EXHIBIT A

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

In Re. **Appeal of the West End DC Community Association**	**BZA Case No.: 21221** **Next Event: Virtual Public Meeting** **November 6, 2024, 9:30 a.m.**

DECLARATION OF RACHEL PIERRE

Pursuant to D.C. Code § 22-2402, I, Rachel Pierre, declare and state as follows:

1. I am over the age of eighteen (18) years, competent to testify to the matters contained in this declaration and testify based on my personal knowledge acquired in the course of my official duties.

2. I am the Administrator for the Family Services Administration (FSA) within the District of Columbia ("District" or "DC") Department of Human Services (DHS). In this role, I am responsible for the administration of FSA which is responsible for providing protection, intervention, and social services, including shelter and homelessness prevention in the District, to meet the needs of vulnerable adults and families to help reduce risk and promote self-sufficiency. I have worked at DHS for the last 4 years, and in my current position for 4 years.

3. DHS is currently responsible for managing the services provided to residents of the Aston, a District-owned property located at 1129 New Hampshire Avenue, NW, Washington, DC 20037.

4. The Aston was formerly owned by George Washington University (GWU) and operated as a dormitory residence, and as such, consists entirely of residential studio units, with individual kitchens and bathrooms.

5. Over the last year, DHS has worked to convert the Aston from student housing to non-congregate transitional housing for individuals in the District who are homeless or at risk of homelessness.

6. The Aston's use as non-congregate housing will provide "bridge housing," which DHS defines as temporary apartment-style units for clients transitioning into more permanent housing.

7. In order to convert the Aston for this purpose, the District needed to conduct demolition and construction work, and to do so DHS and the DC Department of General Services (DGS) through its contractors, was required to apply for and receive all applicable construction permits through the DC Department of Buildings (DOB). DHS also needs a certificate of occupancy before anyone moves into the building.

8. To date, DHS has applied for a construction demolition permit, a construction building permit, and a conditional Certificate of Occupancy (COO).

9. DHS was issued a construction demolition permit for the property on December 15, 2023, and all demolition work at the Aston has been completed.

10. DHS was issued a construction building permit on August 7, 2024.

11. DHS was issued a conditional COO on October 18, 2024, which is valid for 10 days, and includes a condition forbidding overnight occupancy. The conditional COO allows providers who will operate the shelter to begin preparations for moving in residents while the District works towards resolving issues raised in prior inspections.

12. The District intends to apply for a longer-duration conditional COO upon expiration of its 10-day COO. This anticipated COO will allow residents to begin moving into the Aston around mid-November.

13. The District has entered into a contract with The Community Partnership for the Prevention of Homelessness (TCP) to manage oversight of the Aston once residents move in.

14. TCP is an independent, non-profit corporation that contracts with the District to coordinate the District's Continuum of Care, which is the comprehensive system of services for individuals and families who are homeless or at risk of homelessness and is designed to serve clients based on their individual level of need, which may include crisis intervention, outreach and assessment services, shelter, transitional housing, permanent housing programs, and supportive services.

15. To operate the Aston on a daily basis, TCP has entered into a sub-contract with Friendship Place.

16. Friendship Place is a housing service provider for individuals and families experiencing homelessness in the District.

17. DHS regularly works with both TCP and Friendship Place to manage homeless services throughout the District.

18. Under the current conditional COO, TCP and Friendship Place staff have begun setting up their operations at the Aston, including moving furniture, to prepare for its opening for residents.

19. The District will not begin moving in residents until DHS applies for and DOB issues a COO authorizing such use.

20. The District intends to operate the Aston as a non-congregate shelter, which has the capacity to house up to 190 individuals who are homeless or at risk of homelessness in the District.

21. A non-congregate shelter means that each resident will have access to and control of a private unit, which includes the ability to lock their respective units. Each unit will have its own kitchen and bathroom.

22. Residents of the Aston will primarily consist of individuals who cannot be served by current shelters operating in the District including couples, mixed gendered adult families, and clients in need of medical services.

23. All residents of the Aston will be required to sign Program Rules before moving into the Aston. Pursuant to the Homeless Services Reform Act of 2005, as amended, Program Rules establish specific goals of all shelter programs in the District, which generally include but are not limited to, applicable eligibility requirements, client responsibilities, client rights, internal complaint procedures, procedures to request a reasonable accommodation for individuals with disabilities, mediation guidelines, Program Rule violation sanctions, client appeal rights, and applicable savings and escrow account requirements. *See* D.C. Official Code § 4-754.32.

24. DHS has finalized the Program Rules for Aston residents.

25. The Aston Community Advisory Team, an advisory body consisting of representatives from city agencies (including DHS), the office of the Ward 2 Councilmember, various local and interested community organizations, and Advisory Neighborhood Commission 2A, has approved a Good Neighbor Protocol governing the shared goals and responsibilities of the Aston's providers, the District government, and the neighboring community pertaining to the operations of the Aston.

26. All residents of the Aston must be independent (able to dress, eat, transport themselves) and medically stable (able to manage their own medications).

27. Residents will receive case management services and work with staff to develop individualized case plans; these plans must consist of time-specific goals and objectives designed to promote self-sufficiency and attainment of permanent housing and be based on the client's individually assessed needs, desires, strengths, resources, and limitations.

28. The District expects that all residents of the Aston will stay at least one (1) month, with a general timeline of 3–5 months.

I declare under penalty of perjury that the foregoing statements are true and correct, based upon my personal knowledge and information provided to me in the course of my official duties.

Executed on: _10/25/2024_

/s/ *Rachel Pierre*
A. D. Rachel Pierre, MSW MBA
Administrator
DC Department of Human Services
Family Services Administration

EXHIBIT B

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 15129, of Richard B. Nettler on behalf of the Woodland-Normanstone Neighborhood Association, pursuant to 11 DCMR 3200.2 and 3105.1, from the decision of Hampton Cross, Administrator, Building and Land Regulation Administration, and Joseph Bottner, Zoning Administrator, made on April 4, 1989, to the effect that development of Lots 37 and 38 in Square 2140 comply with the Zoning Regulations for the construction of single-family dwellings in an R-1-A District at premises 2804 and 2808 Woodland Drive, N.W., (Square 2140, Lots 38 & 38).

Appeal No. 15136, of Phil Mendelson on behalf of Advisory Neighborhood Commission 3C, pursuant to 11 DCMR 3200.2 and 3105.1, from the decision of the Zoning Administrator, Joseph Bottner, Department of Consumer and Regulatory Affairs, made on June 17, 1988, and subsequently, to the effect that the subdivision and development of former Lot 33 into 7 new lots complies with the Zoning Regulations for the construction of single-family dwellings in an R-1-A District at premises 2805 and 2815 Normanstone Drive, 2804 and 2808 Woodland Drive and 2600, 2610, and 2620 Rock Creek Drive, N.W., (Square 2140, Lots 37, 38, 41, 42, 43, 45 and 46).

HEARING DATES: September 27, 1989, and October 4, 1989

MEETING DATE: November 15, 1989

ORDER GRANTING STAY

This matter is before the Board on the Joint Motion of Appellants for an Emergency Stay. Having considered the joint motion and the response thereto and having heard advice from the Executive Director of the Zoning Secretariat about the legal criteria that apply to consideration of a stay, the Board concludes that, pursuant to D.C. Code Sec. 5-524(g)(4)(1988), the Board has authority to stay construction, just as the Zoning Administrator has authority to stop work pursuant to a permit, and that a brief stay until the date on which the Board is scheduled to decide this matter, that is, December 6, 1989, is in the public interest and will not cause any irreparable injury to intervenor. Accordingly, the Board hereby ORDERS that further construction on Lot 46, Square 2140, be STAYED until close of business (4:45 p.m.) on December 6, 1989.

This ORDER shall be final and effective immediately upon execution by the Executive Director of the Zoning Secretariat on behalf of the Board.

VOTE: 3-2 (Maybelle Taylor Bennett, Paula L. Jewell and Charles R. Norris to grant; William F. McIntosh to deny; Carrie L. Thornhill to deny by proxy).

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

ATTESTED BY:

EDWARD L. CURRY
Executive Director
Zoning Secretariat

FINAL DATE OF STAY ORDER: NOV 21 1989

15129&15136stay/BJW41

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPLICATION No. 15129 & 15136

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a copy of the Order of the Board in the above numbered case, said Order dated NOV 21 1989, has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Richard B. Nettler, Esq.
Gordon, Feinblatt, Rothman, Hoffberger & Hollander
1800 K Street, N.W., Suite 600
Washington, D.C. 20006

Phil Mendelson, Chairperson
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2737 Devonshire Place, N.W.
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3201 New Mexico Avenue, N.W.
Washington, D.C. 20016

Linda Sher
Woodland-Normanstone Neighborhood Assn.
2810 McGill Terrace, N.W.
Washington, D.C. 20008

EDWARD L. CURRY
Executive Director
Zoning Secretariat

DATE: NOV 21 1989

EXHIBIT C

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
441 4th Street, N.W.
Washington, D.C. 20001

Appeal by Residences of Columbia Heights, A Condominium BZA Appeal No. 20183

D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS' PRE-HEARING STATEMENT

The D.C. Department of Consumer and Regulatory Affairs ("DCRA") respectfully requests that the Board of Zoning Adjustment (the "Board") deny this Appeal and states as follows:

Appellant, Residences of Columbia Heights, a Condominium ("RCH"), claims that the Zoning Administrator erred in approving building permit B1908601 (the "Permit") for a building project at 2500 14th Street N.W., (Lot 205, Square 2662) (the "Property") located in Ward 1 of the District (collectively referred to as the "Ward 1 Project").

RCH claims that the Zoning Administrator erred in the following respects:

1) the Permit was issued absent a "special exception" under subtitle U § 513.1(b) as the construction constitutes an "emergency shelter" under subtitle B §100.2;

2) the Ward 1 Project fails to provide a "rear-yard setback" of 15 feet, under G § 405.2;

3) The Ward 1 Project's parking and loading requirements are not met as it is an "emergency shelter".[1]

However, all of Appellant's arguments fail. First, contrary to RCH's assertions, the Ward 1 Project is an "apartment house" under the zoning regulations and not an "emergency shelter." Furthermore, an "apartment house" is permitted as a "matter of right" in the subject zone under subtitle U § 512.1(a). Second, the project is considered "single building" for zoning purposes and it satisfies the rear yard setback requirements. Third, as an "apartment house," the Ward 1 Project

[1] BZA Appeal 20183 Exhibit 33 - Appellant's Revised Pre-Hearing Statement, p. 2.

has the appropriate number of parking spaces for the use and loading berth requirements under the applicable regulations. Thus, the Appeal must be denied.

FACTUAL AND PROCEDURAL BACKGROUND

The Department of General Services ("DGS") has partnered with the Department of Human Services ("DHS") to design and build new Short-term Family Housing in all eight Wards of the District.[2] The building projects are authorized by the Homeless Shelter Replacement Act of 2016 ("HSRA"), D.C. Law 21-141, 63 D.C. Reg. 8453 (eff. July 29, 2016), and the Homeless Shelter Replacement Amendment Act of 2018 ("HSRAA"), D.C. Law 22-167, 65 D.C. Reg. 13693 (eff. Oct. 30, 2018).[3]

The HSRA and the HSRAA draw clear distinctions between the other construction projects in Wards 3 through 8 versus the project at issue in this Appeal. In particular, the HSRAA provides, in relevant part:

> The Mayor is authorized to use funds appropriated for capital project HSW01C – Ward 1 Shelter to construct a facility to provide temporary shelter for families experiencing homelessness containing **35 2- and 3-bedroom *apartment-style* units on District-owned land at 2500 14th Street, N.W., Square 2662, Lot 205**; provided, that the contract for the construction of the facility shall be awarded pursuant to a request for proposals to be issued by the Department of General Services; **provided further, that the site may also be used to locate 15 units of permanent supportive housing**, as defined in section 2(28) of the Homeless Services Reform Act of 2005, effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code § 4-751.01(28)), for seniors and the Rita Bright Recreation Center.

(See, HSRAA, D.C. Law 22-167, § 2(1)) (emphasis added).

In conformity with the HSRAA, DGS's building project in Ward 1 includes 35 "apartment-style units" for families experiencing homelessness ("STFH Units") and 15 units

[2] See https://dgs.dc.gov/page/short-term-family-housing-construction-projects1-0

[3] For a background of HSRA see *Neighbors for Responsive Government, LLC v. District of Columbia Board of Zoning Adjustment*, 195 A.3d 35 (D.C. 2018).

of "permanent supportive housing" for seniors ("PSH Units") at 2500 14th Street N.W. (Lot 205, Square 2662) (the "Property"). The Property is in the MU-5A zone. The project will utilize the existing Rita Bright Recreation Center on the premises and also construct the new apartment house with a "meaningful connection" between the two structures. (See, DCRA Exhibit 1, Architectural Site Plan). The Property is a corner lot with frontage on three streets: Clifton Street on the North, 14th Street on the East, and Chapin Street on the South.

On September 30, 2019, DCRA issued building permit B1908601 to DGS.[4] The Permit provides the construction of:

> . . . 50 residential apartments for Short Term Family Housing (STFH). 35 will be 2 and 3 bedroom apartments. The remaining units will be 1 bedroom apartments for Permanent Supportive Housing.[5]

On October 24, 2019, RCH filed this Appeal and its Pre-Hearing Statement.[6] On January 8, 2020, RCH filed a "Revised Pre-Hearing Statement." [7]

ARGUMENT

I. The Zoning Administrator Did Not Err in Approving the Building Permit as the Project is an "Apartment House," Which May be Built as a Matter of Right in the Zone.

The Appellant erroneously characterizes the Ward 1 Project as an "emergency shelter" subject to a "special exception" under 11 - U DCMR §513.1(b). The Appellant rests its argument on two flawed propositions: 1) because DGS sought a "special exception" for the other short-term housing projects in Wards 3 through 8, it must *de facto* seek a "special exception" in this instance; and 2) although the PSH units are permitted as a "matter of right" within the zone, the STFH Units

[4] BZA Appeal 20183 Exhibit 9 - Building Permit B1908601.
[5] BZA Appeal 20183 Exhibit 9 - Building Permit B1908601.
[6] BZA Appeal 20183 Exhibit 14 - Appellant's Pre-Hearing Statement.
[7] BZA Appeal 20183 Exhibit 33 - Appellant's Revised Pre-Hearing Statement.

are predominately an "emergency shelter," which compels the property owner to obtain BZA relief.[8] Appellant is incorrect on both counts.

Appellant's first argument—that DGS is required to obtain BZA relief because it obtained "special exceptions" for projects in Wards 3 through 8—is meritless. The Appellant fails to provide any support for its claim, and the argument flies in the face of the zoning regulations. Furthermore, the Appellant glosses over terms of the HSRAA and fails to recognize the clear differences that distinguish the Ward 1 project from those in Wards 3 through 8.[9] Moreover, the mere fact that DGS obtained BZA relief on a separate building project in other zones for different uses does not dictate that similar relief is required in any subsequent building project, such as the property at issue here.

Appellant's second claim is likewise meritless. The Ward 1 Project consists of 15 PHS Units and 35 STFH Units. As explained below, both types of units fall within the definition of an "apartment" use. Therefore, both types of units are allowed as a "matter of right." The Appellant concedes that the 15 PHS Units qualify as an "apartment" use but, in essence, argues that the 35 STFH Units do not by arguing cryptically that the 35 STFH Units are not part of the overall project (". . . that does not make the 35 STFH units part of it. . ."),[10] that the STFH Units somehow transform the entire project into an "emergency shelter," and that the alleged "emergency shelter" use is a "dominant use" requiring a "special exception."[11] The Appellant fails to provide any legal

[8] BZA Appeal 20183 Exhibit 33 - Appellant's Revised Pre-Hearing Statement, p. 7-9.
[9] Appellant does not contest the statutory basis of the Ward 1 project under the HSRAA. (See, Appellant's Revised Pre-Hearing Statement, p. 4).
[10] BZA Appeal 20183 Exhibit 33 - Appellant's Revised Pre-Hearing Statement, p. 7.
[11] BZA Appeal 20183 Exhibit 33 - Appellant's Revised Pre-Hearing Statement, p. 8-9.

justification for these assertions, and the suggestion by the Appellant that there is a "dominant use" is irrelevant, without support, and unfounded in the zoning regulations.

Contrary to RCH, the project is an "apartment house" for zoning purposes. The zoning regulations define the terms "apartment" and "apartment house" as follows:

> Apartment: One (1) or more habitable rooms with kitchen and bathroom facilities exclusively for the use of and under the control of the occupants of those rooms. Control of the apartment may be by rental agreement or ownership.
>
> Apartment House: Any building or part of a building in which there are three (3) or more apartments, providing accommodation on a monthly or longer basis.

(11 D-DCMR § 101.2).

Here, all of the units, both STFH Units and PHS Units, each have its own bedroom(s), kitchen and bathroom. (DCRA Exhibit 2, PHS Unit 1 A89.11; Exhibit 3, STFH Unit 3B A8.06; Exhibit 4, 2nd & 4th Floor Plan). It is abundantly clear that that the individual units constitute an "apartment" under subtitle D § 101.2 and the entire project is an "apartment house" as there are more than three (3) apartments (35 STFH Units and 15 PHS Units). (See, 11 D-DCMR § 101.2).

Moreover, the residents of the Ward 1 Project will be signing written agreements with DHS giving the residents exclusive right to occupy their assigned unit. Furthermore, each resident will be given keys to control entry to the units as well.

The BZA ruling in Appeal 18151 (decided April 5, 2011) is instructive.[12] The appeal challenged the DCRA's issuance of a building permit. The University of the District of Columbia leased 21 units in an apartment building for student housing. An apartment owner challenged the permit claiming that the project converted the apartment building into a "dormitory." The evidence

[12] BZA Appeal 20183 Exhibit 7- Letter from Cozen and O'Connor on Behalf of DGS, Tab B.

showed that the 21 units retained their "own kitchen and bathroom facilities for the use of that occupants of that unit."[13] Further, the BZA found that the "occupants of each unit can unlock the door to the hallway, thereby excluding other residents from using their bathrooms and kitchen."

In examining the definition of "apartment," the BZA found that two elements are key: 1) the unit must provide kitchen and bathroom facilities; and 2) the unit must be under the exclusive use and control of the occupants.

In affirming the issuance of the permit, the BZA held:

> The 21 units remain under the exclusive control of the occupants of each unit, inasmuch as the occupants control the locks to their individual units, and are thereby able to exclude other residents from the units. . . The fact that an occupant may need to vacate the unit during school breaks, not have the roommate of their choice, not have unfettered rights to an overnight guest, or be required to move to another unit has nothing to do with their rights to control the premises while he or she is lawfully there. The occupants retain the rights to exclude all others, except UDC, and the circumstances under which UDC may enter the unit are defined. Since the Board has concluded that the 21 units would be "exclusively for the use of and control of the occupants", it must reject the Appellant's claim that these were to become rooming units, which by definition provide accommodations that are "not under the control of the occupants". Nor are these units intended to be merely sleeping accommodations, which leads to the Appellant's claim that a dormitory was to be established.[14]

BZA Appeal 18151 is directly on point and applicable here. The STFH and PHS Units each have their own kitchen and bathroom. (DCRA Exhibit 2, PHS Unit 1 A89.11; Exhibit 3, STFH Unit 3B A8.06; and Exhibit 4, 2nd & 4th Floor Plan). All the units have a living space that is separate and district from the sleeping quarters. (DCRA Exhibit 2, PHS Unit 1 A89.11; Exhibit 3, STFH Unit 3B A8.06; and Exhibit 4, 2nd & 4th Floor Plan). The units are designed so that only the occupant can access the unit, which is key-controlled.[15] The occupants will have exclusive

[13] BZA Appeal 20183 Exhibit 7 - Letter from Cozen and O'Connor on Behalf of DGS, Tab B, p. 4.
[14] BZA Appeal 20183 Exhibit 7 - Letter from Cozen and O'Connor on Behalf of DGS, Tab B, pp. 6-7.
[15] BZA Appeal 20183 Exhibit 7 - Letter from Cozen and O'Connor on Behalf of DGS, p. 2.

control over their own space, and occupants will be able to exclude all other residents form their unit.[16]

In contrast, the facilities in Wards 3 through 8 are different and distinct from the Ward 1 Project at issue here. The facilities in Wards 3 through 8 do not feature kitchen facilities within the units; most bathrooms are shared, with only a limited number of rooms having private bathrooms;[17] the rooms are open spaces without separate living and sleeping quarters;[18] and the rooms are not under the exclusive control of the occupants, but there are security monitoring desks on each floor.[19] Therefore, the design features at the housing in Wards 3 through 8 differ substantially from the Ward 1 Project at issue in this appeal.[20] (See, DCRA Exhibit 5, Summary of BZA Cases in Wards 3 through 8 with reference to the Exhibits with respect to Architectural Design and Specifications).

Lastly, the Appellant states that the Zoning Regulation's definition of "apartment" was "modified" since BZA Appeal No. 18151 was decided.[21] However, the change in the definition of "apartment" merely added the following language (in italics):

> Apartment: One (1) or more habitable rooms with kitchen and bathroom facilities exclusively for the use of and under the control of the occupants of those rooms. *Control of the apartment **may** be by rental agreement or ownership.*

(ZR 2016 11-D-DCMR §101.2) (bold emphasis added).[22]

[16] BZA Appeal 20183 Exhibit 7 - Letter from Cozen and O'Connor on Behalf of DGS, p. 2.
[17] BZA Appeal 20183 Exhibit 7- Letter from Cozen and O'Connor on Behalf of DGS, p. 2.
[18] BZA Appeal 20183 Exhibit 7 -Letter from Cozen and O'Connor on Behalf of DGS, p. 3.
[19] BZA Appeal 20183 Exhibit 7 - Letter from Cozen and O'Connor on Behalf of DGS, p. 3.
[20] BZA Appeal 20183 Exhibit 7 -Letter from Cozen and O'Connor on Behalf of DGS, p. 3.
[21] BZA Appeal 20183 Exhibit 33 - Appellant's Revised Pre-Hearing Statement, p. 9.
[22] ZR 58 11-D DCRM § 199.1 definition of apartment as follows: "Apartment - one (1) or more habitable rooms with kitchen and bathroom facilities exclusively for the use of and under the control of the occupants of those rooms."

As a result of the italicized addition, the Appellant further argues that the concept of "control" has been abandoned and the definition adopts "legal responsibility of the property by either ownership or leasehold."[23] Curiously, the Appellant fails to cite to any case law or BZA ruling to support its claim.

Contrary to the Appellant's unsupported interpretation, the added language of "may" to the definition of "apartment" is *permissive* not mandatory. (See, *Stockard* v. *Moss*, 706 A.2d 561, 566 (D.C. 1997) ("The word 'may' is permissive rather than mandatory"). More importantly, zoning regulations control **use**, not ownership of property. *Watergate West, Inc. v. District of Columbia Board of Zoning Adjustment*, 815 A.2d 762, 767 (D.C. 2003). Thus, under the current regulations, "control" may be established by a rental agreement or ownership, but those are not the exclusive means of demonstrating "control." And there is more than sufficient support in the record to demonstrate that all units in the Ward 1 Project will be exclusively for the use of and under the control of the designated occupants of those units. On this basis alone, the Board must dismiss the Appeal.

II. The Zoning Administrator Did Not Err in Approving the Building Permit as the Project Is a "Single Building" That Conforms to the Rear Set Back Requirements of 11-G DCMR § 405.2.

Appellant argues that the project violates the "rear set back" requirements as the Appellant maintains that there are two buildings on the site under subtitle C § 302.4. However, the project is considered a "single building" under 11-B DCMR § 309.1. The Rita Bright Recreation Center and the proposed structure will be joined by a meaningful connection compliant with subtitle B §309.1. (See, DCRA Exhibit 6, Connection Level P1 GFA).

[23] BZA Appeal 20183 Exhibit 33 - Appellant's Revised Pre-Hearing Statement, p. 9.

Subtitle B § 309.1 states:

> For purposes of this chapter, structures that are separated from the ground up by common division walls or contain multiple sections separated horizontally, such as wings or additions, are separate buildings. Structures or sections shall be considered parts of a single building if they are joined by a connection that is:
>
> (a) Fully above grade;
> (b) Enclosed;
> (c) Heated and artificially lit; and
> (d) Either:
> (1) Common space shared by users of all portions of the building, such as a lobby or recreation room, loading dock or service bay; or
> (2) Space that is designed and used to provide free and unrestricted passage between separate portions of the building, such as an unrestricted doorway or walkway.

(11-B DCMR § 309.1)

The connection between the Rita Bright Recreation Center and the apartment house satisfies all the requirements of subtitle B § 309.1. (See, DCRA Exhibit 6, Connection Level P1 GFA). Here, as required by the regulations, the **connection** between the two buildings is entirely above the adjacent grade. (See, DCRA Exhibit 6, Connection Level P1 GFA).

In addition, the connection is a common hallway that is fully enclosed, heated and artificially lit, meeting the requirements of subtitle B § 309.1(b) and (c). Moreover, the common hallway is designed and used to provide free and unrestricted passage between the new the addition and the Rita Bright Recreation Center, in conformity with subtitle B § 309.1(d)(2), with interior doors serving both the housing and Rita Bright Recreation Center portions of the single building.

Recently, in BZA Appeal 19950, the Board affirmed the Zoning Administrator's interpretation of a "meaningful connection" under subtitle B § 309.1 in an analogous building

project.[24] In BZA Appeal 19950, as in this case, DCRA issued a building permit allowing for the construction of a "common hallway" between two buildings.[25] The connection itself was fully above grade; nevertheless it had stairs and a landing which were partially "below grade" under RCH's interpretation of the zoning regulations. The appellant challenged the permit arguing, *inter alia* that the common hallway failed to satisfy subtitle B § 309.1. However, contrary to the appellant's contention, the common hallway satisfied every requirement of subtitle B §309.1(a)-(d) as it was fully above grade, enclosed, artificially lit, and used to provide free and unrestricted passage between separate portions of the building; despite the fact that certain elements were partially "below grade."[26] In denying the appeal, the Board affirmed the Zoning Administrator's interpretation finding that the common hallway was a "meaningful connection," satisfying subtitle B § 309.1 and that the project constituted "single building" for zoning purposes.[27]

In this instance, the Ward 1 Project is considered a "single building" for zoning purposes, and the Property is a "corner lot" abutting three (3) streets. (See, DCRA Exhibit 7, D.C. Zoning Map). In an MU-5A zone, for a single building, the rear yard set-back is 15 feet. (11-G DCMR § 405.2). Under subtitle B § 318.8, if there is a "corner lot abutting three (3) or more streets," then "the depth of rear yard may be measured from the center line of the street abutting the lot at the rear of the structure." (11-B DCMR § 318.8). The Ward 1 Project meets this rear yard requirement whether the rear yard is located on Chapin Street or Clifton Street, which are 65' and 50' in width respectively. (See, subtitle B § 100.2 Street Frontage: When a lot abuts upon more than one (1)

[24] BZA Appeal 19550 (decided December 19, 2018).
[25] BZA Appeal 19550 (decided December 19, 2018).
[26] BZA Appeal 19550 (decided December 19, 2018).
[27] BZA Appeal 19550 (decided December 19, 2018).

street, the owner shall have the option of selecting which is to be the front for purposes of determining street frontage).[28]

III. The Zoning Administrator Did Not Err in Approving the Building Permit Because the Parking and Loading for the Ward 1 Project Conforms to the Regulations.

Appellant's final objections, with respect to parking and loading requirements, also fail because the Ward 1 Project: 1) does not constitute an "emergency shelter" (see *supra*), and 2) constitutes a "single building" for zoning purposes. Moreover, the Appellant accepts both parking and loading requirements if the project is deemed a single building: "**Similarly I have no reason to take issue with the DGS's analysis of compliance with these criteria [parking and loading] as tied to its view that the 35 units are not an emergency shelter**" (emphasis added).[29]

Under the Appellant's interpretation, the parking requirements are "different for the two uses being added to the property."[30] However, as has been previously stated, a building may have more than one use. The Ward 1 Project is a residential apartment use, and is subject to the "residential, multiple dwelling unit" use category for parking purposes.

At 50 apartment units, the Ward 1 Project's parking requirements is 16 spaces (subtitle C § 701.51 "1 per 3 dwelling units in excess of 4" units—40-4=46 Units/3=25.44). However, it is entitled to a 50% reduction in its parking requirement due to the proximity within .25 miles of the priority bus route on 14th Street. (See, 11-C DCMR § 702.1(c)(7)). Thus, the overall parking requirements is 7.66 or 8 spaces. Nevertheless, the Ward 1 Project will provide 21 spaces, which

[28] The Appellant expressly admits that if the project is deemed to be a "single building" then the rear set back requirements are satisfied. "**DGS and I are in apparent agreement that if the Project properly becomes a single building fronting on Clifton Street, N.W. then the setback from Chapin Street, N.W. is sufficient for meeting the year yard requirement.**" See, BZA Appeal 20183 Exhibit 8- Letter from Knopf & Brown Re: Discussion Points for Meeting May 10, 2019, p.4 (emphasis added).
[29] BZA Appeal 20183 Exhibit 8- Letter from Knopf & Brown Re: Discussion Points for Meeting May 10, 2019, p.4.
[30] BZA Appeal 20183-Exhibit 33 – Appellant's Revised Pre-Hearing Statement.

exceeds the parking requirement (whether or not the above-noted 50 % reduction is applicable). Despite the demonstrated parking capacity in compliance with the zoning regulations, Appellant's mathematics hinge on the project's use as an "emergency shelter," which it is not.

Lastly, Appellant insists that the project does not comply with the loading requirements. However, that argument too relies on the Ward 1 Project being an "emergency shelter." As a single building, "apartment house" load berth is only required when a residential apartment exceeds 50 dwelling units. 11-C DCMR Section 901.1. The Ward 1 Project has 50 units exactly, and therefore loading is not required.

CONCLUSION

For the foregoing reasons, DCRA respectfully requests that the Board deny this Appeal.

Respectfully submitted,

/s/ Esther Yong McGraw
ESTHER YONG MCGRAW
General Counsel
Department of Consumer and Regulatory Affairs

Date: 1/22/20

/s/ Hugh J. Green
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CERTIFICATE OF SERVICE

I certify that on this January 22, 2020 a copy of the foregoing was served via U.S. first-class mail, postage prepaid, and/or electronic mail to:

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/s/ Hugh J. Green
Hugh J. Green

EXHIBIT D

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

WEDNESDAY

MAY 6, 2020

+ + + + +

The Regular Public Meeting convened via Videoconference, pursuant to notice at 9:30 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:
FREDERICK L. HILL, Chairperson
LORNA JOHN, Board Member
CARLTON HART, Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:
MICHAEL G. TURNBULL, FAIA, Commissioner (AOC)
PETER G. MAY, Commissioner (NPS)
PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:
CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:
DANIEL BASSETT, ESQ.
MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

The transcript constitutes the minutes from the Public Meeting held on May 6, 2020.

CONTENTS

VICE CHAIRPERSON HART: I agree with you. I do not think that we need to have further information to be added to the record. So, I would be voting to deny the request of the motion to add to the record.

COMMISSIONER SHAPIRO: I concur, Mr. Chair.

CHAIRPERSON HILL: Okay. All right. So, we'll go ahead then and, by consensus, deny that motion to reopen the record. If I could just -- if that's good with consensus?

(Nodding in agreement.)

CHAIRPERSON HILL: All right. Mr. Moy, if you need more than that, just let me know, but I see that everyone is nodding in terms of denial to reopen the record.

So, then that is going to bring us to the actual merits of the appeal. And I believe that the thing that is before us -- or the two things that -- again, from the amount of testimony that we had, I think it kind of, for me, it boiled down to just two items really, which was whether or not is this an apartment building, and then whether or not there is a meaningful connection.

And so, I'll kind of go ahead and speak to my thoughts on the apartment building first. I thought that it --

COMMISSIONER SHAPIRO: Mr. Chair.

CHAIRPERSON HILL: Yes.

COMMISSIONER SHAPIRO: Just to be clear about the language, I think the language is "apartment house," and I just, you know, stick with the definitions that are in the code.

VICE CHAIRPERSON HART: I would agree.

CHAIRPERSON HILL: Thank you, I'm sorry. Thank you.

So, I mean, I went back to the definitions under B 100.2 and I was looking again at "apartment" and "apartment house."

I did think that the Zoning Administrator correctly identified this as an apartment house because the apartment was one or more habitable rooms with kitchen/bathroom facility exclusively for the use of, and under the control of, the occupants of those rooms. And so, I did believe that they met that definition.

And then the other in terms of the apartment house, any building or apartment building in which there are three or more apartments providing accommodations on a monthly or longer basis, I also thought that they met that definition.

I thought that the -- there was some discussion about the lodging and that it was -- in the testimony that we heard, that these were apartments that would be occupied for over 30 days. And so, I thought that it qualified as a

matter of right apartment house and also as an apartment.

I didn't see anything within the plans or from any of the testimony to make me think otherwise. And so, I mean, it was pretty straightforward in my kind of -- once we got through all of the testimony as to that first issue.

Again, the residents will have a right to be there for over 30 consecutive days. Therefore, I thought it qualified under the lodging definition.

And I suppose I'll go ahead and just open it up for that first issue before going to whether or not it's a meaningful connection.

May I ask Mr. Hart to go next?

VICE CHAIRPERSON HART: Sure. Thank you, Chairman Hill.

So, after reviewing the record, I would also agree with your assessment, Chairman Hill, regarding the apartment house use.

And I'll kind of look at the issue about just the floor plan configurations. And I understand that the mayor and others in the past have used similar terminology when they were discussing this building with the -- emergency shelters in other wards and that there would be some of the same clientele, but I do think that this is a different project.

This project very clearly includes floor plans --

and we have the floor plans from Exhibits 38C and D -- that show apartments that have separate bedrooms, separate bathrooms, a kitchen area, a living room area in separate units.

So, I don't believe that the ZA erred in determining that this is a matter of right use as an apartment house.

And so, I would agree with you, Chairman Hill, that that's definitely what this is. So -- oh, looks like we have Mr. Turnbull back.

(Pause.)

VICE CHAIRPERSON HART: We can't hear you right now.

COMMISSIONER SHAPIRO: Mr. Chair, let me just wrap that up.

I concur on this point related to the ZA, the Zoning Administrator, not erring in determining this is an apartment house. So, I agree with you and Vice Chair Hart.

CHAIRPERSON HILL: Okay. All right. Vice Chair Hart, if you don't mind, in terms of the meaningful connection, I mean, I do have my thoughts on it, but it -- since you're the architect --

VICE CHAIRPERSON HART: Yes.

CHAIRPERSON HILL: -- if you wouldn't mind by continuing the discussion?

VICE CHAIRPERSON HART: Sure. Yeah.

My comments regarding the single building versus separate building or the meaningful connection issue is -- and I'll try to keep it fairly succinct.

So, under Subtitle B 309.1, structures or sections shall be considered parts of a single building if they are joined by a connection that is -- and then there are several criteria that fall within that.

These connections have to be fully above grade. They have to be enclosed. They have to be heated and artificially lit. And they either have to be common space shared by users of all portions of the building or space that is designed and used to provide free and unrestricted passage between separate portions of the building.

So, at first I thought this was fairly complex before we actually kind of heard the case, because the building is on a slope. It's not flat. It's not a level area. It is on a slope.

Since the meaningful connection was within the building and far from any facade or side of the building, determining what is below grade was not obvious.

However, I realize that if this were on a level site with no elevation change and then it would be -- then the ZA would really determine -- determining what was underground would be easy because you would just look to see

what is actually below the level of the ground, which is a level area, and you would kind of draw a line between the two ends.

If, you know, this building were this entire site, you would draw the lines at where the ground met the building and that line would be basically a straight, level line.

So, it seems to me that the consistent way to determine what is below grade on an incline, so that has a sloped topography, you could do the same thing.

Look at the ground plane on either end and then draw a line between them, which is what the Zoning Administrator demonstrated in the hearing and the documents that they submitted on Exhibit 38F.

The interior connection is clearly above this inclined ground plane line. And in addition, DGS stated that the connection is a common hallway that is fully enclosed, will be heated and artificially lit, and is designed to provide free and unrestricted passage between the new addition and the community center with interior doors serving both portions of the single building.

So, I believe that the connection does meet the criteria under Subtitle B 309.1 and that the ZA did not err in determining this.

And I tried to make it -- I kind of wrote some of this down because I thought it was easier to describe this

as -- in a fairly simple way, but it really is about the incline and putting the two lines -- the points where the ground plane hits the building, drawing a line between those two points helps to then identify where that ground plane would be considered.

And if things are above that, then it's above ground. If it's below that, then it's below ground. In this case, it's very clearly identified that this is a meaningful connection because it is fully above grade. And those are my thoughts on that.

CHAIRPERSON HILL: Okay. Great. Thank you, Vice Chair Hart.

Commissioner Shapiro?

COMMISSIONER SHAPIRO: I have nothing to add to that very lucid and succinct argument. I agree with Vice Chair Hart.

CHAIRPERSON HILL: Okay. All right. Well, then I don't really have anything additional to add, I suppose. I mean, as you mentioned, Subtitle B 309, the criteria there for the single or separate buildings, I think, Mr. Hart, you just walked through that. I would agree with your analysis.

I also appreciate the testimony that the Zoning Commissioner gave and how it was a little bit complicated in that it wasn't on a flat -- you know, the line that was drawn helped me understand in terms of how it was, in fact, above

grade.

VICE CHAIRPERSON HART: The Zoning Administrator, you mean?

CHAIRPERSON HILL: Sorry. Yes. Thank you. The Zoning Administrator.

All right. So --

COMMISSIONER SHAPIRO: I agree. That was very helpful.

CHAIRPERSON HILL: I guess, then, unless anyone has anything else to add --

VICE CHAIRPERSON HART: There's one point, Chairman Hill --

CHAIRPERSON HILL: Yes.

VICE CHAIRPERSON HART: -- that I'd like to just bring up. And that's -- there was a question about the -- whether or not the project is subject to the residential multiple dwelling unit use category for parking purposes.

And the parking requirements would require 16 spaces under Subtitle C 705 -- 701.5 and that the project would be entitled to a 50 percent reduction in that and they would be -- I guess the overall parking numbers would be about eight spaces. The project is providing 21 spaces, so that's being met.

The loading berth is required only when a residential apartment exceeds 50 dwelling units. The project

has 50 units exactly and it's not required. So, I didn't think that the Zoning Administrator erred in that instance as well.

This was more of a - kind of a minor point in that, but I just wanted to make sure that we addressed it as well.

CHAIRPERSON HILL: No, I appreciate that. It was again those things, I guess, being moot since it was, in fact, a matter of right apartment house.

All right. I'm going to go ahead and make a motion then to deny Appeal No. 20183, as captioned and read by the secretary, and ask for a second.

VICE CHAIRPERSON HART: Second.

CHAIRPERSON HILL: Motion made and seconded.

Mr. Moy, if you would please -- and actually I just want to say again I don't think that the ZA erred. And that's why I'm -- I don't think the appellant made a case or made enough -- as we walked through this, that the Zoning Administrator actually did err in this decision.

So again, make a motion to deny Appeal No. 20183 as captioned and read by the Secretary. Mr. Hart, you have seconded.

Mr. Moy, if you could please take a roll call?

MR. MOY: Thank you, Mr. Chairman.

So, in this roll call if the participants would

please reply with -- your agreement with the motion made by the Chairman with a "yes," "no" or "abstain" when I call your name.

Zoning Commissioner Peter Shapiro?

COMMISSIONER SHAPIRO: Yes.

MR. MOY: Vice Chair Hart?

VICE CHAIRPERSON HART: Yes.

MR. MOY: Mr. Chairman?

CHAIRPERSON HILL: Yes.

MR. MOY: So, the resulting vote is 3 to 0 to 2. Motion carries, Mr. Chairman.

CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.

All right. So now, I guess, Mr. Shapiro, you are welcome to stay. I'm going to close the hearing at the end, but now Mr. Turnbull -- Commissioner Turnbull is back with us. And then, I guess, Ms. John, if you would rejoin us?

Mr. Shapiro, are you going to stay or are you going to go?

COMMISSIONER SHAPIRO: I'm going to drop off. Thank you all very much.

VICE CHAIRPERSON HART: Take care.

CHAIRPERSON HILL: Nice to see you.

VICE CHAIRPERSON HART: Okay. Chairman Hill, I guess we should just reconvene. Secretary Moy, could you just call this case back to order -- or bring this case back

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DCBZA

Date: 05-06-20

Place: teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

Neal R Gross

Court Reporter

EXHIBIT E

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Appeal No. 18151 of Van Ness South Tenants' Association pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of the Department of Consumer and Regulatory Affairs ("DCRA") in the issuance of Building Permit No. B1009105, allowing the construction of walls within 21 apartment units in an existing apartment house[1] located at 3003 Van Ness Street, N.W., in the R-5-D District (Square 2049, Lot 0806).

HEARING DATES: January 4, 2011, February 1, 2011, and March 15, 2011
DECISION DATE: April 5, 2011

DECISION AND ORDER

This appeal was filed on October 12, 2010, with the Board of Zoning Adjustment (the "Board") by the Van Ness South Tenants' Association. The appeal challenged DCRA's decision to issue a building permit that authorized the property owner (the "Owner") to erect partition walls in 21 units within an existing 625-unit apartment house. The Owner leased these 21 units to the University of the District of Columbia ("UDC"), so that the units could be occupied by UDC students. The Appellant claims that the permit was unlawful for several reasons, the primary ones being that the permit improperly authorized either a "dormitory" use or a "rooming house" use within a residential apartment house. After allowing the parties an opportunity to be heard, the Board found that the permit had been properly issued and that the appeal should be denied. A full discussion of the facts and law supporting this conclusion follows.

PRELIMINARY MATTERS

Notice of Public Hearing

The Office of Zoning scheduled a hearing on January 4, 2011. In accordance with 11 DCMR §§ 3112.13 and 3112.14, the Office of Zoning mailed notice of the hearing to the Appellant, Advisory Neighborhood Commission ("ANC") 3F (the ANC in which the subject property is located), the property owner, and DCRA.

[1] The caption originally referred to an apartment building, but the actual term used in § 199.1 of the Zoning Regulations is "apartment house."

Parties

The Appellant in this case is the Van Ness South Tenants' Association (hereafter "the Appellant" or the "Association"). Under its Articles of Incorporation, the Association is a non-profit corporation which is organized, in part, to organize tenants at the 3003 Van Ness apartment house (the "apartment house"), and is also authorized to bring legal actions. (Exhibit 2.) The Association was represented during the proceedings by Brian Lederer, Karen Perry, and David Wilson.[2]

As the owner of the subject property, Smith Property Holdings Van Ness, L.P. (referred to hereafter as "Archstone"[3] or the "Owner"), requested intervenor status in opposition to the appeal. However, the request was unnecessary because Archstone is automatically a party under 11 DCMR § 3199.1(a)(3). Archstone was represented during the proceedings by the law firm of Greenstein DeLorme & Luchs, PC, by John Patrick Brown, Jr., Esq. and Kate Olson, Esq. UDC, which rents 21 units from Archstone, is the lessee of the property involved, and is also an automatic party to the appeal. (11 DCMR § 3199.1(a)(3).) UDC was represented by the law firm of Goulston & Storrs, Allison Prince, Esq. and David Avitabile, Esq. UDC and Archstone participated in all aspects of the public hearing and will be collectively referred to as the "Parties in Opposition."

DCRA appeared during the proceedings and was represented by Assistant Attorney General Jay Surabian, Esq.

Continuances and Pre-Hearing Statement

As noted, the public hearing was first set for January 4, 2011. However, the Board granted the Appellant's continuance request over the opposition of the Parties in Opposition, and the matter was continued until February 1, 2011. The Appellant had not filed a pre-hearing statement by the deadline of 14 days prior to the hearing and the Parties in Opposition expressed their concern that the Appellant might do so at any time prior to the continuance date. In response the Board gave the Appellant until January 14th to file a pre-hearing statement together with a request to waive the deadline. On February 1, the Appellant sought a second continuance of the hearing and an extension to file its pre-hearing statement. Because the Board did not have a quorum on that date, the public hearing was continued to March 15, 2011. On the March 15th date, the Board accepted the Appellant's Pre-Hearing Statement and Parties in Opposition opposition thereto, and conducted the public hearing.

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[2] Although Mr. Lederer is an attorney, he did not act as counsel for the Association. He, Ms. Perry, and Mr. Wilson each also testified as witnesses during the public hearing.

[3] Archstone Communities, LLC is the property manager of the apartment house.

FINDINGS OF FACT

The Property

1. The subject property is improved with an 11-story, 625-unit apartment house located at 3003 Van Ness Street, N.W. in the R-5-D Zone District.

2. The property is operated under a certificate of occupancy that was issued by DCRA to the Owner in 1996 for a 625-unit rental apartment house.

Events Leading Up to the Issuance of the Permit

3. During August, 2010, residents at the building complained to DCRA regarding possible illegal construction at the property.

4. DCRA inspectors investigated the complaints and found that UDC had constructed partition walls inside of 21 apartment units in the building. The apartment units are not contiguous and are located throughout the building and on different floors.

5. The non-load bearing partition walls were added to create an additional bedroom inside of each unit. The addition of the walls did not change the size of the units, create new units, or change the footprint of the building.

6. On August 11, 2010, DCRA issued a Stop Work Order and a Notice of Infraction for working without building permits.[4]

7. David Naples, DCRA's Deputy Chief Building Official, also inspected the property to determine whether there were any fire and safety issues and whether the construction complied with the Building Code. Finding no violations, the only remaining compliance issue was the requirement to obtain a building permit.

The Building Permit

8. On August 13, 2010, Archstone and UDC applied for a building permit to add "21 walls to 21 apartment units". In the application field titled "proposed use," the applicant wrote that the building would remain an "apartment building".

9. Because Archstone/UDC sought only to do interior renovation work at the building, and no change in use was proposed, DCRA did not refer the permit application for zoning review by the Zoning Administrator (the "ZA").

[4] Construction work is not allowed without a building permit under 12A DCMR § 105A.

10. Because of the limited non-structural nature of the work, and because Deputy Chief Naples determined that plans were not required,[5] DCRA was able to issue the building permit on the same day that it was applied for.

The Appeal

11. The Appellant filed this appeal on October 12, 2010, challenging DCRA's decision to issue the building permit. The appeal alleges that DCRA erred because: (a) the construction converted the building into a "dormitory"; (b) the building permit, itself, is defective because it contains errors and is incomplete; and (c) the permit may be in violation of the building code. In later submissions, the Appellant alleged alternatively, that the construction created an unlawful "rooming house." (Exhibit 29, Pre-Hearing Statement.)

Evidence Adduced at the Hearing

12. Sometime in August, 2010, Archstone leased 21 apartment units to UDC. The leases each run from August 15, 2010 through August 14, 2011.

13. Each unit is occupied by up to four UDC students, who stay in the unit for a period greater than one month.

14. The 21 units retained their own kitchen and bathroom facilities for the use of the occupants of that unit only. The occupants of each unit can lock the door to the hallway, thereby excluding other residents from using their bathrooms and kitchen.

15. UDC allowed students to occupy the 21 units pursuant to an "Occupancy Agreement For Off-Campus Student Housing" (the "Occupancy Agreement"), which is part of the record. (Exhibit 29, Tab 3.) Under the Occupancy Agreement, the students agree to various conditions of occupancy, some of which were alleged by the Appellant to be pertinent to its claims. For instance, the Occupancy Agreement provides that UDC will close the off-campus housing during the winter break. It provides that UDC may deny room or roommate changes and may require a student to move from one unit to another during the year, as necessary. It also provides that overnight guests must complete UDC registration forms and that UDC has the right to enter the units for various purposes.

CONCLUSIONS OF LAW

The Board is authorized by § 8 of the Zoning Act of 1938, D.C. Official Code § 6-641.07(g)(2) (2008 Repl.), to hear and decide appeals where it is alleged that there is error in any decision made by any administrative officer in the administration of the Zoning Regulations. The Board's review of such decisions is not limited to the documents presented to the

[5] DCRA's code official may accept permit applications without plans when the work involved is of a "sufficiently limited scope". (12A DCMR § 106.1.)

administrative decision-maker. Rather, as it did in this appeal, the Board conducts a full evidentiary hearing. Parties were permitted to present and cross examine witnesses and introduce evidence, and the Board has carefully considered the testimony and evidence that was presented. However, error may only be found based upon what the District official knew or reasonably should have known at the time he or she made the decision complained of.

The threshold question is to identify the administrative decision that is challenged and the alleged zoning error. The appeal in this case relates to the issuance of the building permit. The alleged zoning error was DCRA's determination that the construction of partition walls within the 21 units did not convert the apartment house use within those units to a different use. The Appellant disagrees and maintains that the permit authorized a "dormitory" or, in the alternative, a "rooming house" use within those units. However, as will be explained below, the Board concludes that the construction of partition walls within the 21 units did not convert the apartment use into either a dormitory use or a rooming house use.

The Proposed Construction of Partition Walls Did Not Authorize a Change in Use

The R-5-D District allows for several types of multiple unit buildings, including apartment houses, rooming houses, and dormitories. What differentiates one from the other are generally speaking the nature of the occupancy, as the following definitions show:

Apartment

Section 199 of the Zoning Regulations defines an "apartment" as "one (1) or more habitable rooms with kitchen and bathroom facilities exclusively for the use of and the control of the occupants of those rooms."

Dormitory

The term "dormitory" is not defined in the Zoning Regulations. Therefore, the Board is directed to the meaning given in *Webster's Unabridged Dictionary*. (*See,* 11 DCMR § 199.2(g).) According to *Webster's 3rd New International Dictionary*, a "dormitory" is "a residence hall providing separate rooms or suites for individuals or for groups of two, three, or four with common toilet and bathroom facilities but usually without housekeeping facilities."

Rooming house

Section 199 of the Zoning Regulations defines a "rooming house" as:

> a building or part thereof that provides sleeping accommodations for three (3) or more persons who are not members of the immediate family of the resident operator or manager, and in which accommodations are not under the exclusive control of the occupants. A rooming house provides accommodations on a monthly or longer basis. The term "rooming house" shall not be

> interpreted to include an establishment known as, or defined in this title as, a hotel, motel, inn, bed and breakfast, private club, tourist home, guest house, or other transient accommodation.

Pursuant to §§ 330.6(d) and 350.4(a) of the Zoning Regulations, a rooming house is allowed as a matter-of-right in the R-5-D Zone District, so long as cooking facilities are not provided in any individual unit.

From looking at the permit application before it, DCRA had no reason to believe that the construction of the partition walls would result in a conversion from an apartment house to one of these other uses. The applicant stated that the units would remain apartments and there was absolutely nothing in the application to suggest otherwise. According to the definition for "apartment" in the Zoning Regulations, two elements are key: (1) the unit must provide kitchen and bathroom facilities, and (2) the unit must be under the exclusive use and control of the occupants. The permit application stated that the only work proposed was the addition of partition walls to add a second bedroom to the 21 units. Thus, DCRA had a reasonable basis for concluding that the units would retain their kitchen and bathroom facilities and would, therefore, continue to satisfy the first element of the definition. Whether or not the units would be in the exclusive control of the occupants was not something that would be revealed in the application process, and DCRA was not obligated to investigate whether that element was met. This was not a situation in which DCRA knew or should have known of circumstances that would suggest that an applicant was being less than honest. In the absence of any indication on the application that a different use was intended, DCRA correctly issued the building permit.

The Additional Evidence Provided by the Appellant Did Not Prove a Change in Use.

The issue of control was not before DCRA when it issued the building permit. The Board nevertheless permitted the Appellants to argue the issue, but concludes that this element of the definition of apartment house was satisfied as well. The 21 units remain under the exclusive control of the occupants of each unit, inasmuch as the occupants control the locks to their individual units, and are thereby able to exclude other residents from the units. The Appellant asserts that the occupants do not have "exclusive use and control" of their units, citing the restrictions contained in the UDC Occupancy Agreement. The Board believes that the Appellant's reading of the "control" language is overly broad. While UDC does retain certain rights and privileges under the Occupancy Agreement, the Board finds none of the restrictions affects the long term control of the occupant so long as they are allowed to remain on the premises. The fact that an occupant may need to vacate the unit during school breaks, not have the roommate of their choice, not have unfettered rights to an overnight guest, or be required to move to another unit has nothing to do with their rights to control the premises while he or she is lawfully there. The occupants retain the rights to exclude all others, except UDC, and the circumstances under which UDC may enter the unit are defined.

Since the Board has concluded that the 21 units would be "exclusively for the use of and control of the occupants", it must reject the Appellant's claim that these were to become rooming units, which by definition provide accommodations that are "not under the control of the occupants". Nor are these units intended to be merely sleeping accommodations, which leads to the Appellant's claim that a dormitory was to be established.

It is clearly stated in the *Webster's* definition that a dormitory is "usually without housekeeping facilities." As mentioned above, the 21 units have retained their housekeeping facilities. Therefore, the units would not be consistent with this element of the "dormitory" definition. In addition, these units are not contiguous, and so it cannot be said that they collectively constitute a "residence hall".

It is worth noting that even if the Board found that a dormitory use was to be established, the use would have been lawful. As UDC correctly points out, the D.C. Court of Appeals confirmed that dormitories are permitted as a matter-of-right in the R-4 and R-5 zones, so long as they are not located within the boundaries of an approved campus plan. *Watergate West, Inc. v. D.C. Bd. of Zoning Adjustment*, 815 A.2d 762 (D.C. 2003). Here, the apartment house is located in the R-5-D Zone and is not within the boundaries of any campus plan for UDC. Accordingly, even if the construction converted the use to a dormitory use, it would be permitted as a matter of right. If that had been the case, the Board would simply have required DCRA to amend the face of the building permit to indicate a dormitory use, but the use would not be disallowed.

Appellant's Other Claims

The Appellant has alleged several defects in the body of the building permit and has also alleged violations of the Building Code, found in Title 12 of the DCMR. However, these claims are outside the scope of the Board's jurisdiction because they do not derive from alleged zoning errors. The Zoning Act clearly limits the Board's jurisdiction to actions taken by District officials in carrying out and enforcing the Zoning Regulations. *See, Appeal No. 17329 of Georgetown Residence Alliance,* 53 DCR 5932 (2006). Therefore, these portions of the appeal must be dismissed.

ANC

The Board is required under § 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-9.10(d)(3)(A)), to give "great weight" to the issues and concerns raised in the affected ANC's recommendations, which in this case is ANC 3F. However, ANC 3F did not submit a report with any recommendations or participate in the public hearing of this appeal.

For reasons discussed above, it is hereby **ORDERED** that the appeal is **DENIED**.

Vote taken on April 5, 2011.

VOTE: **4-0-1** (Meridith H. Moldenhauer, Nicole C. Sorg, Jeffrey L. Hinkle, and Gregory M. Selfridge voting to Deny; No other Board member (vacant) 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: _____
RICHARD S. NERO, JR.
Acting Director, Office of Zoning

FINAL DATE OF ORDER: SEP 06 2011

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

EXHIBIT F

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

In Re. **Appeal of the West End DC Community Association**	**BZA Case No.: 21221** **Next Event: Virtual Public Meeting** **November 6, 2024, 9:30 a.m.**

DECLARATION OF TRUPTI PATEL

Pursuant to D.C. Code § 22-2402, I, Trupti Patel, declare and state as follows:

1. I am over the age of eighteen (18) years, competent to testify to the matters contained in this declaration and testify based on my personal knowledge acquired in the course of my official duties.

2. I am the Single Member District Commissioner of Advisory Neighborhood Commission (ANC) 2A03.

3. I am the current Chairperson of ANC 2A.

4. The Aston, a property located at 1129 New Hampshire Avenue, NW, Washington, DC 20037, is within Advisory Neighborhood Commission 2A.

5. ANC 2A has regularly discussed or received reports concerning the proposed purchase, redevelopment, and use of the Aston by the Department of Human Services (DHS) as a non-congregate bridge housing at its meetings over the past two years, including at approximately a dozen different meetings from June 28, 2023, through the present.

6. ANC 2A has adopted several resolutions concerning the development of the Aston, most recently in May 2024 when it adopted CR-24-025, "A Resolution Regarding Aston Roof Budget Priority." *See* Exhibit A.

7. On July 1, 2023, ANC 2A adopted Resolution CR-23-003, which resolved that "ANC 2A in general supports the development of a non-congregate shelter at 1129 New Hampshire Avenue NW that will serve the needs of medically vulnerable people as well as people in transition to permanent housing that cannot be served by traditional facilities." *See* Exhibit B.

8. Representatives of ANC 2A are also members of the Community Advisory Team (CAT) regarding the Aston, including the CAT Co-Chairperson Jim Malec, who was designated by myself, ANC 2A06 Joel Causey, Courtney Cooperman, and Chris Labas.

9. The CAT first began meeting on March 11, 2024, and has met at least monthly through the present, with the most recent meeting on October 7, 2024. The next scheduled meeting of the CAT is on November 4, 2024.

10. The CAT has, among other matters, received updates from the District's executive agencies concerning the progress of the Aston's redevelopment, discussed and approved a Good Neighbor Protocol, discussed the Program Rules for the Aston, and received comments from the public concerning the Aston.

11. I have consistently supported the Aston's proposed use as a non-congregate shelter, as have many other members of the ANC 2A community, and I believe that any unnecessary delay in opening the Aston is unacceptable and would cause grave harm to the Aston's potential clients.

12. This is particularly true given the upcoming hypothermia which begins on November 1, 2024.

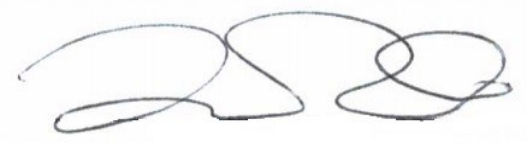
13. ANC 2A's next scheduled meeting is on November 13, 2024.

14. Given my belief in the importance of the Aston's opening to ANC 2A, I intend to place the appeal at the Board of Zoning Adjustment of the West End DC Community Association concerning the Aston on the agenda for ANC 2A's consideration at the November 13, 2024 meeting.

15. I believe that ANC 2A should be afforded the opportunity to consider the West End DC Community Association's appeal before the Board takes action regarding the Aston. I believe that, if the ANC adopts a report concerning the appeal, the Board should consider that report with great weight.

I declare under penalty of perjury that the foregoing statements are true and correct, based upon my personal knowledge and information provided to me in the course of my official duties.

Executed on: 10/25/2024



/s/
Trupti Patel
Chairperson, ANC 2A
Commissioner, ANC 2A03

EXHIBIT A

Advisory Neighborhood Commission 2A

"Serving the Foggy Bottom and West End communities of Washington, D.C."

May16, 2024

Phil Mendelson, Chairperson District of Columbia Council
Chairperson, Committee of the Whole
1350 Pennsylvania Avenue, NW
The Wilson Building
Washington D.C. 20004

RE: A Resolution Regarding Aston Roof Budget Priority.

Dear Chairperson Mendelson,

At its regular meeting on May 15, 2024, Advisory Neighborhood Commission 2A **("ANC 2A" or "Commission")** considered the above-referenced matter. With five of nine commissioners present, a quorum at a duly-noticed public meeting, the Commission, after a motion made by Chairperson Patel and seconded by Vice Chairperson Chadwick, adopted the following resolution (CR-24-025) by unanimous consent:

WHEREAS on April 17, 2024, ANC 2A ("Commission") voted 5-0-0 on the 2024 budget oversight resolution on the Department of Human Services (DHS) handing of the Aston;

WHEREAS on February 21, 2024, ANC 2A voted 6-0-0 on the 2024 performance oversight resolution on the Department of Human Services (DHS) handing of the Aston;

WHEREAS In May of 2023, The George Washington University (GWU) announced it had sold the Aston, a former graduate student dormitory located at 1129 New Hampshire Avenue NW, to the Washington, DC government through Department of General Services (DGS) for $27.5 million dollars;

WHEREAS The Aston would be turned into DC's first high-barrier homeless shelter that would primarily serve adults with acute medical conditions, mixed-gendered adult families, and allow couples experiencing homelessness to stay together—populations that can't be properly served in the other shelters;

WHEREAS At ANC 2A's June 2023[1] meeting, the Department of Human Services (DHS) sent representatives to address questions and concerns from commissioners as well as residents about services the Aston would provide;

WHEREAS ANC 2A, at a special meeting in June 2023, sent a resolution in support of the Aston contingent upon certain conditions being met and outstanding questions that we asked to be addressed;

[1] ANC-2A-RESOLUTION-CR-23-003-DGS-1.pdf (anc2a.org)

WHEREAS After the commission requested the building assessment[2] report from DHS, it was provided from the Department of General Services (DGS), and upon review, there was a deep concern regarding the safety and integrity of the building;

WHEREAS Commissioner Omictin raised concerns about the state of the roof, and that it needed to be replaced immediately and considered as a non-negotiable Fiscal Year 2025 (FY 2025) budget priority not to be tiered out and replaced in 2028;

WHEREAS Page 12 of the DGS building assessment states, "The roof has a lot of patching and water ponding's. No leak reported but the deterioration is visible and needs immediate replacement."

WHEREAS The DGS inspector assessed the roof with a high urgency, but then, further down on the same page, they scored it as a priority 3 item to be addressed within 5 years, and put an action date of May 2027;

WHEREAS, At its April 2024 meeting, the Community Advisory Team (CAT) was informed that the Aston would become operational by August 2024;

WHEREAS Residents and the Commission have inquired with Councilmembers Pinto and White for further clarification on next steps in the process and the delay around the opening of the Aston;

WHEREAS ANC 2A has formally requested the DC Council Committee on Housing to reallocate capital funding in the amount of the estimated cost of $246,840 to repair the roof in FY 2025 instead of FY 2028;

WHEREAS The DC Council Committee on Housing ("Committee") released its Budget Report[3] on May 9, 2024 with recommendations to allocate capital funding in the amount of the estimated cost of $246,840 to repair the roof in FY 2025 instead of FY 2028,

WHEREAS, On page 17, the Committee states that there is "the need to use small capital pool funds for the Aston non-congregate shelter;"

WHEREAS, In the DHS chapter of the Budget Report, on page 91, in its Policy Recommendations for the agency, the Committee states, "DHS should utilize available small capital funding to address the repair needs for the roof at the Aston;"

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[2] Aston-Asset-Condition-Assessment-1.pdf (thewash.org)

[3] Final Budget Report - 05.09.2024 -.docx (sharepoint.com)

EXHIBIT A

Advisory Neighborhood Commission 2A

"Serving the Foggy Bottom and West End communities of Washington, D.C."

WHEREAS, On page 96, the Committee states, "Finally, the Committee is supportive of DHS's plans to open additional non-congregate shelter space for people experiencing homelessness. However, concerns have been raised regarding the condition of the roof at the soon-to-open Aston Shelter in Foggy Bottom. DHS should utilize available small capital funding to address the repair needs for the roof at the Aston."

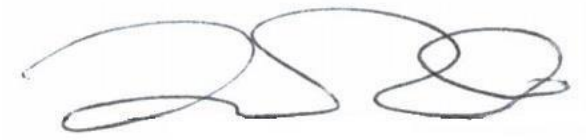
THEREFORE, BE IT RESOLVED that ANC 2A urges the DC Council to adopt the recommendations of The DC Council Committee on Housing for DHS to utilize small capital funding to address the repair needs for the roof at the Aston.

THEREFORE, BE IT FURTHER RESOLVED that the roof of the Aston must be repaired and have immediate funding allocated for FY 2025.

Commissioners Trupti Patel (2A03@anc.dc.gov) and Luke Chadwick (2A05@anc.dc.gov) are the Commission's representatives in this matter.

ON BEHALF OF THE COMMISSION.

Sincerely,



Trupti Patel
Chairperson

Brooke Pinto, Ward 2 Councilmember
Jennifer Budoff, DC Council Budget Director
Wayne Turnidge, Deputy Mayor, Health & Human Services
David Ross, Chief of Staff, Health & Human Services
Rachel Pierre, Interim Director, Health & Human Services; Director, Family Services Administrator
Laura Zeilinger, Director, Health & Human Services
Delano Hunter, Director, Department of General Services
Christopher Powell, Ward 2 Liaison, Mayor's Office of Community Relations

EXHIBIT B

Advisory Neighborhood Commission 2A

"Serving the Foggy Bottom and West End communities of Washington, D.C."

July 1, 2023

Ms. Charleen Ward
Supervisory Realty Specialist
Department of General Services
3924 Minnesota Avenue NE, 6th Floor
Washington, DC 20019
charleen.ward@dc.gov

RE: Notice Pursuant to D.C. Official Code Section 1-309.10 for the Acquisition of Real Property

Dear Ms. Ward,

At its special meeting on June 28, 2023, Advisory Neighborhood Commission 2A **("ANC 2A" or "Commission")** considered the above-referenced matter. With seven of nine commissioners present, a quorum at a duly-noticed public meeting, the Commission voted **(6-1-0)**, after a motion made by Commissioner Comer and seconded by Commissioner Patel, to adopt resolution CR-23-003, which reads as follows:

> WHEREAS, ANC 2A recognizes that individual homelessness remains high in the District of Columbia and is in support of an expansion of facilities to help those seeking stable and permanent housing,
>
> WHEREAS, ANC 2A also supports the use of non-congregate facilities which provide unhoused people with privacy when such facilities are staffed to offer appropriate support services,
>
> WHEREAS, the ANC received notice in accordance with DC Official Code Section 1-309.10 of the intended purchase of Aston Hall, 1129 New Hampshire Avenue NW, on May 19, 2023. Said notice stated, "[the Department of General Services] DGS intends to acquire the above-described real property but has not entered into a purchase and sale agreement for the acquisition." Pursuant to the aforementioned Code Section the ANC is invited to convey its recommendations as to the subject matter of this notice to DGS in writing, and DGS will give great weight to the issues and concerns raised in such recommendations,
>
> WHEREAS, DGS submitted a proposal to enter into a contract to the DC Council on June 9, 2023 (REQUEST FOR SPACE DGS-RFS-DHS-2022-6 Non-congregate Housing) which would be automatically approved on June 22, 2023, in violation of District law. This approval was sought prior to community input,
>
> WHEREAS, during a 2 hour and 44-minute special meeting of the ANC held on June 21st, 2023, the Department of Human Services (DHS) presented information

and answered questions from the community on the non-congregate shelter they intend to build in Aston Hall,

WHEREAS, during the presentation, DHS provided information on the types of people who would be served by the facility; the criteria for entry into the facility; and the renovation plan for the Aston, and

WHEREAS, DGS has pushed forward the date by which they intend to execute their purchase and sale agreement to July 11th, 2023.

THEREFORE, BE IT RESOLVED that ANC 2A in general supports the development of a non-congregate shelter at 1129 New Hampshire Avenue NW that will serve the needs of medically vulnerable people as well as people in transition to permanent housing that cannot be served by traditional facilities.

BE IT FURTHER RESOLVED that ANC 2A requests that DGS shares with ANC 2A any Department of Buildings (DOB) inspection reports generated as part of DGS' assessment of the building's renovation needs.

BE IT FURTHER RESOLVED that ANC 2A seeks the establishment of a Community Advisory Team, as outlined by the Office of the Deputy Mayor for Health and Human Services (DMHHS), that was afforded to the other wards as a result of the dissolution of the DC General homeless shelter to work with members of the ANC and the community to address mutual expectations and commitments via a clear and expedient process for communication and problem solving, and to provide greater transparency and more opportunities for community engagement in order to assist the proposed facility to be better integrated into the neighborhood.

BE IT FURTHER RESOLVED that ANC 2A requests for District of Columbia's lead and support agencies, including DGS and DHS, to demonstrate whether and how it has fulfilled the objectives outlined in the District of Columbia Interagency Council on Homelessness' Homeward DC strategic plan.

BE IT FURTHER RESOLVED that ANC 2A seeks for the security personnel for the proposed facility to receive specialized training in de-escalation and crisis intervention.

BE IT FURTHER RESOLVED that ANC 2A requests that DGS, DHS, and DMHHS representatives attend one additional public meeting to answer the community's questions and engage with the community. This is essential for community members to receive more information on the project and to prepare both the DC Government (DHS in particular) and the community to be good neighbors for this project, while not delaying the project's timeline.

Advisory Neighborhood Commission 2A

"Serving the Foggy Bottom and West End communities of Washington, D.C."

BE IT FURTHER RESOLVED that ANC 2A requests that DGS, DHS, and DMHHS representatives deliver answers, both during the public meeting and in writing in response to this resolution, to the following questions:

- What kinds of medical services will be offered to facility residents on-site, and what kinds of medical facilities will be built on-site?
- The availability of rehabilitation, resettlement, and other services aimed at helping residents transition from the facility to more permanent housing.
- What coordination is DHS willing to do with the West End Library and other public facilities to meet the demand of new neighbors?
- What type of training will on-site security personnel receive, and will it include de-escalation and crisis intervention training?
- What measures will be offered to ensure residents suffering from mental health conditions are properly cared for?
- What is the extent of renovations necessary in the building, taking into account troublesome reports of poor maintenance and extensive damage by former Aston residents as recently as last year?
- What are the estimated staffing levels at the facility if it is operating at peak capacity?

BE IT FURTHER RESOLVED that ANC 2A states that if District agencies involved in the development of the proposed facility fail to engage the ANC and the community over points outlined in this resolution, the ANC may no longer support the endeavor.

Commissioners Joel Causey (2A06@anc.dc.gov), Yannik Omictin (2A01@anc.dc.gov), and Jim Malec (2A02@anc.dc.gov) are the Commission's representatives in this matter.

ON BEHALF OF THE COMMISSION.

Sincerely,

Jim Malec

Jim Malec
Chairperson