GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 21177-A of D.C. Department of General Services, pursuant to 11 DCMR Subtitle X § 901, for a special exception under Subtitle I § 303.1(c) and Subtitle X § 900.3 to allow an extension or enlargement of a large-scale government use that was originally permitted and lawfully established as a matter of right, but for which the Zoning Regulations now require special exception approval, in the D-4-R zone at 501 New York Avenue, N.W. (Square 482-S, Lot 800).

HEARING DATES:	October 9 and October 30, 2024
DECISION DATES:	July 24 and November 13, 2024
FINAL ORDER ISSUANCE DATE:	March 18, 2025
RECONSIDERATION DECISION DATE:	April 30, 2025

ORDER DENYING RECONSIDERATION

By order dated March 18, 2025, the Board granted an application, subject to conditions, submitted on behalf of the D.C. Department of General Services (the "Applicant"), the agency authorized to act on behalf of the District of Columbia, the owner of the property that was the subject of the application. The application requested a special exception to allow an extension or enlargement of an existing large-scale government use in an existing building by increasing the number of holding cells in the facility to serve as the temporary location of the central cell block operated by the D.C. Department of Corrections ("DOC"). The parties in the proceeding were the Applicant and two affected Advisory Neighborhood Commissions ("ANCs"), ANC 2G and ANC 6E.[1]

On March 28, 2025, ANC 2G filed a motion for reconsideration of the order, alleging error in the Board's decision with respect to the release of "no-papered" detainees and parking. (Exhibit 165.) The Applicant filed a statement in opposition to the motion on April 4, 2025 (Exhibit 167). At a public meeting on April 30, 2025, the Board voted to deny the motion for reconsideration.

FINDINGS OF FACT

1. The property that is the subject of this application is a triangular lot bounded by New York Avenue and L, 5th, and 6th Streets, with the address 501 New York Avenue, N.W. (Square 482-S, Lot 800).

[1] ANC 6E did not participate in the reconsideration portion of this proceeding.

2. The subject property is improved with a two-story building constructed in the 1930s. The building area is approximately 9,780 square feet.

3. The Applicant proposed to reconfigure the interior of the existing building for temporary use by the Department of Corrections as a central cell block ("CCB") pending renovation of its current location in the Henry J. Daly Building at 300 Indiana Avenue, N.W. The Applicant did not propose any expansion of the existing building.

4. To facilitate the central cell block function, the first floor and basement will be reconfigured to provide a total of 46 holding cells. The central cell block at the subject property will have a capacity of 88 detainees at any one time.

5. The central cell block at the subject property will be used as a holding facility where persons who have been arrested by the Metropolitan Police Department ("MPD") or other law enforcement officers will be taken after their initial processing elsewhere and detained until their arraignment at D.C. Superior Court at 500 Indiana Avenue, N.W.

6. As stated in Findings of Fact No. 31 and 32 in the Board's initial order:

> 31. At the arraignment, a judge will decide whether an arrested individual will be charged with a crime and, if so, whether the individual will be released or detained pending the next court appearance. Individuals who are not detained are released directly from the courtroom. Individuals who are detained are transported directly to the Central Detention Facility at 1901 D Street, S.E. (Exhibits 9, 52, 152.)
> 32. Alternatively, a prosecutor might determine not to file charges against an arrestee; i.e. to "no paper" the case.[8] Individuals whose cases are no-papered will be released from Superior Court and will not be released directly from the central cell block at the subject property. (Exhibits 52, 52C, 152; Transcript of October 9, 2024 at 172.)

Footnote 8 stated:

> Currently, an individual whose case is "no papered" is released from the central cell block, a protocol that was implemented during the Covid pandemic to facilitate "contactless processing and reduced health impact." Prosecutors at the U.S. Attorney's Office for the District of Columbia ("USAO") informed DOC that USAO had no objection to reinstating pre-Covid protocols. (Exhibit 52, 52C, 152; Transcript of October 9, 2024 at 172.)

7. The subject property has curb cuts on both New York Avenue and L Street. DDOT indicated its agreement with the Applicant's proposal to maintain the existing curb cuts with modifications to improve compliance with DDOT standards. Both curb cuts will be reduced in width.

8. The use of curbside lanes on the north, south, and west frontages of the subject property (that is, L Street, New York Avenue, and 6th Street) is currently restricted as parking for MPD vehicles. On L Street, vehicles are backed in and parked perpendicular to the sidewalk, while parallel parking is used on New York Avenue and 6th Street. (Exhibits 84; Transcript of October 30, 2024 at 79-80.)

9. The Applicant proposed to maintain the existing parking restrictions on L Street and New York Avenue. Approximately seven spaces will be dedicated to the central cell block use on New York Avenue and 16 spaces on L Street, for a total of 23 vehicle parking spaces. (Exhibit 152A; Transcript of October 30, 2024 at 79-80.)

10. Parking for employees of the central cell block will be available on the segments of New York Avenue and L Street designated for authorized government use only. (Exhibit 152.)

11. The Applicant anticipated approximately nine DOC employees per shift at the central cell block. With three shifts each day, a total number of 27 employees are expected at the subject property daily for the central cell block. (Exhibit 52D1.)

CONCLUSIONS OF LAW

Pursuant to Subtitle Y § 700.2, a party may file a motion for reconsideration of a decision of the Board granting an application for a special exception, provided that the motion is filed within 10 days after issuance of a final written order by the Board. The motion for reconsideration filed by ANC 2G was timely filed within 10 days of the issuance of the Board's written order granting the application and was properly served on the other parties in this proceeding.

A motion for reconsideration must state specifically all respects in which the final decision is claimed to be erroneous and the relief sought. (Subtitle Y § 700.7.) In its motion, ANC 2G alleged errors in the "(1) the inaccurate and unverified conclusion of fact related to the release of 'no-papered' detained and (2) the Board's conclusion of law that the parking plan submitted by the Applicant will adequately serve the site without significant adverse impacts to the surrounding neighborhood ...." ANC 2G asked the Board to reconsider its decision and deny the special exception application or, in the alternative, require the Applicant to provide (1) confirmation of the exact details (time and location) of the release of "no-papered" detainees and (2) "correction of the noncompliant parking space distances" from specific intersections near the subject property.

"No-papered" detainees. With respect to the first allegation of error, ANC 2G alleged that Finding of Fact No. 32 and Footnote 8 in the Board's order were "based on nothing more than conjecture and an emailed promise from [the U.S. Attorney's Office which] … is far from a guarantee that no detainees will be released directly from the CCB …" ANC 2G acknowledged that "the Board spent a significant amount of time hearing testimony regarding the … release of detainees from the Central Cell Block" but asserted that detainees have a "fundamental constitutional right" to leave from wherever they are as soon as the determination of "no-paper" is made and any purposeful delay in making the "no-paper" determination would be a constitutional violation. In

support of its allegation of error, ANC 2G referred to testimony provided by Todd Baldwin[2] and Katerina Semyonova,[3] who stated their opinion that detainees should be released, including released directly from the central cell block, as soon as a "no paper" decision is made. The ANC complained of not receiving "a complete and accurate time for release from all three entities involved in release [i.e., DOC, the U.S. Marshals Service, and the federal Department of Justice, according to ANC 2G]" or an answer to the "outstanding question" of "What is the actual release procedure and timing from 501 New York Avenue, N.W.?" According to ANC 2G, "[b]ecause this germane and highly relevant conclusion of fact was based on speculation, the Board's decision must be reevaluated and reversed."

The Applicant disagreed, arguing that the Board's conclusion regarding the release of "no-papered" detainees was supported by the record, "including the U.S. Attorney's Office's representation that it does not object to reinstating pre COVID detainee processing protocols and testimony from the Department of Corrections Director Faust." According to the Applicant, the concerns raised by ANC 2G, including that delays in no-paper determinations might raise constitutional issues, were "speculative and not supported by any evidence in the record." (Exhibit 167.)

The Board agrees with the Applicant that ANC 2G did not state any error in its first claim of error that warranted reconsideration. The Applicant's proposal in this proceeding included a representation that "all detainees will be released at D.C. Superior Court. There will be no

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[2] Todd Baldwin, a court-appointed attorney in Superior Court and the president of the Superior Court Trial Lawyers Association, submitted a letter into the record about the proposed use of the subject property as a central cell block. The letter, dated October 7, 2024, stated "some serious concerns" about the proposal, including that

> …defendants whose cases were "no papered"… would be kept for longer than a normal period of time at CCB rather than being brought to court. In fact, even now, when the transportation is a few hundred yards away or so, the clients are kept longer and longer away from Superior Court so they do not have to be transported unless it is absolutely necessary…. If a client's case has been "no papered", then it is my opinion that the court no longer has jurisdiction. They should be immediately free to leave custody, no matter where that custody is…. What I envision happening is all the cases that are "no papered" for the day are released late in the day. Many of those clients will leave directly from 501 New York Ave., if given the option. I foresee many of those clients (and their friends and family members waiting to pick them up) aimlessly wandering around that area either waiting for their friend or family member to be released or the clients themselves waiting to be picked up or met….

(Exhibit 123.)

[3] Katerina Semyonova testified at the public hearing on behalf of the Public Defender Service for the District of Columbia (see Transcript of October 30, 2024 at pages 122-134) and submitted a letter objecting "to any limitation on individuals being released from 501 New York Ave NW." The letter stated that "the location of the individual has nothing to do with the prosecutor's decision about whether to charge them" and the proposal of the Department of Corrections foreclosing release from the central cell block would create

> the risk that individuals will be held in confinement, despite a decision not to prosecute them [and] the risk that a decision not to prosecute will be needlessly but intentionally delayed so that people are not released from 501 New York Avenue NW but are instead transported to Superior Court, only to effectuate a release that could have and should have been done earlier…. Releasing people into neighborhoods, which seems to be a primary objection to this BZA application, is exactly what should happen. People should be released from detention as soon as possible.

(Exhibit 156.)

detainees released from the CCB at 501 New York Avenue." (Exhibit 152.) The Applicant reiterated this assurance by proffering conditions of approval that included: "The Applicant will work with all necessary agencies to ensure that the policy and practice shall be that no detainees are released from the Property." (Exhibit 152, page 7.) ANC 2G asked the Board to adopt the seven conditions proposed by the Applicant as well as additional conditions proposed by the ANC "if [the Board] approves the application." The conditions requested by ANC 2G included: "1. Applicant agrees that no detainees will be released from the CCB." (Exhibit 162.) The Board heard testimony in opposition to the application from persons who asserted that the release of detainees from the proposed central cell block at the subject property would constitute an adverse impact that warranted denial of the requested special exception. Considering the circumstances, the Board adopted conditions of approval in granting the requested special exception which included Condition No. 2: "The Applicant shall ensure that no detainees are released from the subject property."

The Board was not persuaded by ANC 2G that its decision in this regard constituted error. The Board properly considered all of the evidence and testimony in a large record, giving great weight to the recommendation of the Office of Planning and to the issues and concerns stated by the affected ANCs. "As the trier of fact, the Board may credit the evidence upon which it relies to the detriment of conflicting evidence, and need not explain why it favored the evidence on one side over that on the other." *Citizens for Responsible Options v. District of Columbia Bd. of Zoning Adjustment*, 211 A.3d 169, 179-80 (D.C. 2019), citing *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995). The Board's authority is established by the Zoning Act (D.C. Official Code § 6-641.07) and does not extend to ruling on the merits of the constitutional claims such as those mentioned by two witnesses in connection with the release of "no-papered" detainees."[4] Similarly, the Board's jurisdiction in deciding a request for a special exception for the use of the subject property did not provide a basis for the Board to require the Applicant to provide ANC 2G with confirmation of the exact details (time and location) of the release of "no-papered" detainees.

Parking. With respect to the second claim of error, ANC 2G argued that the order failed to address the ANC's assertion that the parking plan proposed by the Applicant contained errors that "will decrease the number of spaces provided and cause significant parking and traffic impacts that will adversely impact the surrounding vicinity." According to ANC 2G, the Applicant's errors will be "corrected during the PDRM [preliminary design review meeting] process" and "it is now obvious that the proposed number of spaces will not and cannot fit within the allocated area." As a result,

[4] See, e.g., Appeal No. 21042 (William W. Bennett; April 25, 2024) (Board lacked jurisdiction to consider claims of error that issuance of building permit without notice to owner of abutting property violated 5th and 14th Amendments to the U.S. Constitution), Appeal No. 20026 (Arboretum Neighborhood Association; May 11, 2023) (Board dismissed, for lack of jurisdiction, an appeal contending that absence of notice and opportunity to challenge a zoning certification violated due process rights of association's members), Appeal No. 19334 (Shahid Qureshi; January 16, 2019) (Board declined to consider, as outside the scope of its jurisdiction, an argument that the Zoning Administrator's decision to revoke a certificate of occupancy constituted a taking of real and business property without just compensation in violation of the due process clause of the U.S. Constitution), and Appeal No. 17504 (JMM Corp.; October 1, 2007) (Board has "no jurisdiction to decide questions of constitutionality, as its authority is limited to hearing appeals alleging error in the administration and enforcement of the Zoning Regulations").

the ANC asserted that the "parking requested by the Department of Corrections simply does not comply with the District Department of Transportation parking regulations" for the intersections of L Street and 5th and 6th Streets, where "the resulting spillover parking and traffic will certainly affect the surrounding community," especially when considered with a potential new development nearby. The ANC acknowledged that the Board relied on the Applicant's testimony, including the testimony of a transportation expert, "as well as DDOT's support" in concluding that approval of the application would not create adverse impacts related to parking, but objected that ANC 2G "highlighted the adverse impacts to the surrounding residential neighborhood that the inadequate parking plan for the CCB would have."

The Applicant did not agree, asserting that the Board's order properly evaluated parking impacts of the central cell block and that ANC 2G did not identify any error warranting reconsideration. According to the Applicant, "the ANC's argument that the parking layout 'cannot fit' within the allocated space is based on personal observation, not on expert or technical analysis." The Applicant argued that the Board appropriately relied on the Applicant's testimony, expert transportation analysis, and DDOT's determination that the proposed parking arrangement would not result in adverse impacts on the surrounding neighborhood, and the ANC's "[d]isagreement with that conclusion does not justify reconsideration."

The Board does not find that ANC 2G stated any basis in its second claim of error that warranted reconsideration. As stated in the order, the Board concluded that the planned expansion of the large-scale government use at the subject property would not create adverse impacts on the use of neighboring properties related to parking. That conclusion was based in part on the Applicant's proposal to maintain the existing parking restrictions on two streets abutting the subject property to provide sufficient parking to accommodate the parking demand generated by a relatively small staff working in shifts as well as the limited number of other vehicles potentially visiting the site. The Board credited the Applicant's testimony pertaining to the traffic likely to be generated at the planned central cell block and concluded that the DOC protocol for operation of the facility will avoid the potential for a queue of vehicles in public space outside of the curbside lanes designated for government use only or the staging area designated on-site. In giving great weight to the issues and concerns of the affected ANCs, the Board noted that ANC 2G had questioned whether the segments of New York Avenue and L Street abutting the subject property could provide as many vehicle parking spaces as the Applicant claimed. The Board credited the testimony of the Applicant's transportation expert, noting that DDOT concurred with the Applicant's proposal and observed that additional parking spaces will be created in the curbside lanes when the existing curb cuts are narrowed. The order addressed ANC 2G's claim that the area in question could be configured to provide 14 vehicle parking spaces at most, not the 23 proposed by the Applicant, but also noted that the Applicant disputed the ANC's characterization of the distance requirement and testified that DDOT supported the Applicant's proposed configuration of the curbside lanes. Nothing in ANC 2G's motion for reconsideration provides a basis to disturb the Board's decision. The Board is not always bound to accept expert testimony over lay testimony, but the opinions of qualified experts are not to be lightly disregarded. *Neighbors for Responsive Government, LLC v. District of Columbia Bd. of Zoning Adjustment*, 195 A.3d 35, 53 n.67 (D.C. 2018), quoting *Shay v. District of Columbia Bd. of Zoning Adjustment*, 334 A.2d 175, 178 n. 10 (D.C. 1975). *See also Horsey v. District of Columbia Bd. of Zoning Adjustment*, No. 22-AA-0905 at 10 (D.C.; decided

May 22, 2025) (Court upheld Board order where "Board properly accorded 'great weight' to the recommendations of the Office of Planning, the relevant Advisory Neighborhood Commission, and DDOT, all of which had no objection to the proposal").

For the reasons discussed above, the Board concludes that ANC 2G has not satisfied the requirements stated in Subtitle Y § 700.7 for reconsideration of the Board's decision to approve the Applicant's request for a special exception under Subtitle I § 303.1(c) and Subtitle X § 900.3 to allow an extension or enlargement of a large-scale government use that was originally permitted and lawfully established as a matter of right, but for which the Zoning Regulations now require special exception approval, in the D-4-R zone at 501 New York Avenue, N.W. (Square 482-S, Lot 800). Accordingly, it is hereby **ORDERED** that the motion for **RECONSIDERATION** is **DENIED**.

VOTE: 4-0-1 (Frederick L. Hill, Carl H. Blake, Chrishaun S. Smith, and Robert E. Miller to DENY; one Board seat vacant)

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: August 7, 2025

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.

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