

**Application No. 19450 of DC Department of General Services**, pursuant to 11 DCMR Subtitle X, Chapters 9 and 10, for a special exception under the emergency shelter requirements of Subtitle U § 420.1(f), and variances from the maximum number of buildings on a lot requirements of Subtitle C § 302.2, the loading requirements of Subtitle C § 901.1, and the height and number of stories requirements of Subtitle F § 303.1, to allow the construction of a six-story Emergency Shelter facility in the RA-1 Zone at premises 3320 Idaho Avenue N.W. (Square 1818, Lot 849) (the "Project").<sup>1</sup>

**HEARING DATE:** March 1, 2017

**DECISION DATE:** April 5, 2017

## **DECISION AND ORDER**

### **PRELIMINARY MATTERS**

*Self-certification.* The zoning relief requested in this case was self-certified pursuant to Subtitle Y § 300.6(b). (Exhibits ("Ex.") 4, 108). The zoning relief requested was affirmed by the Zoning Administrator. (Ex. 202A).

*Application.* The Application was filed by the Department of General Services (the "Applicant"). The application was filed pursuant to Subtitle X §§ 900 and 1000 for a special exception to operate an emergency shelter use under Subtitle U §§ 420.1(f), and variances from the maximum number of buildings on a lot requirement of Subtitle C § 302.2, the loading requirement of Subtitle C § 901.1, and the height and number of stories requirement of Subtitle F § 303.1. (Ex. 1-14).<sup>2</sup>

*Notice of Application and Notice of Public Hearing.* By memoranda dated January 5, 2017, the Office of Zoning sent notice of the application to the Office of Planning ("OP"); Advisory Neighborhood Commission ("ANC") 3C, the ANC for the area within which the subject property is located; the single-member district representative for ANC 3C06; the Councilmember for Ward 3; the District Department of Transportation ("DDOT"), each of the four At-Large Councilmembers, the Chairman of the Council, and the Department of Human Services. (Ex. 15-25). A public hearing was scheduled for March 1, 2017. Pursuant to Subtitle Y § 402.1, the Office of Zoning mailed notice of the public hearing to the Applicant, the owners of property within 200 feet of the subject property, and ANC 3C on January 5, 2017. (Ex. 26-29). Notice of the public hearing was also published in the D.C. Register on January 13, 2017. The Applicant confirmed by affidavit that it had posted notice of the public hearing on the subject property on February 17, 2017. (Ex. 122).

*Public Hearing.* The Board held a public hearing on the application on March 1, 2017. At the end of the hearing, the Board closed the record except for a submission from the Applicant as well as closing statements and draft findings of fact and conclusions of law from the Applicant and the parties. The Board initially scheduled a decision for March 22, 2017. Following the March 1<sup>st</sup>

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<sup>1</sup> Temporary parking relief from Subtitle U § 203.1(j) will be addressed in a separate proposed Findings of Fact and Conclusions of Law because the Applicant may withdraw its request for this relief prior to the Board's decision hearing date.

<sup>2</sup> Temporary parking relief from Subtitle U § 203.1(j) was added by the Applicant in a subsequent filing. (Ex. 108).

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hearing, Neighbors for Responsive Government (“NRG”), a group that obtained party status in this case, requested a two week extension to file proposed findings of fact and conclusions of law pursuant to Subtitle Y § 601.2. (Ex. 234). The Board granted NRG’s request and, accordingly, moved the decision date from March 22, 2017 to April 5, 2017.

*Requests for Party Status.* In addition to the Applicant, ANC 3C was automatically a party in this proceeding. NRG, an unincorporated membership association created in June 2016 to appeal the site selection decision to the D.C. Superior court, filed an advance-consideration party status request on January 24, 2017. (Ex. 32). Despite an objection to the party status request from the Applicant, the Board granted this request at the February 8, 2017 public meeting. (2/8 Hearing Transcript. at 60-61).

*Applicant’s Case.* Meridith Moldenhauer of Griffin, Murphy, Moldenhauer & Wiggins LLP represented the Applicant. The Applicant provided testimony and evidence in support from Rashad M. Young, the District of Columbia City Administrator, Laura Zeilinger, the Director of the District of Columbia’s Department of Human Services, Greer Gillis, the Director of the District of Columbia’s Department of General Services, Joseph McNamara of Ayers Saint Gross, the project architect, and Nicole White of Symmetra Design, the Applicant’s traffic consultant. Several witnesses were granted expert witness status at the hearing. Director Zeilinger was granted expert witness status in homeless services and operation of homeless facilities and programming, Mr. McNamara was granted expert witness status for architecture, and Nicole White was granted expert witness status for traffic consulting (March 1<sup>st</sup> Hearing Transcript (“Hearing Tr.”) at 11-12). The Applicant and its witnesses described the Project including the Project’s programmatic needs; explained the background on the selection of the site for the Project; explained the community outreach; addressed the need for the various forms of zoning relief requested; and addressed issues regarding potential adverse impact or detriment to the public good. (Ex. 2, 75, and 202). Following the March 1, 2017 public hearing, the Applicant filed additional information requested by the Board on March 10, 2017. (Ex. 235).

*Government Reports.*

*OP Report.* By report dated February 17, 2017 and through testimony at the public hearing, OP “strongly recommended” approval of the application. (Ex. 124; Hearing Tr. at 110). OP found that the application satisfied all the criteria for the requested special exceptions and variances. In particular, OP determined that the Project meets the requirements for special exception approval for the emergency shelter use. OP also determined that the Project meets the requirements for variance relief for number of primary structures on a lot, height and stories, and loading, and that the Applicant faces an exceptional situation resulting in a practical difficulty that will cause no substantial detriment to the public good, nor substantially harm the Zoning Regulations. The Board finds the OP report convincing because of its thoroughness and because of the specialized knowledge OP has for assessing relief in these instances.

*DDOT Report.* DDOT filed a report, dated February 16, 2017, stating that it had no objection to the requested relief. (Ex. 125). DDOT’s report stated that the proposed delivery area is appropriate for the Project’s loading needs. (Ex. 125). DDOT reaffirmed its support for all areas of zoning relief during the March 1<sup>st</sup> hearing. (Hearing Tr. at 111). DDOT also stated that it does not object

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to the relief pertaining to temporary on-street parking during construction of the parking deck. (Hearing Tr. at 111). DDOT noted that it has authorized similar arrangements in the past, including during construction phases at certain D.C. Public Schools. (Hearing Tr. at 111).

*Commission of Fine Arts Letter.* A letter from the Commission of Fine Arts containing comments was submitted to the record. (Ex. 206).

*ANC Report.* At a regularly-scheduled and duly-noticed public meeting held February 21, 2017, with a quorum present, ANC 3C voted 5-4 to adopt a resolution supporting the requested relief for a special exception to operate an emergency shelter for greater than 25 persons under Subtitle U § 420.1(f), as well as variances from the number of primary structures on a lot requirement of Subtitle C § 302.2 and the loading requirements of Subtitle C § 901.1. “The ANC supports locating the shelter at this site.” (Hearing Tr. at 118). However, ANC 3C did not support relief from the height and number of stories requirement of Subtitle F § 303.1. (Ex. 170). ANC 3C stated that “a shorter building would be more appropriate given the nearby single-family homes and townhomes, and the site’s zoning. ANC 3C finds that permitting an increase in height from 40 feet to 72 feet and three stories to six stories would substantially impair the intent, purpose and integrity of the zoning plan, because the height is not within the range of a low- to moderate-density zone. Because of the lot size, the applicant could have designed a lower building that still met development standards and programmatic needs.” (Ex. 170). Notably, the four dissenting Commissioners support the Project at the Property, but voted against the ANC’s resolution because the resolution opposed the variance relief for height and stories. (Hearing Tr. at 127-128; Ex 223). Nancy MacWood, Chair of ANC 3C testified at the public hearing on behalf of the ANC. She said she believed the Project could be designed in a way as to conform to the height and stories requirements and that the Project did not satisfy the variance standard for this area of relief. (Hearing Tr. at 119).

*Persons in support.* The Board heard testimony and received letters from persons in support of the application. Six people testified in support of the application: Anne Collin, Rabbi Aaron Alexander, Latia Barnett, Kate Coventry, Maria Casarella, and Jeffrey Davis. Rabbi Aaron Alexander called the Project a “moral imperative” that would help “those among us with little or no shelter, the most vulnerable” (Hearing Tr. at 144) and support as a John Eaton parent for more diverse background with enhanced well rounded education. (Hearing Tr. 145). Latia Barnett, a current resident at D.C. General with her husband and two children, stated that D.C. General “feels like jail” and is “not fit for living at all.” (Hearing Tr. at 147-148). Ms. Barnett described the conditions at D.C. General, including that the rooms are “literally like hospitals,” and that “they have no real beds.” (Hearing Tr. at 147). Kate Coventry, a member of the ICH design committee, testified on the need to close D.C. General as well as the function of the ICH. (Hearing Tr. at 150-151). Ms. Coventry noted that the ICH design committee provided recommendations on D.C. General replacement shelters, considering factors such as “costs, the needs of families and research on trauma and poor building design.” (Hearing Tr. at 151). Maria Casarella, who is a practicing architect that lives three blocks from the Property, spoke in favor of the zoning relief, particularly the height variance. (Hearing Tr. at 153-154). Ms. Casarella pointed out that the topography as well as the surrounding multi-story buildings would allow the Project to blend in with the neighborhood. (Hearing Tr. at 153-154). Finally, Chairman of the Council of the District of Columbia Phil Mendelson spoke at the hearing in support of the application and, specifically, “the

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council's support for the location of [sic] new emergency shelters for homeless families pursuant to D.C. Law 21-141." (Hearing Tr. at 15-19).

The Board also received more than 112 letters in support of the application. The letters – many from nearby residents – expressed a multitude of sentiments in support of the Project, including the importance of providing enough units to realize the goals of Homeward D.C.; shutting down D.C. General in favor of multiple, smaller-scale facilities; the belief that the placement of two buildings on the same lot will have minimal impacts on the neighborhood; the belief that the Project will not have an adverse impact on neighbors; the belief that the City has undertaken broad and comprehensive evaluations regarding increased parking and traffic concerns; the belief that the Project will fulfill the programmatic needs of shelter occupants; the belief that the site selection process was transparent and provided for community input; and the belief that the site is ideal due to its location near public transit and family-friendly amenities including a playground and a supermarket. (Ex. 36, 38-39, 43-44, 47, 49-51, 53, 55, 70, 72, 74, 76, 83-85, 87, 92-107, 109-110, 112-119, 121, 123, 127-136, 138-142, 144-154, 156-159, 161-162, 166-169, 172-174, 175 (petition from 64 neighbors), 178, 182, 184-185, 188-189, 199, 214-215, 217, 223, and 230). The Board also received letters in support from Commander Melvin Gresham of the Metropolitan Police Department (Ex. 75B), Chris T. Geldart, Director of the Homeland Security and Emergency Management Agency (Ex. 75C), Battalion Fire Chief Tony L. Falwell of the District of Columbia Fire and EMS Department (Ex. 75D and 209), Carla Watson, Chief Operating Officer of District of Columbia Public Schools (Ex. 189), and Ward Three Councilmember Mary M. Cheh (Ex. 216).

*Party in opposition.* NRG testified in opposition at the public hearing. NRG had six individuals testify on its behalf: Brian Powers, Patricia Wittie, Christopher Sweeney, Yvonne Thayer, Tara Stanton, and Arnold Lutzker. In regard to the Application, NRG alleged the following: the Application does not satisfy the variance and special exception standards; the Board can “say no” to the Property selected for the Project; there was no adequate search for alternative sites for the Project; the Project will adversely affect neighboring property in terms of traffic, noise and operations; the height is not within the character of the neighborhood; the co-location of the Project with the MPD Station; two primary structures on a lot is not an area variance; the absence of a loading dock will have a negative impact on the surrounding neighborhood; the Project capacity is just “too big” for the surrounding neighborhood; the Applicant’s hardship is “self-created”; the proposed use does not meet the definition of “emergency shelter” in the Zoning Regulations; how trash from the Project will be disposed; and that the Application lacks information about the parking deck and temporary parking plan. (Hearing Tr. at 160-173, 179, 183, 189, 192, 197-199, 201-202, 205).

*Persons in opposition.* At the March 1, 2017 public hearing, the Board heard testimony in opposition from two individuals: SMD Commissioner Angela Bradbery and Nancy Sullivan. The testimony in opposition was based on the following: the excessive height of the Project; The Project capacity is “too big” for the surrounding neighborhood; overcrowding of John Eaton Elementary School; opposition to temporary parking on the Community Garden tennis courts; general concerns about the parking deck; and light pollution. (Hearing Tr. at 230-233, 235-236).

The Board also received approximately 57 written submissions in opposition, including a petition that was signed by 74 individuals. The written letters in opposition include the following: the

belief that two buildings on the same site will create too much density; lack of initial analysis/transparency/alternative sites/rushed; concern about negatively impacting police operations; present a significant degree of disruption during construction, particularly to the Newark Street Community Garden and tennis courts; will be too tall and out of scale with surrounding property; and the Project is too expensive. (Ex. 35, 45-46, 48, 57-69, 71, 73, 77-79, 80, 82, 86, 88, 90-91, 120, 137, 143, 160, 163, 179, 181, 186, 190-191, 194-198, 200-201, 204, 207, 208, 210, 212 (14 letters), 213, 218-219, 220 (petition of 74 individuals replacing Ex. 205), 221-222).

*Post-hearing submissions.* At the conclusion of the public hearing, the Board closed the record except for additional information from the Applicant, and closing statements as well as draft findings of fact and conclusions of law from the Applicant and NRG. (Hearing Tr. at 297.) On March 10, 2017, the Applicant submitted the additional information. (Ex. 235). On March 31, 2017, the Applicant and NRG submitted closing statements and proposed findings of fact and conclusions of law. (Ex. \_\_\_\_).

## **FINDINGS OF FACT**

### **The Subject Property**

1. The subject property is located in the northwest quadrant of the District of Columbia at 3320 Idaho Avenue, NW (Square 1818, Lot 849) (the "Property").
2. The Property contains approximately 200,965 square feet of land area.
3. The Property is located in Ward 3 and ANC 3C.
4. The Property is not located within a historic district.
5. The Property is irregularly shaped and extremely large.
6. There is a significant, 18-foot topographical change on the Property sloping from north to south, causing a change in grade. (Hearing Tr. at 55).
7. On the western side of the existing wall, the Property also "does drop off considerably at the south end of the site." (Hearing Tr. at 54-55).
8. The Property is owned by the District of Columbia and operated by the District's Department of General Services. (Ex. 2).
9. The Property is zoned RA-1, which is designated for low and moderate-density developments, including detached dwellings, rowhomes and low-rise apartments. (Subtitle F § 300.2). Emergency shelters for more than four persons are permitted by special exception. (Subtitle U § 420.1(f)).
10. The Property is improved with the Metropolitan Police Department's ("MPD") Second District headquarters (the "MPD Station"), a one-story police storage facility, a large parking

area, an emergency vehicle re-fueling station at the northern end, impound lot, community gardens on the western side, and a tennis court.

11. The Property currently contains 157 non-required parking spaces for use by MPD.

12. Police sirens associated with the MPD use commonly emanate from the Property. Police vehicles regularly travel down Idaho Avenue, NW at a high rate of speed. (Hearing Tr. at 185).

13. Trash storage and collection for MPD is currently located adjacent to one-family dwellings along the western side of the Property. (Hearing Tr. at 68).

14. MPD vehicles currently use approximately 59 on-street parking spaces. (Ex. 202A; Hearing Tr. at 28, 102-103, 117).

### **Surrounding Area**

15. The surrounding area consists of several mixed-used developments that vary in height from three to five stories, including large apartment buildings, mid-size walkups, and single-family homes.

16. To the north are the three-story McLean Gardens condominiums, zoned RA-1, and Vaughan Place, constructed as part of an R-5-B/C-2-A/C-2-B PUD. Within Vaughan Place is a five-story building housing a radio station and a nine-story apartment building with commercial uses on the ground floor.

17. To the east is the Cathedral Commons PUD consisting of three-story rowhouses, a Giant supermarket, apartments, office and retail uses in three to five-story buildings.

18. To the south are single-family dwellings in the R-1-B zone.

19. To the west is a dog park, and National Park Service property (Lot 848), which includes a portion of the Newark Street Community Garden (the "Community Garden") and playground, tennis courts, and community garden plots in the RA-1 zone.

20. The Property is well serviced by a number of public transportation options including Metrobus, bikeshare, and carsharing services.

21. The Property is served by numerous Metrobus routes nearby on Wisconsin Avenue, NW, including 30N, 30S, 31, 33, 37 and 96. Additional bus routes run along Massachusetts Avenue, NW, including N2, N4, and N6.

22. The Property is served by a Capital Bikeshare station and a Zipcar pickup station 1 ½ blocks away on Wisconsin Avenue, NW.

23. There are no other properties containing an emergency shelter in the same square or within a radius of 500 feet from any portion of the Property. Additionally, there are no similar facilities to the proposed Emergency Shelter in the nearby area.

### **City's Goals and Objectives**

24. The Mayor's initiative to end homelessness in the District by 2020, "Homeward DC," includes the closure of the large DC General Family Shelter and replacing it with short term, family housing facilities in all eight Wards in order to make homelessness "a rare, brief, and nonrecurring event."
25. Chairman Mendelson testified that "spreading shelters throughout the City also helps to discourage the creation of large concentration 25 of poverty in just a few wards." (Hearing Tr. at 16).
26. D.C. General, a former hospital with approximately 70 units per floor, is overly large, which results in an inefficient and chaotic environment that does "little to alleviate the trauma that families experience upon becoming homeless," which can lead to "toxic stress" that has "lasting negative impacts on the healthy development of children and the well-being of the family as a whole." (Hearing Tr. at 37, 95).
27. Generally, the standards for each facility include that the facility is small, modern, safe and dignified with a maximum of fifty (50) units and that the facility is compatible with the surrounding community within which they are placed. (Hearing Tr. at 39-42).
28. To complement the living units, each facility would include on-site services such as housing search assistance, social work, early childhood screening and school liaisons, education, training and employment services, health care, financial and management services and age appropriate recreation.
29. Each emergency shelter facility should have roughly 12,000 to 30,000 square feet of property, be located close to public transportation and other services, be economically feasible for the District, and allow the District to develop the site within a 24 to 30 month time-frame. (Hearing Tr. at 26-27, 49).
30. The goal of the program is to close DC General by the beginning of the 2019-20 hypothermia season. (Hearing Tr. at 35).
31. The District must provide 280 family units to achieve the goal of closing D.C. General. (Hearing Tr. at 26-27, 35).
32. In summer 2016, the Board approved similar Emergency Shelter facilities, which are also part of the "Homeward D.C." initiative, in Wards 4, 7, and 8. As a result of the relief granted by the Board, construction will begin by summer 2017. (Hearing Tr. at 30-31).
33. The temporal aspect of this goal is critical in implementing the plan from a cost perspective, as well as, the immediate need to provide families with children who are experiencing the crisis of homelessness with suitable shelter. (Hearing Tr. at 35).

### **Legislation by the D.C. Council**

34. The program requirements of the Project are driven by D.C. Council legislation, including D.C. Law 21-75 and D.C. Law 21-141.

35. An overarching goal of the D.C. Council legislation is to close D.C. General by constructing replacement shelter facilities through the District.

36. D.C. Law 21-75, the "Interim Eligibility and Minimum Shelter Standards Amendment Act of 2015," approved in December 2015, sets minimum standards for bathrooms including one private bathroom for every five units and requires a minimum of 280 DC General Family Shelter replacement units.

37. Under D.C. Law 21-75, each shelter unit must consist of "a private room that includes space to store and refrigerate food." See D.C. Code § 4-750.01(11A).

38. D.C. Law 21-75 further requires certain design standards for bathroom facilities. The law establishes that, at a minimum, shelters must provide "[a] private bathroom, including a toilet, sink, and bathtub or shower, in at least 10% of" units, and for every five shelter units "one private lockable bathroom that includes a toilet, sink, and bathtub and shall be accessible to all residents." See D.C. Code § 4-750.03(3)(A-B).

39. D.C. Law 21-141, the "Homeless Shelter Replace Act of 2016," approved in June 2016, authorizes the Mayor "to use designated funds, appropriated for the purpose of developing replacement shelter facilities for the DC General Family Shelter and to construct new emergency shelters "in Wards 1, 3, 4, 5, 6, 7, and 8."

40. On March 17, 2016, the Council held an almost 12-hour public hearing in consideration of D.C. Law 21-141 and received suggestions on alternative sites from members of the public. Three alternative sites for the Ward 3 emergency shelter were placed on the record. (Hearing Tr. at 17-18).

41. On May 17, 2016, the Council voted unanimously to direct the Mayor to change three of the emergency shelter sites, including Ward 3, and to change the economic structure of the plan so that all the sites would be owned and not leased by the city. Also, the Council appropriated \$125 million capital budget for the plan. (Hearing Tr. at 18).

42. Accordingly, as to the Project on the Property, D.C. Law 21-141 authorizes the Mayor to "construct a facility to provide temporary shelter for families experiencing homelessness containing up to 50 DC General Family Shelter replacement units on District-owned land at 3320 Idaho Avenue, N.W., Square 1818, Lot 849."

### **Site Selection**

43. DGS worked in partnership with the Department of Human Services (DHS) to develop relevant criteria, and released a Solicitation for Offers (SFO) based on those metrics in late-2014 to get viable proposals from the community. (Hearing Tr. at 48-49).

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44. DGS sought roughly 12,000 to 30,000 square feet per site, preferably close to public transportation and other services and amenities, and site that are economically feasible and able to be developed with a 24-30 month timeline.
45. DGS executed the SFO process as an open solicitation, so sites were evaluated when they were brought forward for leasing and acquisition. (Hearing Tr. at 279-280).
46. In 2015, DGS started a property search by looking at District-owned properties in the city's inventory. DGS looked for properties to purchase or lease only after they had exhausted their inventory.
47. In the summer of 2015, DGS hired a broker to help identify sites in Wards where they had not yet identified feasible sites, such as Ward 3.
48. All responses to the solicitations were directed to DGS.
49. Upon receipt of the developer's submission of proposals, potential sites were forwarded to DHS for evaluation.
50. In Ward 3, DGS received six proposals with one site - 2619 Wisconsin Ave. NW – identified to be of adequate size as well as within close proximity to public transportation and capacity to satisfy the programmatic requirements.
51. During public hearings for D.C. Law 21-141, the Council considered a number of suggested locations for the Project. These locations included the Mayor's proposed site at 2619 Wisconsin Avenue, NW, a former diplomatic residence at 3101 Albemarle Street, NW, a vacant church at 4100 River Road, NW, Fort Reno, and 3320 Idaho Avenue. (Hearing Tr. at 18).
52. However, the DC Council voted to locate the shelters on District-owned properties. (Hearing Tr. at 17-18, 49).
53. The D.C. Council conducted its own search of District-owned properties as well. (Hearing Tr. at 49).
54. Many citizens and residents testified before Council and participated in the site selection process and made recommendations (Hearing Tr. at 79); but nothing is in the recorded that any from NRG actively participated in the open public process except after the fact to object to the site.
55. For an emergency shelter in Ward 3, the Council considered the Property to be “the best” option (Hearing Tr. at 18) and found that there was no other reasonable site in Ward 3. (Hearing Tr. at 22).
56. Acquisition of the Property would “be the easiest since [the Property] is already city owned. And this, in turn, meant site acquisition would be least expensive.” (Hearing Tr. at 18).

57. Except for the Tenleytown properties, the Property “has the best access to public transportation, grocery, and other stores. And [the Property] is the largest of the various sites except Fort Reno, which was believed to be unavailable.” (Hearing Tr. at 18).

58. Most of the alternative sites considered by the Council are “approximate to single family homes” but the Property “involves fewer such homes than the Wisconsin Avenue or Albemarle sites.” (Hearing Tr. at 18-19).

59. Chairman Mendelson testified that “when all of the factors, including the ones just enumerated, are taken together, all of the suggested locations, including the Mayor’s proposal, were less reasonable than 3320 Idaho Avenue. (Hearing Tr. at 19).

60. Therefore, DGS and the D.C. Council conducted adequate searches for reasonable alternative sites for the Project.

61. The selection of the Property is the result of adequate searches and the conclusion that no other reasonable site exists in Ward 3 for a 50-unit Emergency Shelter to be completed in time to reach the City’s goals.

**Program requirements**

62. The programmatic needs for the Project are informed through the Interagency Council on Homelessness (“ICH”), a statutorily-created group comprised of experts in homeless services from the District government, federal government and other third-party service providers. See D.C. Code § 4-752.01.

63. The ICH was commissioned for the purpose of planning and developing programs for homeless services in the District, including outlining standards to replace D.C. General. The recommended guidelines created by the committee of experts and consultants were utilized by the Applicant and DHS in developing the Project design. (Hearing Tr. at 75-76, 151-152).

64. The ICH recommended that the Project incorporate 10 units per floor. (Hearing Tr. at 95).

65. As a comparison, D.C. General has more than 70 units on one floor.

66. As Sharon McDonald, an expert in family homelessness wrote in a written submission, “The proposal to have ten families to a floor and fifty families to a building was endorsed by this group, which concluded it struck a reasonable balance of providing safety, privacy, comfort and efficiency.” (Ex. 214).

67. The programmatic requirement of ten units per floor promotes “privacy, less noise, less turbulence in the hallways, and a more predictable environment and an opportunity for an appropriate community feel. Also, a maximum of ten units per floor is ideal to allow families to provide the proper amount of attention to young children, who now have a great deal of energy.” (Hearing Tr. at 42-43).

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68. The programmatic requirement of ten units per floor also “permits the common rooms on each floor to feel more like community living than anonymous cafeterias or auditoriums.” (Hearing Tr. at 43).

69. The programmatic requirements include a security desk, staffed 24 hours a day, on each floor that provides staff with a view of common areas and the hallways. (Hearing Tr. at 43-44).

70. The programmatic requirements also include “[a] private bathroom, including a toilet, sink, and bathtub or shower, in at least 10% of” units and for every five shelter units “one private lockable bathroom that includes a toilet, sink, and bathtub and shall be accessible to all residents.” See D.C. Code § 4-750.03(3)(A-B).

71. The Project must also dedicate building space to on-site wrap-around services, which are also mandated by law. See D.C. Code § 4-753.01. D.C. Law 21-141 identifies these vital wrap-around services, noting that “[b]est practices suggest that children and families do best when short-term housing is provided in smaller-scale, service-enriched, community-based settings. . .”

72. Wrap-around services are designed to assist homeless individuals and families in quickly exiting the shelter and returning to permanent housing.

73. On-site services include permanent housing programs, housing search assistance, social work assistance, early childhood screening and school liaisons, education, training, and employment services, health care, and financial and budget management counseling. The services are obtained by the provision of partnerships with community service organizations that help provide health and wellness, mentoring and tutoring, and programming and activities for children.

74. Program requirements include the provision of administrative space, including office spaces, a staff lounge, locker area, bathroom, copy room, and mail distribution area.

75. Program requirements include the provision of ground floor common areas, including a lobby (large and welcoming), conference/programming room, computer lab, multi-purpose room/dining area w/ moveable wall, warming Kitchen, and pantry.

76. Program requirements include the provision of communal, recreation space for adults and children.

77. Program requirements include the provision of ‘per floor’ requirements, including monitoring/assistance station with clear line of sight to all units, a microwave, sink, countertop, homework/study lounge, homework/study room, common area, laundry room, trash room or trash chute, janitor’s closet, and storage room.

78. Program requirements include the provision of play space, crawl space for infants, indoor/outdoor play space for toddlers, and outdoor play space for older youth. (Hearing Tr. at 36).

## **The Project**

79. The Applicant proposes to construct an emergency shelter for 50 families on the Property. (Ex. 2, Tab B).

80. The Project will be a new, approximately 43,345 square foot, six-story building with a basement level, which will be a separate structure from the MPD Station.

81. As part of the Project, the Applicant will construct a three-level parking deck to the rear of the MPD Station.

82. The Project will share the Property with the existing MPD Station, a refueling station, and the prisoner transfer sally port for MPD, all of which constrain the location of the Project on the Property. (Hearing Tr. at 56).

83. The existence of the Community Garden, which is an important source of pride for the city and surrounding community, also restricts the Project's location on the Property as well as the Applicant's ability to offer alternative designs for the building. (Hearing Tr. at 56).

## **Project Design Satisfies Programmatic Needs**

84. The Project is a public service because it implements the District's plan to end homelessness – "Homeward D.C.", which involves, among other things, constructing safe and dignified emergency shelters for families experiencing homelessness.

85. The Project's design is impacted by the necessary duplication of facilities such as community rooms, laundry facilities, and common areas which must be provided on each floor to ensure a small, familial environment for the residents.

86. The Project's design is also impacted by the need to provide social services to support the residents on-site. These specific site program and construction requirements result in a constrained floor plate and a requirement for additional building height. Meeting zoning requirements with relief would result in a loss of units and services on the site.

87. The Project will have space for support services such as dining rooms, conference room, case management area, computer lab, medical room, resident and staff lounges, study, laundry, storage, multipurpose room, warming kitchen, and indoor and outdoor play areas.

88. The Project's outdoor play area was moved from the south side of the building to the west to address noise concerns for the adjacent neighbors. (Hearing Tr. at 57).

89. The first floor will contain the common spaces including a dining room, administrative space, play areas and private bathrooms.

90. Floors two through six will contain residential units, common spaces, laundry facilities, family bathrooms and private bathrooms, and a security desk with a direct line of site down the

floor's single central hallway that will enable staff to monitor activities in common areas at all times.

91. The Project will be limited access, and residents will be issued keys for their particular floor and will not have access to other floors.

92. A family-scale environment is a major priority for the Project because approximately 60% of residents will be children.

93. Sleeping units will be limited to no more than 10 units per floor in order to create a small, family-centric environment that promotes privacy and ensures security.

94. The Project architect reached the Project's proposed design after careful review and consideration of a smaller building on the Property, alternative locations for the Project on the Property and different designs for the Project. (Hearing Tr. at 72-73, 133, 251-254, 268, 270-272).

### **RA-1 Zone Development Standards**

95. Emergency shelters are permitted in the RA-1 zone by special exception.

96. The Project fits the zoning definition of an emergency shelter. (Hearing Tr. at 38-39).

97. Despite use of the promotional term "short-term housing facility", the Project's use still meets the definition of "emergency shelter" as defined in the zoning regulations." (Hearing Tr. at 39).

98. The Project will meet all applicable code and licensing requirements, which will be fully assessed at the time the Applicant obtains building permits and a certificate of occupancy.

99. The Project complies with the RA-1 development standards for floor-area-ratio, lot occupancy, rear yard, side yard and penthouse requirements.

### **Project Landscaping**

100. Approximately 63 feet of trees and shrubbery will be provided along the entire southern and eastern property lines. Additionally, many more trees will be planted along the northeastern property line.

101. The Project incorporates an environmentally friendly building design that will be "LEED" Gold and features a "green" roof.

102. The Project will improve the existing Property by adding significant landscaping elements, including planted areas on the front and side of the Project measuring between 25 and 37 feet in width, as well as a planted "buffer zone" between the Project and properties to the south measuring approximately 21 feet in width.

103. The Project will also add a fencing element around the perimeter of the portion of the lot dedicated to the shelter.

### **Parking**

104. The Project's on-site parking provided will meet the minimum parking requirement for an emergency shelter under the zoning regulations.

105. The Project will include construction of a new parking structure that will include 239 parking spaces that will provide parking for both the Project and MPD.

106. The parking deck will be attached to the MPD building, but separated from the Community Garden to the east by an existing ten foot wall. (Hearing Tr. at 56).

107. The parking deck will be sufficiently screened as only a small portion of the deck can be viewed from Idaho Avenue, NW. (Ex. 237).

108. The existing parking arrangement to the rear of the MPD Station can be viewed from Newark Street, NW, and the proposed parking deck will incorporate a "green screen wall along that parking garage" on its western side to better blend with the Community Garden element. (Ex. 237 & Hearing Tr. at 100).

109. The Project will provide 5 long-term bicycle parking spaces on the ground floor, which can be used by staff and residents, as well as 5 short-term spaces located near the front door. (Hearing Tr. at 63).

### **Loading**

110. Food deliveries would be made by a van to the site twice per day and trash service would occur approximately three times per week.

111. There is an assigned service and delivery space on the northern side of the Project. (Hearing Tr. at 64).

112. There is adequate space for the Project's loading on-site and loading from the street would not be necessary.

### **Community Outreach**

113. Between Fall 2016 and the full ANC meeting of February 21, 2017, the Applicant met with the community, ANC, and District agencies on eleven separate occasions. (Ex. 75E, 235).

### **Contested Issues**

114. Based upon the evidence in the record and the testimony at the March 1<sup>st</sup> hearing, the following are the contested issues for this application:

- The Applicant did not conduct a sufficient search for sites to locate the Project.

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- The Applicant did not consider reasonable alternative sites that would meet the Project's programmatic needs.
- The Project's capacity is too large.
- The Project will create an adverse impact on traffic, noise, neighborhood use and enjoyment, and trash.
- The Project's operations will create an adverse impact on the neighborhood.
- The Project's proposed height is not compatible with the neighborhood.

**Zoning Relief**

**Variance Relief**

115. Variance relief from the height and number of stories, number of primary structures on one lot and loading and service/delivery spot requirements of the Zoning Regulations is required for the Project for the reasons stated in Findings of Fact Nos. 113-115.

116. The maximum permitted building height in the RA-1 Zone District is 40 feet with 3 stories. *See* Subtitle F § 303.1. The Project has a proposed maximum height of 69 feet with 6 stories.

117. The Project was originally proposed for 72 feet in height but was lowered because the architect "reorganized the systems to minimize and eliminate all crossings, and so we were able to lower our floor to floor height." (Hearing Tr. at 59).

118. The Zoning Regulations require that each new primary structure must be erected on a separate lot of record. *See* Subtitle C § 302.2. The Project proposes a new primary structure on the Property, which is currently improved with the MPD Station.

119. 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. *See* Subtitle C § 901.1. The Project does not provide a compliant loading berth or a service/delivery area. Although, the Project design will incorporate a delivery area.

**Special Exception Relief**

120. The Project will provide up to 50 emergency shelter units for families experiencing homeless.

121. The Project requires special exception relief for construction of an emergency shelter in the RA-1 Zone District. *See* Subtitle U § 420.1(f).

122. During construction of the parking deck at the rear of the MPD Station, the Project will displace existing MPD parking spaces from the Property. The Applicant will provide temporary parking spaces on the tennis courts located on the neighboring Lot 848 for MPD parking that is displaced during construction. Therefore, the Project requires special exception relief for a temporary parking use on a separate lot. *See* Subtitle U § 203.1(j).

**Factual Findings Pertaining to the Variance Relief Requested**

*Exceptional Conditions*

123. The existing structures on the Property including the MPD Station, the refueling station, the retaining wall, the Community Garden and the tennis courts.

124. There is a significant topographical change on the Property running north to south and east to west toward the Community Garden. The Property slopes off considerably to the west of the existing 10-foot brick wall that bi-furcates the Project and MPD Station from the Community Garden.

125. The Project's programmatic needs discussed in Findings of Fact Nos. 60 to 76. Specifically, the limit of 10 units per floor, the bathroom requirements, the circulation and on-site/floor service requirements, security requirements and the wrap-around services requirement.

126. A Project design with more than 10 units per floor would cause a hectic, less safe, and less family-friendly environment, which conflicts with the programmatic needs.

127. The District's programmatic needs, determined legislatively by the D.C. Council, require the construction of "up to 50 units" at the Property, and a total of 280 replacement units District-wide, in order to close D.C. General by hypothermia 2019-2020.

**Height and Number of Stories**

*Practical Difficulties*

128. The proposed Project height of 69 feet with 6 stories is necessary due to a confluence of factors, including the existing structures and Community Garden on the Property and the Project's programmatic requirements, that create a practical difficulty in complying with the height and stories requirement.

129. The existing MPD Station, refueling station, and Community Garden must not be disturbed, limiting the building area for the Project.

130. The programmatic needs of 10 units per floor and the legislative requirement of "up to 50 units" on the Property require the specific height variance sought.

131. The need to limit the "number of families per floor to ten or fewer allows families to have more privacy, less noise, less turbulence in the hallways, and a more predictable environment and an opportunity for an appropriate community feel." (Hearing Tr. at 42-43)

132. On the residential floors - floors two through six - the floor-to-ceiling height is 8'4". (Hearing Tr. at 59).

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133. The floor-to-ceiling height can only be reduced in 8" increments, which means that any further reduction would lead to floor-to-ceiling heights of 7'8", which is below industry standard for residential dwelling units. (Hearing Tr. at 59).

134. The basement level of the Project cannot be excavated further and placing administrative or staff offices in the basement is not within programmatic requirements. (Hearing Tr. at 98, 133, 254).

135. The Applicant reviewed alternative design options for reducing the height of the Project, but the alternative design options will not satisfy the District's programmatic requirements/necessity. (Hearing Tr. at 72-73, 133, 251-254, 268, 270-272).

136. Therefore, the Project's design is the design option that can meet the programmatic requirements on the Property, not just the most desired of various options.

137. The Project architect stated that it would be practically difficult to construct a facility that incorporates the programmatic requirements while complying with the matter-of-right height and number of stories in the RA-1 zone. (Hearing Tr. at 271).

138. There is no evidence in the record that a Project satisfying the District's programmatic needs could be constructed on the Property as a matter-of-right without the requested variance from height and stories.

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

*Public Good/No Impairment to Zone Plan*

140. The southern side yard of the Project will be 63 feet, providing a buffer for neighboring single-family residences.

141. The Applicant's sun studies reflect that the Project will not impact the light and air of any neighboring residential properties. (Hearing Tr. at 60-61).

142. There are numerous multi-story buildings in the direct vicinity of the Property, including five, six and nine story buildings. (Ex. 237; Hearing Tr. at 128-29).

143. The additional height and stories requested would not make the building excessively higher or larger than the most of the buildings to the north and east of the property. (Ex. 237).

144. The building height and design fit with the character of the neighborhood. (Hearing Tr. at 60, 272).

145. The Project represents a step toward meeting the goal of the ICH strategic plan, "Homeward D.C.", which seeks to close D.C. General and make homelessness in the District

rare, brief and non-recurring. The Project will provide up to 50 families who are experiencing homelessness with a safe and dignified shelter facility that will further assist families in stabilizing and returning to permanent housing. In this regard, the Project is a positive contribution to the community and the District as a whole.

146. Furthermore, the height of the Project, which is necessary to accommodate the 10 units per floor, aligns with the stated goals of the District's Comprehensive Plan to: "Encourage the provision of homeless services through neighborhood-based supportive housing and single room occupancy (SRO) units, rather than through institution-like facilities and large-scale emergency shelters. The smaller service model can reduce the likelihood of adverse impacts to surrounding uses, improve community acceptance, and also support the reintegration of homeless individuals back into the community. (Policy H-4.2.8: Neighborhood-Based Homeless Services, 10A DCMR § 516.14."

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

#### Two Primary Structures on One Lot

##### *Practical Difficulties*

148. In determining the Ward 3 location for the Project, the D.C. Council expressly encouraged District-owned land.

149. By authorizing the Ward 3 shelter location on the Property, the D.C. Council determined that the Project would necessarily be co-located on the Property with the existing MPD station.

150. A meaningful connection between the Project and the MPD station is not a viable option for either the Emergency Shelter use or the police department use. The two uses operate separately and combining the uses would degrade both. (Hearing Tr. at 267-268).

##### *Public Good/No Impairment to Zone Plan*

151. The Project will not impact the ability of MPD officers to perform their normal duties, including protecting the public and surrounding community.

152. The Project will not impact the operations of the D.C. Homeland Security and Emergency Management Agency or the D.C. Fire and EMS Department.

153. The co-location of community service buildings, such as the Project and the MPD station, aligns with the goals of the District's Comprehensive Plan to: "Encourage the co-location of multiple community services in the same facility, provided that the uses are functionally compatible with each other and are also compatible with land uses and activities on surrounding properties. The planning of public facilities such as libraries, police and fire stations, recreation centers, job training centers, early childhood development centers, and wellness centers, shall be fully coordinated to ensure that such facilities are logically and efficiently sited, and support the goal of providing neighborhood-based services. Joint planning of District-operated facilities with other community facilities such as schools, health clinics, and non-profit service centers

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shall also be supported through ongoing communication and collaboration between the Office of Planning, the DC Public Schools, the Office of Property Management, the City Administrator, the Office of Budget and Planning, other District agencies, and appropriate outside agencies and partners.” (Policy CSF-1.1.8: Co-Location, 10A DCMR § 1103.14).

Loading and Service/Delivery Space

*Practical Difficulties*

154. The need for relief arises from the exceptional conditions on the Property including existing structures and the Community Garden as well as the Project’s programmatic needs.

155. The MPD Station, refueling area and Community Garden limit the reasonable amount of area the Project may occupy on Lot 849.

156. The Project must maintain street access for the MPD station as well as the proposed parking deck at the rear of the MPD station.

157. The Project’s programmatic needs require an outdoor recreation space, which is located to the west of the proposed building and further limits the available space for a loading berth or service/delivery area.

158. The Project incorporates a 63-foot southern side yard to provide a buffer for the neighboring residential properties, but this side yard further limits the available space for a loading berth or service/delivery area.

159. There is no evidence in the record that a Project satisfying the District’s programmatic needs could be constructed on the Property as a matter-of-right without the requested loading variance.

*Public Good/No Impairment to Zone Plan*

160. The Project design provides adequate loading access. (Ex. 37).

161. The dwelling units in the Project will be pre-furnished and residents will not have furniture or large quantities of personal belongings, decreasing the need for a zoning-compliant loading berth.

162. Meals will be delivered by van twice daily, which can be accomplished at the delivery zone on the northern side of the Project.

163. The District Department of Transportation has no objection to the Project design, including the absence of a loading berth and service/delivery area.

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

164. The application for a 50-unit emergency shelter to be located in the RA-1 Zone District requires special exception relief from the Board pursuant to Subtitle U §§ 420.1(f)(1-6).

165. The Project meets the zoning definition of “emergency shelter” because the Project will provide temporary and immediate housing to support families experiencing homelessness. (Hearing Tr. at 38-40).

166. The definition of “emergency shelter” in the zoning regulations incorporates the definition of “temporary shelter” within the Homeless Services Reform Act of 2005. (Hearing Tr. at 39).

167. The Homeless Services Reform Act of 2005 includes in its definition of “temporary shelter” the following: “any facility the primary purpose of which is to provide temporary shelter for the homeless in general or for specific populations of the homeless, which does not require occupants to sign leases or occupancy agreements.” (Hearing Tr. at 39-40).

168. There is no emergency shelter located in Square 1818 or within 500 feet of the Property. (Subtitle U §§ 420.1(f)(1),(5)).

169. The Project provides 23 off-street parking spaces in satisfaction of the minimum parking requirement under the zoning regulations. The parking spaces for the Project will be located in the proposed parking deck to the rear of the MPD station. Therefore, the parking spaces will be appropriately located and screened. (Subtitle U § 420.1(f)(2)).

170. The Project will meet all applicable code and licensing requirements. (Subtitle U § 420.1(f)(3)).

171. The Project will not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area. (Subtitle U § 420.1(f)(4)).

172. Noise emanating from the facility or the facility operations will not impact the neighborhood adversely.

173. The programmatic requirements of the Project will minimize noise. The Project will be staffed by security personnel at all times. (Hearing Tr. at 255-257).

174. The Project has reduced impact to neighborhood by relocating the trash and outdoor playground. (Hearing Tr. at 68).

175. The building will be key-card accessible only, limiting those coming and going from the facility to residents, staff and third-party vendors.

176. The Project will be self-contained, with all necessary services provided on-site and a sufficient buffer between the Project and abutting residential properties.

177. The Project will function similarly to multi-family apartment buildings, and noise from the Property would not be any more than that from the multi-family residential buildings.

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178. "Research suggests that adding a facility of this type to a neighborhood rarely impacts property values or crime." (Hearing Tr. at 31).

179. Staff will be coming to and leaving the Project at times when most neighbors are going to or coming home from work. (Hearing Tr. at 255).

180. The outdoor recreation space will be buffered and will be accessible only during a certain range of hours.

181. Nearby residents can currently hear noise emanating from the MPD station (Hearing Tr. at 185), including police sirens and conversations between police officers, the nearby tennis courts and Community Garden, and the "Giant" loading area along Idaho Avenue, NW; thus, any additional noise generated from the Project will be minimum in comparison to existing conditions.

182. Given the existing condition of traffic, police cars and Giant loading trucks, the Project will not adversely increase the noise or traffic in the area.

183. The Applicant's Transportation Study concluded that the Project will not have an adverse impact on the surrounding community in terms of traffic and parking. (Ex. 37 and Hearing Tr. at 259).

184. The Project will provide off-street parking that meets the minimum parking requirement in the zoning regulations.

185. The proposed parking deck will replace in-kind all MPD parking lost to the Project and provide approximately 59 additional parking spaces for MPD, which will alleviate existing on-street parking conditions in the neighborhood.

186. The site is surrounded by an existing network of transit, bicycle, and pedestrian facilities that result in an adequate environment for safe and effective non-auto transportation.

187. A majority of residents at the Project will not have personal vehicles.

188. The District's Department of Transportation ("DDOT"), the District's technical experts on transportation conducted a detailed review of the Application, and determined that it had "No Objection" to the Project. (Ex. 125).

189. As to operations, both the City Administrator and Director Zeilinger testified that the Project's operator would enter into a "Good Neighbor Agreement" with the adjacent neighbors to establish operational frameworks that will limit any adverse impacts on the neighborhood. (Ex. 227-228). The Good Neighbor Agreement will "set forth expectations and commitments regarding exterior facility and landscape maintenance, safety and security, mutual codes of conduct and respect, and clear and expedient process for communication and problem solving." (Ex. 227). Furthermore, Director Zeilinger has testified that "Anecdotally, I've also met many

people who don't even realize that a homeless program is operating just down the street or right around the corner from their homes or offices." (Ex. 227).

190. The facility would have staff on-site at all times to monitor activities and operations and ensure that the facility does not have a negative impact on the neighborhood.

191. There are no similar facilities in the area nearby the Property, satisfying the final factor within Subtitle U § 420.1(f)(4).

192. The Applicant requests approval for a 50-unit Emergency Shelter, which will house an average of 150 persons. Under Subtitle U § 420.1(f)(6), the Board "may approve a facility for more than twenty-five (25) persons, not including resident supervisors or staff and their families, only if the Board finds that the program goals and objectives of the District of Columbia cannot be achieved by a facility of a smaller size at the subject location and if there is no other reasonable alternative to meet the program needs of that area of the District."

193. As to the first prong, the testimony in the record establishes that the Project's goals and objectives cannot be achieved by a facility of a smaller size at the subject location. The District's programmatic needs, goals and objectives are explained in Findings of Fact Nos. 62-78. In sum, the District needs to provide 280 replacement units in order to close DC General by 2020 and to create smaller, dignified emergency shelters for families, with a maximum of 10 units per floor and necessary ground floor and per floor around services. The residential capacity of up to 50 units for the Property is legislatively mandated by the D.C. Council. Also, the 50 units proposed for the Property are necessary for the District to meet its overall, legislated goal of providing 280 replacement units. Without the proposed number of units on the Property, the goal of closing D.C. General by 2020 may not be met.

194. Director Zeilinger testified in her expert capacity that a building with a smaller capacity at the Property would not meet the District's legislated goal of closing D.C. General. (Hearing Tr. at 41-42).

195. Director Zeilinger testified in her expert capacity that she "would absolutely not design case management services and the supportive services" to be placed in the basement which would be farther away from the people they are serving. (Hearing Tr. at 254).

196. Director Zeilinger also testified that constructing two, smaller facilities, with another on a different property, would not meet the Project's programmatic needs. (Hearing Tr. at 88-89, 260-261). Developing more smaller buildings around the city would increase operations costs and available funds to serve the families in crisis. (Hearing Tr. at 88-89, 260-261).

197. Director Gillis testified that a facility with fewer units will not meet the District's goals and objectives for this Project. (Hearing Tr. at 53).

198. Director Gillis testified that redesigning the project to make the changes suggested by the ANC, CFA and NRG would cause delivery of the site to be pushed and they "would miss the 2019 timeframe." (Hearing Tr. at 252).

199. The Project architect, Joseph McNamara, testified in his expert capacity that constructing a shorter facility with two “wings” would not meet programmatic needs. (Hearing Tr. at 73-74, 251).

200. The Project architect, Joseph McNamara, testified in his expert capacity that “creating a bigger basement” is not reasonable because of the “lack of appropriate program to put in the basement.” (Hearing Tr. at 133) Director Gillis added that expanding to the full basement would be impacted by other “site constraints.” (Hearing Tr. at 98).

201. Mr. McNamara testified that alternative designs, locations for the Project would have difficulties in servicing alternative areas of the lot, and or demolishing existing garden plots. (Hearing Tr. at 271).

202. The concept proposed by the Homeward D.C. initiative aims to create smaller, family-scale environments on each floor of the Project, but comprehensive on-site services are not as efficient for a facility with fewer than the 50 sleeping units proposed.

203. As to the second prong, the record establishes that there is no other reasonable alternative to meet the program needs of Ward 3. As set out in the Findings of Fact Nos. 40 and 51 both DGS and the D.C. Council took efforts to review alternative sites. No other reasonable alternative existed. As Chairman Mendelson, testified “when all of the factors, including the ones just mentioned, are taken together, all of the suggested locations, including the Mayor’s proposal, were less reasonable than 3320 Idaho Avenue.” (Hearing Tr. at 19).

204. Therefore, the Board finds that the program goals and objectives of the District of Columbia cannot be achieved by a facility of a smaller size at the Property and there is no other reasonable alternative to meet the program needs of that area of the District.

## **CONCLUSIONS OF LAW**

### **The Variance Standard**

The Board is authorized to grant variances from the strict application of the Zoning Regulations to relieve difficulties or hardship where “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition” of the property, the strict application of the Zoning Regulations would “result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of the property....” D.C. Official Code § 6641.07(g)(3) (2008 Supp.), 11 DCMR Subtitle X § 1000.1. The “exceptional situation or condition” of a property can arise out of the structures existing on the property itself. See, e.g., *Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 293-294 (D.C. 1974). And, characterization of a use as a public service may also be significant in determining whether the requisite “exceptional situation or condition” exists. *Monaco v. D.C. Bd. of Zoning Adjustment*, 407 A.2d 1091, 1099 (D.C. 1979). Finally, relief can be granted only “without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity

of the zone plan as embodied in the Zoning Regulations and Map.” D.C. Official Code § 6-641.07(g)(3) (2008 Repl.), 11 DCMR Subtitle X § 1000.1.

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

The theory of “self-created hardship” is not relevant to the Board’s deliberations on the requested relief because the Applicant does not seek a use variance. It is well-recognized precedent that a self-created hardship is not a factor to be considered by the Board in an application for an area variance. See *Ass’n for Pres. Of 1700 Block of N St., NW & Vicinity v. Board of Zoning Adjustment*, 384 A.2d 674, 678 (1978); see also BZA Case No. 18651. The record reflects that the Applicant has requested three area variances and a special exception.

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

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

### *Exceptional Conditions*

As set out in Findings of Fact Nos. 120 to 124, the subject Property exhibits the exceptional conditions contemplated by the first prong of the variance test. First, there are numerous existing structures on the Property, including the MPD Station, the refueling area, a 10-foot retaining wall, the Community Garden, and tennis courts, that severely restrict the building area for the Project. The Board finds that the existing structures on the Property are exceptional conditions in satisfaction of the first prong of the test. No evidence to the contrary was credibly presented by the Party in Opposition. Rather, the opposite is true: The main thrust of the Party in Opposition’s argument is that the Property is exceptional, and, therefore, in their perspective was not the correct

site for the Project to be located. The Board does not find those claims to be relevant to this prong of the variance test.

The Board also finds that the District's extensive programmatic needs constitute an exceptional condition at the property. The Project's programmatic needs were discussed above at Findings of Fact 62 to 78. Finding an exceptional condition in the District's programmatic needs is consistent with decisional law. In *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091 (1979), the Court of Appeals upheld use and area variances needed to allow the expansion of the Capitol Hill offices of the Republican National Committee. Among other things, the Monaco decision held that the needs of a non-profit group to expand its facilities may constitute the extraordinary and exceptional situation needed to satisfy the first prong. The Court specifically held that:

when a public service has inadequate facilities and applies for a variance to expand into an adjacent area in common ownership which has long been regarded as part of the same area of the same site, then the Board of Zoning Adjustment does not err in considering the needs of the organization as possible "other extraordinary and exceptional situation or condition of a particular piece of property. *Id.* at 1100.

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

Applying these principles here, the District's programmatic needs are clear. The District needs to close DC General and construct 280 replacement units in dignified emergency shelters located in each ward. Those emergency shelters need to have a maximum of 10 units per floor with ground floor and per floor wrap around services. The proposed Project design is the only means by which these necessary programmatic goals can be accomplished. In addition, the design must take into account the property-specific exceptional conditions discussed above that limit the usable area on site as well as the location of the Project on the Property. As in *Monaco* and *Draude*, the Applicant's need to design the Project to satisfy the programmatic needs on this Property constitutes an exceptional condition and therefore satisfies the first prong of the variance test.

### *Practical Difficulties*

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

does not, however, automatically exempt a public service organization from all zoning requirements. Where a public service organization applies for an area variance in accordance with *Monaco*, it must show (1) that the specific design it wants to build constitutes an institutional necessity, not merely the most desired of various options, and (2) precisely how the needed design features require the specific variance sought. *See Draude v. District of Columbia Bd. of Zoning Adjustment*, 527 A.2d 1242, 1256 (DC 1979).

Here, the Applicant has demonstrated compliance with the elements set forth in the *Draude* decision. *See*, Finding of Fact 136). The Board finds that based on testimony regarding the detailed programmatic requirement and design guidelines, as well as the non-controverted evidence from the Applicant's architectural witness, the Project, as designed, is an institutional necessity, not merely the most desired of various options. The Applicant also established how the Project's design needs require the specific variances sought. In particular, the proposed six stories is institutionally necessary in order to meet onsite wrap around service spaces, as well as 50 units at the Property and limit the units per floor to 10. As discussed by the Project architect, alternative designs, including adding units to each floor, creates design challenges that do not meet programmatic needs. Furthermore, the building height of 69' is necessary to create a safe, dignified, small-scale, community-based, short-term housing facility. The height is not just the most desired option but the minimum height to provide industry standard floor to ceiling respectful and habitable units. The needs of MPD and programmatic needs of the Project dictate that the buildings cannot be connected and, thus, two primary structures are required. To that end, the Board credits the Applicant's expert testimony that the Property's exceptional conditions combined with the programmatic need result in a practical difficulty to the Applicant as to the Project's height and bulk.

Moreover, the Board finds credible the Applicant's statements of practical difficulties associated with providing on-site loading. In particular, the constraints placed on the Project design as a result of the existing structures, including the MPD station and the Community Garden. The Applicant must maintain ingress and egress for MPD officers, significantly limiting the Project's ability to incorporate a loading berth.

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

#### *No Substantial Detriment to Public Good or Impairment of Zone Plan*

Although the Applicant would face serious practical difficulties in complying with the zoning regulations regarding height and stories, primary structures on the lot and loading, the Applicant has made efforts to mitigate these variances. As to height and stories, the Project has reduced the requested relief and created a large buffer from single-family homes to the south by a 63-foot side yard, which is almost a 1:1 ratio with the Project's overall height. The Applicant's sun studies demonstrate that the Project will not impact the light and air available to any residential properties.

Despite testimony from NRG witnesses about visibility, vantage points, and inconsistency with the character, the Board finds that the foliage in the area will block and reduce impact, as well as, the ability for the Project to blend in with other large buildings on Wisconsin and Idaho.

As to loading, the Applicant's traffic consultant concluded that the Project proposes adequate loading access, particularly given the loading needs of the Project. DDOT has concurred in this analysis. The Board does as well, in light of the substantial evidence in the record and the lack of credible evidence to the alternative.

It should also be noted that this Board has concluded that similar height and loading variance relief for other emergency shelter cases, including BZA case numbers 19287, 19288, 19289, and 19451, can be granted without impairment to the public good or zone plan. The legal requirement of "*stare decisis*" directs the Board to make the same finding here. See *Hensley v. D.C. Dep't of Empl. Servs.*, 49 A.3d 1195, 1203 (D.C. 2012) (internal citations omitted).

For these reasons, the Board concludes that the application meets all three prongs of the area variance test. The Property's exceptional conditions and the District's programmatic needs make it practically difficult for the Applicant's to comply with the zoning regulations as to height and stories, primary structures on a lot, and loading. The Project has been designed such that it will cause no substantial detriment to the public good or impairment of the intent and integrity of the Zoning Regulations and Zoning Maps.

### **Special Exception Relief**

The Applicant seeks special exception relief to operate an Emergency Shelter in the RA-1 zone (Subtitle U § 420.1(f)). The Board is authorized to grant a special exception where it finds the special exception:

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

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

For the reasons set out in Findings of Fact Nos. 164 to 204, the Board finds that the Applicant has met its burden to satisfy the special exception criteria in this case, as described more fully below.

Special Exception for Emergency Shelter Use

Accordingly, the Applicant requests Special Exception relief from Subtitle U § 4201.(f), which permits Emergency shelter for five (5) to twenty-five (25) persons, not including resident supervisors or staff and their families. As an initial matter, the Board credits the testimony of the Applicant's expert in homeless services, Director Zeilinger, in establishing that the nature of the Project meets the zoning definition of an "emergency shelter" as it refers back to the Homeless Services Reform Act of 2005. The Board discredits any assertion by NRG that the promotional name of Short-term Housing Facility changes the appropriate categorization of the Project as an emergency shelter for zoning purposes. The Board further finds that the Applicant has demonstrated compliance with the standards and requirements set forth in Subtitle U § 420.1(f), as follows:

Subtitle U § 420.1(f)(1): There shall be no other property containing an emergency shelter for seven (7) or more persons in the same square or within a radius of five hundred feet (500 ft.) from any portion of the subject property.

The Board finds that the Applicant satisfies the requirements for Subsection (1) because there are no other emergency shelters in the Property's square or within 500 feet. (see, Findings of Fact 168).

Subtitle U § 420.1(f)(2): There shall be adequate, appropriately located, and screened off-street parking to provide for the needs of occupants, employees, and visitors to the facility.

As set out in Findings of Fact No. 169, the Project will provide parking spaces in satisfaction of the minimum requirement in the zoning regulations. The Project's off-street parking will be located in the proposed three-level parking deck to be located at the rear of the MPD station, which will be appropriately screened. Notably, the proposed parking deck will replace in-kind all MPD parking lost to the Project and provide approximately 59 additional parking spaces for MPD, which will alleviate existing on-street parking conditions in the neighborhood.

Subtitle U § 420.1(f)(3): The proposed facility shall meet all applicable code and licensing requirements.

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

Subtitle U § 420.1(f)(4): The facility shall not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area.

Next, as to Subsection (4), the record contains ample credible evidence that the Project shall not have an "adverse impact" on the neighborhood due to traffic, noise, operations and number of similar facilities, as set forth in Findings of Fact No. 171. Accordingly, the Board finds that the Applicant satisfied this requirement.

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As to traffic, the Board credits the conclusion of the Applicant's traffic expert that the Project will not have an impact on the surrounding community. The Applicant has established that the number of residents with cars will be negligible. The Board notes that DDOT determined that it had no objection to the relief requested. NRG provided no substantive evidence to prove that the Project would have an adverse impact in terms of traffic, except for antidotal evidence from local residence. The Board finds that while the existing traffic conditions may not be ideal they will not be adversely impacted by an emergency shelter use for 50 units at the Property.

As to noise, the Board credits the Applicant's experts in architecture and homeless services that noise generated by the Project will not have an adverse impact. The testimony indicated that the Project will be LEED Gold, with screening fencing, and that residents will not enter and exit the facility at the same time as set out in Findings of Fact No. 91. Contrary testimony in the record is limited to testimony that sirens and voices can be heard by local residence. The Board finds this limited evidence not to create an adverse impact due to noise.

As to operations, the testimony at the hearing stated that the Applicant would enter into a "Good Neighbor Agreement" that will address operational issues, including maintenance, safety, and security. In this respect, the record reflects that the Applicant has already engaged in a robust community outreach efforts through the Advisory Teams and that the on-going efforts will include the Good Neighbor Agreements. The Board disregards NRG's speculative concerns that homeless families at the facility will lead to rodents, vermin and filth. (Hearing Tr. at 204). The Board credits the Applicant and agrees that such a good neighbor agreement will limit any potential adverse impact of the Project.

Finally, the evidence establishes that there are no similar facilities in the area nearby the Property and, accordingly, the Board finds that this prong of Subsection (4) is also satisfied.

Subtitle U § 420.1(f)(5): The Board of Zoning Adjustment may approve more than one (1) emergency shelter in a square or within five hundred feet (500 ft.) only when the Board finds that the cumulative effect of the facilities will not have an adverse impact on the neighborhood because of traffic, noise, or operations.

As stated in response to Subsection (1), the Board finds that the Applicant satisfies the requirements for Subsection (5) because there are no other emergency shelters in the Property's square or within 500 feet. (see, Findings of Fact 168).

Subtitle U § 420.1(f)(6): The Board of Zoning Adjustment may approve an emergency shelter for more than twenty-five (25) persons, not including resident supervisors or staff and their families, only if the Board of Zoning Adjustment finds that the program goals and objectives of the District of Columbia cannot be achieved by a facility of a smaller size at the subject location and if there is no other reasonable alternative to meet the program needs of that area of the District.

Based on the ample evidence in the record, the Board finds that the program goals and objectives of the District of Columbia cannot be achieved by a facility of a smaller size at

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the subject location and if there is no other reasonable alternative to meet the program needs of that area of the District, and accordingly can approve the proposed Project size pursuant to Subsection (6).

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

As to the first prong of the Subsection (6), the Board credits the Applicant's architectural expert and the testimony of the City Administrator and the Directors of the Department of Human Services and Department of General Services that the District's programmatic needs cannot be met by a facility of a smaller size on the Property. Indeed, the Applicant's architectural expert specifically testified that it would be practically difficult to construct a matter-of-right facility as to height and number of stories while complying with the Project's programmatic requirements. The Applicant's architectural expert also testified that alternative design options were studied, but none would meet the programmatic requirements. Moreover, there is no contrary testimony in record. Indeed, NRG did not claim that a smaller building could satisfy the Project's programmatic needs.

Next, as to the second prong, the Board first notes that the Zoning Regulations does not require that a "search" for "reasonable" alternatives be conducted, and accordingly we do not read that requirement into the Regulations. *See Davis v. United States*, 397 A.2d 951, 956 (1979). The Board finds the extensive testimony by City Administrator, the Director of the Department of General Services and D.C. Council Chair Mendelson about the site search prior to selection by the Council. These facts are discussed in Findings of Fact Nos 25 to 42.

The ample evidence in the record documents that a search for a Ward 3 site began in 2014 and that DGS and the D.C. Council reviewed numerous sites during this time frame. Yet, all other sites were found not to be reasonable due to size, proximity to transit or property ownership. Therefore, the D.C. Council determined that the Property was the only reasonable alternative. NRG asserts that the site selection process was inadequate and that other reasonable properties exist. The Board finds these arguments to be unpersuasive. The substantial evidence in the record supports the Applicant's search methodology and, given the necessary criteria, the Property was the only reasonable site that was available during the necessary timeframe.

For these reasons, the Board finds both that the program goals and objectives of the District of Columbia cannot be achieved by a facility of a smaller size at the subject location and if there is no other reasonable alternative to meet the program needs of that area of the District. Accordingly, the Board can, and will, approve the 50-unit Emergency Shelter proposed at the Property.

### Contested Issues

The Board has considered the contested issues set forth in Findings of Fact 115 as well as all other issues presented by NRG, individuals in opposition, ANC 3C, and any other interested party. In consideration of the evidence in the record and the testimony presented at the hearing, the Board finds that the Applicant has met the standard for the variance relief and special exception relief requested as part of this application.

As discussed above, the Board also notes the comments made by the CFA on the Project's height and density. The clear evidence of record documents that DGS is entitled to additional flexibility from the requirements, as conceded by NRG. (Hearing Tr. at 166). This Board's role is broader, as it must review the entire Project, including the important programmatic needs as well as the evidence in the record on the limited impact on the surrounding neighbors and lack of credible alternative sites. Based on this review, the Board, respectfully acknowledges the CFA's comments but determines that the Applicant has met the necessary zoning standards to approve all relief requested.

### Great Weight

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by OP. D.C. Official Code §§ 1-309.10(d) & 6-623.04 (2008 Supp.) Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive.

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

The Property is located within the jurisdiction of ANC 3C (the "ANC"). The Applicant conducted extensive outreach to the ANC including presenting at two full ANC meetings.<sup>3</sup> The Applicant also met with the ANC 3C Planning and Zoning subcommittee on two occasions. In addition, there are numerous ANC commissioners, including the ANC chair, on the Ward 3 Advisory Team. At a regularly scheduled and duly noticed public meeting held on February 21, 2017, with a quorum present, the ANC voted 5-4-0 to support the special exception for the emergency shelter as well as the variance for primary structures on the lot and loading. (Ex. 170). As part of the resolution, ANC voted to oppose the variance for height and number of stories. (Ex. 170).

The D.C. Court of Appeals has stated that the BZA must acknowledge the concerns of the ANC, and articulate reasons why those concerns and issues were rejected and the relief requested from the zoning regulations was granted. *See Metropole Condo Asso. V. Bd. of Zoning Adjust.* [need full cite] *citing Kopff v. District of Columbia Alcoholic Beverage Control Bd.*, 381 A.2d 1372, 1384 (D.C. 1977) ("We conclude that 'great weight' . . . means . . . that an agency must elaborate,

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<sup>3</sup> The Applicant is scheduled to present at a third ANC 3C meeting on April 3, 2017 for the limited purpose of the temporary parking relief.

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with precision, its response to the ANC issues and concerns.”); see also *Levy v. District of Columbia Bd. of Zoning Adjustment*, 570 A.2d 739, 746 (D.C. 1990) (“[T]he [Board] is required . . . to give issues and concerns raised by the ANC ‘great weight’ [through] ‘the written rationale for the government decision taken.’”). However, the Court is clear that the Board is only required to give great weight to those issues and concerns that are “legally relevant” to the relief requested. *Bakers Local 118 v. D.C. Bd. of Zoning Adjustment*, 437 A.2d 176, 179 (D.C. 1981).

As noted above, the ANC passed a resolution supporting three of the four area of relief requested by the Applicant. The ANC opposes the Applicant’s request for a variance from the requirements for height and number of stories alleging that the Applicant “could have designed a lower building that still met development standards and programmatic needs” and that the proposed height “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. 170). The Board disagrees with the ANC’s conclusion as to height and number of stories. There is ample and substantive evidence in the record establishing the specific programmatic needs for the Project and that a shorter building on the Property would not meet these programmatic needs. Specifically, the Project architect testified that reducing the floor-to-ceiling height on floors two through six is not a viable option, and would result in floor-to-ceiling heights that are well below industry standard for residential space. The Project architect testified that a building with two “wings” would not meet programmatic needs. The testimony also reflects that the basement level cannot be excavated further, nor is it within programmatic requirements to house administrative or staff offices in the basement. Similarly, Director Zeilinger testified that two, smaller facilities, with one located on a different property or even both on the same lot, would not meet the District’s programmatic needs and would double operating costs. Furthermore, the Board finds the need to close DC General as critical goal of the city and credits testimony that redesigning would be delay the goals and objections.

Beyond the programmatic needs, the Board also finds that the existing structures on the lot, including the MPD Station, refueling area, retaining wall, Community Garden, and tennis courts, create an exceptional condition. Contrary to the ANC’s assertion the existing structures are, in fact, unique to the Property. Therefore, based on the ample testimony as to the Project’s programmatic needs as well as the existing structures on the Property, the Board finds that there are exceptional conditions that result in a practical difficulty for the Applicant to comply with the zoning requirements concerning height and number of stories.

Next, the evidence in the record belies the ANC’s assertion that the Project’s height would impair the intent, purpose and integrity of the zoning plan. First, the Board notes that it has found that granting similar height relief on other emergency shelter cases, including BZA case numbers 19288, 19289 and 19451, is consistent with the “intent, purpose and integrity of the zoning plan.” Based on the doctrine of *stare decisis*, the Board is permitted to make the same finding in this case. Second, the record reflects that while the Property is adjacent to single-family homes to the south, the Property is also in close proximity to large, mixed-use buildings that range in height from five to nine stories. The Project would not impair the intent and purpose of the zoning plan as to height because the Project’s height and stories is similar to nearby buildings. ANC voiced concerns regarding impact to John Eaton Elementary School, but the Board relies on the letter in the record from Carla Watson, Chief Operating Officer of District of Columbia Public Schools. Furthermore,

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the ANC acknowledged that the communities preliminary concerns about co-location and the ability for police to perform were dispelled by presentations from Commander Melvin Gresham of the Metropolitan Police Department and Chris T. Geldart, Director of the Homeland Security and Emergency Management Agency. Accordingly, after carefully assessing the concerns of the ANC, the Board must disagree with the ANC's opposition as to the variance for height and number of stories.

For the reasons stated above, the Board concludes that the Applicant has satisfied the requirements for variances from the height and number of stories, primary structures on the lot and loading requirements and special exceptions for an Emergency Shelter for more than 25 persons, for the property at 3320 Idaho Avenue, NW. Accordingly, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of the applications for variances and special exceptions, **SUBJECT TO THE APPROVED PLANS, AS SHOWN ON EXHIBIT NO. 237 OF THE RECORD, AND SUBJECT TO THE FOLLOWING CONDITIONS:**

- 1) Interior partition locations, the number, size, and location of units, stairs and elevators are preliminary and shown for illustrative purposes only. Final layouts, design and interior plans may vary to the extent that such variations do not require additional relief from the Zoning Regulations and such that the variations do not change the external configuration or appearance of the building.
- 2) Flexibility to vary the final selection of exterior materials within the color ranges of the material types, based on the availability at the time of construction, without reducing the quality of materials or intent of the original design
- 3) Flexibility to make minor refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings trim, and windows that are otherwise necessary to obtain a final building permit to the extent that such changes do not require additional relief from the Zoning Regulations and such that the variations do not change the external configuration or appearance of the building.
- 4) The Applicant shall have flexibility to modify the design of the building to address comments from Commission of Fine Arts necessary to obtain final building permit, provided that any such modifications do not increase any of the areas of relief granted by the Board of Zoning Adjustment, or create any new areas of relief.
- 5) The Applicant shall implement a loading and delivery management plan that includes the following:
  - a. A loading manager will be designated by the building management. The loading manager will coordinate and schedule deliveries where possible, and will be on duty during delivery hours.
  - b. The loading operations will be limited to daytime hours of operation, with signage indicating these hours posted prominently at the loading zone.

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- c. Vehicles using the loading zone will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine idling), the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System.
- d. The loading manager will be responsible for disseminating DDOT's Freight Management and Commercial Vehicle Operations document to drivers to encourage compliance with District laws and DDOT's truck routes.

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

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

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

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

FINAL DATE OF ORDER: April 5, 2017

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

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

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR

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ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.