

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19451 of the District of Columbia, pursuant to 11 DCMR Subtitle X, Chapters 9 and 10, for a special exception pursuant to Subtitle U § 320.1(a) to allow an emergency shelter with more than 15 persons, a special exception under Subtitle C § 703 to allow a reduction in the number of required parking spaces, and a variance from the building height and number of stories requirements of Subtitle E § 303.1 in the RF-1 Zone at premises 850 Delaware Avenue, S.W. (Square 590E, Lot 800).

HEARING DATE: March 1, 2017

DECISION DATE: March 1, 2017

DECISION AND ORDER

This self-certified application was submitted on January 4, 2017 on behalf of the District of Columbia, the owner of the property that is the subject of the application (the “Applicant”). The application requested special exception relief to allow an emergency shelter for more than 15 persons and a reduction in the parking requirement, and area variances from requirements relating to building height in feet and in number of stories in the RF-1 district at 850 Delaware Avenue, N.W. (Square 590E, Lot 800). Following a public hearing, the Board voted to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated January 4, 2017, the Office of Zoning provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Department of Human Services (“DHS”); the Councilmember for Ward 6 as well as the Chairman and the four at-large members of the D.C. Council; Advisory Neighborhood Commission (“ANC”) 6D, the ANC in which the subject property is located; and Single Member District/ANC 6D02. Pursuant to 11 DCMR Subtitle Y § 402.1, on January 5, 2017 the Office of Zoning mailed letters providing notice of the hearing to the Applicant, the Councilmember for Ward 6, ANC 6D, and the owners of all property within 200 feet of the subject property. Notice was published in the District of Columbia Register on January 13, 2017 (64 DCR 330).

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District of Columbia
CASE NO.19451
EXHIBIT NO.75

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Party Status. The Applicant and ANC 6D were automatically parties in this proceeding. A request for party status in opposition to the application submitted by Square 643 Associates LLC, the owner of property at 700 Delaware Avenue, S.W., was withdrawn. A request for party status in opposition to the application, filed March 1, 2017 by Dan Forsyth, was denied as untimely.

Applicant's Case. The Applicant provided evidence and testimony about the proposed emergency shelter from witnesses including Laura Green Zeilinger, the Director of the District Department of Human Services and an expert in matters relating to homelessness, including best practices in providing services for the homeless; Greer Gillis, the Director of the Department of General Services; Dan VanPelt, an expert in transportation planning and engineering; and John Burke, the principal architect of the proposed emergency shelter building and an expert in architecture. The Applicant also provided written testimony in support of the application from City Administrator Rashad Young (Exhibit 61.) The Chairman of the Council of the District of Columbia, Phil Mendelson, provided a written statement "to present the public policy underlying [the application], to explain the process behind [the Council's site selection] decision, and to state the Council's support for these sites [selected by the Council] for emergency shelters." (Exhibit 70.)

OP Report. By memorandum dated February 17, 2017, the Office of Planning recommended approval of the zoning relief requested by the Applicant. (Exhibit 47.)

DDOT. By memorandum dated February 16, 2017, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 42.)

Other agency reports. The Board of Zoning Adjustment ("Board" or "BZA") received letters in support of the proposed emergency shelter from the First Police District of the Metropolitan Police Department (Exhibit 54), the D.C. Fire and Emergency Medical Services Department (Exhibit 53), and the District of Columbia Public Schools (Exhibit 52).

The U.S. Commission of Fine Arts ("CFA") submitted comments by letter dated February 24, 2017, indicating that CFA had reviewed concept designs for the Ward 6 shelter and commending "this innovative building program that recognizes the value of decentralized short-term housing and provides residents with safe and dignified accommodations." The CFA members "strongly endorsed the overall goal of building transitional housing for homeless families in established residential neighborhoods, and they expressed support for the development of programmatic and operational guidelines for these facilities." In approving the concept for the proposed building to house the Ward 6 emergency shelter, the members of the Commission of Fine Arts endorsed "the refined modern aesthetic of

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the design” and “expressed strong support for the massing, program disposition, and careful siting of the building and its creative use of the site to provide outdoor recreation space. They commended the project for its rational, compact planning and the approach of contemporary architecture for a public project in Washington, D.C.” (Exhibit 59.)

ANC Report. By resolution dated February 13, 2017, ANC 6D indicated that, at a properly noticed public meeting on the same date with a quorum present, the ANC voted “to support the construction of a Short-Term Family Housing at 850 Delaware Ave, SW.” (Exhibit 48.)

Persons in support. The Board received letters from persons in support of the application. The persons in support generally cited the need for the emergency shelter and stated that the size and operation of the planned shelter would not be objectionable, and that the emergency shelter use would not generate adverse impacts in the surrounding neighborhood.

Persons in opposition. The Board also received letters from persons in opposition to the application. The persons in opposition commented unfavorably on the site selection process for the proposed emergency shelter use, and objected to the planned height of the building and its proximity to public housing.

FINDINGS OF FACT

1. The subject property is a large parcel located on the northeast corner of the intersection of Delaware Avenue and I Street, S.W. (Square 590E, Lot 800).
2. The subject property has a trapezoidal shape with approximately 286 feet of frontage on Delaware Avenue, 127 feet of frontage on I Street, and 49 feet on H Street. The eastern property line of Lot 800, the only lot in Square 590E, abuts private property. The lot area is 24,187 square feet.
3. The subject property is improved with a three-story building located on the southern portion of the site. The building is used as a medical care facility operated by Unity Health Care Inc. to provide primary health care services to homeless and low-income individuals. The Applicant plans to raze the existing building.
4. The northwest portion of the subject property includes part of the former U.S. Reservation No. 220, which was transferred from the jurisdiction of the National Park Service to the District of Columbia for highway purposes in 1957. Reservation 220 has a land area of approximately 11,065 square feet, of which approximately 4,878 square feet is included in the subject property. The transfer of jurisdiction

precluded any development on the portion of the subject property included in Reservation 220.

5. The eastern portion of the subject property was formerly part of the right of way of First Street S.W., a L'Enfant Plan street, which was closed by a street and alley closing plat dated February 5, 1957. Upon the closing, an area 45 feet wide reverted to the subject property. New construction in the former right of way is discouraged by a District policy favoring the retention of the view corridors of the L'Enfant Plan streets that have been closed. (*See* Comprehensive Plan of the National Capital, Policy UD-1.1.2, Reinforcing the L'Enfant Plan, 10A DCMR § 903.7.)
6. The subject property is located a half-mile or less from three Metrorail stations serving the Green, Blue, Orange, and Silver lines. Nine bus lines provide service within a third of a mile from the subject property. Bicycle- and car-sharing options are also conveniently accessible from the subject property.

Program needs

7. More than 7,000 persons experience homelessness in the District of Columbia on any given night. They currently include 941 families in emergency shelter, including approximately 600 families now staying in “overflow” hotels. Almost half of the families now served in emergency shelters are headed by a parent – usually a mother age 24 or younger – with infant children. Approximately 60 percent of residents at emergency shelters are children.
8. The Department of Human Services administers the Homeless Services Reform Act of 2005 (“Homeless Services Reform Act”), effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code §§ 4-751.01 *et seq.*), which established requirements for the delivery of publicly funded services for homeless persons and specified that eligible clients had the right to shelter in certain severe weather conditions. The District was required to make available appropriate space in District of Columbia public or private buildings and facilities for any person in the District who was homeless and could not access other shelter. The Mayor was directed not to place homeless families in non-apartment style shelters. (D.C. Official Code §§ 4-753.01, 4-754.11.)
9. The Homeless Services Reform Act specified that the District’s provision of homeless services must be based on a Continuum of Care that offers a comprehensive range of services through various member agencies and is designed to meet the specific, assessed needs of individuals and families who are homeless

or at imminent risk of becoming homeless. (D.C. Official Code § 4-753.01.) The District is required to respond to the changing needs of individuals and families by ensuring that transfer between and among services within the Continuum of Care is fluid and allows clients to modify the intensity of services they receive to meet their needs, preferences, and changing circumstances. (D.C. Official Code § 4-753.01(a).)

10. The Continuum of Care may include a range of services, including (a) shelter to meet the housing needs of individuals and families who are homeless through the provision of temporary shelter for families for the purpose of meeting short-term housing needs and other supportive service needs, and (b) supportive services for the purpose of providing families who are homeless or at imminent risk of becoming homeless with services that address their housing, employment, physical health, mental health, alcohol and other substance abuse recovery, child care, case management, transportation, and other health and social service needs which, if unmet, may be barriers to obtaining or maintaining permanent housing. These services may be delivered through shelters. (D.C. Official Code §§ 4-753.01(b)(3)(C), 4-753.01(b)(5).)
11. The Homeless Services Reform Act created the D.C. Interagency Council on Homelessness (“ICH”) for the purpose of facilitating interagency, cabinet-level leadership in planning, policymaking, program development, provider monitoring, and budgeting for the Continuum of Care of homeless services. (D.C. Official Code § 4-752.01(a).) The ICH is chaired by the City Administrator and is charged with providing leadership in the development of strategies and policies that guide the implementation of the District’s policies and programs for meeting the needs of individuals and families who are homeless or at imminent risk of becoming homeless. (D.C. Official Code §§ 4-752.01(a), 4-752.01(a).)
12. The District previously sheltered homeless families at the D.C. Village shelter “in conditions described as ‘overcrowded,’ ‘pest infested,’ and ‘inhumane’” until beginning to shelter families at D.C. General, a former hospital that “was not intended to be used for the purpose of sheltering families,” in 2007. The D.C. General family shelter was intended as a temporary measure but “remains the District’s primary emergency family shelter, housing 250 to 300 families experiencing homelessness.
13. In 2015 the Interagency Council on Homelessness participated in the development of Homeward DC, the District’s strategy to end homelessness. Homeward DC is a five-year strategic plan to prevent and end homelessness that was devised based on

research and experience and in recognition of best practices and evidence-based models from across the country. Homeward DC calls for the development of “service-enriched, community-based shelters” that are smaller in scale than the D.C. General family shelter, which is proposed to be closed by the 2019-2020 hypothermia season. According to DHS, the temporal aspect of the Homeward DC goal is critically important from a cost perspective and to provide suitable shelter for families who are experiencing homelessness.

14. Two principal components of Homeward DC are the need to provide a total of 280 residential units to replace the D.C. General family shelter, and the need to provide emergency shelters that will serve families in a smaller, more dignified environment than is provided at the D.C. General family shelter. Each new community-based shelter was intended to be “economically feasible and able to be developed within a 24-30 month timeline,” and located on a site close to Metrobus transportation and other services and amenities.
15. By letter dated September 18, 2015, Mayor Muriel Bowser transmitted legislation to the Council entitled the “Advancing Year Round Access to Shelter Policy and Prevention of Homelessness Amendment Act of 2015” (now known as “Interim Eligibility and Minimum Shelter Standards Act of 2015”) (the “Interim Eligibility Act”).
16. The Committee Report for the bill¹ explained the need for the legislation as follows:

[t]he problems with D.C. General as a shelter are myriad.... The size of this facility has proven difficult to manage. Moreover, the building is old and outdated with basic systems that work poorly and are costly to maintain, including its heating, cooling, electrical, and water systems. In addition, the facility has been reported to be infested with pests and vermin. Also, outbreaks of scabies and reports of filthy communal bathrooms have been made. Further, reports of drug dealing and fights in and around the facility are rampant.... [N]umerous complaints of staff misconduct ... have been made.
17. The Committee Report indicated that there was “widespread agreement that D.C. General is inadequate to meet the needs of families experiencing homelessness and should be closed.” The report noted that Mayor Vincent Gray had “offered a plan

¹ Council of the District of Columbia, Committee of the Whole, Committee Report on Bill 21-352, “Interim Eligibility and Minimum Shelter Standards Amendment Act of 2015.”

- to replace D.C. General with a network of smaller shelters located throughout the city” in 2014. In order to implement this model Mayor Bowser sought Council “authorization to depart from the existing legal preference to provide apartment-style shelter” and instead “to utilize private room units to replace D.C. General.”
18. The Committee Report emphasized that “the District’s strategy should be not only to close D.C. General, but to replace the inappropriate existing facilities with new facilities that meet the needs of those they serve and to do so in a way that adheres to the standards of dignity we expect as a government. Thus ... we should also seek to provide our homeless population with housing that is safe, humane, and in the interest of public health.”
 19. As enacted, the Interim Eligibility Act, *inter alia*, amended the Homeless Shelter Reform Act to authorize the Mayor to provide shelter to a family in a private room meeting certain minimum standards and constructed for the purpose of closing the D.C. General family shelter.
 20. Those private rooms are referred to as “DC General Family Shelter replacement units,” a term defined as “a private room that includes space to store and refrigerate food and is constructed by or at the request of the District for the purpose of sheltering a homeless family.” (D.C. Official Code § 4-751.01(11A).) A “private room” is defined as a part or division of a building that has: (A) four continuous non-portable walls meeting both the ceiling and floor; (B) a door that locks from both the inside and outside as its main point of access; (C) sufficient insulation from sound; (D) lighting within the room that the occupants can turn on or off as desired; and (E) access to on-site bathroom facilities, including a toilet, sink, and shower. (D.C. Official Code § 4-751.01(28A).)
 21. Buildings composed of D.C. General Family Shelter replacement units (“Replacement Units”) must include, at minimum, a private bathroom – including a toilet, sink, and bathtub or shower – in at least 10 percent of the Replacement Units. One private, lockable bathroom that includes a toilet, sink, and bathtub and is accessible to all residents must be provided for every five Replacement Units. At least two multi-fixture bathrooms must be provided per floor, with multiple toilets, sinks, and showers. (D.C. Official Code § 4-753.01(d)(3).)
 22. The Mayor was directed to maintain a minimum of 280 D.C. General Family Shelter Replacement Units in the District’s shelter inventory, once the Replacement Units were constructed. (D.C. Official Code § 4-753.01(d)(5).)

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23. In 2016 Mayor Muriel Bowser announced an initiative entitled “A Plan to Close D.C. General: Short Term Family Housing in All 8 Wards.” The plan called for the replacement of the family shelter at the former D.C. General Hospital with smaller shelters on sites throughout the District.
24. Under the 2016 initiative to close the D.C. General family shelter and establish new emergency shelters with a maximum of 50 family units each, the Mayor proposed seven sites as potential locations for the new shelters, and proposed to build some of the shelters on sites leased by the District.
25. The sites proposed by the Mayor were identified after the District undertook a search for properties in each ward that could meet the relevant criteria: that is, sites capable of providing a total of at least 280 units, so as to replace the emergency shelter at D.C. General; were economically feasible; were close to public transportation and other services and amenities; and could be developed within 24 to 30 months. The search considered District-owned properties as well as properties to purchase or lease.
26. In Ward 6, the Mayor selected, as the site for a new emergency shelter, a parcel at 700 Delaware Avenue, S.W.
27. Under District law, the Mayor could not proceed with the lease land acquisition or proposed construction without Council approval.
28. Therefore, through a letter dated February 11, 2016, the Mayor proposed legislation, entitled the “Homeward DC Omnibus Approval of Facilities Plan for Short-term Housing for Persons Experiencing Homelessness Act of 2016,” to seek Council approval for the Mayor’s acquisition and construction plan and for certain proposed transactions for the development of short-term housing facilities for families and individuals experiencing homelessness.
29. In her letter, Mayor Bowser “committed to closing DC General” and recognized that, to do so, “we need alternative, safe, and dignified places for families experiencing homelessness,” 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.” The Mayor proposed legislation so that the Council could “express support for and intent to approve impending contracts for short-term housing for persons experiencing homelessness [and to] specify the process for Council approval of these contracts.... The Mayor stated that

It is critical that the Council express its intent to approve the proposed leases and construction contracts in advance, so that the Department of General Services will be able to complete negotiations of the leases and advance the process for construction contracts. It is imperative that the District provide developers with a demonstrated commitment to ensure their willingness to assume risk for advancing designs, securing financing and initiating predevelopment activities.

30. The transactions included a lease between the District and 700 Delaware LLC for a facility in Ward 6 for approximately 50 families experiencing homelessness, at a cost of approximately \$2.25 million annually, consistent with a letter of intent entered into between the District and 700 Delaware LLC, dated November 19, 2015. (Homeward DC Omnibus Approval of Facilities Plan for Short-term Housing for Persons Experiencing Homelessness Act of 2016, Sec. 2(a)(5).)
31. The Council of the District of Columbia endorsed aspects of the Mayor's plan – especially the intention to end use of D.C. General as an emergency shelter for families – but “disagreed with three of the seven sites proposed by the Mayor, and disagreed with the economics of the Mayor's plan – namely that five of the seven sites would be leased....” On March 17, 2016 the Council held a public hearing to address site selection for the emergency shelters, which lasted almost 12 hours and for which more than 80 citizens registered to testify. In May 2016, the Council voted unanimously to direct the Mayor to change three of the sites selected for new shelters – among them the site in Ward 6 – and “to change the economic structure of the plan so that all of the sites would be owned, not leased” by the District. The Council also appropriated a capital budget of \$125 million for the plan. (Exhibit 70.)
32. The Councilmembers received suggestions for alternative sites at the public hearing and subsequently, including “several alternatives” for the Ward 6 shelter. As described in the testimony of Council Chairman Phil Mendelson, the Council “considered several suggested sites.” The site proposed by the Mayor “was widely criticized for a variety of reasons....” The Council initially voted to approve a District-owned site at 2nd and K Streets, N.W. but, after raising “concerns regarding federal regulatory approvals” for that site, the Mayor proposed locating the Ward 6 shelter at the subject property. The subject property “became more attractive” to the Council as the site for the proposed emergency shelter. (Exhibit 70.)
33. The “Homeward DC Omnibus Approval of Facilities Plan for Short-Term Housing for Persons Experiencing Homelessness Act of 2016” was renamed the “Homeless Shelter Replacement Act of 2016.” In its report on the Act (Bill 21-620), the

Council stated that Bill 21-620 presented “a clear plan for how the District will replace D.C. General and, notably, will be fully funded through Bill 21-668, the *Fiscal Year 2017 Local Budget Act of 2016*. The Council report also stated that Bill 21-620 was

a strong statement of the District’s commitment to making homelessness rare, brief, and non-recurring and that doing the right thing can be done in a manner that is both an effective and efficient use of the District’s financial resources and capital assets. The District’s strategy cannot be simply to close D.C. General, but to close and replace D.C. General with new facilities and a full complement of services and supports that truly meet the needs of families experiencing homelessness.

34. *The Homeless Shelter Replacement Act of 2016* (D.C. Law 21-141, effective July 29, 2016; D.C. Official Code § 4-754.01 Note) authorized the Mayor, at Section 3(a), to use designated funds to provide temporary shelter for families experiencing homelessness by constructing six facilities containing D.C. General Family Shelter replacement units, as defined in *The Homeless Services Reform Act*, to replace the D.C. General family shelter. Section 3(a)(5) authorized the Mayor “to use funds appropriated for capital project HSW06C—Ward 6 Shelter to construct a facility to provide temporary shelter for families experiencing homelessness containing 50 DC General Family Shelter replacement units on District-owned land at 850 Delaware Avenue, S.W., Square 590E, Lot 800 ... provided, that the site also may be utilized to locate a health-services facility serving families experiencing homelessness....” The Act appropriated up to \$100 million for the specified purposes. (Section 3(b).) The Mayor was authorized to use funds appropriated for capital project THK16C – Temporary and Permanent Supportive Housing Pool Project for any acquisition or construction authorized by the Act, the cost of which exceeded the amount appropriated for HSW06C – Ward 6 Shelter. Section 3(c).
35. *The Homeless Shelter Replacement Act* reflected the Council’s findings, in Section 2, that:

Best practices suggest that children and families do best when short-term housing is provided in smaller-scale, service-enriched, community-based settings, and it is therefore in the best interest of the District to replace the DC General Family Shelter with a series of facilities throughout the District that provide temporary shelter. (Paragraph 4.)

To close the DC General Family Shelter ... the District needs to construct new facilities that are safe and dignified spaces for families experiencing homelessness. (Paragraph 6.)

It is in the best interest of the District to construct these new temporary-shelter facilities on District-owned land, in part to avoid the disruption to the provision of services in the continuum of care that would accompany the eventual expiration of leases. (Paragraph 7.)

36. The D.C. Council's Committee Report on Bill 21-620, "*Homeless Shelter Replacement Act of 2016*," provides an overview of homelessness in the District of Columbia and the "new approach to sheltering families experiencing homelessness." The report notes that replacement of the D.C. General family shelter by "a similar number of new family units, but in smaller facilities purposely designed with the intention of housing families experiencing homelessness will immediately eliminate some of the most pressing problems that exist at D.C. General" in part because "smaller facilities with fewer families will likely be easier to manage." The Committee Report concludes that "[r]eplacement of D.C. General offers the District a unique opportunity to design a system of shelter facilities with a focus on prioritizing the needs of clients and takes into account lessons learned over decades of providing shelter and services in inadequate facilities."
37. The Applicant's proposed emergency shelter was designed to comply with the statutory requirements and to incorporate standards and guidelines devised by the Interagency Council on Homelessness and the Department of Human Services based *inter alia* on research including studies of best practices. As a result:
 - a. The emergency shelter will provide 50 sleeping units, consistent with the policy to replace the beds currently provided at the D.C. General family shelter with smaller facilities in locations around the District.
 - b. The number of sleeping units per floor was limited to 10, to encourage a predictable environment in which each family could experience greater privacy, without excessive noise or turbulence in the hallways, at a scale where the common rooms on each floor would feel more like community living rooms than anonymous cafeterias or auditoriums.

- c. Each floor was designed to provide a direct line of sight down the floor's single central hallway, which will enhance personal safety by removing hiding places so that the program operator can ensure safety without the need for more intrusive security measures. Activities in the common areas and hallways will be monitored by staff stationed at the security desk on each floor 24 hours per day.
- d. The emergency shelter will not use congregate, dormitory-style bathrooms but will provide bathrooms that will accommodate only one person at a time, with at least one private bathroom for every two family units and some rooms having en-suite private bathrooms to accommodate families with special needs.

Emergency shelter use

- 38. The Applicant proposes to construct and operate an emergency shelter at the subject property. The new building will also provide space for a medical care facility, primarily on the cellar level.²
- 39. The new building will be located in the southern portion of the subject property, and will be built up to the property lines on the H Street (south) and Delaware Avenue (west) sides. The north exterior wall of the new building will abut Reservation 220. The proposed building will not be constructed on Reservation 220 or on the 1st Street, S.W. right of way ("ROW").
- 40. The emergency shelter will meet all applicable code and licensing requirements, and will be operated consistent with the Short-Term Family Housing programs administered by the Department of Human Services for the purpose of providing immediate support to families experiencing homelessness.
- 41. The emergency shelter will provide 50 residential units, with a capacity of up to 166 persons, in a seven-story building containing approximately 51,791 square feet of gross floor area devoted to the emergency shelter use (plus approximately 2,121 square feet of cellar floor area). In addition to the residential units, the building will provide space for services and functions in support of the emergency shelter use, including a dining area, administrative offices, and recreational areas for residents.

² Medical care uses are permitted as a matter of right in the RF-1 zone pursuant to Subtitle U § 301.1(k).

42. The main entry to the emergency shelter will be located on Delaware Avenue at the northern end of the building. In addition to the shelter lobby, the ground floor of the new building will provide space for administrative functions including offices for case management and training, a conference room, and storage along the western edge. Common areas will include a dining and food serving area as well as a computer room, exam room, and space for workforce training. The emergency shelter will provide private meeting space for the provision of “wrap-around” services designed to assist residents in obtaining permanent housing more quickly.³
43. The entrance to the medical care facility will be provided from I Street via a lobby (approximately 1,214 square feet) located at the southern end of the building. The medical care facility will occupy approximately 6,646 square feet of cellar floor area.
44. Floors two through seven of the new building will each contain residential units accessed by a central corridor. The arrangement of units along a single corridor allows a direct line of sight to each residential unit.
45. The northern end of each residential floor will be devoted to a community room, while smaller common areas will provide a sink, microwave, and laundry facilities. An outdoor play space, ranging from 345 square feet to 451 square feet on the seventh, will be provided on each residential floor.
46. Each floor will have a security desk staffed 24-hours per day. Staff monitors will be stationed on each residential floor in a location providing a line of sight encompassing the common areas and the entire length of the hallway. (Exhibit 63.)
47. The residential units will be arranged so that two units will have private bathrooms and the other units will share “family” bathrooms. Each unit will provide two, three, or four beds. A total of 50 units will be provided: 10 each on the second and third floors; eight units each on the fourth and fifth floors; and seven units each on the sixth and seventh floors.
48. The sleeping units and common areas in the emergency shelter will be fully furnished. Residents found eligible for emergency shelter will be permitted to bring personal belongings but not large furniture. (Exhibit 63.)

³ Wrap-around services are intended to provide residents of the emergency shelter with connections to permanent housing programs, housing search assistance, credit counseling, and budgeting, as well as assistance in meeting needs such as childcare, health care, training, and employment services,

49. The cellar level of the new building will provide space for the medical care facility (almost 6,000 square feet) as well as areas devoted to long-term bicycle parking and to storage.
50. The rear yard, along the eastern edge of the subject property, will be devoted to parking for vehicles and for bicycles, and to a loading berth, platform, and a service delivery space. Vehicular access to the site will be provided via existing curb cuts, with ingress from H Street and egress onto I Street. An evergreen hedge, 42 inches in height, will be planted along the eastern edge of the subject property, consistent with the requirements of Subtitle C § 714.2.
51. The parking area will provide 13 parking spaces for vehicles. One space will be devoted to the medical care use, and 12 will be devoted to the emergency shelter use. Pursuant to Subtitle C § 701.5, the parking requirements for zoning purposes are one space for the medical care use and 26 spaces for the emergency shelter use.
52. The maximum number of parking spaces that can be provided in the designated parking area is 13, given the zoning requirements for the depth of each parking space. The parking spaces will be laid out at a 45-degree angle so as to allow a drive aisle of sufficient width. The drive aisle will be 17 feet wide, the minimum required pursuant to Subtitle C § 712.5.
53. The new emergency shelter building will not have a kitchen for food preparation on-site. Instead, meals will be delivered by van twice each day, with deliveries utilizing the on-site loading facilities.
54. Trash collection for the new building will occur in the rear yard, accessed through the ingress and egress established for the on-site parking and loading. Trash will be stored in a room within the emergency shelter building, adjacent to the loading area, in accordance with Subtitle C § 907.1.
55. The Applicant will implement a loading management plan to facilitate deliveries to the site, which the Applicant estimated would occur six to seven times per day. In accordance with the loading management plan, the building management will designate a loading manager, who will be on duty during delivery hours to coordinate and schedule deliveries where possible, and who will encourage compliance with DDOT policies for truck routes and for freight management and commercial vehicle operations. Loading operations will be limited to daytime hours of operation, with signage indicating these hours posted prominently at the loading zone. Trucks using the loading zone will not be allowed to idle and must follow

guidelines for heavy-vehicle operation and the primary access routes designated by DDOT. (Exhibit 34.)

56. Bicycle parking will be provided on site, with five short-term spaces near the entrance to the emergency shelter and five long-term spaces inside the building. (Exhibit 34.) Residents of the emergency shelter will have access to the long-term bicycle storage spaces. (Exhibit 42.)
57. The Applicant will implement a transportation demand management (“TDM”) plan to minimize the traffic impacts of the emergency shelter use. Elements of the TDM plan will include the designation of a TDM coordinator, transit subsidies, and bicycle amenities. All residents of the emergency shelter will receive vouchers to encourage public transit use. Children who are enrolled in a D.C. public school are eligible to receive a DC One Card, which permits free travel on Metrorail and Metrobus.
58. The emergency shelter will be operated by a staff of approximately 24 to 26 employees, with at least 12 employees expected on site at all times and as many as 27 on site at peak staffing times. Because employees will work in shifts beginning at 7:00 a.m., 3:00 p.m., and 11:00 p.m., the arrival times of most employees will not coincide with the times of peak traffic on streets in the vicinity of the subject property. (Exhibit 34.)
59. Residents of the shelter will not be permitted to park vehicles on site. Based on experience at other emergency shelters, the Applicant projects that less than one percent of shelter residents will own a vehicle, and that most residents will likely utilize non-automobile transportation options such as public transit, bicycles, or walking to travel to and from the emergency shelter. (Exhibit 34.)
60. A “community advisory team” was formed as part of the Mayor’s community engagement process related to the emergency shelter initiative in Ward 6 to coordinate community feedback and input, share information on issues and concerns, and comment on building designs to help ensure that the new shelter building would reflect the character the surrounding neighborhood. The Ward 6 community advisory team, comprising 10 community representatives, will conduct “ongoing discussions about specific concerns” with respect to the emergency shelter and will “provide feedback on concerns related to resident quality of life during construction and help develop” a “good neighbor agreement” for the program. The good-neighbor agreement, between the Applicant, the service provider of the emergency shelter, and the advisory team on behalf of the community, will address

expectations and commitments regarding exterior facility and landscape maintenance, community safety, neighborhood codes of conduct, and communication, problem-solving, and mutual respect. (Exhibits 50, 61.)

Building height

61. The Applicant proposes to construct a building 88.5 feet and seven stories in height to house the emergency shelter use. Pursuant to Subtitle E § 303.1, a maximum height of 35 feet and three stories is permitted as a matter of right in the RF-1 zone. Subtitle E § 303.3 allows a building height of 40 feet as a special exception.

RF zoning classification

62. The subject property is located in an RF-1 zone that also encompasses areas to the north and east of the subject property.
63. The Residential Flat (RF) zones are residential zones, which provide for areas developed primarily with row dwellings, but within which there have been limited conversions of dwellings or other buildings into more than two dwelling units. Subtitle E § 100.1.
64. The provisions of the RF zones are intended to: (a) recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city; (b) allow for limited compatible non-residential uses; (c) allow for the matter-of-right development of existing lots of record; (d) establish minimum lot area and dimensions for the subdivision and creation of new lots of record in RF zones; (e) allow for the limited conversion of rowhouse and other structures for flats; and (f) prohibit the conversion of flats and row houses for apartment buildings as anticipated in the RA zone. (Subtitle E § 100.3.)
65. The bulk of structures in the RF zones is controlled through the combined requirements of the general development standards and the zone-specific development standards of Subtitle E (governing Residential Flats zones) and the requirements and standards of Subtitle C (stating General Rules). (Subtitle E § 101.1.)
66. The development standards of Subtitle E are intended to (a) control the bulk or volume of structures, including height, floor area ratio, and lot occupancy; (b)

control the location of building bulk in relation to adjacent lots and streets, by regulating setbacks for side and rear yards, and the relationship of buildings to street lot lines; (c) regulate the mixture of uses; and (d) promote the environmental performance of development. (Subtitle E § 101.2.)

67. The proposed shelter building will comply with development standards applicable in the RF-1 zone with the exception of building height. As a result of the new construction, lot occupancy at the subject property will increase from 29 percent to 36 percent, where a maximum of 40 percent is permitted as a matter of right (Subtitle E § 304.1). A rear yard of 46 feet, seven inches will be provided, where a minimum depth of 20 feet is required (Subtitle E § 306.1). Pursuant to Subtitle E § 307.2, a side yard is not required along a side street abutting a corner lot in the RF-1 zone. The subject property is a corner lot, and the new construction will not provide a side yard on the south side (along I Street); however, a setback of approximately 120 feet will be provided on the north side (abutting H Street).

Nearby properties

68. Properties to the south and west of the subject property are zoned RA-1 and RA-3, with an area mapped as MU-7 located to the south. Properties further to the southeast of the subject property are zoned R-5.
69. The surrounding neighborhood consists of a mix of residential, institutional, and office uses. The nine-story Capitol Park Plaza apartment building (in the RA-3 zone) is located directly across Delaware Avenue to the west of the subject property; the Friendship Baptist Church is located directly across I Street to the south; and a variety of low-rise garden-style apartments are located to the north and northwest. The former Randall Junior High School property, which abuts the subject property to the east, is currently vacant but is the site of a planned unit development (“PUD”) approved by the Zoning Commission in Case No. 07-13. The approved PUD allows new residential construction at a height of 110 feet and 12 stories. See Z.C. Order No. 07-13D (effective May 9, 2014).
70. The new emergency shelter building will be set back at least 90 feet from adjacent property lines to the north, west, and south. On the east, the emergency shelter building will be at a distance of at least 90 feet from the Randall school building.
71. Retail uses, including a grocery store and pharmacy, and service establishments are located near the Metrorail stations within walking distance of the subject property.

A park and two public schools are also located within a half-mile of the subject property.

72. No other property in Square 590E or within 1,000 feet of the subject property is presently used as an emergency shelter.

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception pursuant to Subtitle U § 320.1(a) to allow an emergency shelter with more than 15 persons, a special exception under Subtitle C § 703 to allow a reduction in the number of required parking spaces, and area variances from the building height and number of stories requirements of Subtitle E § 303.1 in the RF-1 zone at 850 Delaware Avenue S.W. (Square 590E, Lot 800). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008 Supp.) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11 DCMR Subtitle X § 901.2.)

Emergency shelter use

Pursuant to Subtitle U § 320.1, certain uses may be permitted in the RF-1 zone if approved by the Board as a special exception under Subtitle X, Chapter 9, subject to the provisions applicable to each use. In accordance with Subtitle U § 320.1(a), the uses permitted in the RF-1 zone by special exception include any use or structure permitted under Subtitle U § 203 subject to any modifications mentioned with respect to use permissions in the Residential Flats (RF) zones. The criteria for special exception approval of an emergency shelter use are listed in Subtitle U § 203.1(h).

Emergency shelter use. In the case of an emergency shelter use considered under Subtitle U § 203.1(h), the provisions applicable to this application specify that the proposed emergency shelter must provide adequate, appropriately located, and screened off-street parking to provide for the needs of occupants, employees, and visitors to the facility (Subtitle U § 203.1(h)(3)); the proposed emergency shelter must meet all applicable code and licensing requirements (Subtitle U § 203.1(h)(4)); the proposed emergency shelter must not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area (Subtitle U § 203.1(h)(5)); and a facility for more than 15 persons, not including any resident supervisors or staff and their families, can

be approved 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 location and if there is no other reasonable alternative to meet the program needs of that area of the District (Subtitle U § 203.1(h)(7)).⁴ Based on the findings of fact, the Board concludes that the new building will be devoted to use as an emergency shelter, as that term is defined in the Zoning Regulations,⁵ and that the application satisfies the requirements for special exception relief in accordance with Subtitle U § 203.1(h).

With regard to Subtitle U § 203.1(h)(3), the Board concludes that the proposed emergency shelter will provide adequate, appropriately located, and screened off-street parking to provide for the needs of occupants, employees, and visitors to the facility. The Applicant will provide 13 spaces in a parking lot along the eastern edge of the property, 12 of which will be reserved for use by employees of the emergency shelter and any visitors to the site.⁶ The Board concludes that 12 spaces will be adequate for the planned emergency shelter use, which will not generate a significant demand for parking given the relatively small number of employees at the facility. Based on experience at other facilities, the Applicant anticipates that very few residents of the new emergency shelter will own personal vehicles. Residents will not be permitted to park vehicles on-site, but will receive transit subsidies to encourage use of public transportation. The use of personal vehicles is not necessary for convenient access to the site, since the location is well-served by public transportation and conveniently located near car- and bicycle-sharing facilities, and the shelter building will provide both short-term and long-term bicycle storage. The Board notes that ANC 6D concluded that the Applicant's proposal will "provide adequate off-street parking" (Exhibit 48.)

The Board finds that the parking lot will be appropriately located, given the size and shape of the subject property, the location of the new building, and development constraints on the site. Consistent with zoning requirements, the Applicant will install landscaping, including an evergreen hedge 42 inches high, along the eastern property line to screen the parking spaces from view from neighboring properties.

⁴ Certain provisions of Subtitle U § 203.1(h) do not apply to this application. They are Subtitle U § 203.1(h)(1) and Subtitle U § 203.1(h)(2), since the subject property is zoned RF-1 and therefore is not located in any R-Use group, and Subtitle U § 203.1(h)(6), concerning the cumulative effect of facilities, because no other facility is now located in the same square or within 1,000 feet.

⁵ The Zoning Regulations define an "emergency shelter" as "[a] facility providing temporary housing for one (1) or more individuals who are otherwise homeless as that arrangement is defined in the *Homeless Services Reform Act of 2005* ...; an emergency shelter use may also provide ancillary services such as counseling, vocational training, or similar social and career assistance." (11 DCMR Subtitle B § 100.2.)

⁶ The remaining parking space will be devoted to the medical care facility.

With respect to Subtitle U § 203.1(h)(4), the Board credits the Applicant's testimony, confirmed by the Office of Planning and not disputed by any testimony or evidence, that the proposed emergency shelter will meet all applicable code and licensing requirements. The Applicant indicated that the Department of General Services will ensure compliance with all applicable code requirements, while the Department of Human Services will ensure compliance with all applicable licensing requirements.

In accordance with Subtitle U § 203.1(h)(5), the Board finds that the proposed emergency shelter will not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area. The emergency shelter at the subject property will be the only such facility in the vicinity. DDOT concurred with the Applicant's method of calculating trip generation estimates for the project, and concluded that "impacts to the surrounding vehicle network [associated with shelter operation] are expected to be minimal." (Exhibit 42.) The emergency shelter is not expected to generate significant increases in traffic, at a level that would have an adverse impact on the neighborhood, because most shelter residents likely will not travel to the site by personal vehicle, the shelter will be staffed by a relatively small number of employees who will work in shifts on a schedule that will not coincide with peak traffic periods on nearby streets, the residents will move in without bringing furniture or other large items typically delivered by trucks, and the internal circulation of the site, including a designated area for loading and trash collection on the east side of the property, will be adequate to accommodate twice-daily food deliveries and trash collection. The Applicant will implement both a transportation demand management plan and a loading management plan to help minimize potential adverse impacts relating to traffic, parking, and loading operations of the new emergency shelter use at the subject property. DDOT concluded that access to the loading and off-street parking, as proposed by the Applicant, would be consistent with DDOT standards, and that the Applicant's proposed loading area will be sufficient to accommodate the project and consistent with DDOT standards. (Exhibit 42.) ANC 6D also concluded that the new emergency shelter would "provide adequate loading and is not anticipated to generate appreciable increases in traffic along Eye Street, SW." (Exhibit 48.)

The emergency shelter use is not likely to generate any adverse impacts relating to noise or operations. Operation of the emergency shelter will be supervised by staff who will be on-site 24 hours each day. All operations will be contained within the building with the exception of small outdoor recreation areas on the residential floors of the building, which will also be subject to staff supervision. Trash collection will occur on the eastern side of the property, in the designated loading area. Operation of the emergency shelter use will be guided by a "good neighbor agreement" devised by a community advisory team that will conduct ongoing discussions to address any concerns about the emergency shelter that

may arise in the future. Several District agencies, in addition to OP and DDOT, indicated no objection to the proposed emergency shelter, including the First Police District of the Metropolitan Police Department (Exhibit 54), the D.C. Fire and Emergency Medical Services Department (Exhibit 53), and the District of Columbia Public Schools (Exhibit 52). ANC 6D “determined that as a primarily residential use, the facility will produce no adverse impacts due to noise or general operations” (Exhibit 48.)

Pursuant to Subtitle U § 203.1(h)(7), an emergency shelter for more than 15 persons, not including any resident supervisors or staff and their families, can be approved 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 location and if there is no other reasonable alternative to meet the program needs of that area of the District.⁷ The Applicant proposes to operate an emergency shelter containing 50 residential units, with a capacity of up to 166 persons, at the subject property.

The Board concludes that the District’s program goals and objectives cannot be achieved by a facility of a smaller size at the subject property because the size of the planned emergency shelter, in terms of the number of units, is required by the District policy to close the D.C. General Family Shelter and to provide a like number of emergency shelter units in smaller facilities on sites in locations around the District. By statute, the District of Columbia is required to maintain an inventory of 280 Replacement Units, once constructed. Provision of a total of 280 residential units is also a key component of the Homeward DC initiative devised by the Interagency Council on Homelessness. To achieve a total of 280 Replacement Units District-wide, each individual emergency shelter for families must contain between 46 and 50 sleeping units.

The decision to provide 50 residential units in the emergency shelter was also driven by program needs related to the provision of wrap-around services. The Applicant determined that a larger number of units in a single facility would help achieve program efficiencies and manage the costs of the services by allowing the provision of services to a larger number of people at one location, rather than building and operating multiple smaller facilities.⁸ The desire for efficiency and cost-management was balanced by the need to

⁷ The emergency shelter proposed in this application will not include any resident supervisors or staff and their families.

⁸ As the Applicant noted, a restriction on the number of occupants to a maximum of 15 would require the construction and operation of at least 12 separate emergency shelter facilities in Ward 6 to house 166 persons who will be served at the subject property, with each smaller facility required to be located on a District-owned site at least 1,000 feet from each other and not in the same square as each other. The delivery of comprehensive, on-site wrap-around services for the residents could not efficiently or effectively be replicated at numerous different smaller District-owned facilities spread throughout Ward 6. (Exhibit 38.)

provide a smaller, family-scale environment on each floor and in the emergency shelter as a whole. The number of sleeping units was set at 50 as the optimal balance between legal requirements and the program's needs and costs.

The Board was also persuaded that construction of multiple smaller facilities on various sites in Ward 6 or the construction of a lower, multi-wing building on the subject property were not feasible options. The Applicant described the importance of the seven-story, 50-unit shelter considering the relevant legal requirements, the costs of providing the services, and the program needs of an emergency shelter facility for families with small children.⁹ The Applicant decided against building smaller shelters because the operation of multiple structures would require the operation of multiple programs, with significantly higher annual operating costs than a single 50-unit shelter.

Construction of multiple smaller facilities would also delay the time until a sufficient number of replacement units would become available to allow the closure of the D.C. General shelter. Homeward DC calls for the development of "service-enriched, community-based shelters" on a schedule such that the D.C. General Family Shelter can be closed by the 2019-2020 hypothermia season.

The size of the planned emergency shelter in terms of the dimensions of the building similarly reflects requirements of District laws and policies. The *Homeless Services Reform Act*, as amended by the *Interim Eligibility Act*, establishes standards for the provision of services for families by specifying the minimum requirements for a private room, for bathrooms, and for access to related services. Specific design elements of the emergency shelter proposed in this application were derived from the legal requirements as well as from research and experience, concerning especially the maximum of 10 sleeping units per floor and the provision of a single hallway on each floor, so that the entire length is visible to staff, to enhance the residents' security.

The Board finds that the proposed density is appropriate at the site, considering especially the public need for the facility and the lack of adverse impacts associated with the emergency shelter on the use of neighboring property. An increase in density is not necessarily incompatible with a residential neighborhood where an increase in the population of an area would not demonstrably bring about an increase in traffic or indicate

⁹ The City Administrator described the proposal to construct a seven-story emergency shelter at the subject property as "a critical element of the District's eight-ward initiative to developing a more effective crisis response system." (Exhibit 61.) The director of DHS testified that the size of the proposed emergency shelter was "necessary to achieve the legislative goal of replacing DC General with facilities for 280 families" while providing emergency shelters that would "harmonize and integrate with the community." (Exhibit 63.)

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a significant change in the level of noise. *Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 295 (D.C. 1974).

The Board concludes that the Applicant has satisfied the requirement of Subtitle U § 203.1(h)(7) in showing that there is no other reasonable alternative to the proposed Ward 6 emergency shelter to meet the program needs of that area of the District. This application grew out of a process, undertaken over a period of years, to devise and implement policies addressing homelessness in the District of Columbia. As part of the process, the responsible District agencies identified certain criteria to assess whether a given property would be a suitable location for an emergency shelter designed to serve families in D.C. General Replacement Units. The Mayor identified sites in each ward. The Council considered the Mayor's initial proposal, as well as other possible sites, before making a determination that the subject property best fit the selection criteria. The Office of Planning and ANC 6D recommended approval of the emergency shelter proposed at the subject property.

In accordance with Subtitle X § 901.2, the Board concludes that approval of the requested special exception to allow an emergency shelter will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. As discussed above, the Board does not find that operation of the shelter will create any adverse impacts on the use of neighboring property.

Approval of the requested special exception will be in harmony with the RF-1 zone and its purposes to recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city. The RF-1 zone provides for areas developed primarily with row dwellings, but anticipates some higher density development as well, since buildings up to 90 feet in height are permitted, without zoning relief, under certain circumstances.¹⁰ The Applicant's proposal satisfies the area requirements applicable in the RF-1 zone with the exception of height. The Board does not find that the proposed building height of 88.5 feet and seven stories is incompatible with the RF-1 zone mapped at the subject property, especially considering the mix of uses and building types in the vicinity.

¹⁰ Pursuant to Subtitle E § 303.4, a place of worship may be erected to a height not exceeding 60 feet and three stories, not including the penthouse. In accordance with Subtitle E § 303.5, a building may be erected to a height not exceeding 90 feet, not including the penthouse, if the building is removed from all lot lines of its lot for a distance equal to the height of the building above the natural grade. Under Subtitle E § 303.6, an institutional building may be erected to a height not exceeding 90 feet, not including the penthouse, if the building is removed from all lot lines of its lot a distance of not less than one foot for each foot of height in excess of that authorized in the zone in which it is located.

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ANC 6D stated its belief that “the building’s proposed design and massing will fit in with the architecture of the surrounding community” (Exhibit 48.)

Parking reduction. The Applicant seeks a special exception under Subtitle C § 703 to allow a reduction, from 26 to 12, in the number of parking spaces required for the emergency shelter use. The Zoning Regulations, in accordance with Subtitle C § 703.1, provide flexibility from the minimum required number of parking spaces, *inter alia*, when the provision of the required number of spaces would be impractical or unnecessary due to a lack of demand for parking or proximity to transit. Pursuant to Subtitle C § 703.2, the Board may grant a reduction in the number of required parking spaces subject to the general special exception requirements and to the applicant’s demonstration of at least one of the eight enumerated conditions. A reduction in the required number of parking spaces must be only for the amount that the applicant is physically unable to provide, and must be proportionate to the reduction in parking demand demonstrated by the applicant. (Subtitle C § 703.3.)

In this case, the Board finds that the Applicant has demonstrated several of the conditions listed in Subtitle C § 703.2. As described in the findings of fact, the emergency shelter use will be particularly well served by mass transit, shared vehicle, and bicycle facilities (Subtitle C § 703.2(b)), since the location offers convenient accessibility to mass transit service, especially Metrobus and Metrorail, as well as to shared vehicle and shared bicycle facilities. The new building will provide bicycle parking available to both residents and employees of the emergency shelter. The land use and transportation characteristics of the neighborhood minimize the need for required parking spaces (Subtitle C § 703.2(c)), given the location of the subject property in a walkable, mixed-use neighborhood where retail and other commercial uses, schools, and parks are accessible on foot. The nature of the emergency shelter use and the number of residents, employees, and visitors who would reasonably be expected to use the proposed building at one time will generate demand for less parking than the minimum parking standards. (Subtitle C § 703.2(e).) The Applicant reasonably expects, based on experience at other sites, that residents of the emergency shelter will not own personal vehicles, and residents will not be permitted to park on-site. Among other TDM measures that the Applicant will implement, residents will be offered transit subsidies to encourage the use of public transportation. The emergency shelter will employ a relatively small number of employees, who will work in shifts so that the parking demand generated by the staff of the emergency shelter use will not be concentrated at any one time.

Consistent with Subtitle C § 703.3, the Board concludes that a reduction in the required number of parking spaces for the emergency shelter use to 12 (in addition to one space required for the medical care facility also on the site) accounts for the amount of parking

that the Applicant is physically unable to provide, and is proportionate to the reduction in parking demand demonstrated by the Applicant. The Applicant has shown that, as proposed, the emergency shelter use is unlikely to create a demand for parking that would warrant the provision of more than 12 spaces.

The Applicant has also demonstrated that additional parking cannot be provided on-site due to the constraints imposed by the siting of the new emergency shelter building and the infeasibility of providing below-grade parking. The layout of the parking area was designed to provide the maximum number of spaces possible while also providing a drive aisle of suitable width for adequate maneuverability for vehicles. Any below-grade garage would have to be located at least two levels below ground, since the medical care facility and other necessary features of the planned emergency shelter will occupy the basement level. Particularly in light of the limited demand for parking expected to be generated by the emergency shelter use, a below-grade garage would be economically infeasible due to the high costs of construction, and the trapezoidal shape of the site would necessarily result in an inefficient layout of any below-grade parking spaces.

In accordance with Subtitle X § 901.2, the Board concludes that approval of the requested special exception to allow a reduction in the number of parking spaces will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. The grant of flexibility from the minimum required number of parking spaces is warranted, as demonstrated by the Applicant, since the provision of the required number of spaces would be impractical and unnecessary, and the requested reduction reflects the amount of parking that the Applicant is physically unable to provide and is proportionate to a reduction in parking demand associated with the planned emergency shelter use at the subject property. For the reasons discussed above, the Board finds that the proposed reduction in the number of on-site parking spaces will not create any adverse impacts on the use of neighboring property.

Area variances

The Applicant seeks area variances from requirements relating to building height in feet and number of stories in the RF-1 zone under Subtitle E § 303.1. The Board is authorized under § 8 of the Zoning Act to grant variance relief where, “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,” the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided

that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. (See 11 DCMR Subtitle X § 1000.1.)

Extraordinary or exceptional situation. For purposes of variance relief, the “extraordinary or exceptional situation” need not inhere in the land itself. *Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Rather, the extraordinary or exceptional conditions that justify a finding of uniqueness can be caused by subsequent events extraneous to the land at issue, provided that the condition uniquely affects a single property. *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939, 942 (D.C. 1987); *DeAzcarate v. District of Columbia Bd. of Zoning Adjustment*, 388 A.2d 1233, 1237 (D.C. 1978) (the extraordinary or exceptional condition that is the basis for a use variance need not be inherent in the land but can be caused by subsequent events extraneous to the land itself....[The] term was designed to serve as an additional source of authority enabling the Board to temper the strict application of the zoning regulations in appropriate cases); *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979) (for purposes of approval of variance relief, “extraordinary circumstances” need not be limited to physical aspects of the land). The extraordinary or exceptional conditions affecting a property can arise from a confluence of factors; the critical requirement is that the extraordinary condition must affect a single property. *Metropole Condominium Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1082-1083 (D.C. 2016), citing *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

The Board may consider the property owner’s needs in finding an exceptional situation or condition when the applicant is a non-profit organization and the proposed use is a public service. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091 (D.C. 1979) (BZA considered permissible factors in applying the first branch of the variance test to a public service organization; the organization’s wish to move to a particular site did not make the site unique, but the Board properly recognized that the site’s location made it “uniquely valuable” to the organization and “uniquely suitable for [its] headquarters.”) Generally, an applicant’s desire to utilize property for a certain use is not by itself sufficient to create an extraordinary or exceptional situation or condition under the zoning regulations, *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540 (D.C. 1972), but subsequent decisions modified *Palmer*, permitting the BZA to weigh more fully the equities in an individual case. *National Black Child Development Institute, Inc. (“NBCDI”) v. District of Columbia Bd. of Zoning Adjustment*, 483 A.2d 687, 690 (D.C. 1984). Consistent with “a well established element of our governmental system,” the

Board “may be more flexible when it assesses a non-profit organization,” even if “a commercial user before the BZA might not be able to establish uniqueness in a particular site’s exceptional profit-making potential.” *Monaco* at 1098, quoting 3 R. Anderson, *American Law of Zoning* s 14.78 (1968) (the public need for a use is an important factor in granting or denying a variance and “the apparently objective standards of the enabling acts are applied differently to the several kinds of uses ...”). The characterization of a proposed use as a public service is significant, and “when a public service has inadequate facilities and applies for a variance to expand ..., 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.’” (*Monaco* at 1099.) *See also NBCDI*, 483 A.2d 687 (D.C. 1984) (BZA did not exceed its authority in granting variance relief to a nonprofit entity whose work promoted the public welfare by benefitting “black children and families within the District,” when, absent variance relief, “the great expense of operating offices at another site would cause serious detriment” to the nonprofit.)

The need to expand does not automatically exempt a public service organization from all zoning requirements. In applying for an area variance, a public service organization must show (1) that the specific design it wants to build constitutes an institutional necessity, not merely the most desired of various options, and (2) precisely how the needed design features require the specific variance sought. *Draude v. District of Columbia Bd. of Zoning Adjustment*, 527 A.2d 1242, 1256 (D.C. 1987).

The Board concurs with the Applicant that the subject property is faced with an exceptional situation and condition as the result of the physical constraints limiting development of the lot, especially its trapezoidal shape and the restrictions on how a building can be sited on the lot imposed by the inclusion of a portion of Reservation 220 and the former First Street right of way, as well as the designation of the subject property, in legislation enacted by the D.C. Council, as the site for a new emergency shelter in furtherance of Homeward DC, a District-wide initiative to comply with statutory requirements and to implement public policy by creating an adequate supply of emergency shelter units for use by eligible families facing homelessness.¹¹ The Council selected the site as the best option relative to criteria determined by the Council, which in large measure reflected the criteria used by the Mayor and by District agencies in defining the parameters for locations best suited for

¹¹ The Applicant also cited “specific conditions...imposed on the proposed development” as creating “a further exceptional situation and condition,” listing the requirement to provide 50 residential units, as well as space for support services, as “an exceptional situation and condition that further dictates the size, program, and design of the building and directly impacts the Applicant’s ability to provide a fully zoning-compliant project.” (Exhibit 38.) However, the proposed use of a property is not a sufficient basis for determining the presence of exceptional conditions, *Metropole Condominium Ass’n*, 141 A.3d at 1083.

emergency shelters providing D.C. General Replacement Units, and appropriated funds for use in building and operating an emergency shelter at that site. As discussed *supra*, the Board accepts the Council's determination.

The Applicant has requested area variance relief from the limits on building height in terms of feet and number of stories. The Applicant has shown that the District has a need to use the subject property in furtherance of providing a public service, the provision of shelter and services to homeless families. The site is "uniquely valuable" to the Applicant in light of the goals and policies set forth in the Homeward DC initiative, and is "uniquely suitable" as the location for the proposed emergency shelter in light of the site selection process undertaken by District agencies and finally voted on by the Council. The Applicant demonstrated a need for the proposed building height, as a lower building with multiple wings at the subject property or the operation of several smaller facilities at multiple locations would not be possible, would complicate the provision of services while greatly increasing the costs, and would not comport with the District's policy decisions with respect to the optimal size and layout of emergency shelter facilities. The Board finds that the proposed building height of 88.5 feet and seven stories is an institutional necessity with respect to the construction of an emergency shelter for families that will meet statutory requirements with respect to the provision of private rooms, adequate bathroom facilities, and suitable space to offer wrap-around services while also meeting security requirements and achieving cost efficiencies in the operation of the shelter.

Practical difficulties. An applicant for area variance relief is required to show that the strict application of the zoning regulations would result in "practical difficulties." *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995), quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980). A showing of practical difficulty requires "[t]he applicant [to] demonstrate that ... compliance with the area restriction would be unnecessarily burdensome" *Metropole Condominium Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1084 (D.C. 2016), quoting *Fleishman v. District of Columbia Bd. of Zoning Adjustment*, 27 A.3d 554, 561-62 (D.C. 2011). In assessing a claim of practical difficulty, proper factors for the Board's consideration include the added expense and inconvenience to the applicant inherent in alternatives that would not require the requested variance relief. *Barbour v. District of Columbia Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976).

The Applicant asserted that, absent variance relief, the District would be unable to meet its program needs, since the requested variances are needed to carry out the public purpose of providing the necessary emergency shelter facility at the site designated for Ward 6. The strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the Applicant by precluding the construction of an emergency

shelter building on the site consistent with legal and public policy requirements. A building limited to the height and number of stories permitted as a matter of right would be unnecessarily burdensome to the Applicant by preventing its implementation of a design derived from extensive research and consideration of operational efficiencies and the costs of providing the necessary services.

The strict application of the zoning limits on building height would result in practical difficulties to the Applicant in part because the development constraints in place at the subject property preclude the construction of a new emergency shelter building at a lower height spread out horizontally on the site. The building footprint cannot be extended further to the south or west, since the Applicant's proposed design already incorporates construction up to the south and west property lines. The building footprint cannot be extended further to the north, because, as designed, the building's north exterior wall will abut Reservation 220, which precludes any further development to the north. Any additional development to the east, cantilevered over the proposed parking and loading area, would require zoning relief from rear yard requirements and would contravene the District policy to retain the view corridors of L'Enfant Plan streets. Even if physically possible, a lower building with a larger footprint would result in internal areas without windows, which would therefore be unsuitable for residential use, and would require multiple corridors that would not allow for internal direct lines of sight, thereby diminishing the safety and security of residents and staff of the emergency shelter. Below-grade construction would not be appropriate for the emergency shelter use.

No substantial detriment or impairment. The Board finds that approval of the requested variance relief would not result in substantial detriment to the public good or cause any impairment of the zone plan. As previously discussed, the proposed emergency shelter use satisfies the requirements for special exception approval such that the use is consistent with zoning requirements and will not cause adverse impacts on the use of neighboring property. The Applicant has demonstrated that the size of the planned building is necessary to meet relevant program needs and achieve needed efficiencies through the provision of 50 residential units and space for related "wrap-around" services as part of a program to provide 280 units District-wide in a setting designed to create a suitable environment for families facing homelessness in a building that will be integrated into the surrounding community. The Office of Planning and ANC 6D both recommended approval of the requested variance relief, finding no substantial detriment to the public good arising from the additional building height. The Commission of Fine Arts also commented favorably on the building design, endorsing its "refined modern aesthetic" and expressing "strong support for the massing ... and careful siting of the building." The Board concurs with

OP's testimony that the Applicant's proposed building "would be compatible with the development pattern" of nearby buildings, and that its "substantial" setbacks will ensure that the additional height would not result in "any shadows to negatively impact light and air to neighboring residences." The proposed height of the emergency shelter is less than the maximum height permitted as a matter of right under certain circumstances (*i.e.* buildings permitted up to 90 feet in height in accordance with Subtitle F § 303), and therefore will not substantially impair the intent, purpose, or integrity of the RF-1 zone.

Great weight

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.)) For the reasons discussed above, the Board concurs with OP's recommendation that the application should be approved in this case.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.)). In this case ANC 6D passed a resolution in support of the application and did not state any issues or concerns in opposition to the Board's approval of the application. Thus, there is nothing for the Board to give great weight to.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception to allow an emergency shelter for more than 15 persons, a special exception to reduce the number of required parking spaces, and area variances from requirements relating to building height in feet and number of stories in the RF-1 district at 850 Delaware Avenue, S.W. (Square 590E, Lot 800). Accordingly, it is **ORDERED** that the application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 38B - ARCHITECTURAL DRAWINGS.**

VOTE: 4-0-1 (Frederick L. Hill, Robert E. Miller, Lesylleé M. White, and Carlton E. Hart voting to APPROVE; one Board seat vacant).

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

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: October 4, 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 TWO-YEAR 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 THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

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

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.