



September 9, 2024

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Frederick L. Hill, Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Suite 200S
Washington, DC 20010

Re: BZA Case No. 21177
Applicant's Prehearing Statement

Chairperson Hill and Honorable Members of the Board:

On behalf of Applicant D.C. Department of General Services, please find enclosed the Prehearing Statement for the above-referenced case. We look forward to presenting the application to the Board of Zoning Adjustment on October 9, 2024. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'MM', written over a horizontal line.

Meridith Moldenhauer

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Madeline Shay Williams

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of October, 2024 a copy of the foregoing Prehearing Statement was served, via electronic mail, on the following:

D.C. Office of Planning
c/o Matthew Jesick
1100 4th Street SW, Suite E650
Washington, DC 20024
Matthew.Jesick@dc.gov

D.C. Department of Transportation
c/o Erkin Ozberk and Noah Hagen
250 M Street SE
Washington, DC 20003
Erkin.ozberk@dc.gov
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Advisory Neighborhood Commission 2G
c/o Tracy L. Themak
Donohue, Themak + Miller, PLC
117 Oronoco Street
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tthemak@dtm.law

Advisory Neighborhood Commission 6E
c/o Chris Hart, Chairperson and SMD 6E01
6E@anc.dc.gov
6E01@anc.dc.gov

A handwritten signature in blue ink, appearing to read 'M. Moldenhauer', is written over a light blue horizontal line.

Meridith Moldenhauer

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

**APPLICATION OF
D.C. DEPARTMENT OF GENERAL SERVICES**

BZA CASE NO. 21177

APPLICANT'S PREHEARING STATEMENT

I. EXECUTIVE SUMMARY AND NATURE OF RELIEF SOUGHT

This prehearing statement is submitted on behalf of Applicant D.C. Department of General Services (the “**Applicant**”), as the implementing agency for the D.C. Department of Corrections (“**DOC**”), the owner of the property located at 501 New York Avenue NW (Square 0482-S, Lot 800) (the “**Property**”), in support of its application for special exception relief, pursuant to Subtitle X § 900.3, for the enlargement of an existing conforming large scale government use in the D-4-R zone.

The Applicant proposes the temporary use of the Property for the DOC’s Central Cell Block (“**CCB**”). As referenced in the enclosed letter of support (**Exhibit A**) from the D.C. Deputy Mayor for Public Safety and Justice, CCB is a critical component of the District’s justice system wherein arrestees are processed and detained prior to arraignment at D.C. Superior Court. CCB is currently located in the Daly Building at 300 Indiana Avenue NW, but would be moved to the Property temporarily while the Daly Building is renovated.

Since filing the application, the Applicant has presented to Advisory Neighborhood Commission 2G (“**ANC 2G**”) and Advisory Neighborhood Commission 6E (“**ANC 6E**”). The Applicant has also reviewed the application with the D.C. Office of Planning (“**OP**”). The following information is intended to address questions raised by the community and OP as well as in opposition letters filed in the case record.

II. CCB OPERATIONS

In the application, the Applicant provided general detail as to CCB's function in the District's criminal justice system. CCB is a temporary holding facility where individual arrestees are held for approximately 12 to 24 hours between the time of arrest and the time of arraignment in D.C. Superior Court. However, the community sought more specific information on CCB operations, including as to procedures for intake processing and detainee release.

To best address these issues, the Applicant has worked with DOC and the Metropolitan Police Department ("MPD") to clarify the process flow at CCB from arrest to arraignment, which is as follows:

1. Arrest – Individual is arrested within the District of Columbia by an MPD officer or other authorized representative.
2. Booking – Arrestee is brought to a local police district and goes through initial processing (obtaining personal info, background search). MPD also accepts all arrestees from agencies that do not have holding cells (ex. Metro Transit) and then follows the process.
 - A. If the arrest is a citation offense - the arrestee is issued a citation and will be released from the police district location.
 - B. The arrestee may be briefly held at the police station in a holding cell.
 - C. If the arrestee is held on charges requiring presentment for arraignment, then the arrestee is transferred from the police station to CCB for additional processing (fingerprinting and identify verification) and holding.
 - D. In limited circumstances, the arrestee may be held at the police district and not transferred to CCB. In those cases all processing is completed at the police district station. These limited circumstances include:
 1. Arrestee is handicapped. (CCB Daly is not handicap accessible and unable to house handicap arrestees);
 2. CCB has reached capacity;
 3. Arrestee is in the hospital (held at the hospital);
 4. Arrestee has medical or mental health issues and initially not accepted by CCB nurse (once they have received care [and medication, if required] CCB will accept) and/or
 5. Arrestee was arrested after CCB has begun morning court movement, then the arrestee is taken directly to Court from the police district (MPD may stop by CCB with arrestees in the van, but only to assist with additional court pickups);

3. After Transfer to CCB/Post-Arrest Investigation – Prosecutor information gathering. The prosecutor determines whether to file charges. Prosecutors review charges from the previous day until the cut-off time of 10:45 am Monday through Friday and 2:30 pm cut off on Saturday.
 - A. CCB transfers arrestees to D.C. Superior Court in two waves –
 1. 9:00am - Individuals considered priority cases (determined by the Court and prosecutors)
 2. 10:30am – CCB begins transporting everyone else from CCB or any persons from the police districts (outlined above)
 - B. If the prosecutors “no paper” charges prior to court transfer the individual(s) is currently released from CCB (or the police district if not previously transported to CCB).¹
4. First Appearance/Arraignment – Occurs at D.C. Superior Court where determination of release or further detainment is made.
 - A. If detainee is to be released, they are released directly from D.C. Superior Court. This includes “no paper” charges.
 - B. If detainee is to be held until the next court appearance, they will be transferred directly from the courtroom to the Central Detention Facility at 1901 D Street SE.

With respect to CCB intake processing, as described under Section 2(C) in the process flow above, arrestees will be transferred by police car or van from individual police district stations to CCB. The van will access CCB through the existing sallyport, which provides a secure garage area that is not externally visible. Arrestees will then be processed and held in CCB.

As reflected in the enclosed letter from Chief of Police Pamela Smith (**Exhibit B**), MPD is committed to working with DOC to ensure arrestee transport and intake processing is conducted in a coordinated manner to limit any potential impact on the neighborhood. As stated in Chief Smith’s letter,

MPD and DOC will develop a protocol for transporting detainees to the proposed temporary location for CCB at the Property. This protocol will include security measures and a method for coordination between MPD district stations and DOC as well as for staging of police vehicles when arriving at the Property. The goals of this protocol will be to provide for the safety of the community as well as the efficient transport of detainees with limited idling of police vehicles outside of the Property’s sallyport.

¹ To “no paper” a charge means that the prosecutor has insufficient evidence to move forward with arraignment and the detainee is released from custody. During the COVID-19 pandemic, protocol was updated to allow a “no paper” released directly from CCB. As explained below, this protocol will no longer be in effect when CCB moves to the Property.

See **Exhibit B**.

With respect to release procedure, a majority of arrestees are released either from the police district station or directly from D.C. Superior Court. It is not anticipated that arrestees will be released from CCB prior to a court appearance. As described under Section 3(B) above, this scenario occurred during the COVID-19 pandemic when a prosecutor from the U.S. Attorney's Office² determined to "no paper" a charge after the arrestee is transferred to CCB but before the first appearance in D.C. Superior Court. To "no paper" a charge means that the prosecutor has insufficient evidence to move forward with arraignment. The detained individual is no longer charged with a crime, and the individual is released from police custody.

DOC Director Faust met with representatives of the U.S. Attorney's Office to discuss CCB release procedure. As reflected in the enclosed correspondence (**Exhibit C**), the U.S. Attorney's Office has no objection to returning to pre-COVID protocols in which detainees are released from DC Superior Court, even in a "no paper" charge. This means that detainees would not be released directly from CCB at the Property.

III. ADVERSE EFFECTS

The Applicant addressed some of the potential adverse effects in the application, but wishes to elaborate further based on additional community comments.

A. Transportation and Traffic

i. Transportation Statement

The Applicant has engaged Gorove Slade to review the transportation and traffic aspects of the CCB and draft a report of its findings (the "**Transportation Statement**"), which is attached at **Exhibit D**. Among other topics, the Transportation Statement includes a detailed discussion of

² In the District of Columbia, the U.S. Attorney's Office serves as the prosecutor for both local and federal crimes.

proposed site operations, including the expected number of employees at CCB, vehicular trips to and from the facility, and parking arrangements. Of particular note, the Transportation Statement concludes:

- The vehicular network surrounding the Project Site is well-developed, supporting a high volume of car traffic to and from the site;
- The proposed CCB use is expected to result in a substantial net decrease in peak hour and daily trips as compared to the previous use of the Property by MPD's Traffic Safety and Specialized Enforcement Branch;
- A heavy majority of the site's vehicular activity is expected to occur outside of peak hours, thereby limiting the site's impact on the transportation network during commuter periods; and
- The proposed Project will have negligible impact on the surrounding transportation network as it generates fewer trips compared to existing conditions.

See **Exhibit D**.

ii. Parking and Loading Requirements

Additionally, the community has requested an understanding of the zoning requirements for parking and loading associated with the CCB. Historically, there have been no parking spaces or formal loading berth located on the Property. The existing building covers a large portion of the site and, due to the triangular shape of the Property, there is insufficient space for an accessway to and from formal parking spaces or a loading berth.³ Over the years, MPD has parked vehicles in adjacent public space along New York Avenue and L Street. However, parking spaces in public space do not constitute zoning-required parking. Therefore, the Property has zero parking spaces and no parking requirement under the special exception request.

The Zoning Regulations provide guidance as to when new minimum parking requirements are applicable for an existing use of property. Under Subtitle C § 704.1, additional minimum parking is required when a structural addition expands existing gross floor area by 25% or more.

³ The sallyport does not qualify as a formal loading berth under the Zoning Regulations, as it does not have 30 feet in depth and there is no adjacent loading platform.

For the CCB, this provision does not apply because the existing building at the Property will not be structurally expanded.

Alternatively, under Subtitle C § 705.1, additional minimum parking can be required for an expansion or change of use “when the minimum number of parking spaces required for the new use exceeds the number of spaces required for the prior use...” In applying this regulation, “it shall be assumed that the previous use provided at least the minimum number of spaces required.” *See* Subtitle C § 705.2. Yet, there is no parking requirement associated with the new use category for the CCB – large-scale government. *See* Subtitle C § 701.5. Therefore, the number of parking required for the expanded use does not exceed the parking required for the original use.

The zoning requirements for loading are similar to parking. Under Subtitle C § 901.6, an expansion of use within a building triggers additional loading “only when the gross floor area of the building or use is expanded or enlarged by twenty-five percent (25%) or more beyond the existing gross floor area.” Here, the proposed renovations to the CCB are entirely within the existing floorplate and, therefore, no new loading requirements are triggered under Subtitle C § 901.6.

Accordingly, the special exception relief has no impact on parking or loading under the Zoning Regulations since the proposed CCB will create no change to the parking or loading requirement for the Property.

B. Security

Due to the nature of the CCB use, the community has expressed concern with potential safety impacts. Generally, the BZA does not consider safety or security as a factor within the special exception standard, but given the nature of the proposed use the Applicant is providing more information on this point.

The existing building at the Property has been used as a temporary holding facility in the past and, therefore, has existing security infrastructure, including the sallyport. Nonetheless, there will be several new security measures implemented for the CCB, including

- Installation of internal and external cameras;
- New integrated electronic security system with detention grade framing and hardware - CCB will use the latest in security design for physical security. This means that the detention areas will be secure, operate efficiently and effectively, and that the inhabitants of the building are safe and secure within;
- Security Grilles - The use of security grilles within the building are to provide a greater level of protection to the exterior large window of the existing detention area. Security mesh provides protection against glass breakage and maintains a physical security barrier to resist escape; and
- Improvements to existing and new holding cells - New glass cell fronts were provided on the existing cells to reduce sound and improve security. The use of detention rated walls and cell fronts for new cells were also used.

Furthermore, access to the Property will be restricted to DOC and law enforcement personnel only, who will oversee the operation and management of the facility 24 hours per day, seven days per week. DOC requires all personnel to complete training based on security protocol. DOC's training requirements are attached at **Exhibit E**.

Based on the physical improvements at the Property, the extensive training and protocol provided by DOC, and the increased police presence, the community should be confident that the area around the Property will remain safe.

C. Noise and Privacy

With respect to noise, the application outlines several of the design features that will dampen any noise from CCB, including in-set cell locations with glazed fronts, sound-absorbing materials in the corridors, almost half of cells located in the below-grade basement level, and a processing area facing New York Avenue (as opposed to L Street). Procedures for intake and transport to court will be conducted within the enclosed sallyport, further limiting any external noise. Additionally, it should be noted that CCB operations do not require law enforcement

vehicles to activate sirens, as there will be no active arrest activities or public safety emergencies initiated from CCB.

In order to visually separate CCB from the surrounding neighborhood, the Applicant will be installing new fencing around the perimeter of the Property. A site plan and rendering depicting the location of the fencing is attached at **Exhibit F**. The proposed fencing will be located in public space adjacent to the Property. In addition to providing a visual barrier, the fencing also helps to demarcate the CCB as a secure location for law enforcement personnel.

D. Light and Air

Finally, as noted in the application, the proposed CCB will have no impact on neighboring properties' light and air as the existing building will not be structurally altered. Further, the Property is circumscribed by public rights-of-way on all three sides and, therefore, buffered from neighboring properties.

IV. SITE SELECTION

The Applicant received questions from the community as to why the Property was chosen as the location for the temporary CCB. Although the method of site selection for CCB is not germane to the special exception standard,⁴ the Applicant provides a brief summary of the process that lead to the City's decision to use the Property for CCB. The following is provided as background and is not germane to the BZA special exception standard.

The Property is the only District-owned building that (1) is in close proximity to the D.C. Superior Court, (2) has existing holding cells and sallyport, and (3) is a central location in the District for MPD operational requirements. With respect to the first factor, proximity to D.C. Superior Court is critical because it allows for arrestees to be efficiently transported to the

⁴ In reviewing an application for special exception relief, "[t]he Board's discretion . . . is limited to a determination of whether the exception sought meets the requirements of the regulation." *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 68 (D.C. 2003); *see also Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).

courthouse for arraignment. As noted above, the Court begins hearing cases at 8:30 a.m. each weekday. The Property is less than one mile (eight minute drive) from D.C. Superior Court. Given that arraignments occur twice daily, a CCB location farther from the courthouse would be more challenging from a timing and logistical perspective.

As to the second factor, the existing facility at the Property has holding cells, a sallyport and other secure infrastructure that makes the Property more easily adapted to function as the CCB. There is only a short-term need for the CCB while the Daly Building is renovated. Therefore, it is beneficial to have a building that does not require substantial construction to function as a secure facility. In the context of the CCB, these existing features make the Property unique in the District's portfolio.

Finally, the Property's central, downtown location makes it more easily accessible from police district stations throughout the city. If CCB were located by the city's outskirts, it would considerably lengthen the travel distance for officers coming from the other side of the city. Given that transfers to CCB are likely to occur from most, if not all, district stations, it is reasonable to have CCB in a central location.

V. COMMUNITY OUTREACH

The Applicant attended the July public meetings for both ANC 2G and ANC 6E. For each meeting, the Applicant's team included representatives of both DGS and DOC in order to best answer questions posed by the community. Each meeting included a presentation and lengthy discussion of the Property and CCB proposal. Unfortunately, both ANC 2G and ANC 6E voted to oppose to CCB being located at the Property and each ANC adopted resolutions in opposition to this application. Despite the opposition, the Applicant remains open to working with both ANC 2G and ANC 6E throughout this process.

VI. WITNESS TESTIMONY

The Applicant designates the following witnesses to testify at the hearing:

- Director Thomas Faust, D.C. Department of Corrections. Director Faust will testify as to operations of CCB and DOC protocol
- Allam Al-Alami, D.C. Department of General Services, Operations Manager for Capital Construction Services. Mr. Al-Alami will testify on the existing facility and proposed construction.
- Erwin Andres, Gorove Slade Associates. Mr. Andres will testify as an expert witness on traffic and transportation. Mr. Andres' resume is enclosed at **Exhibit G**.
- Pete Obarowski, DLR Group. Mr. Obarowski will testify as to architectural changes to the existing building.

VII. CONCLUSION

For the reasons stated above, and for the reasons enumerated in the Applicant's prior filings as well as the reasons discussed at the Board's hearing, the Applicant submits that the application meets the requirements for special exception relief and respectfully requests that the Board approve the application on October 9, 2024.

Respectfully submitted,
COZEN O'CONNOR



Meridith Moldenhauer



Madeline Shay Williams