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February 8, 2017

VIA IZIS

Frederick L. Hill, Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Suite 210S
Washington, DC 20001

Re: Application No. 19452 – 1700 Rhode Island Avenue, NE (Square 4134, Lot 0800)
Prehearing Statement of the Applicant

Chairperson Hill and Honorable Members of the Board:

On behalf of the District of Columbia Department of General Services, please find enclosed the Prehearing Statement for the above referenced application. The application is scheduled to be heard before the Board of Zoning Adjustment on March 1, 2017.

Thank you for your attention to this matter.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS,
LLP



Meridith H. Moldenhauer

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

**APPLICATION OF
D.C. DEPARTMENT OF GENERAL SERVICES**

**BZA APPLICATION NO. 19452
HEARING DATE: MARCH 1, 2017**

PREHEARING STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of the District of Columbia Department of General Services (the “Applicant”), the owner of the property located at 1700 Rhode Island Avenue NE, (Square 4134, Lot 0800) (the “Property”) in support of its application for special exception relief, pursuant to 11 DCMR Subtitle X § 901.2, from the requirements regarding height (Subtitle G § 403.1), floor-area-ratio (“FAR”) (Subtitle G § 402.1), lot occupancy (Subtitle G § 404.1), open court minimum width (Subtitle G § 202.1), rear yard (Subtitle G § 405.5(a)(1) and (2)), parking (Subtitle C § 701.5), and off-street loading and delivery space requirement (Subtitle C § 901.1) to allow construction of an emergency shelter for more than twenty-five (25) persons in the MU-4 Zone District (Subtitle U § 420.1(f)) at the Property.¹ The proposed shelter will include 46 residential units, space for on-site wrap-around services, administrative offices, and recreational space for the children and outdoor space for the adult residents (the “Project”).

II. EXHIBITS IN SUPPORT OF THE APPLICATION

Tab A:	Revised Architectural Plans
Tab B:	Revised BZA Form 135 – Zoning Self Certification
Tab C:	Resumes of Expert Witnesses
Tab D:	Summary of Witness Testimonies

¹ In the initial application, the Applicant requested special exception relief for emergency shelter use and area variances for parking, loading, building height, floor area ratio, lot occupancy, open court, and rear yard. After reviewing the Regulations, the Applicant has amended the requested relief to reflect that the Regulations permit a special exception for all areas of requested relief. A revised self-certification form is included here as **Tab B**. As amended, the Applicant reserves the right to argue that the more flexible standard for review of a public service use set out in *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091, 1096 (D.C. 1979) and *Nat’l Black Child Dev. Inst. v. District of Columbia Bd. of Zoning Adjustment*, 483 A.2d 687, 690 (D.C. 1984) continues to apply to the Project.

III. REVISED ARCHITECTURAL PLANS

Since the filing of the initial application, the Applicant has updated and refined the architectural plans. *See*, Revised Architectural Plans (the “Revised Plans”) at **Tab A**. While the general design parameters of the Project have not changed, the updated plans offer additional site information and contextual renderings. As a result of minor modifications to the building envelope, there is a small reduction in the footprint and the density of the proposed building with a consequent adjustment in the quantum of zoning relief in Lot Occupancy and Floor Area Ratio, respectively. The updated plans incorporate detailed site dimensions for the Project, including square footage of interior dwelling rooms and exterior measurements. Overall, the updated plans highlight the Project’s safe and thoughtful design that is respectful of the nearby community.

IV. DESCRIPTION OF PROPERTY AND PROJECT

A. The Property

The Property, also known as Lot 800 in Square 4134, contains approximately 12,336 square feet of land area. The Property is located in the MU-4 Zone District, which is intended to “Provide facilities for shopping and business needs, *housing*, and mixed uses for large segments of the District of Columbia outside of the central core” as well as to include office employment centers, shopping centers, and moderate bulk mixed-use centers. *See* Subtitle G § 400.3 (emphasis added).

The properties to the north and east of the subject property are automobile-related retail commercial uses. To the south, the Property is bounded by Rhode Island Avenue NE, a wide, highly-trafficked, 130-foot right-of-way that is improved with commercial and apartment house uses. To the east, the Property is bordered by a 15-foot public alley. To the immediate west of the subject Property is 17th street, which is a 90-foot right of way and separates the Property from the single-family dwellings to the east. A recently permitted six-unit residential building that is four-stories in height with a cellar is under construction on the MU-4 zoned lot immediately north of the subject property. Numerous

larger apartment houses, ranging from 4 to 5 ½ stories in height are located along Rhode Island Avenue and in Property’s immediate vicinity.

As noted in the initial statement, the Property is currently improved with a three-story former police station (“Existing Structure”) (*circa* 1922) and a 150-foot tall communications antenna and concrete utility building supporting the antenna functions (“the Antenna”).² As discussed more below, the Applicant worked closely with HPO staff to design the Project to be contextual and harmonious with the Existing Structure, although that building is neither located in a historic district, nor historically landmarked.

B. The Project

The Project represents a vital aspect of the District’s goal of making homelessness in the District a rare, brief, and non-recurring experience in the District by 2020. A key strategy in achieving this goal includes developing a more effective crisis response system and closing D.C. General, the District’s largest family shelter. D.C. General does not sufficiently provide the services that families need to quickly exit a shelter and get back into permanent housing. Thus, the District proposes to replace D.C. General, which has 280 family units, with smaller, more dignified, short-term family housing facilities with on-site services in all eight wards of the District. The Applicant’s proposal to construct a six-story short-term family housing facility at the Property is a critical element of the District’s eight-ward initiative to developing a more effective crisis response system.

The need for zoning relief is directly related to the programmatic needs of the Project. The program requirements of the Project are driven by D.C. Council legislation, including D.C. Law 21-75 and D.C. Law 21-141. Under D.C. Law 21-75, the Council established certain legislative parameters for short-term family shelters used to replace D.C. General. Importantly, D.C. Law 21-141 designates funds for the District to

² The Antenna and equipment room were approved in BZA Case No. 16991. As such, they cannot be relocated or removed.

construct shelters that will replace D.C. General and establishes that the Project must be constructed on the Property and must include the proposed number of units.

It must also be noted that the programmatic needs for the Project are further informed through the Interagency Council on Homelessness (“ICH”), a statutorily created group comprised of experts in homeless services from the District government, federal government and other third-party service providers. See D.C. Code § 4-752.01. The ICH was commissioned for the purpose of planning and developing programs for homeless services in the District, including outlining standards to replace D.C. General. In a report issued to Mayor Bowser dated October 16, 2015, the ICH concluded that the number of sleeping units on each floor should be limited to 10 in order to ensure a small, familial environment for each shelter. The ICH recommended that a space for security and staff be located on each floor, with a view of common areas. Accordingly, the Project’s design, which incorporates 10 units per floor, is driven by ICH recommendations.

Under D.C. Law 21-75, each shelter unit must consist of “a private room that includes space to store and refrigerate food.” See D.C. Code § 4-750.01(11A). D.C. Law 21-75 further requires certain design standards for bathroom facilities. The law establishes that, at a minimum, shelters must provide “[a] private bathroom, including a toilet, sink, and bathtub or shower, in at least 10% of” units and for every five shelter units “one private lockable bathroom that includes a toilet, sink, and bathtub and shall be accessible to all residents.” See D.C. Code § 4-750.03(3)(A-B). Maximizing private bathroom space was of significant concern to the ICH due to concerns over “privacy, safety, cleanliness, and convenience.” For the Project, the Applicant has worked to exceed the legislatively established “family-unit to bathroom” ratio, by ensuring that only two families, at most, share a family bathroom.

The Project must also dedicate building space to on-site wrap-around services, which are also mandated by law. See D.C. Code § 4-753.01. D.C. Law 21-141 identifies these vital wrap-around services, noting that “[b]est practices suggest that children and families do best when short-term housing is provided in smaller-scale, service-enriched, community-based settings. . . .” These on-site services offer a “continuum of care” designed to assist homeless individuals and families in quickly exiting the shelter and returning to

permanent housing. The requirement to include on-site wrap-around services further drives the Applicant's need for zoning relief.

Accordingly, the need to provide safe, dignified, small-scale, community-based, short-term housing facilities has driven the design of the building. The District's goal is to provide a District-wide solution to homelessness and to close D.C. General, as reflected in the aforementioned legislation. Yet, in order to close D.C. General and replace it (and the capacity it holds) with smaller facilities in each ward, the Project must provide the proposed 46 sleeping units. To provide these sleeping units, while limiting each floor to 10 units, along with a floor dedicated to wrap-around services, requires six stories and the additional height proposed. Each floor must have direct lines of sight to the units so that parents and security staff can easily observe activity on the floor, limiting alternative designs for the Project. Simply put, the Project cannot provide the requisite units while complying with the shelter's programmatic needs in a matter-of-right facility.

Although the Existing Structure is neither located in a historic district, nor historically landmarked, the Applicant worked closely with HPO staff to design the Project to be contextual and harmonious with the Existing Structure. As such, the revised plans at **Tab A** ("Revised Plans") illustrate the Applicant's efforts to retain the most significant portion of the Existing Structure, and to construct the Project that retains views of the Existing Structure from Rhode Island Avenue and 17th Street. As designed, the Project proposes an expansion and adaptive re-use of the Existing Structure that will be composed of approximately 47,000 square feet of residential space, accommodating 46 family units with up to 150 total beds. The Project will not remove or construct over the significant portion of the Existing Structure.

The Revised Plans also showcase the efforts made to maximize the residential aspects of the site. The building will feature brick exterior to better blend with the character of the Brookland neighborhood. To orient the Project toward the more residential area, the main entrance of the building will face on 17th Street NE instead of the current entrance on Rhode Island Avenue NE. This will create

a safer and more secure access point. The revised plans also aim to maximize use of available green space as a recreation area for the residents. And, because this will be a Project oriented towards families, the Property will include secure play areas for children.

V. APPLICANT MEETS BURDEN OF PROOF FOR SPECIAL EXCEPTION

The Board is authorized to grant a special exception where it finds the special exception:

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

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

As described in the Statement of the Applicant, this Prehearing Statement, and as will be further explained at the public hearing, the Applicant satisfies the standard for special exception relief requested.

VI. APPLICANT MEETS THE BURDEN OF PROOF FOR A SPECIAL EXCEPTION AS TO EMERGENCY SHELTER USE

The application for a 46-housing unit emergency family shelter to be located in the MU-4 Zone District requires special exception approval from the Board pursuant to Subtitle U §§ 513.1(b)(1)-(6). As set forth in the initial submission, the Project complies with the general requirements for special exception relief as well as the particular requirements for an emergency shelter.

- A. The Project will not adversely affect the use of neighboring property and the Project is in harmony with the general purpose and intent of the zone plan**

The Project will not adversely affect the use of neighboring property. The Project has sufficient front and side yards to buffer the Project from neighboring properties. The construction of a new short-term family housing facility with safe and secure accommodations is consistent with the law and policies of the District, as reflected in legislation including D.C. Law 21-75 and D.C. Law 21-141. The Project will offer a great benefit to families in the District experiencing homelessness. Moreover, the provision of a short-term family housing facility with 46 family units and wrap around services on-site is in harmony with the stated goals in the Comprehensive Plan's Housing Element to provide small-scale emergency shelters.

B. The Project satisfies the conditions in Subtitle U § 513.1(b)(1)-(6) for an Emergency Shelter use in the MU-4 Zone District

Pursuant to Subtitle U § 513.1(b)(1)-(6), the Board may approve an emergency shelter in the MU-4 Zone District subject to the following requirements:

513.1(b)(1) - There shall be no other property containing an emergency shelter for seven (7) or more persons either in the same square or within a radius of five hundred feet (500 ft.) from any portion of the property.

There is no emergency shelter located in Square 4124 or within 500 feet of the Property.³

513.1(b)(2) - There shall be adequate, appropriately located, and screened off-street parking to provide for the needs of occupants, employees, and visitors to the facility;

The Project provides four, off-street parking spaces. As determined in the traffic study (the "Traffic Study") by Gorove/Slade, the proposed parking will be adequate for the needs of the Project. See BZA Exhibit No. 29. Furthermore, the Applicant is requesting a special exception from the parking requirements for an emergency shelter, as discussed below. The proposed parking spaces will be tucked into the building along the alley side.

513.1(b)(3) - The proposed facility shall meet all applicable code and licensing requirements;

The Project will meet all code and licensing requirements.

³ An "emergency shelter" is defined 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, 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 § 100.2. The project at 1545 Girard, which is approximately 600 feet away from the Property, is not an "emergency shelter" because it is an apartment complex designed for senior residents.

513.1(b)(4) - The facility shall not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area;

The Project will not have an adverse impact on the neighborhood, due to traffic, noise, and/or operations. The facility will be self-contained, with all necessary services provided on-site and sufficient buffers between the Project and abutting properties. Additionally, there are no emergency shelters located within 500 feet. As reflected in the Traffic Study, the Project will have a minimal effect on traffic in the neighborhood, as most residents will not have vehicles and it proposes a significant Transportation Demand Management plan. The Traffic Study concludes:

- The site is surrounded by an existing network of transit, bicycle, and pedestrian facilities that result in an adequate environment for safe and effective non-auto transportation.
- Based on the site location near ample transit services, the unique use of the site, and the site design elements that encourage non-auto transportation, it was determined that the inclusion of limited parking on-site will not have a detrimental impact to the surrounding neighborhood.
- There exists ample available parking within the vicinity of the site to absorb any additional demand for parking as generated by the proposed development.
- The proposed loading plan is adequate given the amount of loading activity expected at the facility. Use of the existing public alley on the eastside of the building will facilitate all the various loading needs of the development. A loading management plan will be implemented to minimize potential timing conflicts, and to ensure as minimal a footprint as possible from loading activities.
- A Transportation Demand Management (TDM) plan for the development will include the implementation of a TDM coordinator, on-site services, and bicycle amenities.

Noise emanating from the facility or the facility operations will not impact the neighborhood adversely. The programmatic requirements of the Project will minimize noise. The Project will be staffed by security personnel at all times. The building will be key-card accessible only, limiting those coming and going from the facility to residents, staff and third-party vendors. The outdoor recreation space will be buffered and will be accessible only during a certain range of hours.

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

There are no emergency shelters in Square 4124 or within 500 feet of the Property. As such, this section is not applicable for the Project.

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

As the detailed discussion above makes clear, the Project's goals and objectives cannot be achieved with a smaller facility that serves 25 people or less. A residential capacity of 50 units for the Project is legislatively mandated by the D.C. Council. Without the higher number of units, the goal of closing D.C. General cannot be achieved. Further, from an efficiency perspective, the Project must serve a larger number of people to justify the extensive wrap-around services that will be provided on-site. To that end, the concept proposed by the Homeward D.C. initiative aims to create smaller, family-scale environments on each floor of the Project, but comprehensive on-site services are not as efficient for a facility with fewer than the 46 sleeping units proposed. Accordingly, the program goals and objectives of the District of Columbia, including the Mayor's office and the D.C. Council, cannot be achieved by a facility of a smaller size at the Property.

VII. APPLICANT MEETS THE BURDEN OF PROOF FOR A SPECIAL EXCEPTION AS TO THE MINIMUM PARKING AND LOADING REQUIREMENT

A. Parking

Pursuant to Table C § 701.5, an emergency shelter must provide 0.5 off-street parking spaces for every 1,000 s.f. of gross floor area developed on the subject property, or in this case, 22 parking spaces. The Project currently proposes four off-street parking spaces to be located under the building overhang on the eastern side of the subject property and accessed from the public alley.

As noted in the initial application, the Board may grant a reduction in required parking spaces by special exception if the Project meets at least one of the conditions set forth under Subtitle C § 703.2. The Project meets these conditions as follows:

(a) Due to physical constraints of the property, the required parking spaces cannot be provided either on the lot or within six hundred feet (600 ft.) of the lot in accordance with Subtitle C § 701.8;

The Existing Structure and Antenna occupy a significant portion of the Project. Importantly, these Existing Structures severely limit the available space for the Applicant to provide the requisite number of parking spaces while at the same time efficiently maximizing space for the residential portions of the Property. The properties within 600 feet are all under separate ownership, so additional parking spaces cannot be located on those properties. Furthermore, there exists ample on-street parking within the vicinity of the site to absorb any additional demand for parking as generated by the proposed development.

(b) The use or structure is particularly well served by mass transit, shared vehicle, or bicycle facilities;

The Applicant's Traffic Study confirms that the Property is well serviced by public transportation options, including the 82, 83, T18, E2, H6, T14, B8, and B9 Metrobus lines, which are all located within 0.1 to 0.3 miles from the Property, and the Rhode Island Avenue and Brookland Metro Station that is approximately 1 mile away. There is a Capital Bikeshare station only 0.1 mile from the Property. Notably, the number of residents who are anticipated to own vehicles is negligible (less than 1%), as stated in the Traffic Report. Furthermore, meals will be delivered to the Property and other social services will be provided on-site, so the need for residents to have a vehicle will be greatly reduced. Nonetheless, the public transportation nearby alleviates the effects of off-street parking that does not meet the minimum requirement pursuant to the zoning regulations.

Additionally, the Traffic Study examined the demand for site-generated parking and the availability of on-street parking. The study observed that during the peak utilization period that more than sixty percent (60%) of the available nearby on-street parking spaces were vacant. Indeed, of the 377 available parking spaces, only 134 were occupied at the peak utilization period. At the peak hour of shelter staff usage during the afternoon shift change, the peak demand is 25 parking spaces, as 13 vehicles arrive and 12 vehicles depart. Therefore, there is ample capacity to absorb site-generated traffic without a negative impact on the immediate neighborhood.

In summation, the Applicant requests special exception relief from the minimum parking standards set forth in Subtitle C § 701.5 as a result of the Existing Structure and Antenna on the Property, which pose a challenge to incorporate the requisite on-site parking. The need for additional off-street parking is diminished because the Property is well-serviced by a number of public transportation options, and a great majority of residents will not use vehicles to access the Project. The proposed parking relief is in harmony with the zone plan and will not tend to adversely affect the use of neighboring properties because there is ample on-street parking available during the peak hours.

B. Loading

Pursuant to Subtitle C § 901.1, an emergency shelter use with a gross floor area between 30,000 and 100,000 square feet, must provide one loading berth and one service/delivery space. The Project does not provide a loading berth and provides only a substandard-sized delivery space at the rear of the building along the public alley. Nonetheless, the limited number of daily deliveries at the subject property do not require a dedicated loading berth. The Traffic Study estimates 6.2 daily deliveries, of which three are passenger pick-ups and drop-offs that are more likely to occur at the front of the shelter on 17th Street, N.E. The remaining daily deliveries, two of which are food deliveries with known arrival times, can be accommodated with access from the public alley to the delivery area provided at the rear of the building.

Even though the number of loading deliveries are very low and the Traffic Study found that “this amount of loading can easily be accommodated,” the Applicant has proposed the following

Loading Management Plan:

- A loading manager will be designated by the building management. The loading manager will coordinate and schedule deliveries where possible, and will be on duty during delivery hours.
- The 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 all District guidelines for heavy vehicle operation including but not limited to DCMR 20 –

Chapter 9, Section 900 (Engine idling), the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System.

- The loading manager will be responsible for disseminating DDOT's Freight Management and Commercial Vehicle Operations document to drivers to encourage compliance with District laws and DDOT's truck routes.

Accordingly, between the small number of deliveries and the proposed loading management plan, the requested relief will not tend to adversely affect the use of neighboring properties.

The Existing Structure and Antenna limit the amount of area the building may occupy on the lot and, therefore, inhibit the Applicant's ability to incorporate a loading berth and service/delivery space. If the Project were to add a loading dock or service/delivery area in the rear yard space, then the Applicant would necessarily require additional relief from the minimum parking requirements. For these reasons, the Applicant requests relief from the loading berth and service/delivery space requirement is in harmony with the zoning regulations.

In addition, Subtitle C § 909.2 provides that the Board of Zoning Adjustment may grant as a special exception a full or partial reduction in the number of loading berths or service/delivery spaces required if the Applicant demonstrates that:

(a) The only means by which a motor vehicle could access the lot is from a public street, and provision of a curb cut or driveway on the street would violate any regulation in this chapter, or in Chapters 6 or 11 of Title 24 DCMR; or

(b) The loading berths or service/delivery spaces are required for an addition to a historic resource, and providing the required loading facilities would result in significant architectural or structural difficulty in maintaining the integrity and appearance of the historic resource.

The Applicant spent considerable effort working with HPO throughout the design process. As previously stated, although the Property is not landmarked, the historic nature of the Existing Structure compelled the Applicant to follow HPO instructions regarding preserving the Existing Structure to the greatest extent possible. In order to provide a loading berth or a delivery area adjacent to the alley, the Applicant would have to significantly alter the appearance of the Existing Structure, counteracting all the preservation efforts to date. Therefore, the Applicant respectfully requests that the BZA grant a special

exception to the loading berth and service/delivery space requirement on the grounds that the Applicant satisfies Subtitle C § 909.2(b).

VIII. APPLICANT MEETS THE BURDEN OF PROOF FOR A SPECIAL EXCEPTION AS TO THE REQUIREMENTS FOR BUILDING HEIGHT, FLOOR AREA RATIO, LOT OCCUPANCY, OPEN COURT, AND REAR YARD

A. The Project is in harmony with the general purpose and intent of the zone plan and the Project will not adversely affect the use of neighboring property.

The Project and the relief requested will be in harmony with the general purposes and intent of the Zoning Regulations because the Emergency Shelter use is permitted as a special exception in the MU-4 Zone District, and, thus, presumed appropriate in the zone. Furthermore, the Project aligns with the stated goals of the District's Comprehensive Plan. The Comprehensive Plan's Housing Element establishes, "[p]rovisions to assist the homeless must include emergency shelter, transitional housing, and permanent housing, along with supportive services." 10A DCMR § 516.4. The Project further embodies the Comprehensive Plan directive to:

Encourage the provision of homeless services through neighborhood-based supportive housing and single room occupancy (SRO) units, rather than through institution-like facilities and large-scale emergency shelters. The smaller service model can reduce the likelihood of adverse impacts to surrounding uses, improve community acceptance, and also support the reintegration of homeless individuals back into the community. (Policy H-4.2.8: Neighborhood-Based Homeless Services, 10A DCMR § 516.14)

As a short-term family housing facility with 46 units, the Project applies the Comprehensive Plan's goal of providing a smaller service model. The District of Columbia's plan to end homelessness, developed in partnership with the ICH, proposes the closure of D.C. General - a former hospital and "institution-like" facility - that has served as the District's largest family shelter for eight years. D.C. General is too big, too old and geographically removed from the services that individuals experiencing homelessness need to exit a shelter and get back on their feet. The replacement of D.C. General with short-term family housing facilities across the city furthers the goals of the Comprehensive Plan, and this Project is a critical element

of that initiative. For these reasons, approval of the zoning relief requested will not cause a detriment to the public good or Zone Plan.

As stated above, the programmatic needs for the Project are informed through the ICH, which concluded that the number of sleeping units on each floor should be limited to 10 in order to ensure a small, familial environment for each shelter. The ICH recommended that a space for security and staff be located on each floor, with a view of common areas.

Furthermore, under D.C. Law 21-75, each shelter unit must consist of “a private room that includes space to store and refrigerate food” as well as “[a] private bathroom”. *See* D.C. Code §§ 4-750.01(11A)-4-750.03(3)(A-B). The Project must also dedicate building space to on-site wrap-around services, which are also mandated by law. *See* D.C. Code § 4-753.01. Accordingly, the need to provide safe, dignified, small-scale, community focused, short-term housing facilities has driven the design of the building. Therefore, the Project is in harmony with the zoning regulations, zoning map, and Comprehensive Plan, which specifically recommends the creation of these types of shelters.

Finally, as discussed below, the requested relief will not tend to adversely affect the use of the neighboring property in accordance with the zoning regulations and zoning maps. It is important to note that the properties to the north, east and south are all zoned MU-4. Accordingly, those properties can, and have, been redeveloped with buildings that are similar in height, bulk and uses to the Project. While the properties across 17th street to the west are single-family dwellings, the bulk of the height, density and lot occupancy is located approximately 140 feet away from the single-family dwellings on 17th Street. Accordingly, this requested relief will not tend to adversely affect those properties’ light and air as shown in the sun studies included at **Tab A**. Therefore, the Project satisfies the special exception standard.

B. The Project satisfies the conditions for a special exception from the following areas of relief

Special Exception relief is required from the regulations regarding height (Subtitle G § 403.1), floor-area-ratio (“FAR”) (Subtitle G § 402.1), lot occupancy (Subtitle G § 404.1), open court minimum

width (Subtitle G § 202.1), and rear yard (Subtitle G § 405.5(a)(1) and (2)). As discussed below, the Project satisfies the required special exception standard for these areas of relief.

A. Height (Subtitle G § 403.1)

The maximum height of a building in the MU-4 Zone District is 50 feet. In order to incorporate the programmatic needs onto a site that contains the Existing Structure and Antenna, the height of the Project will reach approximately 69'-8". This height is attributed to the atypical floor heights of the Existing Structure, which are 14 feet and 11 feet slab-to-slab respectively. As a result, the first three floors of the Project are set higher to meet the floor plates of the Existing Structure which directly increases the height of the Project.⁴

Also, the additional height is dictated by the shelter guidelines that seek a 46-unit facility with no more than 10 units per floor. The proposed Project is directly in harmony with Policy H-4.2.8 of the Comprehensive Plan cited above, which recommends, "the provision of homeless services through neighborhood-based supportive housing and single room occupancy (SRO) units, rather than through institution-like facilities and large-scale emergency shelters." As such, the proposed height will be in harmony with the purpose and intent of the Zoning Regulations and Zoning Maps. Furthermore, as height relief can be granted through special exception, not a variance, in the MU-4 zone, it indicates the Board of Zoning Adjustment's ability to permit taller buildings where the requirements are satisfied, as is the case here.

Also, the proposed additional height will not tend to affect adversely the use of the neighboring property. Importantly, because the Applicant is retaining the Existing Structure, the bulk of the tallest portions of the Project are clustered on the east side of the Property, adjacent to the 15-foot alley, the auto repair uses and other property that is also zoned MU-4. Accordingly, due to the width of 17th Street,

⁴ For example, the floor to ceiling heights of the first two floors of the Existing Structure are 14 feet and 11 feet, respectively, which adds 4 to 5 feet more in height than would be the case for new construction. Moreover, the Existing Structure's base is set at almost three feet above the level of the curb on 17th Street, N.E. which further disadvantages the addition in terms of height. Cumulatively, these physical features add 6 to 8 feet of height as opposed to a design without the Existing Structure.

the bulk of the tallest portions of the Project will be separated from the single-family dwellings along 17th Street by the 90-foot right of way. This separation is enhanced by the approximately 50-foot wide Existing Structure, the height of which will not be increased. Due to this substantial separation of approximately 140 feet, the light and air available to those properties will not tend to be affected adversely. Furthermore, New Hampshire Avenue's 130-foot right of way can easily support a building of this height.

B. Floor Area Ratio (Subtitle G § 402.1)

The FAR in the MU-4 Zone District is limited to 2.5 for residential uses;⁵ the Applicant has requested 3.51 FAR. Given the inefficiency of the Existing Structure and the non-utility of the Antenna, which together amount to approximately 1.0 FAR, the new Project, which would be at an approximate 2.5 FAR, would satisfy the regulations. As discussed above, the size and massing of the Project is necessary to satisfy the shelter guidelines, as well as the Comprehensive Plan section discussed above.

For many of the same reasons discussed above regarding the height relief, the proposed FAR relief is in harmony with the general purpose of the Zoning Regulations and will not tend to adversely affect the use of neighboring property. FAR relief is permitted by special exception in this zone, and similar apartment houses with Inclusionary Zoning units would be permitted up to a 3.0 FAR as a matter of right. Accordingly, due to the fact that the Project itself is more akin to a 2.5 FAR, exclusive of the Existing Structure and Antenna, then the Project is harmonious with the general purpose and intent of the regulations and maps.

Moreover, by siting the bulk of the Project to the east, away from the single-family residential uses along 17th Street, the additional density will not tend to adversely affect the use of neighboring properties.

C. Lot Occupancy (Subtitle G § 404.1)

⁵ Furthermore, although not directly argued here, the District of Columbia Zoning Administrator has determined that other, District/Federally financed projects that provide affordable housing options could be eligible for the Inclusionary Zoning ("IZ") density bonus, which would increase the FAR to 3.0.

The maximum permitted lot occupancy in the MU-4 Zone District is 60%.⁶ The Proposed Project will reach 73% lot occupancy. For similar reasons discussed above pertaining to height and FAR, if the shelter was being constructed on an unimproved site, and the Existing Structure and Antenna was not being retained, the lot occupancy for the Proposed Project would not be as high. The Existing Structure and Antenna occupy approximately 28% of the subject property.

The proposed lot occupancy relief is in harmony with the regulations and zoning map. Similar to the FAR discussion above, if the Project were an apartment house, then 75% lot occupancy would be permitted as a matter of right, and no relief would be required. Accordingly, especially in light of the fact that without the Existing Structure and Antenna, the lot occupancy of the Project would be 48%, well below the permitted 60%, the requested relief is in harmony with what is permitted in the MU-4 Zone District. Furthermore, similar to the discussion above, due to the substantial separation along 17th Street, the lot occupancy relief will not tend to affect adversely the use of the neighboring properties.

D. Open Minimum Court Width (Subtitle G § 202.1)

In the MU-4 Zone District an open court must have a minimum width equal to 4 inches per foot of building height. The definition of “width of court” in the 2016 Zoning Regulations provides that “in the case of a non-rectangular court, [the width of the court is] the diameter of the largest circle that may be inscribed in a horizontal plane within the court.” Subtitle B § 100.2. The Project has an open court on the southern side of the Property between the Existing Structure and the new addition. The largest circle that can be inscribed within the proposed open court would have a diameter of 17 feet.

The Project will reach 69.83 feet, and accordingly the minimum court width should be 23.33 feet. HPO requested that the Applicant leave open a viewshed from Rhode Island Avenue, N.E. by retracting the projecting wing of the new construction in order that more of the historic police station

⁶ Similar to the FAR discussion above, if this Project were to be eligible for the IZ bonus, then the permitted amount of lot occupancy would be increased to 75%.

could be seen. The practical effect of this was to reduce the court width. Therefore, the proposed open court is non-rectangular and will be 19.25 feet at its widest.

This proposed relief is in harmony with the general purpose of the regulations and zoning maps. Courts are not required in this zone, but when they are provided the purpose is to allow for light and air into a structure and the surrounding structure. In this case, the court opens into Rhode Island Avenue's 25-foot "parking"/ sidewalk area to the south and the 15-foot public alley to the east. Therefore, the open area available to the Project and surrounding properties is actually larger by another 25 feet to the south and 15 feet to the east. Accordingly, this relief, which is fairly minimal in nature, is in harmony with the zone's general purposes for courts, which are to permit light and air. Furthermore, this relief will not tend to adversely affect the use of the neighboring properties because it opens into the substantial parking area along Rhode Island Avenue's 130-foot right of way and is located on the east side, adjacent to the public alley.

E. Rear Yard (Subtitle G § 405.5(a)(1) and (2))

The Zoning Regulations require a 15-foot rear yard in the MU-4 Zone District. As 17th Street is the building's frontage, the rear lot line abuts the public alley to the east. The regulations state that where the rear yard abuts an alley, the rear yard can be measured from the centerline of the alley to the rear wall for that portion of the building below a horizontal plane 25 feet above the mean finished grade at the rear of the building. In this instance, the Applicant will provide a substantial rear yard area along Rhode Island Avenue (where the court intersects the alley). The east portion of the Project is constructed to the rear lot line, providing a 7.5-foot rear yard for this portion of the Project measured from the alley centerline for that portion of the building below the 25-foot plane. No rear yard setback for the portions of the Project above the 25-foot plane.

The existing equipment room for the Antenna already intrudes upon the area that would have to be set aside for the rear yard. Accordingly, the existence of that structure is already non-conforming as to the rear yard. The Applicant's design calls for building over the ancillary, equipment building and from there south along the public alley with surface parking spaces.

The request for rear yard relief is both in harmony with the general purpose of the regulations and will not tend to adversely affect the use of the neighboring properties. First, by permitting rear yards to be calculated from the centerline of alleys, the zoning regulations acknowledge that alleys can satisfy the same policy purposes as rear yards. In this case, given the fact that the Project must retain the Antenna equipment building in its existing location and provide four surface parking spaces, the design is harmonious with the general purpose of the zoning regulations. Furthermore, the requested relief will not tend to adversely affect the use of the neighboring property, which is an MU-4 zoned commercial auto-service/tire shop, because the Antenna equipment building is an existing non-conformity already located in the rear yard. Furthermore, the front of the Project along Rhode Island provides a compliant rear yard (in the court area) and on the ground level, the front section of the Project will include four parking spaces. Accordingly, the use of the neighboring property will not be affected adversely because the Antenna equipment building will remain as is, and the rear yard area will not be impacted along Rhode Island Avenue. Also, on the ground floor level to the south of the equipment building, the compliant parking spaces will increase the feel of the rear yard along the alley.

Additionally, the requested rear yard relief satisfies the special condition for rear yard relief under Subtitle G § 1201.1 because:

(a) No apartment window shall be located within forty feet (40 ft.) directly in front of another building;

The rear yard will face the public alley and all rear-facing windows will be more than 40 feet from another building.

(b) No office window shall be located within thirty feet (30 ft.) directly in front of another office window, nor eighteen feet (18 ft.) in front of a blank wall;

No office windows are proposed on the Property.

(c) In buildings that are not parallel to the adjacent buildings, the angle of sight lines and the distance of penetration of sight lines into habitable rooms shall be considered in determining distances between windows and appropriate yards;

There are no habitable rooms that are within the site lines of the Project.

(d) Provision shall be included for service functions, including parking and loading access and adequate loading areas; and

As previously mentioned, the traffic study concluded that the services functions at the site will be well-managed with the proposed loading areas.

IX. COMMUNITY OUTREACH

The Applicant has conducted significant community outreach throughout the planning process for the Project. In addition to meetings for the general public, the Applicant commissioned an advisory team for the Project. The advisory team is composed of representatives from District agencies including the Department of General Services, Department of Human Services and the Mayor's office as well as members of the community, including ANC 5B members. The goal of the advisory team is to discuss a myriad of topics concerning the Project and disseminate information through the community members. A timeline of the Applicant's community outreach for the Project is found at BZA Exhibit 34.

This extensive community outreach reflects that the Applicant has worked with the community both before and after the filing of this BZA application. The Applicant has sponsored several community meetings with Advisory Neighborhood Commission 5B and the advisory team of local community stakeholders to present and refine plans for the subject property. To date, the Applicant has met with ANC 5B three times and intends to meet again once more before the BZA hearing. The Applicant has also reached out to the Chair of ANC 5C. The Applicant is committed to the continuing dialogue with the local community through the BZA process.

In addition, the Applicant has engaged in frequent discussion with the staffs of the Office of Planning, the Commission on Fine Arts and the Historic Preservation Office concerning the development of the site plan for the subject property.

X. WITNESSES

The following witnesses will appear on behalf of the Applicant and their resumes and a summary of their testimonies are included at **Tab C and D**, respectively:

1. Rashad M. Young, City Administrator

2. Councilmember Phil Mendelson, Chairman of the D.C. Council
3. Laura Zeilinger, Director of the District Department of Human Services
4. Sharon McDonald, homeless services expert
5. Ronnie McGhee, R. McGhee & Associates, Project Architect
6. Ryan Moody, Moody Graham, Landscape Architects
7. Dan Van Pelt, Gorove/Slade, Project Transportation Consultant
8. Any other witnesses as deemed necessary⁷.

XI. CONCLUSION

For the reasons stated above, and for the reasons enumerated in the Applicant's prior filings in this case, we hereby submit that the application meets the requirements for 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 Applicant requests flexibility in substituting or adding witnesses after reviewing the Opposition's February 17th filing. Additionally, the Applicant seeks flexibility in substituting witnesses based on District staff availability.

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2017, I served a copy of the Prehearing Statement on the following via email:

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