

Applicant's Draft Findings of Fact and Conclusions of  
Law as to Temporary Parking Relief: Tab "C"

**Application No. 19450A of DC Department of General Services**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the temporary, accessory parking use (“Temporary Parking”) requirements of Subtitle U § 203.1(j).

**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.”) 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 initial 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). The Applicant added Temporary Parking relief from Subtitle U § 203.1(j) in a subsequent filing. (Ex. 108). The Temporary Parking relief has been bifurcated from the relief requested in the initial application.

*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> 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.

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*Requests for Party Status.* In addition to the Applicant, ANC 3C was automatically a party to 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 Ms. 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 proposed, temporary use of the tennis courts as parking for MPD officers' personal vehicles during construction of the parking deck. 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 recommended approval of the application, including the Temporary Parking relief. (Ex. 124; Hearing Tr. at 110). At the hearing, OP reiterated its support for the Temporary Parking relief. (Hearing Tr. at 110).

*DDOT Report.* DDOT filed a report, dated February 16, 2017, which did not include consideration of the Temporary Parking relief. (Ex. 125). Notably, the Applicant added the Temporary Parking relief on that same day – February 16, 2017. (Ex. 108). At the hearing, DDOT stated that it "is happy to work with the Applicant" on the Temporary Parking relief. (Hearing Tr. at 111). DDOT specifically noted that any further issues with the Temporary Parking relief "can be dealt with at a later point, particularly during the public space permitting process." (Hearing Tr. at 111). DDOT also stated that it, if necessary, DDOT does not object 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).

*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 opposing the temporary parking relief requested by the Applicant. (Ex. 170). The resolution acknowledges that, as a result of adding a third level to the proposed parking deck, the Applicant "no longer could build a temporary parking structure onsite for police during the permanent garage construction." (Ex. 170). Therefore, temporary parking for police during construction of the parking deck would be

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located on tennis courts, a portion of which are on the neighboring lot – Lot 848 - that is owned by the federal government. (Ex. 170). The resolution further reflects that, in lieu of utilizing the tennis courts, the Applicant has offered to work with DDOT to reserve on-street parking spaces during parking deck construction. (Ex. 170). Nonetheless, the ANC opposes the temporary parking relief because the tennis courts are a “valuable community amenity” and the parking use “would destroy an undetermined portion of another valuable community asset: the community gardens.” (Ex. 170). The resolution also raises concerns about pedestrian and child safety at the Newark Street Community playground, storm water runoff, removal of trees, and groundwater pollution. (Ex. 170). The ANC states that the preference is for temporary on-street parking, which would be the “least disruptive and costly . . . option.” (Ex. 170). Finally, the ANC notes that it “looks forward to working with DGS and DHS to address the temporary parking options should the project be approved.” (Ex. 170). Nancy MacWood, Chair of ANC 3C, testified at the public hearing on behalf of the ANC. Chair MacWood re-stated the ANC’s concerns as to safety as well as the potential loss of community amenities including the tennis courts and the community gardens. (Hearing Tr. at 122-123). Chair MacWood reiterated that the community would prefer that temporary parking during construction of the parking deck be located on-street. (Hearing Tr. at 123).

*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. The Board received more than 112 letters in support of the application. (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), 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 Temporary Parking relief, NRG testified that the Application lacks information about the temporary parking use; the police vehicles would cause disruption to nearby neighbors in terms of light and noise; and that there will be rainwater runoff that could potentially cause damage to neighboring properties and the Community Garden. (Hearing Tr. at 160-161, 183-184).

*Persons in opposition.* At the public hearing, the Board heard testimony in opposition from two individuals: SMD Commissioner Angela Bradbery and Nancy Sullivan. The testimony in opposition concerned issues of street access to the temporary parking, neighborhood safety, loss of community garden plots, and storm water runoff. (Hearing Tr. at 232-233).

The Board also received approximately 57 written submissions in opposition, including a petition that was signed by 74 individuals. (Ex. 35, 45-46, 48, 57-69, 71, 73, 77-79, 80, 82, 86,

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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.

## **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 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 one tennis court.
11. The Property currently contains 157 non-required parking spaces for use by MPD.

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12. Neighbors can currently hear noises emanating from the Property and the Adjacent Property, including police sirens and conversations between police officers. (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).

**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 west is property owned by the federal government and operated by the National Park Service (Lot 848) (the "Adjacent Property"), which includes a portion of the Newark Street Community Garden (the "Community Garden") and playground, a dog park, two tennis courts, and community garden plots in the RA-1 zone. (Ex. 217).
17. A path exists on Newark Street to access the Adjacent Property, the path goes in between the playground to the west and gardens to the east. (Ex. 217).
18. 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.
19. 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.
20. To the south are single-family dwellings in the R-1-B zone.
21. The Property is well serviced by a number of public transportation options including Metrobus, bikeshare, and carsharing services.
22. 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.
23. The Property is served by a Capital Bikeshare station and a Zipcar pickup station 1 ½ blocks away on Wisconsin Avenue, NW.

**The Project**

24. During construction of a three-level parking deck on the Property, the Applicant will provide temporary, accessory parking for MPD officers' personal vehicles.

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25. The temporary parking will replace in-kind MPD parking that is displaced by construction of the parking deck. The expected timeframe for the temporary, accessory parking use is eight months. (Hearing Tr. at 102-103).
26. The temporary parking use will be located on tennis courts that are partially on the Adjacent Property, which is not owned by the Applicant.
27. The Applicant will pave the tennis courts to provide an appropriate parking pad for MPD officers' personal vehicles.
28. The Applicant will work with DDOT to request a new curb cut on Newark Street, NW, and create street access to the temporary parking pad by constructing a temporary paved road from Newark Street, NW.

**RA-1 Zone Development Standards**

29. Temporary uses shall not exceed a time period of one year. *See Subtitle B § 204.3(a).*
30. Temporary uses shall not result in any new permanent structures, but may utilize existing permanent structures. *See Subtitle B § 204.3(b).*
31. Any use permitted in a particular zone district shall be allowed as a temporary use in that zone. *See Subtitle B § 204.1.*
32. Moreover, any use allowed only with conditions in a zone shall be allowed as a temporary use within that zone, subject to the conditions. *See Subtitle B § 204.2.*
33. Similarly, any use allowed as a permitted use in a zone shall be allowed as an accessory use in that zone. *See Subtitle B § 203.1.*
34. Any use allowed in a zone subject to conditions shall be allowed as an accessory use in that zone, subject to conditions. *See Subtitle B § 203.2.*
35. Pursuant to Subtitle U § 203.1(j), an accessory parking use that is not on the same lot as the principal use may be permitted as a special exception in the RA-1 zone.

**Community Outreach**

36. 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**

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

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- The Application has failed to provide sufficient information about the temporary parking use.
- The Temporary Parking relief will result in loss of community amenities including tennis courts and community garden plots.
- Police vehicles will cause disruption to nearby neighbors in terms of light and noise.
- Police vehicles pose a threat to neighborhood safety given the proximity the parking and access road's proximity to a playground.
- There will be storm water runoff that could potentially cause damage to neighboring properties and the Community Garden.

**Zoning Relief**

**Special Exception Relief**

38. The Project requires special exception relief for a temporary, accessory parking use on a separate lot in the RA-1 zone. *See Subtitle U § 203.1(j).*

**Factual Findings Pertaining to Special Exception Relief**

39. The Applicant proposes a temporary, accessory parking use on tennis courts.

40. During an eight month time frame, the Applicant will construct a three-level parking deck at the rear of the MPD Station on the Property. (Hearing Tr. at 102-103).

41. As a result of the construction, a portion of MPD officers will not be able to park their personal vehicles on the Property. (Hearing Tr. at 103).

42. The Applicant will maintain 50 to 60 MPD parking spots on the Property. (Hearing Tr. at 103).

43. Accordingly, the temporary parking arrangement will be for approximately eight months. (Hearing Tr. at 102-103).

44. The Applicant will pave the existing tennis courts and locate the temporary, accessory parking on the tennis courts.

45. Approximately 1/3 of the temporary parking spaces will be located on the Property.

46. Accessory parking spaces are permitted as a matter-of-right in the RA zone. Subtitle U § 410.1(b).

47. However, a special exception is necessary for accessory parking that is located "elsewhere than on the same lot as the principal use." Subtitle U § 203.1(j).

48. The Applicant's need for relief arises because the remaining 2/3 of the parking spaces will be located on the Adjacent Property.

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49. The Applicant's traffic expert concluded that she has no objection to the temporary use of the tennis courts for parking or the street access point for the temporary parking. (Hearing Tr. at 64).

50. At the hearing, DDOT stated that it "is happy to work with the Applicant" on the Temporary Parking relief, and that any further issues "can be dealt with at a later point, particularly during the public space permitting process." (Hearing Tr. at 111).

51. Currently, the MPD Station experiences "over-flow" parking, with a number of MPD officers' vehicles being parked on the grass in front of the MPD Station. (Hearing Tr. at 190).

52. During numerous public meetings, the community voiced concerns over existing conditions as to on-street parking and congestion in the neighborhood. (Ex. 74; Hearing Tr. at 28, 46, 51).

53. The Applicant expressly responded to these concerns by proposing a third-level of the parking deck, which would alleviate on-street conditions by providing additional parking for MPD. (Ex. 74; Hearing Tr. at 28, 46, 51).

54. In a similar respect, the Applicant proposed the Temporary Parking relief on the tennis courts in order to keep as many MPD vehicles off the nearby streets as possible.

55. Even though the Applicant is seeking Temporary Parking relief, the Applicant continues to review alternative options for MPD parking during construction of the parking deck. (Hearing Tr. at 102).

56. Specifically, the ANC has now indicated that the community does, in fact, prefer the Applicant to temporarily cordon off on-street parking, in lieu of utilizing the tennis courts. (Hearing Tr. at 102).

57. However, the Applicant must find an alternative option that is amenable to both the community and MPD before moving forward with that option and withdrawing the Temporary Parking relief. (Hearing Tr. at 102).

58. DDOT does not object to temporary on-street parking during construction of the parking deck. (Hearing Tr. at 111).

59. DDOT noted that it has authorized similar on-street arrangements in the past, including during construction phases at certain D.C. Public Schools. (Hearing Tr. at 111).

60. The District will develop a "Good Neighbor Agreement" with the adjacent neighbors to establish operational frameworks for the Temporary Parking Relief, including parameters for full restoration of the tennis courts as well as any garden plots that are removed for the temporary parking arrangement. (Ex. 227-228).

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61. As a whole, the Applicant has provided sufficient evidence in the record to consider the Temporary Parking relief.

**CONCLUSIONS OF LAW**

**The Special Exception Standard**

The Applicant seeks special exception relief for a temporary, accessory parking use in the RA-1 zone (Subtitle U § 203.1(j)). 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. 38 to 61, the Board finds that the Applicant has met its burden to satisfy the special exception criteria in this case. Specifically, the Applicant requests special exception relief, pursuant to Subtitle U § 203.1(j), for a temporary, accessory parking use elsewhere than on the same lot as the principal use. Here, the Applicant proposes a temporary, accessory parking use on tennis courts that are partially located on the Adjacent Property. As a preface, the Board finds that the proposed use fits the zoning regulations’ definition of a “temporary” use, as set forth in Subtitle B § 204, because the Applicant has testified that the parking arrangement will be needed for less than one year. (Hearing Tr. at 102-103).

The Board finds that the Temporary Parking relief is in harmony with the general purpose of the zoning regulations and zoning map. As noted in Findings of Fact 46, accessory parking spaces are permitted as a matter-of-right in the RA-1 zone. Subtitle U § 410.1(b). Thus, the accessory nature of the Temporary Parking relief generally aligns with the zoning regulations and map. The Applicant’s need for relief arises solely because a portion of the accessory parking will be located on the Adjacent Property.

Additionally, the Board finds that the Temporary Parking relief will not adversely affect the use of neighboring property. First and foremost, the Temporary Parking relief is just that, temporary. The record reflects that the parking arrangement will only be necessary during the relatively

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short period of time the Applicant will be constructing the permanent parking deck. Upon completing the parking deck, the Applicant will fully restore the tennis courts and community garden plots as well as the area for the access road. Nonetheless, as stated in Findings of Fact 10 to 14, the Temporary Parking relief will not materially change conditions that already exist. There is testimony establishing that neighboring property owners can hear police vehicles. (Hearing Tr. at 185). Thus, there will be no adverse impact in terms of noise. Further, the Temporary Parking will be dedicated for MPD personal vehicles. While the Board recognizes that the access road will be located in close proximity to a playground, there is no substantive evidence reflecting that MPD officers will be operating at high speeds, as the tennis courts will only be utilized for personal vehicles. DDOT has also indicated that any such issues will be considered during the public space process for the requisite curb cut. There is no substantive evidence in the record that disputes any of these conclusions concerning the effect of Temporary Parking on the neighborhood. The Board also notes that the issue of stormwater runoff is a construction issue that is not germane to zoning matters. Finally, potential effects from the Temporary Parking relief can be alleviated through the "Good Neighbor Agreement."

Moreover, Subtitle U § 203.1(j) permits a temporary, accessory parking use as a special exception subject to certain conditions. The Board finds that the Applicant has demonstrated compliance with the standards and requirements set forth in Subtitle U § 203.1(j), as follows:

(1) Parking garages shall not be permitted; parking spaces shall be in an open parking lot area or in an underground garage no portion of which, except for access, shall extend above the level of the adjacent finished grade;

The Applicant proposes a parking pad for the temporary parking arrangement, which will be open to the sky.

(2) All parking shall meet the conditions of Subtitle C, Chapter 7;

The Applicant has not requested a waiver of this condition and, therefore, the Board finds that the proposed parking will comply with all conditions set forth in Subtitle C, Chapter 7 of the zoning regulations.

(3) No commercial advertising signs shall be permitted outside a building, except a sign advertising the rates as required by Chapter 6 of Title 24 DCMR, Public Space and Safety;

The record establishes that the temporary parking will be utilized solely for MPD officers' personal vehicles. The parking will not be open to the general public, nor will the parking be advertised to the general public. Accordingly, the Applicant does not propose any commercial advertising signs in compliance with this condition.

(4) At least eighty percent (80%) of the parking surface shall be of pervious pavement;

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The Applicant has not requested a waiver of this condition and, therefore, the Board concludes that the Applicant will pave the tennis courts with at least 80% pervious pavement.

(5) Accessory parking shall not be accessory to “parking as a principal use”;

As set forth in Findings of Fact 10, the record reflects that the Property is currently improved with the MPD Station, and the Applicant seeks Temporary Parking relief for MPD officers' personal vehicles. Therefore, the proposed temporary parking is accessory to the MPD Station use.

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

There is ample evidence in the record that the temporary, accessory parking use will not be objectionable to nearby property owners due to noise, traffic or other conditions. First, the Board finds that the temporary nature of the Applicant's accessory parking use will alleviate any potential objectionable conditions. The Board finds credible the Applicant's testimony that the accessory parking use is needed only for a timeframe of eight months. Upon completion of the proposed parking deck at the rear of the MPD Station, the Applicant will no longer require accessory parking on the tennis courts. The Applicant's very request for "temporary" relief underscores this point.

Nonetheless, the Board further finds that the accessory parking use is located on the tennis courts so that it will not be objectionable to neighboring properties. The Board notes that the Property and the Adjacent Property are large lots, which offer a buffer for neighboring properties. There is also a dense tree cover to the south of the tennis courts that further buffers neighboring properties. The evidence also reflects that neighbors can currently hear sounds emanating from the police station, including from MPD vehicles. Therefore, in terms of noise, the temporary parking use will not objectionably alter existing conditions.

The Board credits the conclusions of the Applicant's traffic expert and DDOT that the temporary parking use is not objectionable. The Board also notes that the Applicant's temporary parking plan will not add any vehicles to neighborhood traffic; the tennis courts will merely provide parking for displaced MPD vehicles during construction of the parking deck. The Board credits DDOT's statement that issues, including public safety, can be dealt with during the public space permitting process. (Hearing Tr. at 111). Finally, the Board notes that any issues pertaining to stormwater runoff are construction issues that are not germane to this condition.

(6)(B) The present character and future development of the neighborhood will not be affected adversely;

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The Board finds that the temporary nature of the Applicant's request for relief diminishes any affect the parking arrangement will have on the character or development of the neighborhood. The tennis courts will be utilized for parking during a short, eight month period. As noted above, as part of the "Good Neighbor Agreement," the Applicant can work with the community to include terms as to restoration of the tennis courts and community garden. Furthermore, the "Good Neighbor Agreement" can address any objectionable condition as to noise, traffic or light that has been raised by NRG. Additionally, the Applicant's relief will not result in the addition of parking spaces; the temporary parking will simply replace existing MPD parking in-kind.

(6)(C) The parking is reasonably necessary and convenient to other uses in the vicinity;

The evidence in the record establishes that the parking is necessary for MPD officers in order to park their personal vehicles. Officers and staff must have reasonably accessible parking to perform their normal duties. As reflected in Director Gillis' testimony, MPD has dictated that parking must be located no more than one-quarter mile from the Property. (Hearing Tr. at 102). Thus, MPD has clearly indicated a necessity that parking be located in close proximity to the MPD Station. By providing temporary parking both on site and on the Adjacent Property, the Applicant has met this condition.

(8)(A) All parking spaces shall be located in their entirety within two hundred feet (200 ft.) of the area to which they are accessory;

The record reflects that the tennis courts are partially located on the Property in satisfaction of this condition. Further, the remaining portion of the tennis courts is well within 200 feet of the Property, as the Adjacent Property is contiguous to the Property.

(8)(B) All parking spaces shall be contiguous to or separated only by an alley from the use to which they are accessory;

The Board finds that the proposed temporary, accessory parking will be contiguous to the Property. The tennis courts are partially on the Property, with the additional portion of the tennis courts contiguous to the Property.

(11) The application shall be referred to the District Department of Transportation for review and report.

During the hearing, DDOT indicated that it had reviewed the Applicant's Temporary Parking relief. DDOT testified that it "is happy to work with the Applicant" on the Temporary Parking relief, and that any further issues "can be dealt with at a later point, particularly during the public space permitting process. (Hearing Tr. at 111). Therefore, the Board finds that this condition has been satisfied.

Contested Issues

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The Board has considered the contested issues set forth in Findings of Fact 37 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 special exception relief requested as part of this application. Furthermore, the Board finds that a majority of concerns will be raised and addressed by DDOT in their public permitting hearing process for review by the public space committee. That process will permit NRG and ANC to express and resolve any outstanding issues.

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 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>1</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. During these community meetings, the Applicant received community feedback concerning the need to alleviate existing on-street parking conditions and congestion. In direct response to these concerns, the Applicant proposed the Temporary Parking relief on the tennis courts. Nonetheless, 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 oppose the special exception for the Temporary Parking relief. (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, 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).

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<sup>1</sup> The Applicant is scheduled to present at a third ANC 3C meeting on April 5, 2017 for the limited purpose of the Temporary Parking relief and to discuss alternative options referenced by Director Gillis.

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The ANC passed a resolution opposing the Applicant's request for Temporary Parking special exception relief. The ANC stated that the Temporary Parking relief will diminish the tennis courts, which are a "valuable community amenity." (Ex. 170). Additionally, the ANC alleged that the Temporary Parking Relief "would destroy an undetermined portion of another valuable community asset: the community gardens." (Ex. 170). The ANC also raises concerns about pedestrian and child safety, as well as storm water runoff and groundwater pollution caused by the Temporary Parking. (Ex. 170). The Board disagrees with the ANC's conclusion as to the Temporary Parking relief. There is ample and substantive evidence in the record establishing that the Temporary Parking will not adversely affect neighboring property. The temporal aspect of the Applicant's parking plan is a key aspect in this determination. The tennis courts will be unavailable for a relatively short period of time – eight months. However, the Applicant and the community can include terms concerning restoration of the tennis courts, driving path, and water runoff in the "Good Neighbor Agreement." While there is no evidence in the record that the Applicant's Temporary Parking plan will "destroy" the community gardens, the restoration of garden plots can similarly be included in a "Good Neighbor Agreement." The Board further finds that the proposed street access road from Newark Street will follow an existing path and not displace any community gardens. The Board respects the concerns of the community, but the temporary loss of recreational amenities is outweighed by the need to provide appropriate parking for MPD.

Similarly, there is no evidence in the record establishing that MPD personal vehicles will pose a safety threat to the community, including the playground. MPD Officers are sworn to protect and service our community; therefore, it is not reasonable to believe they would endanger children, dog-walkers, or gardeners sharing the area. As noted by DDOT, such issues can be considered during the public permitting process. While safety is paramount, the Board finds the ANC's concerns to be unfounded. Finally, any issues pertaining to storm water runoff or groundwater pollution are construction issues that are not germane to zoning issues, but could be easily resolved by the community in the "Good Neighbor Agreement."

For the reasons stated above, the Board concludes that the Applicant has satisfied the requirements for special exception relief for a temporary, accessory parking use. Accordingly, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of the application for a special exception, **SUBJECT TO THE APPROVED PLANS, AS SHOWN ON THE PLANS ATTACHED HERETO, 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

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- 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.

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

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THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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

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

# TENNIS COURT PARKING



WARD 3 SHORT TERM FAMILY HOUSING  
3320 IDAHO AVE NW, WASHINGTON, DC



- 72 Spaces on Existing Tennis Courts Reserved for MPD
  - Only for personal vehicles
- 57 to 87 On-street Spaces Reserved for MPD
  - Only impacts metered or unrestricted spaces
  - Would not impact RPP spaces

#### TEMPORARY PARKING TOTALS

STANDARD SPACES  
COMPACT SPACES

TOTAL TEMP PARKING

40 SPACES  
34 SPACES

72 SPACES

