

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 19572 of SIM Development, LLC**, as amended<sup>1</sup>, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle C § 703.2 from the parking requirements of Subtitle C § 701.5, to add two stories containing 16 units to an existing two-story, nine-unit mixed use building in the MU-4 zone at premises 1916 15th Street, S.E. (Square 5766, Lot 845).

**HEARING DATES:** November 15 and December 20, 2017,<sup>2</sup> and January 17, 2018  
**MEETING DATE:** September 11, 2019  
**DECISION DATES:** January 24, 2018, and November 13, 2019<sup>3</sup>

**DECISION AND ORDER**

On June 29, 2017, SIM Development LLC (the “**Applicant**”), the owner of a lot improved with a two-story building at 1916 15<sup>th</sup> Street, S.E. (the “**Property**”), submitted an application (the “**Application**”) requesting the following relief under the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all references are made unless otherwise specified):

- special exception relief from the parking requirements of Subtitle C § 701.5, and
- area variance relief from the nonconforming structure requirements of Subtitle C § 202 (subsequently withdrawn)

to allow the construction of a two-story addition on top of an existing mixed-use building on the Property. For the reasons explained below, the Board of Zoning Adjustment (the “**Board**”) voted to **APPROVE** the Application as amended to include only the special exception relief from the requirements of Subtitle C § 701.5.

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<sup>1</sup> The Application’s original self-certification incorrectly listed the parking relief as a variance, but the Applicant’s pre-hearing statement (Exhibit [“**Ex.**”] 45) corrected the parking relief to a special exception. The Applicant originally requested relief from Subtitle X, Chapter 10, for a variance from the non-conforming structure requirements of Subtitle C § 202, but subsequently withdrew the request for this relief in September 2019.

<sup>2</sup> On December 20, 2017, the Board granted the ANC’s motion to postpone the hearing to January 17, 2018.

<sup>3</sup> As fully explained later in this Order, the Board reopened the January 24, 2018 decision on September 11, 2019.

**FINDINGS OF FACT**

**Notice**

1. Pursuant to Subtitle Y § 402.1, on August 24, 2017, the Office of Zoning (“**OZ**”) sent notice of the Application and public hearing<sup>4</sup> to
  - the Applicant;
  - Advisory Neighborhood Commission (“**ANC**”) 8A, the ANC for the area within which the Property is located and therefore the “affected ANC” per Subtitle Y § 101.8;
  - the Single Member District (“**SMD**”) Commissioner for ANC 8A05;
  - the Office of the ANCs;
  - the Office of Planning (“**OP**”);
  - the District Department of Transportation (“**DDOT**”);
  - the Councilmember for Ward 8;
  - the Chairman of the Council;
  - the At-Large Councilmembers; and
  - the owners of all property within 200 feet of the subject property. (Exhibit [“**Ex**”] 15-26.)
2. OZ published notice of the public hearing in the *D.C. Register* on August 25, 2017 (64 DCR 8414), as well as through the calendar on the OZ website.

**Parties**

3. The Applicant and ANC 8A were automatic parties to this Application per Subtitle Y § 403.5. The Board received no requests for party status.

**The Property**

4. The Property is bounded by Good Hope Road, S.E. to the north; 15<sup>th</sup> Street, S.E. to the west; a 16-foot, an improved public alley to the south; and an existing mixed-use building on the lot to the east. (Ex. 35.)
5. The Property is a corner lot, rectangular in shape, containing approximately 8,784 square feet of land area. (Ex. 45.)
6. The Property is improved with a two-story building (the “**Existing Building**”) that is currently vacant but was previously used for a mix of residential and commercial uses. (Ex. 45.)
7. The Existing Building pre-dates the 1958 Zoning Regulations and has a nonconforming 91% lot occupancy, which exceeds the maximum 60% (75% for Inclusionary Zoning (“**IZ**”

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<sup>4</sup> The Public Hearing was originally scheduled and advertised for October 11, 2017. It was subsequently postponed at the Applicant’s request to October 25, 2017. (Ex. 28 and 30.) ANC 8A requested a subsequent postponement to November 15, 2017, which received the Applicant’s consent. (Ex. 31-33.)

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developments) lot occupancy permitted for residential uses in the MU-4 zone. (Ex. 45.)  
The Existing Building is conforming for the commercial uses, as there is no lot occupancy limit on non-residential uses in the MU-4 zone. (Subtitle G § 404.1.)

8. There are no existing parking spaces on the Property. (Ex. 45.)
9. The surrounding area is generally residential with a mix of semi-detached and row dwellings. The Good Hope Road commercial corridor features mixed-use and other institutional buildings. Ketcham Elementary School is located directly across 15<sup>th</sup> Street, S.E. from the Property. (Ex. 35.)
10. There are Metrobus lines on both Good Hope Road and Minnesota Avenue. The Property is approximately one mile from the Anacostia Metrorail station. (Ex. 35.)
11. The Property has a Walk Score of 84, a Transit Score of 70, and a Bike Score of 53. (Ex. 35.)
12. The Property is located within the MU-4 Zone District. (Ex. 45.)
13. The purpose and intent of the MU-4 zone is to permit moderate density mixed-use development, including housing, with access to main roadways or rapid transit stops. (Subtitle G § 400.3.)

**The Application**

14. The Application proposed to renovate the Existing Building to maintain the existing ground floor commercial and residential uses and to construct a two-story and penthouse addition (the “**Addition**”), with 25 residential units over the four floors and habitable penthouse (the “**Project**”). (Ex. 38, 45.)
15. The Application stated that the renovations to the Existing Building’s first and second floors will maintain the existing 91% lot occupancy, while the Addition will be at approximately 63% lot occupancy on the third and fourth floors (the penthouse will be less). (Ex. 38, 45.)
16. The Applicant agreed that since the Project proposes more than 10 residential units, it is subject to Inclusionary Zoning (“**IZ**”) requirements, which will require at least three units with the final number of IZ units determined at permit issuance. (Subtitle C § 1001.2(b) and Ex. 40, 45.)
17. Ordinary repairs and alterations (including structural alterations) to nonconforming structures are permissible by right. (Subtitle C § 202.1.)

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18. Additions to nonconforming structures, provided the addition meets the applicable development standards and doesn't extend or enlarge the nonconforming aspect, or create a new nonconformity are permissible by right. (Subtitle C § 202.2.)
19. The Application proposed to provide no on-site vehicular parking spaces on the Property and so required relief. (Ex. 45.)
20. The Project is required to provide one parking space per every three units in excess of four. (Subtitle C § 701.5) The Project is also permitted a 50% reduction for being within one-quarter mile of the Priority Corridor Network Metrobus Route #92, netting a total of three required spaces for the proposed new 16 units. (Subtitle C § 702.1(c)(6).)
21. At the request of the ANC, and as included in the Applicant's proffered Community Benefits Package (Ex. 40), the Applicant prepared a parking study dated November 6, 2017 (the "**Parking Study**") which analyzed the Project's parking related impacts on the surrounding area. (Ex. 39.)
22. The Parking Study concluded that during a typical weekday or weekend day, there are at least 432 parking spaces available within three blocks of the subject site. The Parking Study concluded that the supply of on-street parking options would be adequate to serve the needs of the Project. (Ex. 39.)
23. The Application stated that the Project will otherwise comply with the MU-4 development standards in terms of floor area ratio ("FAR"), building height, and penthouse height. (Ex. 35, 45.)
24. The Applicant submitted additional elevations and renderings, on December 6, 2017, that did not revise the plans but provided more detail in response to requests from the Board at the November 15, 2017 hearing. (Ex. 60.)

**Relief Requested**

25. The MU-4 zone permits maximum lot occupancy of 60%, or 75% for IZ. (Subtitle G § 404; Subtitle C § 1002.4.)
26. The Application requested:
  - a) A special exception pursuant to Subtitle C § 703 from the minimum parking requirements of Subtitle C § 701.5 because the Applicant is unable to provide the required three spaces.
  - b) A variance from the nonconforming structure requirements of Subtitle C § 202.2 to expand the existing nonconforming lot occupancy of 91% to the proposed addition.

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27. The Application cited the presence of the nonconforming Existing Building, as well as the Property's proximity to alternative means of transportation, and walkability as the basis of its request for parking relief. (Ex. 45; Subtitle C § 703.2(a)-(c).)
28. The Application noted that the Applicant agreed to all Traffic Demand Management ("TDM") Plan conditions suggested by DDOT. (Ex. 45.)

**OP Report**

29. OP submitted a report dated October 27, 2017 recommending approval of the Application. (the "**OP Report**", Ex. 35.)
30. The OP Report noted that the Project would be subject to IZ and the Applicant would be required to provide additional affordable units on-site or contribute to the Housing Production Trust Fund for the proposed penthouse habitable space and the 75% lot occupancy permitted under the IZ requirements of Subtitle C § 1002.4. (Ex. 35.)

**DDOT Report**

31. DDOT submitted a report dated October 13, 2017. (the "**DDOT Report**", Ex. 34.) The DDOT Report concluded that the Application would have no adverse impacts on the travel conditions of the District's transportation network and only minor impacts on vehicular, transit, pedestrian, and bike trips and on-street parking in the surrounding area. (Ex. 34.)
32. The DDOT Report noted that the Property is not subject to the Residential Permit Parking ("**RPP**") Program, and as a result, residents and visitors to the Property would be able to park freely on the 1900 block of 15<sup>th</sup> Street, S.E. (Ex. 34.)
33. The DDOT Report also noted that the Application was not proposing to provide any long or short-term bicycle parking for the Project. The DDOT Report advised that the Project would need to comply with the bicycle parking requirements of the Zoning Regulations. (Ex. 34.)
34. The DDOT Report concluded that DDOT had no objection to the Application, on the condition that the Applicant implement the recommended TDM Plan conditions:
  - a) Identifying a staff member to be the TDM Coordinator to work with goDCgo on implementation;
  - b) Providing TDM materials to new residents in the Residential Welcome Package;
  - c) Providing two additional short-term bicycle parking spaces in the "furniture zone" in public space or on private property; and
  - d) Providing website links to CommuterConnections.com and goDCgo.com on developer and property management websites.

35. DDOT submitted a supplemental report dated December 6, 2017 (the “**Supplemental DDOT Report**”), which reviewed the Parking Study that had not been considered in the DDOT Report. (Ex. 57.) The Supplemental DDOT Report noted that it did not initially require a parking study, as the requested relief for three spaces did not meet DDOT’s threshold of four spaces typically required to trigger a study. (Ex. 57.)
36. The Supplemental DDOT Report noted that it had requested that the Applicant’s transportation consultant narrow the subject radius for additional analysis. After the radius was reduced to two blocks, the Applicant’s consultant provided data to DDOT demonstrating that approximately 293 parking spaces were available during the period of highest demand.<sup>5</sup> The Supplemental DDOT Report concluded that this amount of parking was sufficient to support both the residential and commercial elements of the Project. (Ex. 57.)
37. The Supplemental DDOT Report also noted that the Applicant had submitted revised architectural plans on November 11, 2019 in response to the DDOT Report’s comments regarding bicycle parking. The revised plans now show 11 long-term bicycle parking spaces, and four U-racks (eight spaces) on Good Hope Road, S.E. The Supplemental DDOT Report found this amount of bicycle parking to be sufficient but noted that it still expected the Applicant to provide an additional two, short-term spaces as part of the TDM Plan conditions. (Ex. 57.)
38. The Supplemental DDOT Report noted that the Applicant had verbally agreed to the four proposed TDM Plan conditions, including the two additional short-term bicycle parking spaces. (Ex. 57.)

**ANC Report**

39. ANC 8A submitted a written report stating that at its properly noticed public meeting on November 7, 2017, at which a quorum was present, the ANC voted to support the Application. (the “**First ANC Report**”, Ex. 53.) The First ANC Report noted that the Applicant had provided a parking and traffic assessment at the request of the ANC. (Ex. 53.)
40. ANC 8A subsequently submitted a report dated December 6, 2017 (the “**Second ANC Report**”, Ex. 62) stating that at a properly noticed public meeting on December 5, 2018 at which a quorum was present, the ANC voted to rescind its support for the Application. The Second ANC Report noted that the original ANC vote had only considered the special exception from the parking requirements and not the variance relief, which was not included in the First ANC Report due to a clerical error. The Second ANC Report also noted the following issues and concerns:

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<sup>5</sup> The Applicant’s transportation consultant did not submit a separate report with these findings, they are contained solely in the Supplemental DDOT Report.

- a) The proposed height, and scale of the Addition;
  - b) The aesthetics and choice of building materials for the Project; and
  - c) The comprehensiveness of the Parking Study.
41. The ANC submitted a written report dated January 10, 2018 (the “**Third ANC Report**”, Ex. 100) stating that at its properly noticed public meeting on January 9, 2018, at which a quorum was present, ANC 8A voted to oppose the Application. The Third ANC Report stated that the ANC’s main concern was the impact the project would have on parking in the surrounding area. The Third ANC Report rejected the findings of the Applicant’s Parking Study because the ANC believed the Parking Study had failed to properly consider the impacts of Ketcham Elementary or the nearby commercial uses on parking demands. The Third ANC Report also designated Commissioner Fuller to testify on behalf of the Commission. (Ex. 100.)

**Persons in Support**

42. There were no submissions from persons in support the proposal, and no members of the public testified at the hearing in support of the proposal.

**Persons in Opposition**

43. The Board received approximately 13 letters in opposition to the proposal. (Ex. 41 – 44A2, 47 – 49, 52, 63, 67, 91, and 96.) The Board also received two petitions in opposition. (Ex. 85, 98.)

**Public Hearing of November 15, 2017**

44. At the Public Hearing of November 15, 2017, the Applicant presented testimony from its Architect, Neil Cruickshank of Architectural Solutions, LLC, and of its traffic consultant, Erwin Andres of Gorove/Slade.
45. In response to questions from members of the community and the Board, the Applicant clarified that the Parking Study had not been required by DDOT but rather, was the Applicant’s response to questions from ANC 8A. (BZA Public Hearing Transcript of November 15, 2017 Hearing [“**Nov. 15 Tr.**”] at 288.)
46. OP testified in support of the Application and noted that the Existing Building was constructed prior to the 1958 Zoning Regulations and as a result, did not comply with the lot occupancy standards. OP confirmed that the Addition, as proposed by the Application, would meet the lot occupancy requirements for the MU-4 zone by being below 75%. (Nov. 15 Tr. at 302.)
47. OP further explained that the Applicant’s inability to provide onsite parking was a direct result of the nonconforming Existing Building which did not allow space for the required

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three spaces. OP also noted the site's proximity to MetroBus and MetroRail as mitigating factors. (Nov. 15 Tr. at 302.)

48. Six persons<sup>6</sup> testified in opposition to the project. (Ex. 56; Nov. 15 Tr. at 304-336.) They raised concerns regarding the Application including:
- a) The scale and appearance of the Project;
  - b) The potential impacts on the nearby Anacostia Historic District;
  - c) The conclusions of the Parking Study;
  - d) The ANC's process of reviewing and voting on the Application; and
  - e) The cumulative effects of construction in the area around the Project.
49. At the conclusion of the hearing, in response to concerns from the ANC and community regarding the Parking Study, the Board continued the hearing for a limited scope hearing focused on the parking issues to allow the ANC and DDOT additional time to review the Parking Study. (Nov. 15 Tr. at 289 and 340.) The Applicant was also asked to provide:
- a) Plans and elevations showing the scale of the Project in relation to the surrounding buildings. (Nov. 15 Tr. at 338.)
  - b) Comments from DDOT on the Parking Study. (Nov. 15 Tr. at 343.)

**Public Hearing of December 20, 2017**

50. At the December 20, 2017, public hearing, Troy Donté Prestwood, Chair of ANC 8A testified that the ANC and community continued to have concerns about the Project's scale and the conclusions of the Parking Study. (BZA Public Hearing Transcript of December 20, 2017 ["**Dec. 20 Tr.**"] at 7-10.)
51. OP also testified and reiterated the basis for OP's support of the Application. (Dec. 20 Tr. at 44-45.)

**Public Hearing of January 17, 2018**

52. At the January 17, 2018, public hearing, the Applicant again presented testimony from its architect, Neil Cruickshank of Architectural Solutions, LLC, and of its traffic consultant, Erwin Andres of Gorove/Slade.
53. Mr. Andres provided an overview of the methodology and findings of the Parking Study and noted that the scope of the study had been reduced to a two-block radius of the Property at the request of DDOT. (BZA Public Hearing Transcript of January 17, 2018 ["**Jan. 17 Tr.**"] at 9-11.) Mr. Andres noted that even when the scope of the study was reduced, there were still approximately 293 spaces available and that DDOT concurred with this finding as noted in the Supplemental DDOT Report. (Jan. 17 Tr. at 11.)

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<sup>6</sup> Ms. Greta Fuller, ANC 8A06, testified as a community member because she did not believe she was authorized to represent the ANC before the Board. (Nov. 15 Tr. at 303.)



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54. In response to issues raised by the ANC regarding other construction projects in the area near the project and the “pipeline” of proposed projects, Mr. Andres testified that none of those projects had come before the ANC nor the Board for relief, as would be required if those projects also needed parking relief. (Jan. 17 Tr. at 13-14.)
55. The Applicant testified as to its ongoing communications with the ANC and noted that the parties had been unable to come to a resolution regarding the façade or the proposed scale of the Project. The Applicant confirmed that it was not willing to reduce the height of the Project and reiterated that, aside from the relief requested in the Application, the Project otherwise complied with the development standards of the MU-4 zone. (Jan. 17 Tr. at 7-8, 16-17.)
56. As designated by the Third ANC Report, Commissioner Fuller testified as ANC 8A’s representative. (Ex. 100.) Commissioner Fuller noted that the ANC still had concerns about the findings of the Parking Study, which it felt did not address the impacts of the loss of a DC Circulator Route, the neighboring Ketcham Elementary, and general safety and crime concerns in the surrounding area. Commissioner Fuller noted that the ANC was still requesting that the Applicant reduce the size of the Addition to a single story. Finally, Commissioner Fuller raised concerns about the Project’s proximity to the nearby historic district. (Jan. 17 Tr. at 18-25.)
57. In response to the ANC testimony, OP testified that historic concerns did not have any relevance to the requested relief and that the property is not located in a historic district. Therefore, no historic analysis by either OP or the Historic Preservation Review Board was required. (Jan. 17 Tr. at 31.)
58. OP testified that the Addition was within the permitted height for the MU-4 zone and the new floors would comply with the lot occupancy and FAR standards. With regard to the parking relief, OP again noted that the configuration of the nonconforming existing building made it impossible for the Applicant to provide onsite parking without demolishing a portion of the building. (Jan. 17 Tr. at 34-37.)
59. The Applicant offered additional testimony confirming OP’s testimony, that providing parking on-site would require partial demolition of the Existing Building. The Applicant explained that this demolition would probably necessitate a reconfiguration of the proposed design resulting in additional zoning relief being required. The Applicant also noted, in response to a question posed by the Board, that providing underground parking would be cost prohibitive and unfeasible from an engineering standpoint. (Jan. 17 Tr. at 43-44.)

**Public Meeting of January 24, 2018**

60. At its January 24, 2018, public meeting, the Board approved the Application.

**Public Meeting of September 11, 2019**

61. In response to concerns raised by the Office of Attorney General (“OAG”) that the requested variance relief from Subtitle C § 202.2 was not required, the Board reconsidered its January 24<sup>th</sup> decision at its September 11, 2019 public meeting and voted to rescind the prior approval of the Application and reopen the record for responses from the parties on this issue. (BZA Public Meeting Transcript of September 11, 2019 at 9.) The Board articulated the basis for its rescission of its original approval in a September 12, 2019 procedural order and requested that the Applicant, the ANC, and OP file responses addressing the necessity of a variance under Subtitle C § 202.2. (Ex. 102.)
62. The Applicant submitted a supplemental statement addressing the Board’s concerns as well as revised self-certification forms, formally withdrawing the request for variance relief from Subtitle C § 202.2. (Ex. 106-108.)

**Supplemental OP Report**

63. In response to the Board’s request, OP submitted a supplemental report to the record. (Ex. 104, the “**Supplemental OP Report**”.) The Supplemental OP Report noted that the Existing Building pre-dated the 1958 Zoning Regulations and was nonconforming with respect to residential lot occupancy. However, the Supplemental OP Report noted that the Addition would comply with the MU-4 zone lot occupancy limits and so would not expand the existing nonconforming aspect. The Supplemental OP report therefore concluded that as such, variance relief from Subtitle C § 202 was not necessary. The Supplemental OP Report reiterated OP’s recommendation that the Commission approve the Application.

**CONCLUSIONS OF LAW**

**Special Exception Relief**

1. Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(2) (2018 Repl.); *see also* Subtitle X § 901.2) authorizes the Board to grant special exceptions, as provided in the Zoning Regulations, where, in the judgement of the Board, the special exception:
  - a. *will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map,*
  - b. *will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, and*
  - c. *complies with the special conditions specified in the Zoning Regulations.*
2. For the relief requested by the Application, the “specific conditions” are those of Subtitle C § 703.
3. Relief granted by the Board through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the

specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the Board's discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and "if the applicant meets its burden, the Board ordinarily must grant the application." *First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).

**Relief from the Minimum Parking Requirements of Subtitle C § 701.5 - Subtitle C § 703**

4. Per Subtitle C § 703, the Board may grant a full or partial reduction in number of required parking spaces, subject to the applicant's demonstration of at least one of the ten possible criteria of Subtitle C § 703.2, and satisfaction of the additional standards of Subtitle C §§ 703.3 and 703.4. As explained below, the Board concludes that the Applicant has met its burden of proof by demonstrating compliance with multiple criteria of Subtitle C § 703.2.
5. The Board concludes that the Application meets the criteria of both Subtitle C § 703.2 (b) and (c), satisfaction of any one of which is sufficient, as follows:
  - (b) *The use or structure is particularly well served by mass transit, shared vehicle, or bicycle facilities;*

The Board concludes that the Property is located close to existing Metrorail and Metrobus routes and that the Application proposes to include 11 spaces for long-term bicycle parking and a total of 10 short-term bicycle parking spaces, as recommended by DDOT which found that the Project would have no adverse impacts on the District's transportation network. (Finding of Fact ["FF"] 10-11, 31, 35-38, 53.)
  - (c) *Land use or transportation characteristics of the neighborhood minimize the need for required parking spaces;*

The Board concludes that the Property is considered highly walkable, accessible by bike and close to mass transit options. (FF 10-11, 53.) The Board also concurs with the findings of the Parking Study, as supported by OP and DDOT, that the approximately 293 available street parking spaces in the surrounding area are sufficient to support the needs of the Project. (FF 21-22, 36, 53.)
6. The Board concludes that the Application almost met the criteria of Subtitle C § 703.2 (a), as the nonconforming nature of the Existing Building makes it impossible for the Applicant to provide on-site parking without demolishing a portion of the Existing Building. (FF 8, 19, 47, 58-59.) However, neither the Application, nor any of the testimony at the public hearings addressed the availability of providing the required parking within 600 feet of the Property.

7. Subtitle C § 703.3 - *Any reduction in the required number of parking spaces shall be only for the amount that the applicant is physically unable to provide and shall be proportionate to the reduction in parking demand demonstrated by the applicant.*  
The Board concludes that the Application is only requesting relief from the required three parking spaces on the basis of the lack of space on the Property and the availability of sufficient transportation alternatives. (FF 19-22.)
8. Subtitle C § 703.4 - *Any request for a reduction in the minimum required parking shall include a transportation demand management plan approved by the District Department of Transportation, the implementation of which shall be a condition of the Board of Zoning Adjustment's approval.*  
The Board concludes that the Applicant's agreement to the TDM Plan conditions, both in its pre-hearing statement (FF 28), and orally as noted in, and approved by the Supplemental DDOT Report (FF 34, 38) is sufficient to satisfy the requirements of Subtitle C § 703.4. (Jan. 20 Tr. at 13.)

**General Special Exception Relief – Subtitle X § 901**

9. The Board concludes that the Application, in addition to meeting the specific conditions of the special exceptions from the minimum parking requirements, also meets the general special exception standards in Subtitle X § 901.2 to be in harmony with the purpose and intent of the Zoning Regulations and Zoning Maps and to not adversely affect the surrounding properties as follows.
10. The Board concludes that granting the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps because the Project complies with the intent and purpose of the MU-4 zone district to provide moderate density development in areas that close to transit hubs and major roadways. (Jan. 20 Tr. at 13.) The Board notes that the Application and Applicant stated that the Project complies with the development standards of the MU-4 zone apart from the requested parking relief. (FF 23, 55; Jan. 20 Tr. at 13.) The Board concludes that requiring the Applicant to provide the on-site parking would necessitate demolition of a portion of the Existing Building, which might require additional zoning relief in order for the Applicant to achieve the same number of units and usable commercial space. (FF 58-59.) Further, as explained above, the Board concludes that the Application also met the specific special exception criteria for parking relief as supported by OP and DDOT. (Jan. 20 Tr. at 13.)
11. The Board concludes that granting the requested special exception will not tend to adversely affect the use of neighboring properties because the Board concluded that the conditions of the Applicant's TDM Plan would mitigate any traffic and parking impacts resulting from the requested relief as confirmed by the DDOT Report. (FF 31, 34, 36-38; Jan. 20 Tr. at 13, 15.) The Board concurred with the findings of both the OP and DDOT Reports, which did not raise any concerns about any additional adverse impacts resulting

from the Project. (Jan. 20 Tr. at 13-15.) The Board concludes that in addition to the site's walkability and proximity to public transit options, there is also sufficient off-site parking available to accommodate the needs of the project. (FF 21-22, 31-32, 36.) The Board credits the findings of the Applicant's Parking Study, as contained in the DDOT Supplemental Report, which concluded that there was an average of 293 available parking spaces within a two-block radius of the property. (FF 36.) The Board concludes that since the Applicant was only required to supply three-onsite parking spaces, this appears sufficient to absorb the additional traffic generated by the new units and retail use. (FF 36.)

**“Great Weight” to the Recommendations of OP**

12. The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Y § 405.8.)
13. The Board concludes that the OP Report and the Supplemental OP Report, which provide in-depth analysis of how the Application met each of the requirements for the requested special exception relief, are persuasive and concurs with OP's recommendation that the Application be approved, as discussed above.

**“Great Weight” to the Written Report of the ANC**

14. The Board must give “great weight” to the issues and concerns raised in the written report of the affected ANC, which in this case is ANC 5D. (§ 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) (2012 Repl.) and Subtitle Y § 406.2.) To satisfy this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978).
15. The Board finds the issues and concerns raised by ANC 8A to be unpersuasive. The Application provided a Parking Study, accepted by DDOT, which concluded that there is sufficient street parking in the area to support the needs of the Project. (FF 36, 53.) The DDOT reports concluded that the Project would not result in any significant adverse impacts, and that any minor impacts would be mitigated by the TDM Plan conditions agreed to by the Applicant. (FF 31, 34, 36-38.) The Board concludes that the ANC did not provide any counter evidence to rebut the Parking Study's and DDOT's conclusions regarding the parking relief.
16. The other concerns raised by the ANC, regarding the building height and general appearance are no longer legally relevant, as the Application is not requesting zoning relief

from those specific development standards. (Jan. 20 Tr. at 12-13.) As such, the Board concludes that the issues raised by the ANC have either been sufficiently addressed by the Application or are no longer legally relevant and as such do not constitute “legally relevant issues and concerns.”

## **DECISION**

Based on the case record and the Findings of Fact and Conclusions of Law, the Board concludes that the Applicant has met its burden of proof for the requested special exception relief from the parking requirements of Subtitle C § 701.5, and therefore **ORDERS** that the Application is **GRANTED**, subject to the following **CONDITIONS**:

1. Development of the Property that uses the relief granted in this Order shall comply with the approved plans at Exhibit 38<sup>7</sup> as required by Subtitle Y §§ 604.9 and 604.10.
2. The Applicant shall implement the Transportation Demand Management (“**TDM**”) Package with the following elements (Ex. 57):
  - a. Identify a staff member on-site to be the TDM Coordinator to work with goDCgo on implementation;
  - b. Provide TDM materials to new residents in the Residential Welcome Package to notify them of non-automotive options for travel;
  - c. Provide two additional short-term bicycle parking spaces (one inverted U-rack) in the “furniture zone” in public space or in private property; and
  - d. Provide website links to CommuterConnections.com and goDCgo.com on developer and property management websites.

**VOTE (Nov. 13, 2019): 3-0-2** (Frederick L. Hill, Carlton E. Hart, and Anthony J. Hood to **APPROVE**; no other Board members participating.)

## **BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

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<sup>7</sup> Self-Certification. This is a self-certified application pursuant to Subtitle Y §300.5. (Ex. 108.) In granting the certified relief, the Board of Zoning Adjustment (“Board” or “BZA”) made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

**ATTESTED BY:**

  
\_\_\_\_\_  
**SARA A. BARDIN**  
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** February 7, 2020

PURSUANT TO 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 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 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.

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

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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.