BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPLICATION OF **BZA APPLICATION NO. 19450**
D.C. DEPARTMENT OF GENERAL SERVICES **HEARING DATE: MARCH 1, 2017**

APPLICANT'S REPONSE TO THE PRE-HEARING STATEMENT OF NEIGHBORS FOR RESPONSIVE GOVERNMENT

I. INTRODUCTION

A zoning referral letter[1] from the District of Columbia Zoning Administrator affirming the areas of relief requested is attached as **Exhibit "A"**. The Application is still self-certified and, thus, the updated Self-Certification Form[2] is filed in the record at BZA Exhibit No. 108, which lists the complete areas of relief. The District's Office of Planning and the District's Department of Transportation recommends approval of the necessary relief (BZA Exhibit Nos. 124 and 125, respectively). There is substantive community support for the Project as documented by the numerous letters of support in the Record, as well as the ANC's statement that it "Continues to strongly support creating Ward 3 temporary family housing in furtherance of the Homeward DC initiative", *see* BZA Exhibit No. 170.

The NRG Submission raises the following general concerns about the Project to which the Applicant now responds and will respond further at the March 1, 2017 hearing:

- The Application does not satisfy the variance standard;
- The Project is not an "Emergency Shelter" under the Zoning Regulations;
- The Superior Court's dismissal of NRG's parallel lawsuit on the issue of site selection somehow negates the BZA application; and

[1] The Zoning Administrator affirms that the Applicant may obtain special exception relief for an Emergency Shelter use. Additionally, the Zoning Administrator affirms that the variance relief for the second primary structure on the lot is an area variance – there is no reference to Subtitle U, which sets forth permissible uses.
[2] The revised Self-Certification Form incorporates the temporary parking relief as a special exception. The form inadvertently references Subtitle U § 302.1(j), whereas the correct section is Subtitle U § 203.1(j).

- The Application is "incomplete".

As will be discussed briefly below and more in depth during the hearing, all of NRG's contentions lack merit and are simply an exercise to confuse this Board and the public record. Such efforts fail. The Project is fully compliant with the Zoning Regulations for all the reasons stated in the record and supplemented by the testimony at the upcoming hearing. This Project is a public service that is necessary to ensure that the District satisfies the Mayor's goals, confirmed in D.C. Act No. 21-251 that directed the closing of DC General and the construction of 280 units of emergency shelter for families.

II. APPLICATION SATISFIES THE VARIANCE STANDARD

NRG submits a handful of arguments claiming that the Application does not satisfy the variance standards necessary for the Application (NRG Submission pp. 5 – 16). NRG's assertions fall flat because (A) they fail to acknowledge, as they must, that this Board must apply a lower, more flexible standard for a public service project of this kind; (B) any reliance on a "self-created" hardship standard is completely misplaced as there is no request for a use variance; and (C) the co-location of the Project and the existing MPD second district station aligns with agency needs and the uncontroverted direction in the District of Columbia Comprehensive Plan (the "Comprehensive Plan").

A. Reduced Standard for Public Service Projects

Pursuant to governing D.C. Court of Appeals and Board precedent a reduced standard is to be applied when reviewing and approving zoning relief needed for a building that will house public services uses. Accordingly, the Applicant – the District's Department of General Services – and the nature of the Project – an emergency shelter for families experiencing homelessness – are vital aspects in determining whether the Project meets the standard for obtaining zoning relief.

1. D.C. Court of Appeals has established the more flexible "public-service" standard

The D.C. Court of Appeals has consistently applied the reduced public service standard. The seminal case is *Monaco v. D.C. Board of Zoning Adjustment*, in which the Court considered a BZA application of a non-profit, the Republican National Committee (the "RNC"). *See Monaco v. Board of Zoning Adjustment*, 407 A.2d 1091, 1094 (1978). Specifically, the RNC sought area and use variances to expand its offices. *See id.*at 1095. In analyzing the need for variance relief, the Court concluded that the RNC faced an exceptional condition, specifically noting that

> [w]hile a commercial user before the BZA might not be able to establish uniqueness in a particular site's exceptional profit-making potential, we consider that the **BZA may be more flexible when it assesses a non-profit organization** which is a well established element of our government system. (emphasis added) *See id.* at 1098.

The *Monaco* Court explicitly stated that "**public need is an important factor in granting or denying a variance**." (emphasis added) *See id.* The Court concluded that

> [w]hen a public service has inadequate facilities and applies for a variance to expand into an adjacent area in common ownership . . . 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.' *See id.* at 1099.

Another important Court of Appeals case applying the public service standard to zoning relief is the matter of *National Black Child Development Institute, Inc. v. Board of Zoning Adjustment*. In that case, a nonprofit that benefited young children, applied to the BZA for a use variance to permit an office use its property. *See National Black Child Development Institute, Inc. v. Board of Zoning Adjustment*, 483 A.2d 687, 688 (1984). The BZA granted that application for zoning relief, but the Board imposed certain conditions on the applicant that were ultimately appealed to the Court of Appeals. *See id.*

On appeal, the Court of Appeals adopted the *Monaco* holding, applying a "more flexible standard for determining hardship when a 'public service,' or nonprofit entity, is the applicant." *See id.* at 690. As to the zoning relief, the Court affirmed the BZA's grant of the variance, noting that applicant's "work benefited black children and families within the District," and concluding that the "situation is unique, that **its work does promote the public welfare**…." (emphasis added) *See id.*

Furthermore, in *Draude v. BZA*, the Court of Appeals considered the BZA's decision granting area variance and special exception relief to George Washington University. *See James Draude v. D.C. Board of Zoning Adjustment*, 527 A.2d 1242, 1245 (1986). Applying the Court's clear direction in *Monaco* and *National Black Child Development*, the *Draude* Court applied the reduced public service standard to the university. *See id.* at 1255-56. Notably, the Court established specific factors that must be met for a quasi-public service organization to obtain area variance relief through the reduced standard. *See id.* at 1256. These factors include the requirements

> (1) that the specific design it wants to build constitutes an institutional necessity, not merely the most desired of various options, and (2) precisely how the needed design features require the specific variance sought. *See id.*

The subject Application directly satisfies the two *Draude* factors, demonstrating that it is entitled to the reduced public service standard as to the requested variance relief. Namely, the Applicant has demonstrated that the specific design of the Project is an institutional necessity, and not merely one of many design choices. The Applicant has also submitted evidence documenting precisely how the needed design features require the variance sought.

The requested area variance relief is directly tied to the Project's programmatic requirements, including creating an emergency shelter that is safe and dignified. In order to

close D.C. General, the Project must create 50 units without expanding beyond 10 families per floor. Increasing the number of families per floor would conflict with the programmatic need to create a safe environment. Ten units per floor is consistent with the programmatic requirements to design efficient, family-sized units that promote a calm and healthy environment. In conjunction with other limitations of the Property – particularly, the existing MPD station and the Community Gardens – the Applicant must build six stories with a height of 69 feet. Similarly, the Applicant's design features, height and stories are dictated by the site-conditions and needs of DHS to close D.C. General. Finally, the D.C. Council legislated the authority to administer the use of this Property for the Project, necessitating that the Project be the second primary structure on the Property.

2. The Board has applied the more flexible "public-service" standard to numerous area variance applications

In keeping with precedent established by the Court of Appeals, the Board has applied reduced scrutiny to applications of public service organizations on a number of occasions. In BZA Case 18240, the District of Columbia Public Library applied for an area variance from the minimum rear yard requirement. *See* BZA Case No. 18240. The Board concluded that the "**programmatic requirements of the library constitute an institutional need that contributes to the exceptional situation facing the subject property**." (emphasis added) *See id.* In so doing, the Board specifically found that the applicant had established the

> origins of its standard building program for neighborhood libraries, its efforts to ensure uniform services and facilities, to the extent possible, at each neighborhood library, and the particular need to maximize the services and facilities offered at the subject property as the only neighborhood library in Ward 1. *See id.*

The Board expressly and conclusively dispelled the opposition's attempt to discredit the library's programmatic requirements. Instead of adopting those claims, the Board found that the D.C.

Public Library has satisfied this standard because it had professional expertise in the library's needs, the public had input at various stages of the design, and the public service nature of the library use. *See id.*

The Board made similar findings as to the reduced public service standard in BZA Cases 18272 and 17973. In the former case, the Board granted the application of the First Baptist Church of Washington seeking an area variance from a maximum height requirement. *See* BZA Case No. 18272. In the latter case, the Board granted the District of Columbia Public Library's application for an area variance from the minimum parking requirements. *See* BZA Case No. 17973. In both cases, the Board expressly noted that the burden of proof for variance relief is decreased for non-profit or public service organizations. *See* BZA Case Nos. 18272 and 17973; *see also* BZA Case No. 16916 (Board applies reduced public service standard in granting use variance to Friends Committee on National Legislation) and BZA Case No. 17609 (Board applies reduced public service standard to grant use variance to First Baptist Church).[3]

In the matter before this Board, the Applicant has met the burden of proof for the three requested area variances, particularly in consideration of the reduced standard of scrutiny for a public service organization. Much as in the above-outlined cases, the Applicant, a District agency, has set out to construct the Project in order to remedy an acute public need in the District – ensuring adequate safe shelter for families experiencing homelessness. As described in the

[3] According to the Supreme Court, *stare decisis*[3] "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Randall v. Sorrell*, 548 U.S. 230, 243 (2006) (citation omitted) (*quoting Payne v. Tennessee*, 501 U.S. 808, 827 (1991)). *Stare decisis* thereby avoids the instability and unfairness that accompany disruption of settled legal expectations. *Id*. at 244. As a quasi-judicial body, the principles of *stare decisis* should not be casually ignored in Board decisions.
In addition to fostering actual and perceived integrity in the judicial process, consistent legal interpretation of law is necessary to avoid being arbitrary and capricious. A decision is arbitrary and capricious when it is not based on reason or evidence, or when there is an unaccountable change in reasoning. The D.C. Court of Appeals has found that an "'[u]nexplained' inconsistency in an agency's interpretation of its governing statute can be 'a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.'" *Hensley v. D.C. Dep't of Empl. Servs*., 49 A.3d 1195, 1203 (D.C. 2012) (internal citations omitted).

Applicant's previous filings, the Project represents an important part in implementing "Homeward D.C." the District's strategic plan, adopted by the District's Interagency Council on Homelessness, which has a goal of making homelessness in the District rare, brief and non-recurring. Accordingly, the Board must consider the Applicant's request for zoning relief through the lens of this reduced public service standard. There is no evidence in the record to the contrary, and any efforts to claim otherwise during the hearing will have no basis in the law whatsoever.

B. Self-Created Hardship is not at issue in this case.

NRG takes numerous tacks to advance its unfounded argument that the Board should apply the "self-created" hardship test to this case. All of these efforts must fail for the simple reason that the Applicant seeks *area* variance relief – not use – relief. As discussed in more depth below, the proposed emergency shelter use is permitted as a matter of right and of the proposed size by Special Exception.

It is well established that a self-created hardship is not a factor to be considered by the Board in an application for an area variance. *See Ass'n for Pres. Of 1700 Block of N St., NW & Vicinity v. Board of Zoning Adjustment*, 384 A.2d 674, 678 (1978)*;see also* BZA Case No. 18651. Indeed, a self-imposed hardship would only justify denial of a request for a use variance, which is not the case here. *See Foxhall Community Citizens Assoc. v. Board of Zoning Adjustment*, 524 A.2d 759, 761 (1987); *see also Oakland Condo Ass'n v. Board of Zoning Adjustment*, 22 A.3d 748, 755 (2011).

In a blatant attempt to shoehorn the Project into this standard, the Opposition claims that the Applicant "is actually seeking a use variance disguised as an area variance" as it concerns the requested relief from Subtitle C § 302.2. *See* BZA Ex. No. 164A1, Pg. 12. In doing so, the Opposition ignores that Subtitle X § 1001.3 expressly states that it provide "*examples* of area

variances" (emphasis added), which are by no means exhaustive of every type of area variance relief available under the zoning regulations. To that end, a "use" is defined as "[t]he purpose or activity for which a lot or building is occupied. Use shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupied, offered for occupancy." *See* Subtitle B § 100.2. Use categories are subsequently defined in Subtitle B § 200.2. The existence of more than one[4] primary structure on a lot has absolutely no relation to the use of that property. To claim that relief from Subtitle C § 302.2 constitutes a use variance would be inapposite of the very definition of "use" in the zoning regulations.

Here, the Applicant has requested three area variances, but no use variances. In support of the request for area variances, the Applicant sufficiently details the exceptional conditions affecting the Property, including the Project's programmatic needs. *See* BZA Ex. 75, Pg. 5-7. The D.C. Court of Appeals and BZA precedent clearly establishes that any "self-created" hardship will have no bearing on the Applicant's request for area variances.

Nonetheless, it remains a question as to whether the exceptional conditions are, in fact, "self-created" by the Applicant. The self-created hardship rule is "a manifestation of the equitable principle of estoppel," meaning that the Applicant must have clean hands and act in good faith. *See DeAzcarate v. Board of Zoning* Adjustment, 388 A.2d 1233, 1239 (1978). As noted above, the Applicant is a District agency and the Project is a "public service". The programmatic needs are based upon input from experts in the field of homeless services, and aim to provide families experiencing homelessness with a safe and dignified shelter.

Importantly, Court of Appeals cases such as *Oakland and A.L.W.* do not concern public services and the perceived "self-created" hardship results in direct financial gain for the

[4] The relief requested relates to the number of primary structures on the lot. Thus, the deviation is numeric and corresponds with an area variance.

applicant. As the Court in *Monaco* distinguished, market rate, commercial users, such as those in *Oakland* and *A.LW.*, "might not be able to establish uniqueness in a particular site's exceptional profit-making potential." In *Oakland*, the applicants sought relief to build additional units in a rooming house; in *A.L.W.*, the applicant was a private developer seeking to develop unimproved property. Here, the programmatic needs and the site selection do not benefit the Applicant in any way. As a "public service," the Applicant seeks to carry out the policy goals of the District and solve the problem of homelessness.

In summation, the "self-created" hardship is not relevant to the Applicant's request for area variances. The assertion that the Applicant seeks a use variance is legally unfounded and factually incorrect. Therefore, even if an exceptional condition of the Project is "self-created", which remains in question, the Board may not consider this factor in determining the zoning relief available to the Applicant.

C. <u>The Co-location of the Project and the MPD Second District Station is in accord with the Comprehensive Plan.</u>

The co-location of the emergency shelter on the same lot as the MPD second district station furthers the Comprehensive Plan's goal of co-locating multiple community services; the co-location has been extensively discussed as a group to ensure safe, dual operations. The relevant sections of the Comprehensive Plan include the following policy goals:

- *Policy CSF-1.1.1: Adequate Facilities*: Construct, rehabilitate, and maintain the facilities necessary for the efficient delivery of public services to current and future District residents. § 1103.6

- *Policy CSF-1.1.8: Co-Location:* Encourage the co-location of multiple community services in the same facility, provided that the uses are functionally compatible with each other and are also compatible with land uses and activities on surrounding properties. The planning of public facilities such as libraries, police and fire stations, recreation centers, job training centers, early childhood development centers, and wellness centers, shall be fully coordinated to ensure that such facilities are logically and efficiently sited, and support the goal of providing neighborhood-based services.

> Joint planning of District-operated facilities with other community facilities such as schools, health clinics, and non-profit service centers shall also be supported through ongoing communication and collaboration between the Office of Planning, the DC Public Schools, the Office of Property Management, the City Administrator, the Office of Budget and Planning, other District agencies, and appropriate outside agencies and partners. § 1103.14

Notably, the Comprehensive Plan encourages the co-location of community service buildings, including police stations. Further, the Project and the MPD second district station are functionally compatible. *See* BZA Ex. No. 75B-75D. The Project will have staff on-site at all times to monitor activities and operations. The proximity of the MPD station and its resources will provide a nexus of services that will be beneficial in enhancing a safe environment for the shelter's residents. Therefore, in terms of the Comprehensive Plan, the Project furthers the public service planning goals of the District.

III. THE PROJECT SATISFIES THE DEFINITION OF AN "EMERGENCY SHELTER"

NRG's claims that the proposed project somehow fails the *zoning* definition of an "Emergency Shelter" lack basis in the Zoning Regulations. Tellingly, NRG appears to cite to every possible definition it can locate *except* the only one that governs in this proceeding – the definition of "Emergency Shelter" in the Zoning Regulations.[5]

To be clear, that definition from Subtitle B, §100.2 is:

> A ***facility*** providing ***temporary housing*** for one (1) or more individuals who are otherwise homeless ***as that arrangement*** is defined in ***the Homeless Services***

[5] The Applicant acknowledges that the Project has been publicized as a "Short Term Family Housing" facility for the purposes of DGS/ DHS identification. It has never been the Applicant's intent that the term "Short Term Family Housing" would constitute the *zoning* definition of the Project. Furthermore, NRG's reliance on the "Zoning Handbooks" identification of the "Emergency Shelter use" as a use limited to "thirty (30) days or less" is entirely misplaced because that specific "Emergency Shelter use" language was expressly removed from the Zoning Regulations. By way of background, prior to the Zoning Regulations' effective date, the March 4, 2016 version of the Zoning Regulations included both an "Emergency Shelter" definition (which is similar to the one currently before the Board) at Subtitle B §100.2 *and* a separate "Emergency Shelter Use" at Subtitle B § 200.2(n). Pursuant to ZC Case No. 08-06A, the first set of broad-based technical corrections to the Zoning Regulations adopted in [date]; the "Emergency Shelter use" was *expressly* removed. A copy of the Staff Report identifying the clear intent to remove the "Emergency Shelter Use" is attached here at **Exhibit B**. Accordingly, the Zoning Handbook's reference to an "Emergency Shelter Use" is in error. Indeed, the Zoning Regulations contain no such language.

> ***Reform Act of 2005, effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code §§ 4-751.01 et seq***.)[the "HSRA"]; an emergency shelter use may also provide ancillary services such as counseling, vocational training, or similar social and career assistance. (emphasis added).

As with many other *zoning* definitions of general categories, when drafting this definition the Zoning Commission determined that a project would be identified as an "Emergency Shelter" use if it satisfied the requirements for "temporary" housing set out in HSRA. Specifically, that law states:

> "Temporary shelter" means:
>
> (A) A housing accommodation for individuals who are homeless that is open either 24 hours or at least 12 hours each day, other than a severe weather shelter or low barrier shelter, provided directly by, or through contract with or grant from, the District, for the purpose of providing shelter and supportive services; or
>
> (B) A 24-hour apartment-style housing accommodation for individuals or families who are homeless, other than a severe weather shelter, provided directly by, or through contract with or grant from, the District, for the purpose of providing shelter and supportive services. D.C. Code § 4-754.24.

The Project satisfies the requirements of a HSRA "Temporary Shelter" and, therefore, the Project falls under the *zoning* definition of an "Emergency Shelter." Importantly, the District's Zoning Administrator, whose job it is to interpret the Zoning Regulations determined that the Project is an "Emergency Shelter" in satisfaction of Subtitle B, §100.2. A copy of the Zoning Administrator's letter to this effect is included at **Exhibit "A"**. Similar to other "zoning definitions" that may be known commercially by other titles (such as projects that are "apartment houses" for zoning purposes, but are known commercially as condominiums/apartments), the "Emergency Shelter" definition encompasses a broader group of housing options, including those known more commercially as "Short Term Family Housing" that satisfies the HSRA requirements for Temporary Shelter.

Based upon the above, the Project fits squarely within the definition of "Emergency Shelter" in the Zoning Regulations. It necessarily follows that the Applicant may obtain special exception relief from this Board to construct an Emergency Shelter on the Property. Accordingly, the Opposition's argument asserting that the Applicant requires a use variance is unfounded.

IV. SUPERIOR COURT CASE ON SITE SELECTION IS NOT RELEVANT TO THIS PROCEEDING

NRG devotes approximately four pages of its Submission and 22 pages of Exhibits to attempting to rehash the Superior Courts decision to dismiss NRG's court case questioning the D.C. Council's legislated selection of the Property. Despite all this verbiage, the Superior Court's decision boils down to one, unremarkable fact: the Applicant needs zoning relief from the Board to build this Project. That is no surprise, and is, indeed, why the Applicant is seeking the relief at this time. NRG's efforts to contort this straight-forward decision into something that it is not – a Superior Court rebuke of the Property; and to simultaneously relitigate this issue before the Board must fail. The site selection issue was heard in the proper forum, and NRG did not prevail. The Property is the site that was legislated and it is the one that the Board will review in making its decision on the subject Application.

Indeed, the relevance of the issue of site selection to the subject BZA application is tangential at best. Such question might only be reviewed by the Board as part of its assessment of the special exception standards of Subtitle U § 420.1(f)(6) permitting special exception approval for an emergency shelter for more than 25 persons if the Board "finds that the program goals and objectives of the District of Columbia cannot be achieved by a facility of a smaller size at the subject location and if there is no other reasonable alternative to meet the program needs of that area of the District." As will be discussed at the hearing, the Project satisfies the first

requirement because the program goals and objectives of the District of Columbia cannot be achieved by a facility of a smaller size at the Property and there is no other reasonable alternative to meet these needs in this area.

For these reasons, NRG's efforts to raise questions about site selection and the Superior Court's decision on that matter have no relevance to this proceeding and should be disregarded.

V. THE APPLICATION IS COMPLETE

NRG attempts to derail and possibly delay the March 1st hearing[6] by baselessly claiming that the Application is somehow "incomplete". Similar to many of the claims above, this attempt has little basis in fact. Rather, as shown in the exhaustive record, the Applicant has provided sufficient documentation and contextual renderings detailing the proposed parking deck to be constructed at the rear of the MPD second district station. *See* BZA Exhibit Nos. 2, 7, 75, 75A1-A2, 165 and 165A.

Importantly, it must be noted that the Applicant does not seek zoning relief related to the parking deck. Nonetheless, within the initial burden of proof, the Applicant established that it would construct a parking deck to replace in-kind all existing MPD parking lost to the Project. At public meetings on January 24th and January 31st, the Applicant displayed contextual images of the parking deck in its powerpoint presentation. In the Applicant's Prehearing Statement, submitted on February 8th, the Applicant provided significant detail on the nature of the two-story parking structure, and included contextual images of the parking deck in relation to the existing MPD building and community gardens. On February 21st, the Applicant also submitted a minor revision to the Project plans, which included a "green" wall on the parking deck's

[6] No formal request to postpone has been filed; thus, the Opposition has lost the opportunity to request a postponement on this basis.

western-facing side. Accordingly, the Applicant complied with the Board's rules, including Subtitle Y § 300.8(c).

The Project, as in many applications made to this Board, is an iterative process in which the Applicant has modified plans based upon community input. After filing the initial application, the Applicant responded to community concerns regarding on-street parking by altering the original park deck proposal to include a second story. The second story of the parking structure not only satisfies the parking requirement for the Project's Emergency Shelter use, but provides a significant benefit for the community by getting rid of 59 MPD vehicles currently using neighborhood street parking. As a result of this modification, which has been detailed to the community over the past two months, the Applicant no longer seeks relief from the minimum parking requirement.

The Applicant's recent revision to include zoning relief for a temporary parking use is directly correlated with the parking deck modification as well as community concerns with existing parking conditions. At the time the Applicant filed the application to the Board, the intent was for MPD to park in the surrounding neighborhood during construction of the parking deck; such a temporary parking plan aligns with similar projects that displace parking for existing uses. However, when the community voiced concern over existing on-street parking conditions, the Applicant modified its plans to include a second story on the parking deck, as detailed above. The additional story requires a more complicated excavation and construction process and, in turn, lengthens the timeline for completion of the parking deck. Thus, in an

attempt to avoid utilizing on-street[7] parking during construction, the Applicant revised its plans to include temporary parking on the tennis courts.

Finally, it should be noted that issues pertaining to construction of the parking deck and temporary parking are not germane to the deliberations of the Board. Notwithstanding, the Applicant will comply with all relevant building code provisions during the construction process.

VI. CONCLUSION

For the reasons stated above, and for the reasons enumerated in the Applicant's prior filings in this case and will be enumerated at the public hearing, we hereby submit that the application meets the requirements for area variance and special exception relief.

We look forward to presenting our case to the Board on March 1, 2017.

Respectfully submitted,

GRIFFIN, MURPHY, MOLDENHAUER & WIGGINS, LLP

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[7] The opposition incorrectly asserts that "cordoning off" on-street parking would require notice to families living within 200 feet. On-street parking is public space, and, accordingly, is under the jurisdiction of the District Department of Transportation.

EXHIBIT A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR

February 17, 2017

Meridith Moldenhauer
Griffin, Murphy, Moldenhauer & Wiggins, LLP
1912 Sunderland Place, N.W.
Washington, DC 20036

SUBJECT: Construction of Short-Term Family Housing Emergency Shelter
3320 Idaho Avenue, NW (the "Property") Lot 849 in Square 1818

Dear Ms. Moldenhauer:

As we discussed on February 13, 2017, the subject Property is owned by the District of Columbia government, and is operated by the District's Department of General Services ("DGS"). The Property is presently improved with the Metropolitan Police Department's ("MPD") Second District Station and the Newark Street Community Garden ("Community Garden").

DGS proposes to construct a Short-Term Family Housing Emergency Shelter (the "Project") that will share the Property with the MPD station and the Community Garden, and is zoned RA-1.

It is my understanding that the Project will be a six-story building that provides up to 50 units of emergency housing for families experiencing homelessness. The proposed building will be 72' in height with six (6) stories, will provide the required number of parking spaces in a multi-level parking structure that will be attached to the building, and will not have a loading berth or service/delivery space. During construction, DGS will temporarily relocate many of the MPD's parking spaces to the tennis courts located on the adjacent lot, which is owned by the National Park Service.

The Project requires Board of Zoning Adjustment [BZA] approval as follows:

1) The proposed use satisfies the definition of "emergency shelter", as that term is defined in Subtitle B § 100.2. Therefore, pursuant to Subtitle U § 420.1(f), special exception relief, as set forth in Subtitle X § 901.2, is required for construction of an emergency shelter in the subject RA-1 Zone District.

2) Pursuant to Subtitle F § 303.1, area variance relief, as set forth in Subtitle X § 1000.1, is required to construct a building that exceeds 40 feet in height and three (3) stories.

3) Pursuant to Subtitle C § 901.1, area variance relief, as set forth in Subtitle X § 1000.1, is required because the Project does not provide a loading berth or a service/delivery area.

4) Pursuant to Subtitle C § 302.2, area variance relief, as set forth in Subtitle X § 1000.1, is required because the Project will be the second primary structure on Property.

5) Pursuant to Subtitle U § 203.1(j), special exception relief will be required to temporarily relocate accessory parking for MPD on the adjacent tennis courts during construction of the Project.

Please let me know if you have any further questions.

Sincerely,

Matthew Le Grant
Zoning Administrator

File: Det Let re 3320 Idaho St NW to Moldenhauer 2-17-17

EXHIBIT B

District of Columbia
Office of Planning

MEMORANDUM

TO: Sara Bardin, Director, Office of Zoning

FROM: JLS
Jennifer Steingasser, Deputy Director, Historic Preservation and Development Review

DATE: May 18, 2016

SUBJECT: Zoning Commission Case No. 08-06A.

Request for Consent Calendar consideration of a technical corrections to DCMR 11 Zoning Regulations as adopted in Case 08-06A

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1. LATE FILING REQUEST

This Office of Planning report is being submitted less than ten (10) days prior to the Zoning Commission's Public Meeting. The Office of Planning respectfully requests that the Commission waive its rule and accept this report into the record.

2. OP RECOMMENDATION

OP recommends that the Commission make the attached technical corrections and minor modifications to Zoning Regulations as approved in case 08-06-A, and respectfully requests that the matter be placed on the May 23, 2016 consent calendar pursuant to § 3030 of the Commission's rules.

The following table represents the first group of minor modifications and technical corrections to the 2016 Zoning Regulations. The explanation of the modifications or correction is in blue, followed by a brief description for the public notice, and the third paragraph is the proposed text correction. The Office of Planning will work with Office of Attorney General to refine the language prior to notice if necessary.

Some of the modifications represent an effort to make the language consistent with existing text, or between Subtitles and chapters, some are corrections of wrong number citations, and some represent language that was either inadvertently omitted or misstated. A separate report including additional minor modifications and technical correction is expected to be filed in June and will include subtitles not included in this report.

B-100.2	**Definitions** Definition of "Use, Principal" might not apply to "structures" as adopted; the word "structure" should be inserted between "land" and "or building" of the definition. The Definition of Use, Principal, in Subtitle B § 100.2 is amended by adding the word "structure" should be inserted between "lot" and "or building" of the definition as follows: Use, Principal: The primary purpose or activity for which a lot**, structure** or building is occupied.
B-100.2	**Definitions** The definition of retaining wall from case ZC. No. 13-06 is missing and should be included. Subtitle B § 100.2 is amended by adding the Definition of retaining wall as follows: **Retaining Wall – a vertical, self-supporting structure constructed of concrete, durable wood, masonry or other materials, designed to resist the lateral displacement of soil or other materials. The term shall include concrete walls, crib and bin walls, reinforced or mechanically stabilized earth systems, anchored walls, soil nail walls, multi-tiered systems, boulter walls, or other retaining structures.**
B-100.2 200.2 (n)	**Definitions** Emergency Shelter is defined as a Use and as a Use Group but is only referrenced when permitted as a use in Subtitle U (not a Use Group); Subtitle B § 100.2 is amended by correcting the Definition of Emergency Shelter by adding **"an emergency shelter use may also provide ancillary services such as counseling, vocational training, or similar social and career assistance"** to the definition of Emergency Shelter as follows: Emergency Shelter: 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, effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code §§ 4-751.01 *et seq.*); **An emergency shelter use may also provide ancillary services such as counseling, vocational training, or similar social and career assistance.** Subtitle B § 200.2, Use Groups, is amended by deleteing § 200.2 (n) Emergency Shelter, and renumbering § 200.2 (n) through § 200.2 (ii) accordingly. ~~***200.2 (n) Emergency Shelter:***~~ ~~A use providing thirty (30) days or less of temporary housing to indigent, needy, homeless, or transient individuals; and~~ ~~Emergency shelter uses may also provide ancillary services such as counseling, vocational training, or similar social and career assistance~~;
B-200.2 (bb) (3)	The description of Production, Distribution and Repair references "warehouses" as an example of the PDR use, but there is no refernce to "storage" or "self-storage." Subtitle B § 200.2, Use Groups, is amended by adding "storage, self-storage," to the list of Production Distribution and Repair examples in (bb)(3) as follows: (bb) Production, Distribution, and Repair: