

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19862 of Heights Holdings, LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle C § 703 for relief from the minimum parking requirements of Subtitle C § 701.5, and a special exception pursuant to Subtitle G §§ 409 and 1201 from the rear yard requirements of Subtitle G § 405.2, to construct a new 26-unit apartment house in the MU-4 Zone at premises 3331 and 3333 11th Street N.W. and 1032 and 1034 Park Road, N.W. (Square 2841, Lots 95, 96, 98, and 99).

HEARING DATES: November 14, December 5 and 19, 2018¹
DECISION DATE: December 19, 2018

DECISION AND ORDER

Heights Holdings, LLC (the “**Applicant**”) filed an application with the Board of Zoning Adjustment (the “**Board**”) on August 20, 2018, for a special exception under Subtitle C § 703 of Title 11 of the DCMR (the “**Zoning Regulations**”, to which all references are made unless otherwise specified) for relief from the minimum parking requirements of Subtitle C § 701.5 and a special exception pursuant to Subtitle G §§ 409 and 1201 from the rear yard requirements of Subtitle G § 405.2 (the “**Application**”) to construct a new 26-unit apartment house in the MU-4 Zone at premises 3331 and 3333 11th Street, N.W. and 1032 and 1034 Park Road, N.W. (Square 2841, Lots 95, 96, 98, and 99) (the “**Property**”). For the reasons explained below, the Board voted to **APPROVE** the Application.

FINDINGS OF FACT

Notice of Application and Notice of Public Hearing

1. Pursuant to Subtitle Y §§ 400.4 and 402.1, the Office of Zoning (“**OZ**”) sent notice of the Application and the November 14, 2018 hearing by a September 20, 2018 letter to the Applicant; Advisory Neighborhood Commission (“**ANC**”) 1A, the ANC for the area within which the subject property is located, the single-member district ANC 1A07, and the Office of ANCs; the Office of Planning (“**OP**”) and the District Department of Transportation (“**DDOT**”); the Councilmember for Ward 1, the Chairman of the Council, and the At-Large Councilmembers; and the owners of all property within 200 feet of the Property. (Exhibits 12-

¹ The Board granted the Applicant’s request to postpone the original scheduled hearing from November 14 to December 5, 2018.

BZA APPLICATION NO. 19862

PAGE NO. 2

24.) OZ also published notice of the November 14, 2018 public hearing in the *D.C. Register* on September 21, 2018 (65 DCR 9726) as well as through the calendar on OZ's website.

Party Status

2. The Applicant and ANC 1A were automatically parties in this proceeding per Subtitle Y § 403.5. No request for party status was filed.

The Property

3. The Property contains 5,574 sq. ft. of land area. (Exhibit 46B.)
4. The Property is irregularly-shaped and consists of four lots of record, two with frontage on 11th Street, N.W. and two with frontage on Park Road, N.W., that wrap around a corner lot (Lot 97) that is not part of the Property or Application. (Exhibit 46B.)
5. The Property borders a restaurant use in the corner lot to the northwest (Lot 97) and residential uses to the south (Lot 94) and east (Lot 872). (Exhibits 6 and 46B.)
6. The Property is currently improved with four two-story rowhouses. (Exhibits 4 and 9.)
7. The Property has no curb cut onto a public street and its only access to a public alley is by a 3.75-foot-wide strip that leads behind the adjacent property to the south (Lot 94) to an approximately 15-foot-wide alley. (Exhibits 46B and 48.)
8. None of the four lots which comprise the Property currently provide off-street parking.
9. The Property is located 0.1 miles from the nearest bicycle station, 0.1 miles from two Metrobus routes (63 and H8), less than 0.5 miles from the Georgia Avenue-Petworth Metrorail station, and 0.6 miles from the Columbia Heights Metrorail station. (Exhibits 7 and 47.)
10. The Property is in the MU-4 Zone.
11. Pursuant to Subtitle G § 400.3, 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.
12. The surrounding neighborhood is developed with a cluster of a half-dozen retail, service, and restaurant uses at the intersection of 11th Street, N.W. and Park Road, N.W. as well as apartment houses of varying sizes and rowhouses. (Exhibits 6, 9, and 46B.)

The Application

13. The Application proposed to raze the four existing buildings on the Property, subdivide the four lots into a new single record lot, and construct a 26-unit apartment building (the "**Building**") fronting on 11th Street, N.W. with a side yard on Park Road, N.W. and attached

BZA APPLICATION NO. 19862

PAGE NO. 3

to the abutting buildings on the east (Lot 827), south (Lot 94), and northwest (Lot 97). (Exhibits 6 and 46B.)

14. The Building's proposed 26 units would require a minimum of four parking spaces on the Property, because the Property's location within a half-mile of a Metro Station reduces the seven parking spaces required by 50% under Subtitle C §§ 701.5 and 702.1(a). (Exhibits 46B and 47.)
15. The Application proposed to provide no parking on the Property. (Exhibit 46B.)
16. The Applicant stated that it does not own property that could provide off-site parking within 600 feet of the Subject Property. (Exhibit 7.)
17. A minimum rear yard of 15 feet is required in the MU-4 Zone. (Subtitle G § 405.2.)
18. The Application proposed to provide a variable rear yard along the eastern rear lot line, including a 3.75-foot rear yard along the alley accessway on the southern portion, a 10-foot rear yard for approximately 55 feet, no rear yard where the Building would abut the existing building to the east (1030 Park Road, N.W.) and a compliant rear yard on the frontage with Park Road, N.W. (Exhibits 6, 37A, and 46B.)
19. The Application proposed no windows along the south side of the Building that would abut directly the building to the south at 3329 11th Street, N.W., except for one window on the penthouse that overlooks the rear yard of that adjacent building. (Exhibit 46B.)
20. The Application proposed windows on the south side of the Building facing the rear yard that extends over 40 feet to the south. (Exhibit 46B.)
21. The Application proposed no windows on the northern portion of the east side of the Building that would abut directly the building to the east at 1030 Park Road, N.W. (Exhibit 46B.)
22. The Application proposed windows on the southern portion of the east side of the Building facing the rear yard that extends 10 feet to the east rear lot line. (Exhibit 46B.) Across this 10-foot rear yard, the northern pair of windows on each floor would face the blank wall of the rear extension of the abutting property at 1030 Park Road, N.W. and the other windows would face the rear yards of the adjacent properties on Park Road, N.W. with no building within 40 feet of these windows.
23. The Application proposed no office uses in the Building.

Zoning Relief

24. The Application requested a special exception under Subtitle C § 703 from the four parking spaces required under minimum parking requirements of Subtitle C § 701.5, as reduced by Subtitle C § 702.1(a).
25. The Application also requested a special exception under Subtitle G §§ 409 and 1201 from the required 15-foot rear yard required by Subtitle G § 405.2 to provide a 10-foot rear yard on the southern portion of the rear lot line and no rear yard on the northern portion.

Persons in Support

26. Fourteen neighbors (including RedRocks, the owner of the corner lot 97 surrounded by the Property), signed letters stating their support for the Application. (Exhibits 32- 36, 38-44, 53, and 54.)

Persons in Opposition

27. The Board received no letters nor testimony from persons in opposition to the Application.

OP Report

28. OP submitted a report dated November 26, 2018 (the “**OP Report**,” Exhibit 47) recommending approval of the amended request for special exception relief, subject to the following conditions to mitigate the projected adverse effect of the Building on public parking:
- a) Applicant provide a specific amount of prepaid Capital Bikeshare annual membership or Metro farecard to all new tenants;
 - b) Applicant designate a location for the required short-term bicycle parking space in consultation with DDOT; and
 - c) Applicant provide an additional long-term bicycle parking space beyond the minimum required.

DDOT Report

29. DDOT submitted a report dated November 26, 2018 (the “**DDOT Report**,” Exhibit 48), stated that DDOT had determined that the Property had no vehicular access because:
- a) the alley access way at the rear of the Property is too narrow for vehicular access;
 - b) a curb cut for vehicular access to the Property off Park Road, N.W. would violate the prohibition of the DDOT Design and Engineering Manual (“DEM”) against a curb cut within 60 feet of an intersection;
 - c) a curb cut for vehicular access to the Property off of 11th Street, N.W. would violate DDOT’s DEM prohibition on installing curb cuts that would harm existing street trees; and
 - d) curb cuts, even if allowed, would increase the adverse effects of the Building on the availability of on-street public parking by reducing the number of curbside parking spaces.

BZA APPLICATION NO. 19862
PAGE NO. 5

30. The DDOT Report also determined that because the Building had less than 50 units, no on-site loading was required by the Zoning Regulations.
31. The DDOT Report stated that DDOT had determined that the Application would have only minor potential transportation impacts by reducing the availability of on-street public parking and increasing the number of vehicular, transit, pedestrian, and bicycle trips. To mitigate these potential minor negative impacts, DDOT recommended that the Application include the following conditions:
- a) All new tenants and residents of the Building receive transit information;
 - b) An electronic message board in the Building's residential lobby that displays relevant transportation information including estimated arrival times at nearby stations/stops and availability at nearby Capital Bike stations;
 - c) Each new residential unit receive a one-year Capital Bikeshare or pre-paid Metro fare card with a minimum expenditure of \$2,200; and
 - d) Provide additional long-term bicycle parking spaces if available.
32. The DDOT Report stated that as the Applicant had agreed to include these conditions in the Application, DDOT had no objection to the parking relief requested in the Application.

ANC Report

33. The Applicant presented the Application to the surrounding neighborhood at an ANC community meeting on October 2, 2018. (Exhibit 37.)
34. In response to comments from the community at the October 2nd ANC community meeting, the Applicant revised the design of the Building's façade from a modern metal and glass façade to a more traditional brick façade and included a mural on the Building's north and west facades. (Exhibits 37 and 37A.)
35. The Applicant presented the Application at the ANC's October and November 14, 2018 meetings.
36. ANC 1A submitted a written report (the "**ANC Report**," Exhibit 49) stating that at a duly noticed and scheduled public meeting on November 14, 2018, at which a quorum was present, the ANC voted to oppose the Application and to express three concerns based on the three ANC meetings at which the Applicant presented the Application:
- a) that the Building was not compatible with the architectural character and compatibility of the surrounding neighborhood,
 - b) that the Building did not adequately mitigate the increased parking demand from the increased density, and

- c) that the Building did not provide sufficient affordable housing units nor at sufficiently deep affordability levels
37. The ANC Report appeared to accept the Applicant's revised design as resolving concerns on the architectural character by commending the improved aesthetics of the more traditional façade design than the initial contemporary façade.
38. The ANC Report stated that despite the Applicant's revised design, the impact on public parking posed by the Application's requested relief would be too great despite the Applicant's proposed TDM measures without additional mitigation measures such as increasing the length of alternative transportation incentives and exploring a curb cut. (Exhibit 49.)
39. The ANC Report did not further address the issue of affordable housing units.
40. The ANC Report authorized the Chair of the ANC (single-member district Commissioner for 1A08) to present the report to the Board.
41. The ANC Chair testified at the December 5, 2018 public hearing before the Board that the "core issue [for the ANC] is the parking." (BZA Public Hearing Transcript of December 5, 2018 at 162.) The ANC Chair proposed specific additional mitigation measures to address the ANC Report's expressed concerns that the Applicant's TDM measures were insufficient to discourage residents of the Building from owning cars that would increase the demand on on-street public parking.
42. At the December 5, 2018 hearing, the ANC Chair did not testify about the ANC Report's concern that the Application's proposed affordable housing included too few units with too high an income limit.
43. At the December 5, 2018 hearing, the Board discussed with the Applicant potential additional mitigation measures to address the ANC Report's concern with the Application's impact on public parking. The Board requested the Applicant to prepare a final TDM plan that would incorporate those additional mitigation measures that the Applicant could support and discuss that final TDM plan with the ANC.
44. In response to the Board's request at the December 5, 2018, hearing, the Applicant met with the Chair and three other members of the ANC (1A02, 1A03, and 1A06) on December 12, 2019, and agreed to incorporate additional TDM measures into the Application's final TDM plan (the "**Final TDM Plan**"). (Exhibit 57.) These additional TDM measures included:
- a) providing each new resident with a reusable shopping bag, with additional ones available near the long term bicycle parking area;
 - b) clarification that the electronic message board displaying nearby transit options will be permanent and will include nearby options for car- and bike-sharing;

- c) expansion of the one-year Capitol Bikeshare Membership or prepaid Metro card for each residential unit for a minimum of \$2,200 to include a Zipcar or Lyft gift card and to run for four years (for a minimum cost of \$8,840);
- d) providing one long-term bicycle parking space more than required under the Zoning Regulations in a cellar-level storage room; and
- e) promises to work with DDOT to provide additional short-term bicycle parking spaces on the Property and to create a pick-up/drop-off space on either Park Road, N.W. or 11th Street, N.W. provided this space would not remove any existing legal on-street parking spaces.

45. These four members of the ANC, including the Chair, executed an agreement with the Applicant on behalf of the ANC that incorporated the Final TDM Plan as conditions to the Application. (Exhibit 58.)

Revisions to the Application

46. In response to concerns about parking raised at the November 14, 2018 ANC meeting and OP's report, the Applicant submitted a Transportation Demand Management ("TDM") plan that included the conditions referenced in OP's report. (Exhibit 46A.)

47. In response to testimony at the December 5, 2018 public hearing of the Board, the Applicant agreed to further revisions to the TDM plan that resolved the concerns of four members of the ANC, as expressed in a letter. (Exhibits 57 and 58.)

CONCLUSIONS OF LAW

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

- (i) will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map,
- (ii) will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, and
- (iii) complies with the special conditions specified in the Zoning Regulations.

For the relief requested by the Application, the "specific conditions" are those of Subtitle C § 703 and Subtitle G § 1201.

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)).

As explained more fully below, the Board concludes that the Applicant has demonstrated that the Application met the specific and general conditions for both special exceptions requested.

Subtitle C § 703 – Relief from Parking Requirements of Subtitle C § 701.5

To qualify for a special exception from the minimum parking requirements of Subtitle § 701.5 under Subtitle C § 703, the Applicant must demonstrate the Application’s compliance with at least one of ten criteria of Subtitle C § 703.2 in addition to satisfying the criteria of Subtitle C §§ 703.3 and 703.4 and the general special exception criteria of Subtitle X § 901.

The Board concludes that the Applicant demonstrated satisfaction of two of the criteria of Subtitle C § 703.2:

C-703.2(b) the use or structure is particularly well served by mass transit, shared vehicle, or bicycle facilities;

The Board concludes that the Application meets this criterion because the Property is well served by other means of transportation as it is located 0.1 miles from the nearest bicycle station, 0.1 miles from two Metrobus routes (63 and H8), within a half-mile of the Georgia Avenue-Petworth Metrorail station, and 0.6 miles from the Columbia Heights Metrorail station.

C-703.2(h) the property does not have access to an open public alley, resulting in the only means by which a motor vehicle could access the lots is from an improved public street and either

- 1) A curb cut permit for the property has been denied by the District Department of Transportation; or*
- 2) Any driveway that could access an improved public street from the property would violate any regulation of this chapter, of the parking provisions of any other subtitle in the Zoning Regulations or of Chapters 6 or 11 of Title 24 DCMR.*

The Board concludes that the Application meets this criterion because the DDOT Report specified that the Property had no vehicular access, as the rear alley access was too small for vehicles and no curb cut could be installed to give the Property access to either 11th Street, N.W. or Park Road, N.W. that would not violate DDOT’s DEM.

Subtitle C § 703.3 requires that “*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*” and Subtitle C § 703.4 requires that “*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 satisfied these requirements because the Application only requested the relief from the four parking spaces that the Property could not provide due to the lack of vehicular access to the public street and alley network. The Board concludes that the Final TDM Plan incorporated into the Application, which was negotiated with the ANC, and which incorporated and exceeded the TDM requirements of the DDOT and OP Reports, demonstrated that the requested four-parking-space reduction was proportionate to these parking-demand reduction incentives included in the Final TDM Plan.

Based on the above, the Board concludes that the Applicant has demonstrated that the Application meets the specific conditions for the requested special exception relief under Subtitle C § 703.2 from the minimum parking requirements of Subtitle C § 701.5.

Subtitle G §§ 409 and 1201 – Relief from Rear Yard Requirements of Subtitle G § 405.2

To qualify for a special exception from the minimum rear yard requirements of Subtitle G § 405.2 under Subtitle G §§ 409 and 1201, the Applicant must demonstrate that the Application satisfies the following conditions of Subtitle G § 1201:

G-1201.1(a) No apartment window shall be located within forty feet (40 ft.) directly in front of another building;

The Board concludes that the Application meets this condition because the windows on the south side and east rear facades would overlook the rear yards of adjacent lots with no building within 40 feet of these windows, except for the northern pair of windows on each floor on the rear east façade that would face the blank side wall of the rear extension of the building on the abutting lot to the east at 1030 Park Road, N.W. across the 10-foot rear yard.

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;

The Board concludes that this condition is not applicable to the Building, which will not include any office uses.

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;

The Board considered the potential sightlines into habitable rooms on adjacent properties from the windows on the east rear façade of the Building, which is not parallel to the adjacent buildings on Park Road, N.W. The Board concludes that the windows on the east rear façade will not have any sightlines into habitable rooms because these windows face onto adjacent rear yards for at least 40 feet or a blank wall.

- d) Provision shall be included for service functions, including parking and loading access and adequate loading area; and*

The Board concludes that the Application meets this condition by providing for applicable service functions because the Application has requested relief from the minimum parking requirements of Subtitle C § 701.5 as discussed above, and because the Building has no loading requirements under the Zoning Regulations.

- e) Upon receiving an application to waive rear yard requirements in the subject zone, the Board of Zoning Adjustment shall submit the application to the Office of Planning for coordination, review, report, and impact assessment, along with reviews in writing from all relevant District of Columbia departments and agencies, including the Department of Transportation, the District of Columbia Housing Authority and, if historic district or historic landmark is involved, the Historic Preservation Office.*

The Board concludes that the Application meets this condition because the Board submitted the Application to the relevant District agencies - OP and DDOT - for their assessment, and both OP and DDOT submitted written responses in support of the Application.

The Board therefore concludes that the Applicant has demonstrated that the Application meets the specific conditions for the requested special exception relief under Subtitle G §§ 409 and 1201.1 from the minimum rear yard requirements of Subtitle G § 405.2.

General Special Exception Relief – Subtitle X § 901

The Board concludes that the Application, in addition to meeting the specific conditions of the special exceptions from the minimum parking and rear yard 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.

The Board concludes that granting both requested special exceptions would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps because the Building meets the intent of the MU-4 Zone to permit moderate density mixed-use development as a four-story apartment building that meets the other development standards of the MU-4 Zone.

The Board concludes that granting both requested special exceptions would not tend to adversely affect the use of neighboring properties because the Final TDM Plan would mitigate any adverse impacts of the requested parking relief, and the Building's siting of windows would mitigate any adverse impacts of the requested rear yard relief.

BZA APPLICATION NO. 19862
PAGE NO. 11

The Board therefore concludes that the Applicant met its burden of proof to demonstrate that the Application met the general conditions, as well as the specific conditions, for the requested special exceptions from Subtitle C § 701.5 and Subtitle G § 405.2.

Great Weight to the Recommendations of OP

The Board must give “great weight” to the recommendation of OP. (D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Y § 405.8.)

The Board concludes that the OP Report, which provided an in-depth analysis of how the Application complied with the conditions of the requested special exceptions, is persuasive and concurs with OP’s recommendation that the Application be approved, subject to the Final TDM Plan that met and exceeded the recommended TDM conditions in the OP Report, as discussed above.

Great Weight to the Issues and Concerns of the Written Report of the ANC

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 1A. (§ 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).

The Board finds the ANC Report unpersuasive on the three issues and concerns raised in the ANC Report: the Building’s proposed design, affordable housing, and lack of parking.

Proposed design. The Board notes that the ANC Report itself appears to have recognized that this concern was resolved by the Applicant’s revisions to the design. Nonetheless, the Board finds that the ANC Report did not clarify how this concern directly related to the two types of relief sought in the Application – parking and rear yard – and therefore how the Board’s authority in considering these requests for relief extended to the design of the Building. The Board credited the analysis in the OP Report, which mirrored the Board’s determination based on the record, that the Application had met the standards for the requested relief as discussed above. The Board therefore concludes that the ANC Report was not persuasive on this concern.

Affordable housing. The Board finds that the ANC Report did not provide any explanation or supporting evidence for the expressed concern that the Application failed to provide a sufficient number of affordable units at a sufficiently low targeted income level. The Board also finds that the ANC Report did not clarify how this concern directly related to the two types of relief sought

in the Application – parking and rear yard – and therefore how the Board’s authority in considering these requests for relief extended to the Building’s number of affordable units and income target levels for those units. The Board notes that the Application, like all applications, must comply with the Inclusionary Zoning requirements of the Zoning Regulations that address affordable housing. The Board therefore concludes that the ANC Report was not persuasive on this concern.

Parking. The Board finds the ANC Report’s concern about the impact of the requested parking relief on the availability of on-street public parking persuasive, but concludes that the additional TDM measures negotiated by the Applicant with four members of the ANC, which satisfy and exceed the TDM conditions recommended by the OP and DDOT Reports, will address this concern sufficiently provided the Final TDM Plan is incorporated as a condition of the Board’s approval. In particular, the Board concludes that expansion of the subsidy for car ownership alternatives to include Uber and Lyft gift cards in addition to SmarTrip and Capital Bikeshare membership and to cover four years instead of the initial proposal of one year, dramatically increases the incentives for residents of the Building to try and adopt car-ownership alternatives as a permanent lifestyle that should mitigate the Building’s potential adverse impact on increasing demand for public on-street parking. The Board therefore finds that the ANC Report’s recommendations to deny the Application on the basis of this concern unpersuasive because this concern was adequately addressed by the Final TDM Plan.

DECISION

Based on the record and the above Findings of Fact and Conclusions of Law, the Board concludes that the Applicant has met its burden of proof with respect to the request for special exceptions under Subtitle C § 703.2 from the parking requirements of Subtitle C § 701.5 and under Subtitle G §§ 409 and 1201 from the rear yard requirements of Subtitle G § 405.2 to construct a new 26-unit apartment house in the MU-4 Zone.

Accordingly, it is **ORDERED** that the Application is hereby **GRANTED, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS² AT EXHIBIT 46B AND TO THE FOLLOWING CONDITIONS:**

1. The owner of the Building shall give every new resident a Residential Welcome Package which will include information about nearby alternative transportation options available, including but not limited to, ride-sharing services, car-sharing services, Metro, bike-sharing services such as Capital Bikeshare, and a reusable shopping bag, with additional

² Self-Certification. The zoning relief requested in this case was self-certified, pursuant to Subtitle Y § 300.6 (Exhibit 5). In granting the requested self-certified relief subject to the plans submitted with the Application, the Board made no finding that the requested relief is either necessary or sufficient to authorize the proposed construction project described in the Application and depicted on the approved plans. 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 that would require additional or different zoning relief from that is granted by this order.

BZA APPLICATION NO. 19862
PAGE NO. 13

shared reusable shopping bags available near the long-term bicycle storage space in the cellar.

2. The owner of the Building shall install a permanent Transportation Information Center Display in the lobby to provide residents and their guests Metro train and bus information as well as current information about the availability and status of local car-sharing and bike-sharing options.
3. For the first four years after opening to residents, the owner of the Building shall provide each residential unit the option to select one prepaid transportation incentive on an annual basis (each option will be equal to \$85.00 per unit annually, for a total value of \$340.00 per unit over the four-year period):
 - a. Capital Bikeshare membership;
 - b. Zipcar gift card;
 - c. Lyft gift card; or
 - d. Metrocard (SmarTrip).
4. The owner of the Building shall provide all required short- and long-term bicycle parking spaces, plus one additional long-term bicycle parking space, in the Building. The long-term bicycle parking spaces will be provided in a room in the cellar level. In addition, following the BZA process, the Applicant shall work with DDOT to find a suitable area on the Property to provide more than the minimum short-term bicycle parking spaces.
5. The owner of the Building shall make a good faith effort to coordinate with the ANC and DDOT regarding adding a pick-up/drop-off space on either Park Road, N.W. or 11th Street, N.W., provided that such space will not result in the removal of any current legal parking spaces.

VOTE: 4-0-1 (Frederick L. Hill, Lesylleé M. White, Lorna L. John, and Anthony J. Hood (via absentee ballot) to APPROVE; Carlton E. Hart not participating.)

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

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

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: May 16, 2019

BZA APPLICATION NO. 19862
PAGE NO. 14

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

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

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT

BZA APPLICATION NO. 19862
PAGE NO. 15

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.