood of the proposed shelter, on a single weekday evening from 5 to 11 PM, and concluded that the area around the site has more than enough parking capacity to absorb the increase in parking from the project. Ex. 29 at 13-14.

74. The Assessment’s favorable conclusion regarding on-street parking was contradicted by citizen testimony that parking is a constant problem in the neighborhood of the proposed shelter. Ex. 131 at 29-39; 19450 Tr. at 185.

75. The Transportation Assessment does not take into consideration that there are two very active churches within two blocks and it is often impossible to find a reasonable place to park during regular and random one-off church events. Tr. at 186.

76. The Transportation Assessment is deeply flawed, failing to account for 9 new spots needed at 2909 17th St for the 6 condo units immediately adjacent to the proposed site, 2 additional spots that will be needed at 2911 17th St. after that property is sold to a new family, parking for 15 new parking spots that will be needed for 1715 Hamlin, the parking needed for the 42-unit apartment building coming to 2027 Rhode Island Avenue, and the 30 parking spots needed for the project across the street at 1515 Rhode Island Avenue. Ex. 119 at 4; Tr. at 186; Ex. 204A-B at 44.

77. The proposed shelter will create additional noise in the neighborhood that residents are concerned will not be adequately buffered, thus interfering with their quiet enjoyment of their properties, particularly with up to 90 children constrained to a 14’ x 13’ play area. Ex. 119 at 5, 13, 15. “With this action, the District is taking the quietness of my life. It will be never quiet because it cannot be quiet when you have 70 feet away an institution-like facility with 150 residents + 27 employees on such a tiny place.” Ex. 130 at 5.

VI. The Requested Height and FAR Variances Would Result in a Structure Out of Scale with the Neighborhood

A. The height and bulk of the proposed shelter is considerably greater than is permitted in Zone MU-4 under Subtitle G.

78. A height of 50 feet and an FAR of up to 2.5 is permitted as of right in zone MU-4. Subtitle G §§ 403.1, 402.1.

79. The proposed shelter is 69.8 feet high with an FAR of 3.51. The requested height variance is therefore almost 40% and the FAR variance is also 40%.

B. Applicant has failed to show that a lower shelter will not meet the District's programmatic needs.

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

81. Applicant claims that only a shelter with 46-50 units will allow it to meet this goal. However, as explained in Part V.B of the Findings, Applicant has not established closing D.C. General requires a 46-unit replacement building in Ward 5 nor has it shown that a smaller shelter will not meet the District's programmatic needs.

82. Even if a shelter with 46 units were necessary to meet the City's goals, Applicant has been unwilling to consider alternative designs that could result in a lower building that could still accommodate 46 units. Test. of Laura Zeilinger, 19450 Tr. 75-76.

C. The proposed shelter will tower over the neighboring single-family homes

83. The single-family homes on the same block of 17th Street, N.E., and across the street are all two-story homes with a height of under 40 feet. The tallest building on that block on either side is the new condominium building abutting the property to the north. Its height is 39-45 feet and four stories.

84. The proposed shelter will tower over the nearby single-family homes, and the abutting condominium, depriving residents of their privacy and cutting off their sunlight, air and open sight-lines.

D. ANC 5B has objected to the requested height and FAR variances, and its objections must be given great weight.

85. On March 17, 2017 ANC 5B adopted a resolution which objects, *inter alia*, to the requested height and FAR variances. Ex. 208.

86. The ANC 5B Resolution states:

ANC 5B believes a shorter building would be more appropriate given the nearby single-family homes and townhomes and the site's zoning. ANC 5B finds that permitting an increase in height ... to 70 feet would substantially impair the intent, purpose and integrity of the zoning plan, because the height is not within the range of a low-to moderate-density zone.

Ex. 208 at 3.

87. The ANC5B Resolution also recounts numerous concerns that many residents of ANC5B had expressed: the lack of transparency in the site selection process; that the lot is too small for the size of the project; that the small number of parking spaces on site will burden existing residents (especially elderly residents); that increased traffic will pose pedestrian risks; that the play area for children residing in the homeless shelter is too small; and that the building height is incompatible with surrounding properties. *Id.* ANC5B expressed support for the reduction in court width, but otherwise opposed all other requests for relief: rear yard, loading and delivery space, FAR, height, lot occupancy, and parking. *Id.* at 2-3.

E. The U.S. Commission of Fine Arts objected to the proposed height, and it would be highly unusual for the District to proceed in light of its objections.

88. The CFA did not find the proposed design adequate enough to fully review, and so “did not take an action and requested a new concept proposal for the project.” Ex. 106 at 2. CFA found “a mismatch between the size of the program and the constraints of this small site.” *Id.* CFA suggested a reduction in the number of units and “relocating the telecommunications facility to another site.” *Id.*

89. The CFA suggested a number of ways the building might be improved on redesign, observing that the building proposed “is too tall for its context, appears bulky, and overwhelms the historic Colonial Revival-style building.” *Id.* The CFA also had numerous design recommendations for more compatible integrated architecture and improved, better integrated exterior spaces. CFA concluded by stating that it “anticipates the submission of a new concept design for this project that responds to its comments.” *Id.* at 3.

90. DGS Director Gillis indicated that there are instances where the DCRA, the “permitting arm” “discerns that CFA recommendations are unnecessary, or inappropriate, in which case they may issue the permit in light of outstanding CFA recommendations.” Oral Test. of Greer Gillis, 19450 Tr. at 249:10-15. However, the CFA is sensitive to programmatic goals and its review should not be dismissed as having been conducted in a design vacuum. In fact, the CFA expressed support “for the goal of building transitional housing for homeless families in established residential neighborhoods.” Ex. 106 at 1.

VII. A Variance to Allow the Shelter to Be Built without a Proper Loading Dock and Delivery Space Would Have an Adverse Impact on the Neighborhood

91. Under 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.

92. The proposed shelter, which exceeds 30,000 square feet, does not provide a loading berth or a service-delivery area. See Ex.94A at 16.

93. Applicant relies on its Transportation Assessment, Exs. 29, 43, to support its claim that no loading dock is necessary. However, that assessment has no supporting evidence or analysis and is wholly silent about the many needs that a loading dock serves. Ex. 37 at 24.

94. Applicant denies that it will be receiving large shipments or deliveries. However, it is reasonable to assume that a shelter designed for 150 or more persons will have such needs. For example, the operation of the shelter building will need loading/unloading facilities for deliveries, vehicles for maintenance of large systems, furniture replacements and especially trash pick-ups.

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

VIII. The Special Exception for an 86% Decrease In The On-Site Parking Requirement is Directly Traceable to the “Mismatch” Observed by CFA

96. U § 513.1(b)(2) specifies that when a special exception for an emergency shelter with more than 25 persons is granted, “[t]here shall be adequate, appropriately located, and screened off-street parking to provide for the needs of occupants, employees and visitors to the facility.” This standard does not set the parking needs of “occupants” and “visitors” at zero, yet that is exactly what is proposed in this application, by providing only three on-site parking spaces, identified in the Transportation Statement as exclusively for staff. Ex. 29 at 12; Ex. 43.

97. A quantitative assessment of the parking in relation to C §701.5, which matches uses to parking space requirements for an emergency shelter (.5 spaces per 1,000 sq ft of GFA), reveals that staff parking is also seriously impacted by the proposed shelter plans. DGS states that the parking requirements are satisfied with 22 spaces (.5 per 1,000 sq ft of GFA), for an “emergency shelter.” But only 3 on-site spaces are proposed, which is a significant shortfall from the standard requirement, by 19 spaces.

98. The parking minimum of C §701.5 –22 spaces – is proposed to be reduced by special exception relief to 3. This would be a $(22-3)/22 = 86\%$ reduction. DGS claims that there is adequate on-street parking within 600 feet of the property. The Transportation Assessment includes an on-street parking inventory/utilization analysis, but it is not geared to this 600-foot limitation and presents otherwise inconclusive data on DGS’s claim of adequate on-street parking.

99. No request is made for special exception relief under C § 703.2(c), the proper evaluative framework for relief from parking requirements on the basis of on-street parking. That framework requires proof that the reduction allowed is only for spaces that cannot be provided on site. C § 703.3. DGS’s own arguments make clear

that it is not possible to fit 22 (and maybe not even 11) parking spaces on the Site while still achieving a facility of the desired size.

100. In short, the parking deficiency on site is directly linked to what, CFA described as, "a mismatch between the size of the program and the constraints of this small site." Ex. 106 at 2.

IX. The Special Exception for a 22% Increase In Lot Occupancy Is Also Directly Traceable to the "Mismatch" Noted by CFA.

101. DGS seeks a lot occupancy of 73%, whereas the maximum lot occupancy allowed in the MU-4 zone is 60%. This is an increase of $(73-60)/60 = 22.3\%$. DGS makes the same argument for the lot occupancy increase as is made for the FAR increase. DGS claims the existing structures covering 28% of the property preclude maximizing their FAR potential, so as to reduce lot occupancy. Ex. 36 at 18.

102. The amount of increased lot occupancy sought, measured in square feet, is $.13 \times 12,336 = 1604$ sq. ft., which means a total of 9005 sq ft. of gross floor area on the property. No lot occupancy increase would be needed, however, if the lot were $9005/.6 = 15,008$ sq ft., as 2672 sq. ft. bigger.

103. Again, in other zones in Ward 5, depending on the lot occupancy requirement for the zone, there may be no need for relief. Here, the need for the increase is directly tied the "mismatch" between program size and lot size, as CFA has observed.

X. The Special Exception for a 27% Reduction In Open Court Width Is Also Directly Traceable to the "Mismatch" Noted by CFA

104. DGS has designed the addition to the police station in a way that it has an open court on the south side with a width of 17 feet, whereas the minimum court width in any MU zone for a building height of 69.83 feet is 23.33 feet. G § 202.1. Hence, a reduction of 6.33 feet from the minimum is sought, or $6.33/23.33 = 27\%$.

105. The initial application, Ex. 7 at 12, makes clear that a redesign to eliminate the narrow court would result in a loss of up to 5 living units. Hence, the court width reduction request is directly related to achieving the number of living units proposed, i.e., 46, which itself is a 4-unit shortfall on the statutory goal of "up to 50 units."

106. Inspection of the site plan for the project, however, makes clear that if the property were just 7 feet wider, there would be no need for the open court variance. Hence, the shortfall in court width is directly linked to the fact that the site is too small for the intended program size, as noted by CFA.

XI. The Rear Yard Reduction Request Raises Unresolved Problems

107. DGS states that the rear yard requirement in the MU-4 zone is 15 feet, measured from the center line of the public alley behind the rear lot line to the first 25 feet

of the rear building wall, and measured from the rear lot line above the first 25 feet of the rear building wall. DGS is thus seeking to convert the east lot line, which is parallel to 17th Street, N.E., and to the public alley, to a rear lot line.

108. While the diagrams supplied by DGS do not provide any scaled drawings in confirmation of these figures, the applicant claims that the rear yard for the lower 25 feet of the building is 7.5 feet, i.e., 7.5 feet short of the 15-foot minimum, a reduction of 50%. Above the 25-foot plane, the shortfall is the entire 15 feet, for a 100% reduction.

109. DGS is not seeking a reduction for the north lot line, which is opposite Rhode Island Avenue, N.E. DGS Seeks to convert that lot line from its long historical use as a rear lot line in order for it to be treated as a side lot line, and it is proposed to have a setback from the building of 11.9 feet, just a little more than the minimum of 11.64 feet for a building height of 69.83 feet. G §406.1. This designation change is both questionable and highly problematic, as set forth in the Conclusions of Law.

CONCLUSIONS OF LAW

I. APPLICANT'S CLAIM THAT THE SELECTION OF THE SITE IS MANDATED BY LAW IS ERRONEOUS AND DOES NOT SUPPORT ZONING RELIEF

1. Applicant's need for zoning relief is directly traceable to the District's choice of this site for its Ward 5 shelter. Indeed, much of Applicant's arguments are centered around its claim that the selected site has been mandated by the City Council, so it has no choice but to place the Ward 5 shelter on this site. Ex. 36 at 10.

2. Applicant's claim is erroneous, because if it was correct, it would effectively strip this Board of its authority to deny the requested zoning relief if warranted. The District knows there is no such mandate, as confirmed by the District's own words before the D.C. Superior Court. There, the Executive and the Council argued to the Court, in opposition to CFRO, that the Council's designation of the Site was merely preliminary and was not final or binding. Specifically, the Council and the Mayor argued that the Shelter Act "does not direct the construction of a shelter at the Rhode Island Avenue Site or any other location." Rather, it "authorizes, but does not require" that action. The Court dismissed CFRO's complaint.

3. The language of the Homeless Shelter Replacement Act itself makes clear that the construction of a shelter on the Site is not mandated, but is only authorized. The statute states that "[t]he Mayor is **authorized** to use funds appropriate for capital project HSW05C-Ward 5 Shelter to construct a facility to provide temporary shelter for families experiencing homelessness **containing up to 50** DC General Family Shelter replacement units on District-owned land at 1700 Rhode Island Avenue, N.W." D.C. Law 21-141, § 3(a)(4) (emphasis added).

4. DGS's argument to the contrary before this Board is flatly inconsistent with positions that the District, including the Executive, successfully advanced before the

District Court. DGS may not now be heard to advance a contrary position. DGS is estopped from advancing this position before the Board.

5. In light of the clear record, and the plain language of the Shelter Act, the Board rejects Applicant's claim that it "must" build a shelter on the Property. The Shelter Act does not provide any basis for mandating any of the zoning relief sought by Applicant.

II. THE PROPOSED SHELTER DOES NOT COMPLY WITH U §513.1(B) FOR AN EMERGENCY SHELTER FOR MORE THAN 25 RESIDENTS IN ZONE MU-4

A. Standards for Approval

6. The maximum size emergency shelter permitted as of right in zone MU-4, is a shelter for 4 residents. U §512.1(a); U §401.1(a); U §301.1; U §202.1(h). The regulations allow a special exception for a shelter designed to house 5 to 25 residents if certain defined conditions are met. U §513.1(b).

7. To obtain a special exception to place an emergency shelter with more than 4 residents in zone MU-4, Applicant must show, among other things, that the "facility shall not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area," U §513.1(b)(4), and that Applicant will provide "adequate, appropriately located and screened off-street parking to provide for the needs of occupants, employees, and visitors to the facility." U §513.1(b)(2).

8. An applicant may seek a special exception to place a shelter that exceeds 25 residents only upon proof with competent evidence that "The program goals and objectives of the District of Columbia cannot be achieved by a **facility of a smaller size** at the subject location and if **there is no other reasonable alternative to meet the program needs of that area of the District.**" U § 513.1(b)(6)(emphasis added).

9. The conditions set forth in U §513.1(b) are **mandatory** and are not, in turn, subject to exception. The Regulations make clear that, to be granted, the special exception "will meet such special conditions as may be specified in this title." X § 901.2. The conditions written in U §413.1(b) are absolute requirements; the Zoning Regulations do not provide for a test of degree, a sliding scale, or exceptions to any of the conditions in U §513.1(b).

B. The Proposed Shelter Is Beyond the Range of Sizes Reasonably Permitted by U §513.1(b) in the MU-4 Zone

10. For the reasons discussed above, the sheer size of the proposed shelter is not "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps." Therefore, the special exception as to size (number of units) must be denied.

11. For the reasons discussed above, the proposed shelter will "tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and

Zoning Maps.” Therefore, the special exception as to size (number of units) must be denied.

12. The area closest to the proposed shelter is residential, and low to moderate density, consisting primarily of single-family residences on the same block of 17th Street, N.E.

13. Section 513.1(b) does not contemplate that an emergency shelter for 150 residents may be placed in zone MU-4. The requested shelter is 37 times the size of a shelter permitted as of right in the zone, and more than 6 times the maximum size generally contemplated for the special exception.

14. Approving an emergency shelter in the MU-4 Zone for 150 residents stretches the authority provided in U §513.1(b)(6) beyond what may be allowed in that zone, which is limited to moderate density residential buildings. Therefore, the special exception as to size (number of units) must be denied.

15. Applicant claims that the special exceptions granted by the Board for homeless shelters in other cases in 2016 provide valid precedent here. Those cases were uncontested, and no issue regarding the maximum size for an emergency shelter was raised. Accordingly, those cases are not reliable precedent to support Applicant here.

16. In any event, the massive deviation of the proposed shelter from the ordinary maximum contemplated by U §513.1(b) means that all the conditions set forth in that section must be strictly met by detailed, clear and convincing evidence. Conclusory assertions are not sufficient.

C. Applicant Has Failed To Meet its Burden of Proving that the District’s Program Goals and Objectives Cannot Be Met by a Facility of Smaller Size, as Required by U § 513.1(b)

17. Applicant has not demonstrated that the District’s program goals and objectives for Ward 5 cannot be achieved by a facility of a smaller size. Accordingly, the application must be denied.

18. The key programmatic requirement identified by Applicant is the need to close DC General. As discussed in Part V.B. of the Findings, a shelter substantially smaller than 46 units at the Site would enable the Applicant to close DC General.

19. Applicant has not shown that it is unable to build a larger shelter in Ward 1 than the proposed 29-unit shelter, or that it cannot build a shelter for this program in Ward 2 to further reduce the number of units needed in Ward 5.

20. Applicant has not demonstrated that it would be cost-prohibitive to build more than one shelter in Ward 5. The Applicant provided only conclusory testimony that operating expenses would be higher to operate two shelters. It did not provide even a ballpark estimate of the expenses to operate the proposed shelter, let alone evidence to

demonstrate the cost increase of operating two shelters in Ward 5, to allow the Board to evaluate those costs in the context of other costs of the project or the entire budget.

21. Applicant is not legislatively required to build a shelter of 46 units at the proposed site. The applicable statute does not mandate any shelter at the proposed site, and, at most, provides authority for a shelter of up to 50 units at the Site. Ex. 55 at 2. For the foregoing reasons, the Applicant has failed to demonstrate that it could not meet its programmatic needs with a shelter smaller than one proposed for this site.

D. Applicant Has Failed To Meet its Burden of Proving that there Is No Reasonable Alternative Site for a Ward 5 Shelter, as Required by U § 513.1(b)(6)

22. Applicant has not demonstrated that there is no reasonable alternative site for a Ward 5 shelter that would not raise the multitude of zoning violations in need of relief presented by the site. Under U §513.1(b)(6), these circumstances necessitate a systematic search by the applicant for alternative sites.

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

24. In its written submissions in this case, Applicant neither cited nor offered anything more than conclusory assertions to demonstrate that a systematic search for alternative sites was made.

25. The evidence shows that the site designated by the Council was based on a suggestion by members of the public opposed to the Mayor's proposed site at 2266 25th Place, N.E. Such *ad hoc* citizen input does not equate with the kind of systematic search required by U § 513.1(b)(6).

E. Applicant Has Failed To Meet its Burden of Proving that it Will Provide Adequate Off- Street Parking for Occupants, Employees and Visitors, as Required by U § 513.1(b)(2)

26. Applicant is obliged to provide 22 spaces for an emergency shelter of the size it wishes to construct. C §701.5 (.5 spaces per 1,000 sq. ft. of gross floor area); U §513.1(b)(2).

27. Applicant proposes to provide only 3 on-site parking spaces for staff, and none for residential, visitors or anyone else.

28. Applicant does not have the option of seeking to be excused from the minimum parking requirement by, in effect, seeking a special exception within a special exception. Even if such a request would have been proper, Applicant failed to make it. Any relief would be pursuant to C §703.2(c), requiring proof that the reduction proposed is only

for spaces that cannot be provided on site. C §703.3. No request for such relief was made by the Applicant.

29. Based on Part VIII of the Findings, the Board concludes that Applicant is seeking an 86% decrease in the parking requirement of 22 spaces pursuant to a reduction of 19 spaces from what is required under C §701.5.

30. If such a reduction were allowed, Applicant would be required to make application for it under C §703.2(c), and show that the reduction allowed is only for spaces that cannot be provided on site. C § 703.3. The Applicant has made no such application.

31. Even if Applicant had made such an application and it were deemed proper, it would still have to be denied because the parking deficiency is directly traceable to the Applicant's intentional selection of this site, which was known by the Applicant at the time to be undersized for meeting – or even coming remotely close to meeting – the on-site parking requirement. Hence granting the relief would not be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps X §901.2(a) and would tend to adversely affect the lawful and proper use by neighbors of their properties. X §901.2(b).

32. Accordingly, Applicant has failed to demonstrate that it will provide the requisite parking for the shelter. Because Applicant has failed to meet a mandatory condition of Subtitle U, § 513.1(b), i.e., subparagraph (2), the Application for a special exception must be denied.

F. Applicant Has Failed to Meet its Burden of Proving that the Proposed Shelter “Shall Not Have an Adverse Effect on the Neighborhood Because of Traffic, Noise or Operations,” as Required by U § 513.1(b)(4); The Record Is to the Contrary

33. The Applicant has failed to show that the proposed shelter “shall not have an adverse impact on the neighborhood because of traffic, noise, or operations” as required by U § 513.1(b)(4). To the contrary, CFRO has demonstrated that such adverse impacts are likely. See Part V.D. of the Findings.

34. CFRO has shown that the operation of the proposed shelter is likely to have the following adverse impacts on the neighborhood: (i) increased traffic; (ii) increased noise; (iii) exacerbation of scarce parking; and (iv) loss of light and air.

35. Accordingly, because Applicant does not satisfy U § 513.1(b)(4), the application must be denied.

III. APPLICANT BEARS THE BURDEN OF PROVING ALL ELEMENTS NEEDED TO QUALIFY FOR ANY SPECIAL EXCEPTION AND ANY VARIANCE; IT IS NOT EXCUSED FROM COMPLIANCE WITH ZONING REQUIREMENTS BECAUSE IT IS THE GOVERNMENT

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

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

38. The Zoning Regulations establish the requirements for the granting of a variance. To qualify for a variance, the applicant must meet the burden of proof to establish each of the requirements with competent evidence in the record, even if no contrary evidence is presented. X § 1002.2.

39. For all variance applications, the applicant must show that “the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.” *Id.*, § 1000.1.

40. To qualify for an area variance, an applicant “must prove that, as a result of the attributes of a specific piece of property described in Subtitle X § 1000.1, the strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to the owner of property.” *Id.*, § 1002.1(a). The attributes “described in Subtitle X § 1000.1” are: “exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property.” As the Court of Appeals said in *Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990) (“[t]he critical point is that the extraordinary or exceptional condition **must affect a single property**”).

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

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

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

42. As discussed below in the context of specific requested variances, Applicant’s programmatic goals are not exceptional conditions that affect a single property.

Nor is the fact that Applicant is voluntarily engaging in other continuing uses of the property.

43. Applicant argues that, because it is “a public service,” it is entitled to a “more flexible” standard for the grant of variances. Ex. 94A at 2-6. It relies on *Monaco v. BZA*, 407 A.2d 1091 (D.C. 1979), *National Black Child Development Institute v. BZA*, 483 A.2d 687 (D.C. 1984) (hereinafter “NBCDI”), and *Draude v. BZA*, 527 A.2d 1242 (1986), for this proposition.

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

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

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

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

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

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

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

48. Here, there is no need to expand an existing use into an adjacent area of common ownership. Nor is there any claim that Applicant needs zoning relief to continue an existing use that was previously allowed. The BZA cases cited by the Applicant, Ex. 94A at 4-5, are inapposite. In each of cases number 18240, 18272, 17973, 16916 and 17609, the applicant sought to expand ongoing, continuing uses at its existing property, and demonstrated that it had no practical alternative. Thus, the cited cases provide no support for Applicant.

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

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

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

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

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

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

55. Rather, the Court has held that where a public service organization invokes the *Monaco* rule to seek to expand its facilities, it must show: “(1) that the specific design it wants to build constitutes an institutional necessity, not merely the most desired of

various options, and (2) precisely how the needed design features require the specific variance sought.” *Draude*, 527 A.2d at 1256.

56. In adopting that rule, the Court of Appeals made clear that the institution seeking a variance must prove “institutional necessity.” That institutional necessity encompasses proof, as in *NBCDI*, that “the great expense of operating offices at another site would cause serious detriment to the Institute,” which it found would “cause undue hardship.” *NBCDI*, 483 A.2d at 690.

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

IV. THE REQUESTED HEIGHT AND FAR VARIANCES ARE DENIED

58. Applicant is seeking a 40% height variance and a 40% FAR variance because it selected a site that does not allow it to meet its asserted programmatic needs in a way that complies with applicable zoning regulations. But Applicant has made no showing that it must place its shelter on this Site – indeed, it did not even look for or consider other sites where lesser or no height relief would be needed. For that reason, as discussed in Parts I.B. and I.C. of the Findings, any asserted difficulty is a self-imposed hardship that alone justifies variance denial.

59. Moreover, the requested variances cannot be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan. The Site is zoned MU-4, which in this circumstance is a surrounding neighborhood that consists primarily of single family homes that are no more than 40 feet and two stories high, and a six-unit condominium with four floors and a 40’ height, and with a zone-compliant FAR of 2.5 or less. Indeed, the maximum height permitted in the zone is 50 feet and the maximum FAR is 2.5.

60. As discussed above, the proposed shelter would be 40% higher and bulkier than what is permitted in the zone. The proposed building will loom over all of the nearby single-family homes, depriving them of their privacy, and cutting off their sunlight, air and open sight-lines. These are factors that zoning laws exist to protect. *See, e.g., Draude, supra*, 527 A.2d at 1252 (quoting the predecessor regulation to Subtitle A § 101.1).

61. ANC 5B, which is familiar with the subject property, objected to the proposed height and FAR variances. Ex. 208. As we must, we give the ANC’s objections great weight and agree with its conclusion concerning the height and FAR variances.

62. The U.S. Commission on Fine Arts similarly concluded that the proposed shelter was “too tall for its context, appears bulky and overwhelms the historic Colonial Revival-style building.” Ex. 106 at 2. The CFA is an expert body that provides credible independent advice regarding architectural design. Its views are persuasive, and we find them persuasive here.

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

64. The attributes “described in Subtitle X § 1000.1” are: “exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property.”

65. The lot on which Applicant wishes to build is of a size that simply does not have the space necessary to build a facility that complies with the height and FAR limitations of the zone and still meet (or come close to meeting) the District’s goal of a 50-unit homeless shelter for Ward 5. This is the “mismatch” clearly recognized by CFA. But this goal is not a practical difficulty caused by the property; it is simply a guideline that Applicant wishes to follow – one that is not tied to any feature of the property. See *Gilmartin, supra*, 579 A.2d at 1168 (“[t]he critical point is that the extraordinary or exceptional condition **must affect a single property**”) (emphasis added). Moreover, in *Gilmartin*, the exceptional conditions included legally valid easements in favor of third parties that limited applicant’s ability to use its property. *Id.* 579 A.2d at 1168. *Gilmartin* does not support an argument that, as here, an applicant’s own voluntary use of other parts of a lot can create an exceptional condition.

66. Applicant’s program preference for a building 40% higher and 40% bulkier than allowed in the zone is just that -- a preference. It is not mandatory. Nor is it a factor that uniquely affects the Property. Accordingly, Applicant does not satisfy the variance standard set forth in X § 1000.1 for the requested height and FAR variances.

67. Nor has Applicant shown that the specific design it desires constitutes an institutional necessity. See *Draude*, 527 A.2d at 1256. Rather, it is merely a desired outcome out of various options. Applicant’s preference for a taller building is not an “institutional necessity.” Applicant has not shown that its needs cannot be met with a smaller shelter. Nor has Applicant shown that its institutional needs cannot be met at another site, for the simple reason that it did not conduct a systematic search for such a site. Accordingly, Applicant does not satisfy even the lesser proof standard for an area variance applicable to a public service organization, as set forth in *Draude*.

68. For the foregoing reasons, the requested variances for height and FAR are denied.

V. THE REQUESTED VARIANCE TO DISPENSE WITH A LOADING BERTH IS DENIED

69. Applicant is seeking a variance to permit it not to build a required loading berth and delivery space. It alleges that the property does not contain adequate room for

them. But Applicant has made no showing that it must place its shelter on this Property – indeed, it did not even look for or consider other sites where this relief would not be needed. For that reason, as discussed above, any asserted difficulty is a self-imposed hardship that alone justifies variance denial.

70. Moreover, the requested loading dock variance cannot be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan. The Applicant relies entirely on its Transportation Assessment to support its claim that no loading dock is necessary. Ex. 94A at 16. But that Assessment has no supporting evidence or analysis for its conclusion that the proposed substandard loading and delivery areas are sufficient. Therefore, Applicant has failed to meet its burden of proof on the requested variance.

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

72. Common sense dictates that a loading and service delivery dock is an absolute necessity for a facility proposing to house 150 residents who will be regularly coming and going with their possessions. Moreover, since residents will be eating in common dining facilities with meals provided by the shelter, food trucks and other service vehicles will arrive twice daily for deliveries. It must be anticipated that a facility this large will also experience emergency vehicles arriving to assist residents in distress. They, too, will need such a dock.

73. Further, Applicant has not shown that there is a practical difficulty caused by the site that justifies the requested variance.

74. The site has none of the attributes “described in Subtitle X § 1000.1” that would preclude compliance. What hinders Applicant is its desire to build so many residential units that there will be no room left to add these features. This prioritization is not a practical difficulty caused by the land.

75. Nor can Applicant show that the specific design constitutes an institutional necessity. *See Draude*, 527 A.2d at 1280. Rather, it is merely the desired outcome from among various options. Applicant has not shown that its institutional needs cannot be met without the variance at this site or by instead choosing a site with ample space to meet its programmatic needs without the variance. Accordingly, Applicant does not satisfy even the standard for a public service organization set forth in *Draude*.

76. For the foregoing reasons, the requested variance to provide no loading dock and as substandard delivery area is denied.

VI. THE 22% INCREASE IN LOT OCCUPANCY IS DENIED

77. Based on Part IX of the Findings, the Board concludes that Applicant is seeking a 22% increase in lot occupancy, from 60% to 73%, and that there would be no need for lot occupancy relief for this project if the lot were only 2672 sq. ft. larger.

78. Accordingly, the need for relief is directly traceable to the mismatch identified by CFA between program size and lot size. Since Applicant was not limited to this Ward 5 location in choosing a Ward 5 homeless shelter site, its need for a lot occupancy increase is a self-imposed difficulty.

79. The record does not contain persuasive evidence that Applicant could not have avoided the need for lot occupancy relief by selecting a slightly larger site in Ward 5 for a homeless shelter.

80. DGS also employs arguments for increased lot occupancy that do not withstand scrutiny. As with the FAR and building height arguments, DGS erroneously argues that lot occupancy would not be a problem if the police station and antenna structures did not already occupy 28% of the property. These structures cannot be ignored; they all contribute to the demonstrable overcrowding of the lot. DGS also attempts to justify greater lot occupancy with many of the same erroneous arguments used for increased building height and FAR rejected above.

81. Given the severe crowding of the site that granting the relief would result in – only 27% open space around a 6-story building that looms over all the smaller adjacent and confronting properties-granting the relief would not be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps X §901.2(a), and would tend to adversely affect the lawful and proper use by neighbors of their properties. X §901.2(b).

VII. THE SPECIAL EXCEPTION FOR A 27% REDUCTION IN MINIMUM OPEN COURT WIDTH IS DENIED

82. Based on Part X of the Findings, the Board concludes that Applicant is seeking a 27% reduction in the open court width and that there would be no need for the reduction if the site were just 7 feet wider

83. Accordingly, the need for relief is directly traceable to the mismatch identified by CFA between program size and lot size. Since Applicant was not limited to this Ward 5 location in choosing a Ward 5 homeless shelter site, its need for a court with reduction is a self-imposed difficulty.

84. In fact, the reduction is intended to avoid having to drop 5 living units from the 46 planned for the site, even though, for reasons previously discussed, 41 units would, along with the homeless shelters planned for the other Wards, meet the goal of closing D.C. General.

85. This tradeoff would be at the expense of the many children expected to reside at the shelter, in that the open court is their intended play area.

86. Accordingly, the Board concludes that granting the relief would not be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps X §901.2(a), and would tend to adversely affect the lawful and proper use by neighbors of their properties. X §901.2(b).

VIII. THE REAR YARD REDUCTION REQUEST IS NOT ADEQUATELY JUSTIFIED

87. Based on Part XI of the Findings, the rear yard reduction request is not adequately justified on this record and is therefore denied. The Board is not convinced that the proper request for relief have been made or that they should be granted if properly made.

88. The conversion of the existing rear lot line to a side lot line is questionable because it has not been certified by the Zoning Administrator and because what is proposed is an “addition” to a building that has fronted on Rhode Island Avenue, N.E. for the past 95 years, and adjacent development has taken place in light of and in reliance on such treatment.

89. It is problematic because it would have significant adverse effects on the property abutting that rear lot line. The north lot line can be treated as a continued, rear lot line. B § 317.2 provides that a lot may have more than one rear lot line.

90. If the north lot line is continued second rear lot line, two considerations come into play. First and least significant, the reduction needed from the 15-foot rear yard requirement would be 3.1 feet, or $3.1/15 = a 21\%$ reduction, increasing the total number of relief requests to eight.

91. More significantly, the project could not comply with G § 1201.1(a) which would require the windows on the north side of the addition to be at least 40 feet from the abutting building to the north. In fact, those windows would be about 12 feet from the adjacent condominium building immediately adjacent to the property to the north.

92. Special exception relief from this 40-foot requirement, reducing it by 70% to 12 feet, could not possibly be justified, given the drastic impact of this 70-foot building on the loss of light and air to the condominium units whose construction was plainly predicated on a continuation of the rear yard setback requirements for the old police station building and any “addition” to it.

93. Even if the north lot line were allowed to be converted into a side lot line, there is no question that relief is made necessary because of the combination of the existing structures on the property and the lot’s overall small size in relation to the dimensions of the proposed addition to and retrofit of the police station building. The initial application states that without the rear yard relief requested, the project would lose, or substantially reduce the size of, 12 housing units and support facilities on floors 3 through 6. Ex. 7 at

12. There would be similar losses on the north side if the north lot line continued to serve as a rear lot line.

94. Once again, therefore, the need for the relief is tied directly to the fact that the site is a mismatch between program size and lot size, a problem that could have been avoided by selecting a more suitable location for the Ward 5 homeless shelter.

95. Accordingly, the Board concludes that granting the relief would not be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps X §901.2(a), and would tend to adversely affect the lawful and proper use by neighbors of their properties. X §901.2(b).

IX. THE REQUESTED RELIEF IS INCONSISTENT WITH THE COMPREHENSIVE PLAN AND WITH THE ZONING REGULATIONS AND MAP, AND MUST THEREFORE BE DENIED

96. To obtain special exception relief an applicant must demonstrate that the requested relief “will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.” X §901.2(a). To obtain a variance, the applicant must show that it can be granted “without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.” X § 1000.1.

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

98. As discussed above, in Proposed Findings Part IV, the Comprehensive Plan recognizes the need to preserve and enhance the identity of each neighborhood, LU-2.1.1, and that when adding any form of group or institutional residence to a residential neighborhood, it should not change its character or its fundamental qualities as a residential neighborhood. LU-3.4.1.

99. In the Upper Northeast Planning Area, the Comprehensive Plan places a high priority on the preservation of existing neighborhoods. UNE-1.1.1. More particularly, along Rhode Island Avenue from 13th to 24th Street, N.E., the Plan encourages pedestrian-oriented mixed use with ground floor retail and upper story office or housing use. UNE-2.5.4.

100. The Applicant claims the proposed shelter is not inconsistent with Policy H-4.2.8 in the Comprehensive Plans Housing Element. Ex. 36 at 14. But that Policy expresses a preference that homeless services be provided “through neighborhood based supportive housing and single room occupancy (SRO) units, rather than through institution-like facilities and large-scale emergency shelters.” The Policy explains in detail the rationale for why such shelters should be a compatible fit in their neighborhood locations:

The smaller service model can reduce the likelihood of adverse impacts to surrounding uses, improve community

acceptance, and also support reintegration of homeless individuals back into the community.

Id.

101. The proposed shelter is not consistent with the scale, function or moderate density character of the surrounding neighborhood and is therefore not consistent with: Policy H-4.2.8, Policy LU-3.4.1, Policy LU-2.1.1 and Policy UNE-1.1.1. Nor does the proposed shelter advance the development goals for this segment of Rhode Island Avenue, N.E., as detailed in Policy UNE-2.5.4.

102. Zone MU-4 is intended to permit moderate density mixed use development in low and moderate density residential areas. G §400.3. Given this purpose, there must necessarily be a limit to the size of an emergency shelter that can be allowed in the MU-4 Zone. The proposed shelter is not one of moderate density. As specified for the future Land Use Map, it is a medium density residential use. 10-A DCMR §225.5. Hence, a six-story shelter of this size in the MU-4 Zone is not consistent with the Comprehensive Plan.

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

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

Respectfully submitted,



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Citizens for Responsible Options

March 31, 2017

CERTIFICATE OF SERVICE

The Citizens for Responsible Options, by and through the undersigned counsel, on March 31, 2017, served the foregoing Proposed Findings of Fact and Conclusions of Law by email on the applicant, Meridith Moldenhauer, Esq., Griffin, Murphy, Moldenhauer & Wiggins, LLP, 1912 Sunderland Place, NW, Washington, DC 20036 MMoldenhauer@washlaw.com and ABigley@washlaw.com; Advisory Neighborhood Commission 5B, 5b02@anc.dc.gov; Advisory Neighborhood Commission 5C, jacquemanning8@aol.com, Single Member District 5B03 Henri Makembe, 5b03@anc.dc.gov; Dept. of Transportation, Evelyn Israel, evelyn.israel@dc.gov; and Maxine Brown-Roberts, DC Office of Planning, Maxine.brownroberts@dc.gov.

Respectfully submitted,



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