

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW. AND ORDER

Board of Zoning Adjustment Case #20266

Pursuant to 11-C DCMR §703.2

for a Special Exception to the Minimum Parking Requirements under 11-C DCMR §701.5

HEARING DATES: July 29, 2020; August 5, 2020

SUBMISSION DATE: September 8, 2020

DECISION DATE: September 30, 2020

PRELIMINARY MATTERS

Background

1. On February 21, 2020, 3400 Connecticut Partners LLC (the ‘Applicant’) submitted an application for special exception relief under 11-C DCMR §703.2 from the minimum parking requirements of the Zoning Regulations under Subtitle C §701.5, in connection with the development of a mixed-use property in Cleveland Park (*BZA Ex. 4*).
2. On March 23, 2020, the D.C. Office of Zoning sent a Referral Memorandum and Notice of Public Hearing on April 29, 2020, to the Applicant, ANC 3C, and all property owners within 200 feet of the subject property.
3. On March 23, 2020, the D.C. Office of Zoning sent a notice that all cases for hearing would be rescheduled following Mayor Bowser’s declaration of a State of Emergency.
4. On July 14, 2020, the D.C. Office of Zoning sent a notice to all property owners within 200 feet of the subject property that a Virtual Public Hearing was rescheduled for July 29, 2020.

Party Status

5. On July 13, 2020, Mark Rosenman submitted a Request for Party Status on behalf of forty (40) neighbors of the Macklin (*BZA Ex. 44*). On July 28, 2020, he submitted an expanded list of 54 neighbors, eight of whom live within 200 feet of the project site, with supporting documentation (*BZA Ex. 122*). In that filing, Rosenman also asked that Jennifer Anderson be allowed to serve as a party representative. Rosenman’s request for Party Status was granted at the initial hearing on July 29, 2020 (*Tr. at p. 17*). The Applicant and ANC 3C are automatic parties.

Applicant’s Case

6. The Applicant provided testimony and documents in support of its case from the Applicant, Phil Kang (*Tr. at p. 25*), his attorney, Allison Prince of Goulston & Storrs (*Tr. at p. 8*), his architect, Kevin Sperry of KASA Architects (*Tr. at p. 29*), and a traffic consultant, Erwin Andres of Gorove Slade (*Tr. at p. 36*). According to their testimony, the existing surface parking lot for 14 vehicles would be replaced with four townhouses with retail below and a public plaza. Further, according to their testimony, it is both

“unfeasible” to build new parking spaces on-site and unnecessary to do so, given the proximity of the project to a Metro station and several bus lines.

Office of Planning Memorandum

7. By Memorandum dated July 17, 2020 (*BZA Ex. 73*), the Office of Planning (OP) supported approval of the special exception. According to the OP Memorandum, the request is in harmony with zoning because the project provides housing and because, given its proximity to a Metro station and several bus lines, it would not tend to adversely affect the nearby property owners.

ANC 3C Resolution

8. By Resolution dated July 20, 2020 (*BZA Ex. 98*), adopted at a noticed and regularly scheduled monthly public virtual meeting at which a quorum was present, the ANC voted to support the special exception with specific conditions. The Resolution provides that, if those conditions are not included in the BZA order, the ANC opposes the special exception. According to the ANC, there is a lack of parking supply in the neighborhood and there will be adverse impacts if the special exception is granted; thus, conditions to mitigate the impacts are necessary

DDOT Memorandum

9. By Memorandum dated April 20, 2020 (*BZA Ex. 33*), the District Department of Transportation (DDOT) supported approval of the special exception with conditions that included inclusion of a Transportation Demand Management plan. According to DDOT, the project will create “minor” impacts, but there will be available curbside parking according to the Applicant’s transportation study and report, and the area is “very well served” by Metro and bus lines.

Persons in Opposition

10. The Board heard testimony and received letters in opposition to the granting of the special exception. Nearby residents expressed concerns about the lack of residential and commercial parking and about the project’s impact on safety, quality of life, and the ability of businesses to prosper. According to some neighbors living near the alley that provides access to the property (see paragraph 16 below), there are concerns about the capacity of the alley to absorb more intense usage from the project.

Persons in Support

11. The Board heard testimony and received letters in support of the special exception from groups and individuals who support the use of public transit and the reduction of car usage in the District. According to much of the testimony, the tenants of the existing and proposed residential units will not own cars, and the additional retail space will not attract patrons in cars.

Hearing Conducted

12. At the conclusion of the July 29, 2020, virtual hearing, the Board of Zoning Adjustment scheduled a virtual decision meeting for August 5, 2020 (*BZA Ex. 139*).

Post-Hearing Submissions

13. On August 5, 2020, at a virtual meeting of the Board of Zoning Adjustment, the Chair moved to postpone the decision of the Board to September 23, 2020, and asked the Applicant and the Party in Opposition to submit analyses of how the project does or does not meet requirements for the special exception relief requested, and to include identification of all contested issues of fact and identification of all contested

conclusions of law. The deadline for submitting materials was August 24, 2020 (*BZA Ex. 133*). On August 10, 2020, Rosenman requested a 30-day extension of that schedule (*BZA Ex. 134*) and on August 13, 2020, all parties were granted a two-week extension to September 8, 2020 (*BZA Ex. 135 and 136*). A virtual meeting of the Board to consider this case now is scheduled on September 30, 2020.

FINDINGS OF FACT

Subject Property

14. The subject property is located at 3400 Connecticut Avenue, NW (Square 2069, Lots 817-821). The lot area is 29,923 square feet with 32% lot occupancy, which is proposed to increase to 43% lot occupancy where 75% is permitted. The lot is currently improved with a 17-unit apartment building known as the Macklin, which is accessible from Newark Street, and, 13,397 square feet of ground-floor retail, which is organized on two sides of the existing parking lot for 14 vehicles and accessible from Connecticut Avenue (*BZA Ex. 73*).
15. The subject property is in the Cleveland Park Neighborhood Mixed-Use Zone NC-3. The primary purpose of this zone designation is (1) to encourage development compatible with the Cleveland Park Historic District, (2) to encourage development compatible with the existing scale of development, and (3) to retain existing housing, to help meet the need for affordable housing, and “to enhance pedestrian activity, safety, and consumer support for businesses in the commercial area” *11-H DCMR §500.1(c)*.
16. The subject property adjoins a 15-foot-wide alley which culminates at the lot and is accessible from Ordway Street and 29th Street. The alley has several branches which dead-end. The portion of the alley proposed to be used for loading at the subject property is currently used by residents on Ordway Street, on 29th Street, and on Newark Street, and by businesses on Connecticut Avenue between Newark Street and Ordway Street (*Tr. at pp. 52 and 69ff*).
17. The Applicant’s property abuts single-family homes to the west and a moderate-density commercial area to the north (*BZA Ex, 4*).
18. The Applicant proposes to construct two new buildings on the site (a) a 31-unit apartment building (including six units available to applicants earning less than 60% of AMI under the Inclusionary Zoning requirements (*Tr. at p. 51*) to the west of the existing Macklin building and accessible from Newark Street, and (b) four residential townhouses accessible from Newark Street above 2,700 square feet of additional retail space accessible from Connecticut Avenue on the southern portion of the now-existing 14 space parking lot (*BZA Ex. 4*).
19. The subject property’s existing buildings are contributing structures in the Cleveland Park Historic District. Applicant testified that the project was favorably reviewed by the Historic Preservation Office and the Historic Preservation Review Board (*Tr. at p. 24*).

Harmony with Zoning

20. 11-X DCMR §901.2 provides that the special exception “(a) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps; (b) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps...” 11-X DCMR §901.3 requires that “The applicant for a special exception shall have the full burden to prove no undue adverse impact and shall demonstrate such through evidence in the public record.” Further, 11-C DCMR §703.2 requires that the applicant must demonstrate that at least one of the enumerated conditions has been met to qualify for a special exception.
21. In accordance with 11-C DCMR §701.5, a project of this size is required to provide sixteen (16) parking spaces for residents and seventeen (17) spaces for the retail component, for a total of thirty-three (33) spaces (*BZA Ex. 32A at p. 1*).
22. Pursuant to 11-C DCMR §702.1(a), the proposed project received a 50 percent reduction in the required number of parking spaces based on its proximity to a Metro station. Accordingly, the Applicant is required to provide eight (8) parking spaces for residents and nine (9) spaces for the retail component, for a total of 17 spaces (*BZA Ex. 4 at p. 2*).
23. Beyond the 50 percent reduction of 11-C DCMR §702.1(a), the Applicant requests a special exception and asks that the parking requirement be waived in its entirety under §703.2 so that the existing 14 space surface retail parking lot can be removed and replaced partly with structure and partly with an open plaza (*BZA Ex. 4 at p. 3*).
24. The Cleveland Park Metro station serves only the Red Line, which travels along a north-south route; almost all connection to other routes to other parts of the city are from downtown. Metrorail has served Cleveland Park for more than three decades, and local business complaints about lack of parking have been consistent for at least the past 20 years. Thus, the existence of the Red Line has not positively affected business prosperity. Removing existing retail parking by granting a special expectation to waive this project’s parking requirement will only worsen the situation (*Tr. at p. 80*).
25. The 2016 Commercial Market Analysis and Enhancement Strategy for Cleveland Park, prepared for the Deputy Mayor for Planning and Economic Development, states that 86 percent of Cleveland Park businesses on Connecticut Avenue considered the “lack of available parking” as the biggest challenge facing their business (*BZA Ex. 130 at p. 1*). The analysis concludes that businesses in the commercial area would likely suffer harm as a result of a reduction in available parking (*Tr. at pp. 77, 81*). Neither the Applicant nor government agencies (Office of Planning, Department of Transportation) made any mention of this study and its findings in their submissions, nor did the Applicant mention “to enhance pedestrian activity, safety, and consumer support for businesses in the commercial area” under *11-H DCMR §500.1(c)* in his submission (*BZA Ex. at p. 2*).
26. Pierre Abushacra, owner of Firehook Bakery, soon after closing his Cleveland Park location across from the subject property in July 2020, said “Businesses in Cleveland Park need accessible parking now more than ever.” (*Tr. at p. 77*).

27. The Applicant himself acknowledged the benefit of ensuring parking for a prospective tenant when he advertised that four (4) parking spaces on the subject property would be a component of the leasing of an existing retail space on the property; the Applicant's sign was still on display at the time of the July 29, 2020, BZA hearing (*BZA Ex. 130 at p. 4; Tr. at pp. 63, 64, 79*).
28. Erwin Andres, Gorove Slade traffic expert for the Applicant, stated in response to a question at the July 6, 2020, ANC 3C Planning & Zoning Committee meeting that there is no available parking in the neighborhood. (*BZA Ex. 98 at p. 2; Tr. At pp. 79, 91*). The comment refuted other findings in the Applicant's Revised Transportation Study that at various times there were available parking spaces (*BZA Ex. 32A at p. 9*) within the generously-defined study area (*BZA Ex. 32A at pp. 6, 7*).
29. The shortage of parking spaces in the two-block radius will be made even more acute by the DDOT-approved Streetscape Improvement Project, which includes redesign of the commercial service lane across from the subject property on the east side of Connecticut Avenue between Macomb Street and Ordway Street. The Streetscape Improvement Project includes removing three or four retail parking spaces to accommodate the redesign. The loss of commercial parking spaces was not considered in the Applicant's traffic study (*Tr. at pp. 73 and 143*). The study also did not consider how the loss of the 14 parking spaces on the subject property would affect off-site parking demand for residents and businesses (*Tr. at p. 74*). Further, it did not update its report to note that since April 23, 2020, in accordance with Mayor Bowser's State of Emergency declaration, the service lane's 28 parking spaces were removed for an indefinite period (*Tr. at 73, 143*).
30. ANC3C found that "there is a lack of parking supply in the neighborhood to meet the day to day demand particularly near the metro station an in the evening..." (*BZA Ex. 98 at p. 2*).
31. The Applicant agrees to a condition to prohibit tenants from applying for/being issued Residential Parking Permits (RPP) and Visitor Parking Permits (VPP) (*Tr. at p. 153*) in an effort to reduce the project's residential parking and traffic impact (*BZA Ex. 98*), although DDOT testified that it has no way to enforce such a condition (*Tr. at p. 147*).
32. There is no proffer to offset the removal of the 14 extant retail spaces in the parking lot (*BZA Ex. 3*), or any mention of ways to moderate the effect of increasing retail space on-site by about 15 percent or 2,700 SF (*BZA Ex. 42C at p. 14*) without providing any of the additional parking spaces required by zoning regulation (*11-C DCMR § 701.5*). If the surface lot was retained, the Applicant could provide almost all the required parking (*Tr. at p. 82*).
33. The Applicant raised the possibility of complying with the minimum parking requirement for residential uses by providing on-grade parking via access from Newark Street or second-level parking via access from the public alley on Ordway Street, noting that this would be difficult (*Tr. at pp. 34-36*) and entail the removal of one level of residential units (nine units) (*Tr. at p. 36*) and the relocation of stairs and an elevator (*BZA Ex. 42C at p. 26*). Either parking option would provide at least eight (8) residential spaces.
34. The potential loss of proposed units from providing on-site parking may be offset at least in part by replacing amenity spaces for a gym and library, which are available in the commercial area and as close as next door, with housing units (*Tr. at pp. 82, 109, 139, 159*). So, too, might the loss be offset with the possible redesign of development on Lot 817 (*Tr. at p. 82*).

35. Although the Applicant asserts that the existing curb cut to Connecticut Avenue would need to be removed (*Tr. at p. 23*), if Lot 817 were not to be developed and the parking lot maintained, that curb cut would be “grandfathered” since the “status quo” would be maintained (*Tr. at pp. 65, 141*). Even with some development on Lot 817, a determination of whether the existing curb cut could be retained is speculation since the Public Space Committee of DDOT has the jurisdiction to make that determination. As recently as 2018 that committee approved a new curb cut on another arterial roadway, Wisconsin Avenue, for access to on-site parking (*Tr. at p. 82*).
36. Since the applicant self-certified the zoning issues raised by this project, it is unknown which zoning regulations might be raised by retaining the existing surface parking lot or some portion of it, but a special exception could be sought to waive those requirements just as the Applicant is doing in this case to waive the minimum parking requirement (*BZA Ex. 5*).

Adverse Impact on Neighboring Property

37. The real and serious adverse impact on neighboring commercial properties has been addressed in paragraphs 23 – 29, and 32 above.
38. The proposed project would increase by more than 70 percent the number of Newark Street residences between Connecticut Avenue and Highland Place (*Tr. at p.92*) and more than triple the number of residents on site (*Tr. at p. 80*).
39. Fifty-four (54) neighbors -- a preponderance of the owners of neighboring properties – support the Party in Opposition and argue that the proposed project would affect them adversely (*BZA Ex. 122 at p. 1*) Neighbors on the three nearby streets who wrote to the ANC ran more than 90 percent in opposition (*Tr. at p. 128*). Further, an analysis of BZA exhibits shows that the 51 individuals writing in opposition live an average of 872 feet from the site of the proposed project, and the 42 individuals writing in support live an average of 2,589 feet away (*BZA Ex. 40, 41, 43, 45, 62, 64, 68, 71, 78, 82, 83, 84, 85, 86, 87, 89, 92, 93, 94, 96, 97, 104, 105, 107, 108, 109, 111, 112, 113, 114, 115, 116, 117, 118, 119, 123, 128*) (*BZA Ex. 34, 35, 36, 37, 47, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 63, 65, 66, 67, 67, 69, 70, 72, 73, 77, 81, 79, 88, 90, 91, 95, 99, 100, 101, 103, 110, 120, 124, 126, 127*).
40. Of those writing in opposition, neighbors stated that they would be adversely affected by problems in: parking (37), traffic (17) and safety (13). The record provides evidence that pedestrians, especially children in strollers and seniors, would face serious safety hazards on Newark and Ordway Streets, both of which are narrow, with sightlines interrupted by curves. These circumstances often, because of utility-pole-obstructed and crowded sidewalks, force pedestrians to walk in the traffic lanes, especially on Newark, which is without a sidewalk on one side of the street, and works against the safety and consumer support of area businesses (*Tr. at pp. 41, 64, 68, 82, 97, 104, 112, 114, 12*).
41. Residents wrote and testified that drivers looking for parking often circle around neighborhood streets focused on looking for empty spaces, rather than noticing people walking in the street because of the narrow sidewalk, and they pull into driveways to reverse course and resort to illegal parking practices. Testimony agreed with the following points:

(a) “Aggressive and inattentive drivers search for parking circling blocks, making U-turns in the middle of side streets, and otherwise present a danger for residents and visitors, especially elderly who are trying to age in place, and those with disability. Out of frustration, drivers block some driveways, they turn into, and have actually stopped and parked in driveways. They drive up on to the curb, otherwise park where no parking is allowed. And create not only a nuisance but a safety issue. Newark has only [a] very narrow sidewalk with obstructions, people are often forced into the street by those obstructions and by inconsiderate parking.” (*Tr. at p. 81*)

(b) “. Seniors who are walking to the shops or for exercise and families walking with young children are often endangered by cars and trucks trying to squeeze through the street (*BZA Ex. 114*)

(c) “. Several spots in the sidewalk, they have actually light poles in the middle of the sidewalk. So what ends up happening is people get off the sidewalk and stay on the road. But that becomes a hazard because of the narrowness of the street and because of cars kind of constantly coming up and looking for parking, and then turning around.” (*Tr. at p. 90*)

(d). “.The allies [sic] off of Ordway and 29th are extremely tight, turning into the small alley that feeds to the rear of the Macklin is unsuitable for large trucks.” (*Tr. at p. 94*)

42. The Applicant provides a Loading Management Plan to comply with DDOT’s requirement that a Traffic Management Plan, including in this case loading plans, accompany any request to eliminate five or more required parking spaces. The plan erroneously states that Connecticut Avenue businesses adjacent to the alley accessed from Ordway St. contract for trash pick-up through the alley (*Tr. at pp. 52 and 66*). All businesses on the west side of the street (adjacent to the proposed project) have their waste containers stored next to the Uptown Theater (accessed from Connecticut Avenue) and collected/emptied on Connecticut Avenue.
43. The alley is unsuitable for the trash collection and the move-in/move-out services the Applicant’s management plans propose (*Tr. at p. 33*) because it is difficult for trucks to turn safely into the narrow alley from Ordway or 29th Streets (*Tr. at p. 94*).

Office of Planning Memorandum

44. The Office of Planning Memorandum (hereafter “OP”) simply asserts that the provision of “35 new residential units” satisfies 11-X DCMR §901.2(a) as being in harmony with Zoning Regulations and Zoning Maps (*BZA Ex. 73 at p. 2*). It fails to note that the general purpose of NC zones are to create safe and efficient conditions for pedestrians and motor vehicle movements, and that one of the important NC-3 zone purposes is to enhance consumer support for businesses in the commercial area (*11-H DCMR §500.1*). The OP report is silent on a key concern that the special exception would not be harmony with zoning, even though there is considerable evidence in the record that the special exception would worsen an already challenging parking situation for businesses, In addition, OP’s analysis fails to mention that 31 of the proposed new units could be constructed without the loss of the extant 14 parking spaces (*Tr. at p.*

135) and that the project has already benefitted from the 50 percent reduction in required spaces Pursuant to 11-C DCMR §702.1(a) (see paragraph 22 above).

45. OP did not factor into its report the loss of 14 retail spaces in the extant parking lot nor did it take note of the DMPED study documenting businesses identification of scarce parking as their overwhelming principal concern (*Tr. at p. 149*). It did not mention the loss of 3-4 parking spaces from the DDOT Streetscape Improvement project, or the indefinite suspension of 28 parking spaces on the service road that like other temporary changes resulting from Mayor Bowser's declaration of a State of Emergency could be made permanent (*Tr. at p. 148*). In effect, OP did not mention anything the Applicant did not mention.
46. OP does not mention §703.3 that advises reductions in required number of parking spaces shall only be 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 applicant could retain 14 parking spaces on-site where a public plaza is proposed, but there is no analysis of how many of those spaces could be provided that would reduce or eliminate the need for a special exception. OP also does not comment on parking demand in the area, which is key to how many parking spaces could be waived, despite the fact that supply and demand are significant elements of this case.
47. OP omits any discussion in response to 11-X DCMR §901.2(b) concern for adverse effect on neighboring property and simply notes the Project's proximity to Metro and that the Project plans call for closure of an existing curb cut, which it erroneously concludes will restore on street parking spaces. The curb cut location is proposed by the Applicant to be an on-street commercial loading zone. (*BZA Ex. 73 at p. 3*).
48. OP notes that the extant curb cut does not comply with current regulations but omits mention that it would be grandfathered if no development was planned for Lot 817. It accepts the Applicant's language that parking at the rear of the site would be "difficult," asserts that parking on-site "would not be feasible" simply by accepting the Applicant's claims, and relies on that analysis of unexamined physical constraints 11-C DCMR §703.2(a) to justify its support of the Applicant (*BZA Ex. 73 at p. 3; Tr. at p. 132*).
49. Further in response to §703.2(a), OP both fails to acknowledge that there is alley access to the planned development and that on-site parking options are possible, and cites without explanation that the existence of the historic Macklin building on-site constrains the ability to provide required parking (*BZA Ex. 73 at p. 3*).
50. Still further addressing §703.2(a), OP asserts that §710.2(b)(2), prohibiting front-yard parking means that the current lot is not compliant, but 100 percent of NC-3 lots are buildable and do not have front-yards (11-H DCMR §200), and screening concerns under §714 are both covered by grandfathering and open to special exception if needed (*Tr. at p. 65*).
51. OP, in response to §703.2(b) and §703.2(c), notes that the project is well served by public transit, but fails to explain how it reached that conclusion, does not acknowledge that the neighborhood, especially its business community, has not benefited significantly by the one available Metrorail line station (see paragraph 24 and *BZA Ex. at p. 80*), and that the project has already received a 50 percent reduction in required parking pursuant to 11-C DCMR §702.1(a) (*BZA Ex. 73 at p. 3*).

52. OP asserts that the addition of 35 dwelling units “would not be expected to significantly increase traffic congestion” 11-C DCMR §703.2(d) without any analysis of expected new retail customers and staff, new tenants, guests, and delivery services searching for non-existent parking spaces (*BZA Ex. 73 at p. 4; Tr. at p. 80*).
53. Addressing 11-C DCMR §703.2(h), OP fails to note the project does have access to an open public alley, so this does not apply (*BZA Ex. 73 at pp. 4*).
54. The Applicant could retain and/or provide parking spaces (paragraphs 18, 24, 31, 32 and 33 above) so OP acceptance of the assertion that “Applicant is unable” is not accurate (*BZA Ex. 73 at p. 5*)

Department of Transportation Memorandum

55. The Department of Transportation Memorandum (hereafter “DDOT”), submitted on April 20, 2020, draws conclusions “based on the information provided” by the Applicant (*BZA Ex. 33 at p. 2*); no other source of information or analysis is cited anywhere in the report.
56. DDOT did not factor into its report the loss of 14 retail spaces in the extant parking lot nor did it take note of the DMPED study documenting businesses identification of scarce parking as their overwhelming principal concern (*Tr. at p. 149*). It did not mention the loss of 3-4 parking spaces from the DDOT Streetscape Improvement project, or the indefinite suspension of 28 parking spaces on the service road that like other temporary changes resulting from Mayor Bowser’s declaration of a State of Emergency could be made permanent (*Tr. at p. 148*). In effect, DDOT did not mention anything the Applicant did not mention.
57. Based on the “results of the parking occupancy study,” required by DDOT when there is a request to remove 5 or more of the minimum number of required parking spaces, and provided by the Applicant (*BZA Ex. 33, p. 4*), DDOT concluded that “the amount of non-RPP on-street parking” was sufficient to meet the needs of the Project. DDOT witnesses testified that it would not modify that opinion after hearing testimony on July 29, 2020, including (a) the fact that the Applicant’s traffic consultant acknowledged that there is no available parking in the neighborhood, (b) the loss of 14 spaces in the extant lot was not mentioned in the study, (c) the loss of three or four streetscape-improved service lane spaces, and (d) the indefinite loss of 28 service lane spaces were also not included as updated relevant information (*Tr. at pp. 139, 148 – 150*)
58. DDOT did not analyze the exhibits provided by the Applicant to critically explore the possibility of providing parking accessible from Newark Street or the alley or retaining all or some of the existing parking spaces accessible from Connecticut Avenue, or any other innovative parking options (*Tr. at p. 151*)
59. DDOT’s report and testimony did not mention that the minimum parking requirement for the subject project is a total of 34 parking spaces. Applicant benefited from a 50% reduction in the minimum parking requirement pursuant to §702.1(a), which assumes a reduced parking need near Metro stations. The balance of parking spaces are described by DDOT as the minimum required number of spaces when in fact they are only half of the minimum parking spaces required by §701.5: a project of this size is

required to provide sixteen (16) parking spaces for residents and eighteen (17) spaces for the retail component for a total of thirty-three (33) spaces (*BZA Ex. 32A at p. 1*).

60. In asserting that the Project will not generate problematic traffic, DDOT witnesses testified that DDOT generally finds no impact for all developments with housing units less than the “100, 150 unit range.” DDOT does not assess the parking supply/demand situation or any other unique circumstances that could affect the reasonableness of a special exception request (*Tr. at p. 143*)
61. DDOT notes that the project is well served by public transit (*BZA Ex. 33 at . 2*), but fails to explain how it reached that conclusion, does not acknowledge that the neighborhood, especially its business community, has not benefited significantly by the one available Metrorail line station (see paragraph 24 and *BZA Ex. at p. 80*), and that the project has already received a 50 percent reduction in required parking pursuant to 11-C DCMR §702.1(a) (*BZA Ex. 73 at p. 3*).
62. The DDOT Memorandum states explicitly that its recommendation is based on a set of conditions, but the DDOT witnesses dismissed its likely implementation of the RPP prohibition condition, which was an explicit condition of its support (*BZA Ex. 33 at p. 3*.) The RPP restriction is also incorporated by reference to the Transportation Demand management plan in the Office of Planning Memorandum support (*BZA Ex. 73 at p. 5*)

Conditions

63. ANC 3C, DDOT, and OP listed conditions as imperatives for approval of the special exception. ANC 3C stated it would oppose the special exception if its conditions were not included in any order approving the special exception (*BZA Ex. 98 at p. 2*).
64. DDOT included a lengthy list of commitments in the submitted Transportation Demand Management plan, which it requires when there is a request to remove 5 or more parking spaces from the minimum required number of spaces. DDOT also required an associated parking study to determine the potential impact on neighborhood parking if the request were approved.
65. DDOT’s list of commitments that must be met by the Applicant are not in conflict with the ANC 3C conditions and some are similar. Like the ANC, DDOT included loading requirements because truck activities associated with the operation of the subject project will impact the neighborhood.
66. ANC 3C detailed a list of conditions that included a prohibition on tenants of the subject properties obtaining or using RPP/VPP benefits; this condition is accepted by the Applicant and is endorsed by DDOT and OP.
67. ANC 3C, like DDOT and OP, recognized that loading management must be addressed in the zoning order. Its list of recommendations, negotiated with the Applicant, provide flexibility for the operation of the project while limiting the potential impacts from multiple day trash pick-ups, residential and commercial deliveries, and move-in/move-out activities on a 15-foot alley relied on by residents on Newark Street, 29th Street, and Ordway Street.

68. Testimony was received that the alley is too narrow for commercial trash pick-ups and that Connecticut Avenue businesses do not use it for that purpose, and instead store bins along the side of the Uptown Theatre for Connecticut Avenue pic-ups. The Applicant characterized his planned use of the alley as “piggyback” on the current use, but that was not an accurate recitation of how the alley is currently used by businesses (*Tr. at p. 53*).
69. All of the ANC 3C conditions are objective and measurable commitments that can be enforced by the Zoning Administrator, with the current exception of the RPP condition. When the alley is inadequate to handle a prescribed use, the ANC conditions provide that the use moves to the proposed Connecticut Avenue loading area. The RPP restriction has been a condition of many BZA orders but has not been implemented by DDOT and thus, not enforced by the Zoning Administrator. That gap was corrected on July 30, 2020 when the D.C. Council unanimously approved emergency legislation to authorize DDOT to restrict specific addresses on an RPP-authorized block from RPP eligibility and included that this authorization should extend to BZA order conditions regarding RPP. However, DDOT testified that it doesn’t know when or how DDOT might comply with the Council legislation (*Tr. at p. 147*).

CONCLUSIONS OF LAW

70. The Board is authorized to grant variances from the strict application of the Zoning Regulations to relieve difficulties or hardship, providing the project will: 1) be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and 2) not tend to affect adversely the use of neighboring property . . . (*11-X DCMR §901.2*).
71. Since the project is in the Cleveland Park Neighborhood Mixed-Use(NC-3) Zone, the Applicant must also comply with 11-H DCMR §500.1(c), which provides that the purpose of the zoning is, in part, to “enhance pedestrian activity, safety, and consumer support for businesses in the commercial area.”
72. The Applicant for a special exception bears the full burden to prove no undue adverse impact (*11-H DCMR §901.3*).
73. The Board may grant a full or partial reduction in number of required parking spaces, subject to the above standards and the Applicant’s demonstration of at least one of the enumerated requirements in 11-C DCMR §703.2(a)-(j).
74. For the reasons stated below, the Applicant has not met his burden to prove that the project is in harmony with the Zoning Regulations and that there is no undue adverse impact.
75. In addition, the Applicant has not met his burden to demonstrate that he qualifies for one of the exceptions listed in 11-C DCMR §703.2(a)-(j).

The requested special exception is not in harmony with the general purpose and intent of the Zoning Regulations.

76. For a project this size, Applicant is required to provide a total of 33 parking spaces. Pursuant to 11-C DCMR §702.1(a), the proposed project received a 50 percent reduction in the required number of parking spaces based on its proximity to a Metro station. Accordingly, the Applicant is required to provide only eight parking spaces for residents and nine spaces for the retail component, for a total of 17 spaces. So, the Applicant has received a significant benefit already because of its proximity to public transportation.
77. Despite its proximity to a Metro station and bus lines, Cleveland Park already has a significant parking problem. Notably, the Cleveland Park Metro Red Line has been open since 1981 and the parking problems associated with the neighborhood have not dissipated. DDOT itself previously recognized the need to retain as many parking spaces as possible in redesigning the service road pursuant to the Connecticut Avenue Streetscape Project. A 2016 report for the Deputy Mayor for Planning and Development identified the lack of parking as a significant problem for local businesses.
78. The Applicant's traffic study does not convince this Board otherwise, as it finds the study flawed. First, the study fails to consider the elimination of 14 parking spaces on site. Second, even improperly considering those spaces, the study found there were no RPP spaces available during rush hour. Third, if you eliminate those 14 spaces, the observed demand for the on-street parking spaces would exceed the available supply during any of the hours analyzed. Fourth, the Applicant's own expert candidly acknowledged that there is no parking in the neighborhood. Fifth, the expert did not update the study to consider the more recent loss of 28 service road spaces, 3 to 4 spaces on Connecticut Avenue due to the Streetscape Project, and the general change in driving behavior due to the pandemic.
79. The public transit available in Cleveland Park, both bus and rail, is redundant, since it all (with the exception of a bus line to Columbia Heights) travels along a north-south route, with all connections to other parts of the city only from downtown. Thus, there is little or no basis for the Office of Planning or the Department of Transportation to claim, as they do, respectively, that the project is "well served" or "very well served" by public transit.
80. The Board, therefore, does not, as Applicant suggests, consider the proximity to public transportation as justification to reduce the parking requirement even further to zero.
81. Moreover, the ample evidence of a parking supply/parking demand imbalance that directly affects "consumer support for the businesses in the area," as required by NC-3 zoning, leads to the conclusion that the requested waiver conflicts with the intent and purpose of the Zoning Regulations.

The requested special exception is not required by the Applicant's alleged inability to physically provide any spaces on-site.

82. At the heart of the Applicant's request for a special exception is his argument that it is not feasible to provide the required parking spaces. Indeed, it is on that basis that the OP supports his request. However, the property currently has 14 retail parking spaces, which the Applicant could retain in order to provide almost all the required parking. Since this parking is on a separate lot, he would not be subject to the regulations concerning screening and removal of the curb cut. Even if he were subject to those regulations, nothing precludes him from seeking a special exception, as he is doing in this case.
83. Instead, Applicant asks this Board to grant a special exception to the minimum parking requirements of the Zoning Regulations so that he can use the parking lot primarily for additional income-producing structures -- retail space and four townhouses -- at the expense of neighbors and local retailers. The question is: Can the Applicant develop his property in such a way to remove parking spaces and then use that very removal to justify his request for a special exception. We find that he cannot. The regulations envision a situation where parking is not feasible; they do not envision a situation where parking is removed, thereby allowing an applicant to argue parking is no longer feasible.
84. Moreover, 11-C §703.2(a) provides for an exception [d]ue to the physical constraints of the property, if "the required parking spaces cannot be provided either on the lot or within six hundred feet (600 ft.) of the lot..." The Applicant has not demonstrated that he cannot provide parking at another lot 600 ft. away. Notably, OP did not address this issue in its report.
85. As discussed above, the Board does not consider the proximity to public transportation as justification to reduce the parking requirement even further to zero. Accordingly, Applicant does not meet the requirements of 11-C DCMR§703.2(b) and (c).
86. The addition of 35 additional dwelling units would significantly increase traffic congestion. Accordingly, Applicant does not meet the requirements of 11-C DCMR§703.2(d).
87. OP concluded that 11-C DCMR§703.2(e), (f), and (g) are not applicable.
88. Similarly, 11-C DCMR§703.2(h) does not apply because it is premised on the project not having access to an open public alley and this project does have access. Applicant's curb cut is grandfathered in as the curb cut predates any regulation. Moreover, even if the regulation applies, Applicant has not demonstrated that he cannot obtain a waiver of the regulation.
89. Since OP supported a waiver because it found on-site parking was not feasible, we give their report no deference.
90. We conclude that the Applicant has not met his burden to show that the requested special exception is required by the number of spaces the Applicant cannot physically provide on-site. Accordingly, such a use conflicts with the intent and purpose of the Zoning Regulations.

The requested special exception will affect adversely the use of neighboring property.

91. The project would remove 14 extant retail spaces in the parking lot while increasing retail space on-site by about 15 percent or 2,700 SF without providing any of the additional parking spaces required by their customers and staff.
92. The proposed project adds increases by more than 70 percent the number of Newark Street residences between Connecticut Avenue and Highland Place. Along with such a number comes increased traffic, including delivery and ride share drivers, and visitors.
93. The Board gives weight to the fact that 54 neighbors – a preponderance of the owners of neighboring properties – supported Party Status and asserted that the proposed project would affect them adversely. Neighbors on the three nearby streets who wrote to the ANC were more than 90 percent in opposition, citing problems in parking (37), traffic (17) and safety (13).
94. Sight levels on the street are poor because the Macklin sits right below a curve in the street. The record provides evidence that pedestrians, especially children in strollers and seniors, and cars would face serious safety hazards on Newark and Ordway Streets, both of which are narrow. Part of Newark Street has a sidewalk on only one side of the road, and utility pole obstructions often force pedestrians to walk in the street.
95. The only evidence the Applicant presented to the contrary is the OP report, which concluded that the project would not have an adverse impact on the neighborhood, which also conflicts with the finding of ANC 3C. The OP's conclusion is flawed. OP asserts that the addition of 35 dwelling units "would not be expected to significantly increase traffic congestion" without any analysis of the impact of moving trucks, visitors, guests, and delivery services, or of expected new retail customers and staff, all searching for non-existent parking spaces. In fact, the OP representative testified that she did not take any of those things into account when she wrote her report. Her failure to do so severely undermines her conclusion. Accordingly, the Board gives it no weight.
96. Similarly, the Board does not give deference to DDOT's report. DDOT did not factor into its report the loss of 14 retail spaces in the extant parking lot nor did it take note of the DMPED study documenting businesses identification of scarce parking as their overwhelming principal concern. It did not mention the loss of 3-4 parking spaces from the DDOT Streetscape Improvement Project, or the indefinite suspension of 28 parking spaces on the service road that, like other temporary changes resulting from Mayor Bowser's declaration of a State of Emergency, could be made permanent. In effect, DDOT did not mention anything the Applicant did not mention, which the Board finds telling.
97. The Board considered the ANC 3C recommendation and gave it great weight. The ANC found that there would be adverse impacts on neighboring property and the Board concurs. The Board is not considering the conditions the ANC offered because the Board finds that the applicant has not met his burden to satisfy the requirements for a Special Exception from the minimum parking requirements
98. There is a documented problem, which has existed since long before this project, with the lack of adequate parking for local businesses. Providing no parking for residents and removing 14

parking spaces, currently earmarked for commercial tenants, will only exacerbate the problem and serve to undermine those businesses further.

99. The Applicant has not met his burden to demonstrate that the requested special exception will not tend to affect adversely the use of neighboring property. To the contrary, the Board concludes that the waiver would adversely affect the use of neighboring property.

100. The Board concludes that there is overwhelming evidence that granting the Applicant's request will create parking demand, is counter to the zone intent and purpose, will both create and exacerbate existing pedestrian and traffic safety issues, and will undermine support for local businesses.

In consideration of the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that the request for a special exception to the minimum parking requirements under 11-C DCMR §701.5 is **DENIED**.