

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



Application No. 20308-A of 4865 MacArthur Landlord, LLC, pursuant to Subtitle X, Chapter 9 for a special exception under Subtitle U § 203.1(g) to allow a continuing care retirement community use on the R-1B zoned portion of property located at 4865 MacArthur Boulevard, N.W. (Square 1389, Lot 25).

HEARING DATE: November 29, 2023
DECISION DATES: October 4 and December 13, 2023

**ORDER APPROVING A MODIFICATION OF SIGNIFICANCE
TO AMEND CONDITION No. 2.c.**

This self-certified request was filed on August 11, 2023 on behalf of 4865 MacArthur Landlord, LLC (the “Applicant”), the owner of the property that is the subject of the application. Following a public hearing, the Board voted to approve the request.

PRELIMINARY MATTERS

Notice of Request and Notice of Hearing. The Applicant’s request was originally filed as a modification of consequence. At a public meeting on October 4, 2023, the Board determined that the request constituted a modification of significance and set the matter for a public hearing on November 29, 2023. (See Subtitle Y § 703.13(d).) In accordance with Subtitle Y §§ 400.4 and 402.1, the Office of Zoning provided notice of the request and of the public hearing, by letters dated October 10, 2023, to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), the Department of Buildings, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 3 as well as the Chairman and the at-large members of the D.C. Council, Advisory Neighborhood Commission (“ANC”) 3D, the ANC in which the subject property is located, the Single Member District ANC 3D05, and the owners of all property within 200 feet of the subject property. Notice of the public hearing was published in the *District of Columbia Register* on September 1, 2023 (70 DCR 011949).

Party Status. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 3D were automatically parties in this proceeding. The Board denied a request for party status in opposition to the requested modification from the Palisades Community Association.

Applicant’s Case. The Applicant provided evidence and testimony in support of the request for a modification of significance to change a condition of approval adopted by the Board in the original order in this proceeding (issued June 4, 2021), in which the Board approved a special exception to allow a continuing care retirement community (“CCRC”) use. Specifically, the Applicant sought

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“to correct Condition No. 2.c.” of the initial order “to match the wording of the voluntary language agreed to by the applicant and Advisory Neighborhood Commission 3D for the continuing care retirement community.” (Exhibit 14A.)

OP Report. By memorandum dated September 29, 2023, the Office of Planning indicated its continuing support for the planned CCRC use as well as its support for a revised condition proposed by DDOT to address off-site public space improvements. (Exhibit 11.)

DDOT. By memorandum dated September 22, 2023, the District Department of Transportation indicated its support for modification of Condition No. 2.c. but recommended an alternative instead of the revision proposed by the Applicant. (Exhibit 9.)

ANC 3D. By letter dated October 10, 2023, ANC 3D stated that, at a public meeting on October 4, 2023 with a quorum present, the ANC voted to approve and transmit to the Board a letter submitted by Commissioner Bernard P. Horn, ANC 3D05, dated October 2, 2023 and included in the record at Exhibit 12. (Exhibit 18.) The commissioner’s letter asserted that the Board should not consider DDOT’s proposed revision as a modification of consequence and that Condition No. 2.c., as adopted by the Board, was necessary to address adverse traffic impacts related to the CCRC use and “to ensure that necessary work is completed in a timely fashion – i.e. before the completion of the project.” (Exhibit 12.)

Persons in Opposition. The Board received letters and heard testimony in opposition to the Applicant’s requested modification from persons who stated concerns about increased vehicular and pedestrian traffic as well as increased danger to pedestrians. The Palisades Community Association expressed its opposition to a modification that “would remove the requirement that the Applicant construct off-site pedestrian facilities throughout the surrounding neighborhood and instead advocate that the District Department of Transportation (DDOT) construct them” notwithstanding the importance of “sidewalks and other pedestrian safety measures” in the vicinity of the Applicant’s project. (Exhibit 23.)

FINDINGS OF FACT

1. The property that is the subject of this request is an irregularly shaped lot on the east side of MacArthur Boulevard with the address 4865 MacArthur Boulevard, N.W. (Square 1389, Lot 25).
2. The subject property is bounded by MacArthur Boulevard to the west, 48th Place to the northwest, V Street to the north, and U Street to the south. The east lot line is irregular and abuts two lots; the lot to the south is used as a parking lot and the lot to the north contains a detached principal dwelling.
3. The lot area of the subject property is approximately 64,815 square feet.
4. The subject property was previously improved with a parking lot and a structure that housed a grocery store.

5. The subject property is split zoned. The northern portion of the site, totaling 29,401 square feet, is in a Residential House zone, R-1B. The southern portion, totaling 35,414 square feet, is in a Mixed Use zone, MU-4.
6. The Applicant undertook a project to redevelop the subject property with a building devoted to a continuing care retirement community use containing approximately 156 assisted living or independent living units, dining facilities, and recreation/community rooms. In addition to 15 surface parking spaces, approximately 77 vehicle parking spaces will be provided in a below-grade garage.
7. The CCRC use is permitted as a matter of right in the MU-4 zone but requires approval, as a special exception, in the R-1B zone. By order dated June 4, 2021, the Board granted the Applicant's request for a special exception under Subtitle U § 203.1(g) to allow a CCRC use on the R-1-B zoned (northern) portion of the subject property.¹
8. The parties in the original proceeding were the Applicant and ANC 3D. The Palisades Community Association ("PCA") requested party status in opposition to the application but subsequently withdrew the request.
9. The Applicant, ANC 3D, and PCA negotiated a memorandum of agreement ("MOA") and a construction management agreement.² (See Application No. 20308, Exhibit 31). The Applicant agreed to include a retail space (5,000 square feet) in the new development, likely for a grocery tenant, to allow nearby businesses to use its parking lot, and to make landscape improvements as well as certain improvements in the public space near the subject property intended to improve traffic and pedestrian safety.
10. Paragraph 4(e)(iii) of the MOA stated:

4. Public Space

- e. Traffic and Safety Improvements around the Perimeter of the Site: Developer recognizes that the changes to the Site, including the new curb cut on V Street will negatively impact traffic. As a result, Developer has agreed to pursue the following Traffic and Safety Improvements around the Perimeter of the Site in conjunction with the PCA and ANC, but subject to final approval by DDOT:
 - i. Construct sidewalks, at Developer's expense, on the south side of V Street NW, from 48th Place to MacArthur Blvd. and from 48th Place to the curb cut to the proposed V Street parking lot.

¹ By orders issued August 25, 2023, the Zoning Commission approved text amendments that established new zone names and amended some of the regulations applicable to the Applicant's proposal. (See Zoning Commission Orders No. 18-16 and 19-27.) This order reflects the zoning provisions in effect at the time of the Board's vote at the conclusion of the public hearing.

- ii. Construct, at its expense, at the beginning of the construction, an extension of the sidewalk on the west side of 48th place up to V Street NW.
 - iii. Actively promote with the District Department of Transportation both in writing and orally the following safety improvements near the Project's site:
 - 1. Three-way stop signs and cross walks at V and 48th place, V and 49th Street, and V and 48th Street;
 - 2. A no-right-turn-for-trucks sign at 48th Place and V Street intersection for trucks exiting 48th Place.
 - 3. A crosswalk and a speed control measure on 48th Street near the intersection with U Street;
 - 4. 15 mph signs near the library on V Street;
 - 5. A high-visibility crosswalk and crosswalk signal at U Street and MacArthur
 - 6. Sidewalk extensions along all of V Street, 48th Street, and 49th Street.
11. The Applicant proposed to implement a transportation demand management ("TDM") plan that was approved by DDOT. (See Application No. 20308, Exhibit 29).
12. The Board approved the requested special exception subject to four conditions intended "to protect adjacent and nearby properties pursuant to Subtitle U § 203.1(g)(6), specifically conditions requiring traffic and pedestrian safety improvements and the implementation of the TDM Plan."
13. Condition No. 2 stated: The Applicant shall implement the following traffic and pedestrian safety improvements around the perimeter of the Property:
- a. Construct sidewalks, at the Applicant's expense, on the south side of V Street, N.W, from 48th Place, N.W., to MacArthur Boulevard, N.W., and from 48th Place, N.W., to the curb cut providing access to the proposed V Street, N.W., parking lot subject to permission and final approval by DDOT;
 - b. Construct, at the Applicant's expense, an extension of the sidewalk on the west side of 48th Place, N.W. up to V Street, N.W., at the beginning of the construction of the R-1-B Building, subject to permission and final approval by DDOT; and
 - c. Actively seek, in writing and orally, the following safety improvements near the R-1-B Building's site, and if approved by DDOT, construct these improvements:
 - i. Three-way stop signs and cross walks at V Street and 48th Place, N.W; at V and 49th Streets, N.W.; and at V and 48th Streets, N.W.;
 - ii. A no-right-turn-for-trucks sign at the 48th Place and V Street, N.W. intersection for trucks exiting 48th Place, N.W.;

- iii. A crosswalk and a speed control measure on 48th Street near the intersection with U Street, N.W.;
 - iv. 15 mph signs near the library on V Street, N.W.;
 - v. A high-visibility crosswalk and crosswalk signal at U Street and MacArthur Boulevard, N.W.; and
 - vi. Sidewalk extensions along all of V, 48th, and 49th Streets, N.W.
14. The Applicant began construction of a new building for the continuing care retirement community use at the subject property.³
15. By email sent January 24, 2022, the Zoning Administrator responded to an inquiry from a representative of the Palisades Community Association regarding the Applicant's compliance with Condition No. 2. The Zoning Administrator's email reviewed information that was previously provided by the Applicant to counsel for PCA, which indicated that issuance of a public space permit was expected "shortly" for "the sidewalk and curb cut work" required by Condition No. 2.a. and "within the next two months" for the sidewalk improvements required by Condition No. 2.b. With respect to Condition No. 2.c., the Applicant's information reflected that the Applicant had "actively sought and is continuing to seek approval for the safety improvements outlined" in the condition; "DDOT advised that such community safety improvements are entered into the standard DDOT queue for community requests to be reviewed, approved, and ultimately scheduled if approved" and "can also be pursued via 311...." The Zoning Administrator "reviewed each of these issues and concluded that [the Zoning Administrator's office] has no action to take on this matter at this time." (Exhibit 4D.)
16. By letter to the Office of Zoning Administration ("OZA") dated March 1, 2023, ANC 3D asked OZA to "take action to enforce the Applicant's noncompliance" with Condition No. 2.c. According to ANC 3D, the "Developer has mostly built the sidewalks in (2)(a) and we expect them to comply with (2)(b)" but was in "noncompliance with (2)(c), which required the Applicant to "actively seek, in writing and orally, the [specified] safety improvements near the R-1-B Building site, and if approved by DDOT, construct these improvements." The ANC noted a difference in the wording of Condition No. 2.c., as compared to the MOA, and asserted that "[b]y proactively changing the language of this clause, the BZA clearly intended much more than the [MOA]." According to ANC 3D, the wording of Condition No. 2.c. "only makes sense if the Developer is to pay for the improvements as long as DDOT approves such improvements." (Exhibit 4E.)
17. By letter to the Applicant dated July 3, 2023, the Zoning Administrator addressed "the question that has arisen regarding the responsibility for Condition 2.c." The letter quoted the condition, noting its similarity to "the language contained" in the MOA, but also stated that Condition 2.c. "differs from the other conditions in Section 2 of the Order in that it does not specify who bears the cost of constructing the improvements specified therein."

³ The modification request did not propose any change to the plans approved by the Board in the initial order.

However, “like the other conditions,” Condition 2.c. “requires [the Applicant] to construct the improvements upon DDOT’s approval” and “creates the obligation that [the Applicant] actively seek to obtain DDOT’s approval for the construction of the conditions. To date, [the Applicant has] not actively sought, in writing and orally, DDOT’s approval for the improvements specified in the Condition, nor have those specified improvements been constructed. The Condition remains unfulfilled. It is the position of the Office of the Zoning Administrator that pursuant to the plain language of the Order, [the Applicant is] responsible for fulfilling the Condition. The actual source of the costs of construction, though unspecified in the Condition, is immaterial to the Condition’s fulfillment.” The letter noted that the Applicant’s building permit was issued for the purpose of constructing the CCRC as a consequence of the BZA’s grant of the relief requested “and subject to the conditions therein.” Accordingly, “each condition to the approval of the special exception...shall be treated as a condition to the issuance of a building permit or certificate of occupancy,” and “[a]ny person who owns...or uses any building...shall at all times comply with any condition to the issuance to the certificate of occupancy for the building...”⁴ The letter stated “the determination of the Office of the Zoning Administrator that prior to the issuance of a Certificate of Occupancy for the Property, [the Applicant] must comply with the Conditions imposed by the BZA.”⁵ (Exhibit 4F.)

18. The Applicant requested a modification of Condition No. 2.c. “to match exactly the wording of Section 4(e)(iii) of the Memorandum of Agreement (‘MOA’) dated October 30, 2021 between the Applicant and Advisory Neighborhood Commission (‘ANC’) 3D, which is the only language the parties voluntarily agreed to include as a condition of approval.” According to the Applicant, the difference in wording “has resulted in conflicting interpretations from the ANC, the Palisades Citizens Association (‘PCA’) and the Office of the Zoning Administration (‘OZA’) that exceed what the Applicant voluntarily agreed to accept” and “[r]estoring the language [of the condition] to that of the MOA would resolve any conflicting interpretations.” (Exhibit 4.)
19. In response to the Applicant’s request for a modification, DDOT reiterated its conclusion in the original proceeding that approval of the application would not cause adverse impacts on the surrounding transportation network. In lieu of the Applicant’s proposed modification, DDOT recommended an alternative revision to Condition No. 2.c. to address improvements to pedestrian connectivity and safety with a provision that would “effectively retain the commitments to install missing curb ramps and crosswalk at two (2) intersections, swap the off-site sidewalks for a 19-dock Capital Bikeshare Station and 4-dock expansion, and remove the requirement for signage and traffic calming.” (Exhibit 9.)
20. The Applicant did not oppose DDOT’s proposed revision to Condition No. 2.c., which would require the Applicant to:
Construct, at the Applicant’s expense, the following, subject to DDOT approval:

⁴ See Subtitle A § 303 (Compliance with Conditions in Orders), especially Subtitle A §§ 303.3, 303.4 and 303.5.

⁵ The Applicant appealed the OZA determination that the Applicant was not in compliance with Condition 2.c. to the Board. See Appeal No. 21007 (4865 MacArthur Landlord, LLC).

- i. All-way stop signs and stop bars at the intersections of V Street and 48th Street, V Street and 48th Place, and V Street and 49th Street, if determined to be warranted by DDOT. The Applicant will supply DDOT with current traffic counts at these three (3) intersections to support the all-way stop control (6:30 AM-9:30 AM and 4:00 PM-7:00 PM on a typical weekday).
- ii. ADA curb ramps and high-visibility crosswalks on all corners and legs of the intersection of V Street and 49th Street NW and V Street and 48th Place NW.
- iii. Fund the installation by DDOT of one (1) 19-dock Capital Bikeshare station including one year of operating expenses, and one (1) 4-dock expansion plate. DDOT will determine the final locations of both with a geographic preference for ANC 3D and Ward 3.

(Exhibits 9, 10.)

21. DDOT's recommended revision to Condition No. 2.c. was based on DDOT's assessment of "the constructability and viability of each of the requirements of Condition 2c." According to DDOT, crosswalks and curb ramps at intersections along V Street with 48th Place and 49th Street "are critical to enhancing ADA accessibility to/from the site and are directly connected to the sidewalks the Applicant has already constructed in [accordance with] Conditions 2a and 2b."
22. With respect to "each segment of sidewalk in Condition 2c," DDOT "determined that there are significant challenges to the Applicant constructing these, including large grade changes necessitating retaining walls, removal of trees and telephone poles, and removal of items installed by adjacent property owners such as fences, staircases, gardens, and stone walls" that "would require significant coordination with these neighbors." Instead, DDOT recommended that "the Applicant contribute to improving the bike share network in Ward 3 and DDOT will install the sidewalks in the future" consistent with DDOT's "Sidewalk Gap Program, which prioritizes installation of missing sidewalks based on equity, proximity to schools, transit, and high injury network streets, and complexity of installation." (Exhibit 9.)
23. With respect to the provisions pertaining to signage, traffic calming, and pedestrian signals, DDOT "determined they cannot be approved at this time" and therefore "should be removed from the condition." According to DDOT, these measures could be pursued as "a 311 Traffic Safety Input (TSI) request" or "a letter from the ANC formally requesting DDOT to investigate them." DDOT supported retention of a condition requiring evaluation of an all-way stop at three intersections and installed, if warranted based on the Applicant's submission of "fresh traffic count data" to DDOT. (Exhibit 9.)

CONCLUSIONS OF LAW AND OPINION

Pursuant to Subtitle Y § 704, the Applicant seeks approval of a modification of significance to amend a condition approved by order issued June 4, 2021 in Application No. 20308, in which the Board approved a special exception, subject to conditions, to allow a continuing care retirement

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community use on the residentially zoned portion of the subject property. The Board may consider a request to change a condition adopted in a final order as a modification of significance. (Subtitle Y §§ 703.4, 703.11.) A modification of significance requires a public hearing, which must be “focused on the relevant evidentiary issues requested for modification and any condition impacted by the requested modification.” (Subtitle Y §§ 704.1, 704.6.) The scope of a public hearing on a request for a modification of significance must be “limited to [the] impact of the modification on the subject of the original application, and shall not permit the Board to revisit its original decision.” (Subtitle Y § 704.7.)

In the initial order in this proceeding, the Board approved a special exception to allow a continuing care retirement community use on the portion of the subject property that is located in a Residential House zone. The Board adopted several conditions of approval, including Condition No. 2, which required the Applicant to undertake certain actions related to “traffic and pedestrian safety improvements around the perimeter” of the subject property. The improvements called for the construction of sidewalks on specified streets as well as the installation of various traffic signs, crosswalks, and other measures at specified locations on streets near the subject property.

In support of its modification request, the Applicant asserted that its intent had been to agree to a condition matching Paragraph 4(e)(iii) of the agreement negotiated with ANC 3D, but the wording was changed in Condition No. 2.c. of the initial order in this proceeding. As a result, a disagreement had arisen about whether the Applicant was required to construct and pay for the improvements listed in Condition No. 2.c. The Applicant requested a modification to “correct” the wording of the condition “to match the wording” used in the MOA.

Implicit in the Board’s power to grant special exceptions is the authority to place reasonable conditions on the approval. *President and Directors of Georgetown College v. District of Columbia Bd. of Zoning Adjustment*, 837 A.2d 58, 69 (D.C. 2003). The Applicant asserted that “if an Applicant volunteers to include a condition, the Board has the discretion to incorporate that condition into the order.” However, that discretion is not unlimited. While the Board may impose conditions intended to ensure that approval of zoning relief would have no detrimental effect on the neighborhood or zone plan, conditions of approval must regulate the use of land and be supported by reliable, probative, and substantial evidence in the record. *National Black Child Development Institute, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 483 A.2d 687 (D.C. 1984). The Board’s jurisdiction is defined by statute and may not be extended by agreement of the parties. *Spring Valley Wesley Heights Citizens Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 644 A.2d 434, 437 (D.C. 1994) (an order that incorporated an agreement between an applicant for zoning relief and third parties could not extend the BZA’s power beyond its statutory authority). The Board’s authority is defined by the Zoning Act and Zoning Regulations and does not extend to the regulation of public space, including matters related to the installation of traffic improvements. *See* D.C. Official Code § 6-641.07(g)(2) (2012 Repl.) and Subtitle X § 901 (Board may grant special exceptions, as provided in the Zoning Regulations, when, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions).

In this case, the initial order stated the Board's conclusions that approval of the application would not cause adverse impacts, including with respect to traffic, parking, and pedestrian safety.⁶ The order incorporated conditions based on an agreement reached by the Applicant with ANC 3D. The parties agreed in the MOA that the Applicant would make or support certain improvements intended to improve traffic safety in the vicinity of a project for which the Applicant requested approval of a special exception. The Board concludes that Condition No. 2.c. was intended to restate a provision in the MOA negotiated by the parties. The Board does not agree with ANC 3D that the change in wording in the condition was intended to alter the nature of the agreement reached in the MOA or impose a different requirement. Both the MOA and Condition No. 2 included some provisions that required the Applicant to construct and pay for certain improvements. However, neither Condition No. 2.c. nor the corresponding paragraph in the MOA explicitly required the Applicant to construct and pay the cost of the improvements delineated in those provisions. Condition No. 2.c. did not repeat the same wording used in Condition No. 2.a. and 2.b. that expressly required the Applicant to construct and pay the cost of the specified improvements. The Board's conclusion in this regard is supported by DDOT's testimony in this proceeding that some of the improvements called for in Condition No. 2.c. would be difficult and infeasible in the short term and by the Applicant's estimate of the cost (in excess of \$1,625,000).⁷

Under the circumstances, the Board determines that Condition No. 2.c. was not intended to require the Applicant to construct and defray the cost of the specified improvements. Accordingly, the Board concludes that the Applicant's proposed modification is appropriate to clarify the intended meaning of Condition No. 2.c.

Great weight. The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.).) In this case, OP indicated its support for a revision to Condition 2.c. proposed by DDOT. For the reasons discussed above, the Board agreed with the Applicant that the condition should be modified consistent with the Applicant's original proposal.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. (Section 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)(3)(A) (2012 Repl.).) In this case, ANC 3D opposed the modification request, asserting that the Applicant's compliance with Condition No. 2.c., as adopted in the initial order, was necessary to address adverse traffic impacts before the Applicant's project was completed. For the reasons discussed above, the Board was not persuaded that the condition implicitly required the Applicant to construct or pay for the improvements listed in Condition No. 2.c.

⁶ The order stated the Board's conclusion the application satisfied the requirement of Subtitle U § 203.1(g)(4) to provide sufficient off-street parking for employees, residents, and visitors because the project would meet the zoning requirement for vehicle parking spaces and would be subject to the TDM plan. The Board also concluded that the application adequately addressed any potential adverse traffic and pedestrian safety concerns, as confirmed by the DDOT report, based on its parking and access layouts, the sidewalk and intersection improvements required as a condition of the order, and the TDM plan. Pursuant to Y § 704.7, a request for a modification of significance does not permit the Board to revisit its original decision.

⁷ See Exhibits No. 30 and 30A as well as the ANC's response at Exhibit No. 31.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof for a modification of significance to change Condition No. 2.c. as shown below. Accordingly, it is **ORDERED** that the modification request is **GRANTED** and the conditions of approval, as adopted in the initial order and modified herein, are as follows:

1. The R-1-B Building shall be constructed in accordance with the plans submitted as Exhibits 27A1 and 27A2 in the record, as required by Subtitle Y §§ 604.9 and 604.10.
2. The Applicant shall implement the following traffic and pedestrian safety improvements around the perimeter of the Property:
 - a. Construct sidewalks, at the Applicant's expense, on the south side of V Street, N.W., from 48th Place, N.W., to MacArthur Boulevard, N.W., and from 48th Place, N.W., to the curb cut providing access to the proposed V Street, N.W., parking lot subject to permission and final approval by DDOT;
 - b. Construct, at the Applicant's expense, an extension of the sidewalk on the west side of 48th Place, N.W. up to V Street, N.W., at the beginning of the construction of the R-1-B Building, subject to permission and final approval by DDOT; and
 - c. Actively promote with the District Department of Transportation, in writing and orally, the following safety improvements near the Project's site:
 - i. Three-way stop signs and cross walks at V Street and 48th Place, N.W.; at V and 49th Streets, N.W.; and at V and 48th Streets, N.W.;
 - ii. A no-right-turn-for-trucks sign at the 48th Place and V Street, N.W. intersection for trucks exiting 48th Place, N.W.;
 - iii. A crosswalk and a speed control measure on 48th Street near the intersection with U Street, N.W.;
 - iv. 15 mph signs near the library on V Street, N.W.;
 - v. A high-visibility crosswalk and crosswalk signal at U Street and MacArthur Boulevard, N.W.; and
 - vi. Sidewalk extensions along all of V, 48th, and 49th Streets, N.W.
3. The Applicant shall implement the following Transportation Demand management ("TDM") Plan, as proposed in the October 7, 2020, Transportation Memo, for the life of the project, unless otherwise noted:
 - a. The Applicant will unbundle the cost of vehicle parking from the housing cost for each independent living unit and lease vehicle parking spaces separately at a rate equivalent to or greater than the average market rate within a half mile;
 - b. The Applicant will provide private transportation for medical appointments, grocery shopping, errands, and other common trips to the CCRC's residents;

- c. The Applicant will designate a TDM Coordinator for the planning, construction, and operations phases of development. The Transportation Coordinator will act as the point of contact with DDOT, goDCgo, and Zoning Enforcement;
- d. The Applicant will provide the TDM Coordinator's contact information to goDCgo, conduct an annual commuter survey of staff, transportation survey of residents, and report TDM activities and data collection efforts to goDCgo once per year;
- e. The TDM Coordinator will develop, distribute, and market various transportation alternatives and options to the staff and residents, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on the staff portal, property website, and in any internal building newsletters or communications;
- f. The TDM Coordinator will receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM Plan;
- g. The Applicant will provide welcome packets to all new staff and residents that include site shuttle information, the Metrorail pocket guide, brochures of local bus lines, carpool and vanpool information, Guaranteed Ride Home brochure, and the most recent DC Bike Map;
- h. The TDM Coordinator will provide staff who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments ("MWCOG") or other comparable service if MWCOG does not offer this in the future;
- i. The TDM Coordinator will subscribe to goDCgo's newsletters and distribute information on alternative transportation options to staff and residents on a regular basis;
- j. The Applicant will post all TDM commitments on website, publicize availability, and allow the public to see what commitments have been promised;
- k. The Applicant will provide every staff member a free SmartTrip card pre-loaded with \$50 and a complimentary annual Capital Bikeshare membership for one year after the building opens;
- l. The Applicant will provide every resident a free SmartTrip card pre-loaded with \$50;
- m. The Applicant will meet the Zoning Regulations' minimum requirements for short and long-term bicycle parking;
- n. The Applicant will provide three collapsible shopping carts (utility cart) available to residents to promote and encourage residents to walk for grocery shopping and to run errands; and
- o. The TDM Coordinator will host transportation events for staff and residents twice a year to raise and maintain awareness of alternative transportation options. Examples include resident social, walking tour of local transportation facilities, goDCgo lobby event, transportation fair, WABA everyday Bicycling seminar, bicycle safety/information class, bicycle repair event, etc.


4. The Board acknowledges the existence of the Memorandum Of Agreement Between ANC 3D, 4865 MacArthur Landlord LLC, and The Trammell Crow Company For The Development At 4865 MacArthur Boulevard, dated October 27, 2020, and the Construction Management Agreement, dated October 27, 2020, between Midatlantic Development, Inc. and PCA for the purpose of memorialization only, and disclaims any authority to enforce these Agreements, as portions of both are outside its jurisdiction.

VOTE: 4-0-1 (Frederick L. Hill, Lorna L. John, Chrishaun S. Smith (by absentee vote), and Tammy M. Stidham (by absentee vote) to APPROVE the modification request; Carl H. Blake 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: July 25, 2024

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 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

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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.