GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 21377 of Hampton East Owner, LLC, pursuant to 11 DCMR Subtitle X § 1000 for an area variance from Subtitle C § 303.4 to allow creation of a new lot for use by an apartment house with street frontage of less than 30 feet and, pursuant to Subtitle X § 901, for a special exception under Subtitle U § 421.1 to allow a new residential development (a 28-unit apartment house in a new three-story building) in the RA-1 zone at 4750 and 4730 Benning Road, SE (Square 5344, portion of Lots 1 and 2).

HEARING DATE: February 11, 2026

DECISION DATE: February 25, 2026

PROPOSED DECISION AND ORDER

This self-certified application was filed on August 19, 2025 by Hampton East Owner, LLC (the "Applicant"), the owner of the property that is the subject of this application. Following a public hearing, the Board voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. In accordance with Subtitle Y §§ 400.4 and 402.1, the Office of Zoning provided notice of the application and of the public hearing by letters dated September 4, 2025 to the Applicant, the Office of Planning ("OP"), the District Department of Transportation ("DDOT"), the Department of Buildings, the Department of Parks and Recreation, the Office of the State Superintendent of Education, Advisory Neighborhood Commission ("ANC") 7E, the ANC where the subject property is located, and Single Member District 7E04, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 7 as well as the Chairman and the at-large members of the D.C. Council, and the owners of all property within 200

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feet of the subject property. Notice was published in the *District of Columbia Register* on October 10, 2025 (72 DCR 011085).

Party Status. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 7E were automatically parties in this proceeding**.** The Board received no requests for party status.

Applicant's Case. The Applicant presented evidence and testimony in support of the application including from Aubrey Grant, the project architect and an expert in architecture, and David Landsman, an expert in civil engineering and site design. The Applicant requested the zoning relief necessary to create a new record lot for use as a 28-unit apartment house in a new three-story detached building.

OP Report**.** By memorandum dated January 23, 2026, the Office of Planning recommended approval of the application. (Exhibit 38.)

DDOT Report. By memorandum dated January 23, 2026, the District Department of Transportation indicated no objection to approval of the application subject to a condition requiring the Applicant to implement the transportation demand management plan described in DDOT's report. (Exhibit 37.)

ANC Report. By report dated February 3, 2026, ANC 7E stated that, at a regularly scheduled meeting on February 3, 2026, with a quorum present, the ANC voted to oppose the application. (Exhibit 44.)

Persons in support. The Board received letters in support from residents living near the subject property, who stated that the Applicant's project would not negatively affect nearby properties.

Persons in opposition. The Board heard testimony in opposition to the application from persons living near the subject property, who objected to a lack of information about the Applicant's project and its potential impacts on nearby properties.

FINDINGS OF FACT

1. The property that is the subject of this application comprises a portion of two contiguous lots now configured as Lot 1 (4750 Benning Road, SE) and Lot 2 (4730 Benning Road, SE) in Square 5344.

2. Lots 1 and 2 are both irregularly shaped with an interlocking configuration. Together, the lots have a generally rectangular shape that is narrower in the southwest portion. The combined lot area is approximately148,460 square feet (3.4 acres).[1] (Exhibits 3, 38.)

3. The parcel comprising Lots 1 and 2 extends approximately 275.55 feet along St. Louis Street S.E. between D and F Streets. Lot 2 has approximately 686 feet of frontage on F Street S.E. between St. Louis Street and Benning Road, as well as approximately 75 feet of frontage on Benning Road.

[1] The individual lot areas are approximately 32,534 square feet (Lot 1) and 115,976 square feet (Lot 2). (Exhibit 36A1.)

4. The north lot lines of Lots 1 and 2 extend approximately 504 feet from St. Louis Street. The west lot line of Lot 2 extends approximately 181.5 feet south from the north lot line, defining the larger rectangular portion of the parcel. The southwestern portion of Lot 2 comprises a smaller rectangular area, extending approximately 200 feet further west at a depth of approximately 75 feet.

5. Lot 1 and Lot 2 are both improved with detached buildings configured as apartment houses, along with surface parking areas adjacent to the buildings.

6. The building on Lot 1 has four stories and fronts on St. Louis Street. (Exhibits 5, 36A3, 38.)

7. The building on Lot 1 is approximately 45 feet wide and extends approximately 197 feet from the St. Louis street frontage. A walkway extends along the north side of the building while the south side is adjacent to a vehicle parking area. (Exhibit 5.)

8. The building on Lot 2 has four stories and fronts on F Street. Vehicular access to the parking area adjacent to the building is available from St. Louis Street. (Exhibits 36A3, 38.)

9. The building on Lot 2 is located to the south of the Lot 1 building, opposite the vehicle parking area serving both buildings. The building extends along F Street from St. Louis Street to Benning Road at a depth of approximately 45 feet. (Exhibit 5.)

10. The northwestern portion of Lot 2 includes some surface parking that serves the two existing buildings, along with an unimproved area. (Exhibits 3, 11.)

11. The north lot lines of both Lot 1 and Lot 2 are lined with existing vegetation, including trees. (Exhibits 3, 11.)

12. The Applicant proposed to subdivide the parcel now configured as Lots 1 and 2 to create three new record lots, known for purposes of this application as Lots A, B, and C.

13. Lot A will be located primarily in the northwest portion of the parcel. The irregularly shaped lot will have a lot area of approximately 25,738.6 square feet. (Exhibit 36A1.)

14. The majority of Lot A will be generally rectangular, approximately 186 feet by 123 feet. A "pipestem" portion, five feet wide, will extend approximately 318 feet along the northern portion of the parcel to St. Louis Street. (Exhibits 5, 36A1, 36A3.)

15. The north lot line of Lot A will extend approximately 503.89 feet, including the pipestem, coinciding with the north lot lines of existing Lots 1 and 2. The larger rectangular portion of Lot A will be defined by the west lot line, extending approximately 123.3 feet from the north lot line; a portion of the south lot line extending approximately 194 feet to the east from the west lot line; and an irregular east lot line extending roughly parallel to the west lot line between the pipestem and the south lot line.

16. The west lot line will abut two lots fronting on Benning Road to the west of the Applicant's property. The majority of the south line will abut Lot B; the eastern portion of the pipestem will abut Lot C. The east lot line will form a shared boundary with Lot B. (Exhibits 5, 36A1, 36A3.)

17. New Lot B will be located in the southern portion of the parcel formerly designated Lots 1 and 2. Lot B will have a lot area of approximately 95,692.6 square feet and will contain the existing apartment house now situated on Lot 2. Lot B will have a lot occupancy of 31.1 percent and a floor area ratio ("FAR") of 1.08. (Exhibit 36A1.)

18. New Lot C will be located in the eastern portion of the parcel formerly designated Lots 1 and 2. Lot C will have a lot area of approximately 27,033.3 square feet and will contain the existing apartment house now situated on Lot 1. Lot C will have a lot occupancy of 31.2 percent and a floor area ratio of 1.08. (Exhibit 36A1.)

19. The Applicant proposed to construct an apartment house on Lot A in a new three-story detached building, with a cellar and penthouse.

20. The new building will have a gross floor area of 26,670 square feet and will be configured as 28 apartments, comprising a mix of two-, three-, and four-bedroom units on the first, second, third, and penthouse levels.[2] (Exhibits 3, 36A1.)

[2] According to the Applicant, the Inclusionary Zoning (IZ) requirement for the new building will be met by providing four IZ units located on the first, second, and third floors. (Exhibit 36A1.) See Subtitle C, Chapter 10 (Inclusionary Zoning).

21. The new building will be approximately 22 feet (as measured from the west elevation) and three stories in height. The building will extend approximately 168 feet long (east-west) and 55 feet wide (north-south), with a building area of approximately 9,271.94 square feet. The resulting lot occupancy will be 36 percent on Lot A. (Exhibit 36A1.)

22. Lot A will have a rear yard of approximately 20.4 feet to the west of the new building. A side yard of approximately 38.14 feet will be provided on the north side, and a side yard of approximately 30.52 feet will be provided on the south side. (Exhibit 36A1.)

23. The project will result in a floor area ratio of 1.04 for Lot A. (Exhibit 36A1.)

24. The building will have windows on each façade on the first through third floors. The penthouse level will include windows facing north, south, and east. (Exhibits 36A1, 36A2.)

25. Each apartment on the lower floors will have a balcony on either the north or south side of the building. The penthouse level will be set back from the exterior walls of the lower floors. Units at the penthouse level will have decks on the north or south side of the building roof. (Exhibits 36A1, 36A2.)

26. The roof of the penthouse will contain an equipment yard for heating, ventilation, and air conditioning equipment that will be set back approximately 10 feet from the north and south façades of the building. The remainder of the roof will contain solar panels and a green roof on the western portion. (Exhibits 3, 38.)

27. The cellar level will provide storage space as well as rooms used to contain utility equipment and bicycle parking.

28. The panhandle portion of Lot A will not be used to provide access to the apartment house. Instead, that area will remain undeveloped and will be maintained as a wooded area. (Exhibit 38.)

29. The Applicant will implement a landscaping plan that will maintain existing vegetation, including trees, along the north side of the subject property. An area south of the apartment house, adjacent to the vehicle parking area, will be landscaped with perennial plants including ground covers. (Exhibit 36A3.)

30. Vehicular access to Lots A, B, and C will be provided via an existing curb cut on St. Louis Street located between the two existing apartment houses on the Applicant's property. (Transcript of February 11, 2026 at 90.) Parking for the two existing apartment houses will be provided in the existing parking areas. (Exhibit 5, 11.)

31. Lot A will provide 18 vehicular parking spaces in the south side yard adjacent to the parking areas available to the two existing apartment houses. The parking spaces will be accessible from the existing curb cut on St. Louis Street. (Exhibits 3, 36A, 36C; Transcript of February 11, 2026 at 90.)

32. The new apartment house will provide at least 11 long-term bicycle parking spaces in the cellar level of the building. The Applicant will also provide two short-term bicycle parking spaces. (Exhibit 36C.)

33. The subject property is located within 0.6 miles of the Benning Road Metrorail station. (Exhibits 3.)

34. The subject property is located approximately 0.4 miles from the Benning Terrace Recreation Center and approximately 0.6 miles from the Woody Ward Community Center. Both facilities have variety of recreational facilities for all ages. (Exhibit 38.)

35. No new rights-of-way or easements were proposed in connection with the new apartment house. (Exhibit 38.)

36. The property immediately north of the Applicant's property (Lot 802 in Square 5344; 4650 Benning Road, SE) is the site of the former Fletcher-Johnson public school campus and athletic field, which is now vacant. In 2025 the Zoning Commission rezoned the 15.3-acre lot from RA-1 to a Mixed Use zone (MU-8B) after the District of Columbia disposed of the property and awarded redevelopment rights. The MU-8B zone is intended for medium-density mixed-use development with a focus on employment and residential use (Subtitle G § 101.13) and permits, as a matter of right, a maximum density of at least 5.0 FAR, of which 4.0 can be devoted to non-residential uses (Subtitle G § 201.1), and a maximum building height of 70 feet (Subtitle G § 203.2). The map amendment was intended to enable

"new mixed-use development with expanded opportunities for retail and residential uses" at the site, presenting "opportunities for compatible infill development that could enhance the surrounding community and may include residential and commercial uses that meet the day-to-day needs of residents and workers in the adjacent neighborhoods…." See Z.C. Order No. 24-06, Z.C. Case No. 24-06 (effective July 25, 2025). (Exhibits 38, 42.)

37. The abutting properties to the west of Lot A (Lot 3, 4724 Benning Road SE and Lot 4, 4732 Benning Road SE) contain apartment houses, each in a four-story detached building. (Exhibit 38.) The Applicant estimated that the distance between the new apartment house on Lot A and the abutting apartments to the west at approximately 90 feet. (Transcript at February 11, 2026 at 87.)

38. Properties to the south and east of the Applicant's property are developed with row dwellings. A public charter school is located to the west across Benning Road. The surrounding neighborhood is predominantly residential in nature with a mix of attached and detached principal dwellings as well as low-rise apartment houses and some institutional uses. (Exhibit 38.)

39. The subject property is located in a Residential Apartment (RA) zone, RA-1. The Residential Apartment zones are residential zones, designed to provide for residential areas suitable for multiple dwelling unit development and supporting uses. (Subtitle F § 101.1.)

40. The provisions of the RA zones are intended to (a) permit flexibility by allowing all types of residential development; (b) promote stable residential areas while permitting a variety

of types of urban residential neighborhoods; (c) promote a walkable living environment; (d) allow limited non-residential uses that are compatible with adjoining residential uses; (e) encourage compatibility between the location of new buildings or construction and the existing neighborhood; and (f) ensure that buildings and developments around fixed rail stations, transit hubs, and streetcar lines are oriented to support active use of public transportation and safety of public spaces. (Subtitle F § 101.2.)

41. The purpose of the RA-1 zone is to permit flexibility of design by permitting all types of urban residential development if they conform to the height, density, and area requirements established for these districts; and permit the construction of those institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive residential zones. (Subtitle F § 101.3.)

42. The RA-1 zone provides for areas predominantly developed with low- to moderate-density development, including detached houses, row houses, and low-rise apartments. (Subtitle F § 101.4.)

CONCLUSIONS OF LAW AND OPINION

The Applicant requested zoning relief including an area variance from Subtitle C § 303.4 to allow the creation of a new lot for use by an apartment house with street frontage of less than 30 feet in the RA-1 zone at 4750 and 4730 Benning Road, SE (Square 5344, portion of Lots 1 and 2). In the RA-1 zone, each new primary building must be erected on a separate lot of record (with certain exceptions not relevant to this application). (Subtitle C § 302.2.) All new record lots must have at

least one street lot line on a public street or a public access easement approved by DDOT. (Subtitle C § 303.1.) Pursuant to Subtitle C § 303.4, each new lot being created to be used and occupied by an apartment house must have a street frontage measured along the street line a distance of not less than 30 feet. The Applicant proposed to create a new lot for use by an apartment house that will provide five feet of street frontage measured along St. Louis Street.

The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3), to grant a variance "[w]here, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property," the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. (See also Subtitle X § 1000.1.)

The Board has the flexibility to consider a number of factors when deciding whether to approve an application for a variance, including the weight of the burden of strict compliance, the severity of the variance requested, and the effect the proposed variance would have on the overall zone plan. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990). Based on the findings of fact and having given great weight to the recommendation of the Office of Planning and to the issues and concerns stated by ANC 7E, the Board concluded that the Applicant has satisfied the requirements for approval of the requested area variance.

For purposes of an area variance, the "extraordinary or exceptional conditions affecting a property can arise from a confluence of factors; however, the critical requirement is that the extraordinary or exceptional condition must affect a single property." Metropole Condo. Ass'n v. District of Columbia Bd. of Zoning Adjustment, 141 A.3d 1079, 1082-1083 (D.C. 2016). Generally, an owner's desire to utilize property for a certain use is not by itself sufficient to create an extraordinary or exceptional condition under the zoning regulations. Palmer v. District of Columbia Bd. of Zoning Adjustment, 287 A.2d 535, 540 (D.C. 1972). The Board concluded that the subject property faces an extraordinary or exceptional situation or condition as a result of a confluence of factors affecting the subject property, including the physical constraints of the site, the lack of available street frontage, and the location and current undeveloped state of a large portion of the Applicant's property.

The Board determined that the subject property, new Lot A, was affected by an extraordinary or exceptional condition due to its location within the Applicant's property and the development constraints created by existing improvements. The Applicant owns a property, currently configured as two record lots and containing two apartment houses, that is sufficiently large for a subdivision to create three record lots, each containing an apartment house, consistent with most zoning requirements. However, the irregular shapes of the existing lots and the locations of the existing improvements limit the location and configuration of any potential new third lot.

Because of the configuration of the Applicant's property and the locations of the existing improvements, a new lot can be created only in the interior of the square. The Applicant was

unable to enlarge or reconfigure the parcel, which is bounded on the east and south by public streets, by a public facility to the north, and by separately owned lots to the west. The Applicant was unable to create a subdivision that would provide the requisite street frontage for Lot A along Benning Road to the west due to the configuration of the Applicant's property, with a relatively narrow projection in the western portion, the location of the existing apartment house now on Lot 2, and the separately owned properties containing apartment houses to the west of the Applicant's property. The existing improvements also precluded street frontage for Lot A along F Street to the south.

The only feasible street frontage accessible to new Lot A was along St. Louis Street to the east. The Applicant proposed street frontage of five feet, rather than the minimum of 30 feet required under Subtitle C § 303.4, due to the distance of the majority of Lot A from the street as well as constraints created by the existing improvements on the Applicant's property. A narrower street frontage was required, thereby reducing the area contained within the pipestem on Lot A, so that the planned subdivision would provide sufficient lot areas for new Lots B and C to comply with zoning requirements, including with respect to lot occupancy and floor area ratio, in light of the existing improvements on those lots. (Exhibit 3.) The Board credited the testimony of the Office of Planning in support of the Applicant's proposal, which cited the lack of need for a 30-foot street frontage to provide access to the new building, the benefit of avoiding the creation of an additional curb cut on St. Louis Street, and the ability to undertake a subdivision of the Applicant's property that would satisfy zoning requirements on new Lots B and C. (Exhibit 38.)

The Board concluded that the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the Applicant as the owner of the subject property. A showing of practical difficulty requires "'[t]he applicant [to] demonstrate that ... compliance with the area restriction would be unnecessarily burdensome….'" Metropole Condominium Ass'n v. District of Columbia Bd. of Zoning Adjustment, 141 A.3d 1079, 1084 (D.C. 2016), quoting Fleishman v. District of Columbia Bd. of Zoning Adjustment, 27 A.3d 554, 561-62 (D.C. 2011). In assessing a claim of practical difficulty, proper factors for the Board's consideration include the added expense and inconvenience to the applicant inherent in alternatives that would not require the requested variance relief as well as "the weight of the burden of strict compliance" and the effect the requested variance would have on the overall zone plan. Barbour v. District of Columbia Bd. of Zoning Adjustment, 358 A.2d 326, 327 (D.C. 1976); Gilmartin 579 A.2d at 1171.

The Board credited the testimony of the Applicant and the Office of Planning that the parcel now configured as two record lots and containing two apartment houses was sufficiently large to serve as a suitable location for a third apartment house. The Zoning Regulations require the creation of a new record lot for the construction of a new principal building, such as the apartment house planned by the Applicant. A record lot must have street frontage, and when a new lot is created for use by an apartment house, the Zoning Regulations require that the lot must have at least 30 feet of street frontage. The application demonstrated that the proposed apartment house would meet zoning requirements other than the 30-foot street frontage requirement, and that the Applicant's plan to provide five feet of street frontage was derived from an exceptional situation exhibited at the proposed new lot.

The Board credited the Applicant's testimony that providing more than five feet of street frontage would not be viable "without demolition of existing improvements, acquisition of adjoining property not owned by the Applicant, or other measures that are infeasible due to practical, financial, or planning considerations." (Exhibit 3.) The Board agreed with the Office of Planning that the planned subdivision, undertaken with the required 30-foot frontage on St. Louis Street SE, would prevent compliance with lot occupancy and FAR requirements at the other two new lots. (Transcript of February 11, 2026, at 100.) For the foregoing reasons, the Board agreed with the Applicant that strict compliance with the Zoning Regulations would prevent the development of a new apartment house at the subject property, which is sufficiently large and well-suited for the planned use in light of its location in a Residential Apartment zone and the prevalence of similar apartment houses in the vicinity.

Approval of the requested variance will not result in substantial detriment to the public good. The planned apartment house will be accessible from existing public sidewalks and through the existing curb cut on St. Louis Street SE that will continue in use by the two existing apartment houses. Accordingly, a 30-foot street frontage was not required for access to the new apartment house. The Board credited the testimony of the Office of Planning that use of the existing curb cut will avoid the need for an additional curb cut to serve the Applicant's new building; instead, the five-foot-wide street frontage will remain undeveloped and wooded.

The Board concluded that approval of the requested variance will not substantially impair the zone plan as embodied in the Zoning Regulations and Map. Approval of the application will be consistent with the intent of the Residential Apartment zones to permit flexibility by allowing all

types of residential development, promote stable residential areas while permitting a variety of types of urban residential neighborhoods, promote a walkable living environment, and encourage compatibility between the location of new buildings and the existing neighborhood. Approval of the application is also consistent with the intent of the RA-1 zone to provide for areas predominantly developed with low- to moderate-density development, including low-rise apartment buildings. The Board concluded that approval of the requested variance was consistent with the purpose of the RA-1 zone to allow development of a residential development, a new apartment house, that will conform to the applicable height, density, and area requirements.

New residential development. Pursuant to Subtitle U § 421, the proposed development of a new apartment house – as a new residential development in the RA-1 zone not comprising principal dwellings in detached or semi-detached buildings – required approval by the Board as a special exception in accordance with the specified standards. To illustrate aspects of the planned development, the Applicant submitted a site plan and a set of typical floor plans and elevations, grading plans (existing and final), as well as a landscaping plan. As required, the application was referred to various agencies for comment and recommendation, and the Applicant submitted the documents necessary to support the request for zoning relief.

The Board concluded that the application satisfied the requirements for approval of the requested special exception under Subtitle U § 421. The Applicant proposed to create a new record lot for use by a new 28-unit apartment house. The application demonstrated the new building's compliance with applicable development standards in the RA-1 zone with respect to building height and number stories, side and rear yard, and lot occupancy.

The Board agreed with the Applicant and the Office of Planning that the existing and planned area schools are adequate to accommodate the number of students that can be expected to reside in the project, a 28-unit apartment house.[3] The Board also concluded that the public streets, recreation, and other services will be adequate to accommodate the residents that can be expected to reside in the new building. The apartment house will be accessible by existing streets and sidewalks, will be located near public transit options, and will provide vehicular and bicycle parking on-site consistent with zoning requirements. The subject property is within walking distance of public recreation facilities, and the Applicant proposed to create a new play area for small children that will be accessible to residents of the new apartment house.[4]

With respect to Subtitle U § 421.3, the Board credited the testimony of the Office of Planning in support of the Applicant's proposal regarding the site plan, the arrangement of buildings, and the provisions of light, air, parking, recreation, landscaping, and grading as they relate to the surrounding neighborhood. The new apartment house will be situated in the vicinity of several

[3] According to the Applicant, school-aged children living in the two existing apartment houses are currently assigned by D.C. Public Schools to Nalle Elementary School, Kelly Miller Middle School, and H.D. Woodson High School, which have estimated utilization rates of 58, 35, and 74 percent, respectively, for the 2027-2028 school year. (Exhibit 3.) The Office of Planning agreed that "it is not anticipated that the addition of students generated by the [Applicant's] development would result in significant overcrowding at these schools," citing projected 2026-2027 utilization data as 50, 82, and 65 percent, respectively. (Exhibit 38.)

[4] At the recommendation of the Office of Planning, the Applicant planned to devote an area of 800 square feet in the northeastern portion of new Lot C to provide a "tot-lot (play area)" that will be "open to all residents of the complex." (Transcript of February 11, 2026 at 84.) The location was selected in recognition of the "steep topography [of the subject property, Lot A], the probability of having to remove trees, and the probable location at the back of the building. The proposed location would be in an area which would require less grading or removal of trees and the play areas would also be accessible to residents of the new building as well as the existing buildings." (Exhibit 38; see also Exhibits 36, 36B.)

existing apartment houses and other nearby residential buildings, and its massing will be similar to adjacent apartment houses.

The Board concluded that the light, air, and privacy impacts of the new apartment house on existing apartment buildings nearby will be minimal given the distances between the buildings. The Applicant's new building will meet zoning requirements with respect to building height and yards, thereby avoiding undue impacts on the light and air available to other properties. The windows and balconies or decks provided in new apartment house will not adversely affect privacy to nearby dwellings, given the significant distances between buildings and landscaping that will prevent direct views.

The application provided a grading plan that reflected limited regrading of the subject property, which was described as part of an area of "gently rolling terrain" by the Office of Planning. (Exhibit 38.) With respect to landscaping, the Applicant submitted a plan calling for the retention of many existing trees and other plantings in addition to the provision of a green roof. (Exhibit 36A.)

The Board noted DDOT's lack of objection to approval of the application subject to a condition requiring the Applicant to implement a transportation demand management ("TDM") plan, which DDOT proposed because the Applicant's project would provide vehicle parking in excess of the minimum required by the Zoning Regulations. The Board did not agree with DDOT that implementation of the proposed TDM plan should be required as a condition of approval of the application, which did not seek relief from zoning requirements for parking or loading, in the

absence of a demonstration of a need to mitigate any potential adverse impacts related to the zoning relief requested and an indication of the need and efficacy of the specific measures proposed by DDOT.[5]

General requirements. The Board concluded that approval of the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, as is required under Subtitle X § 901.2. The Applicant's proposal to construct a new three-story detached building that will be used as 28-unit apartment house at the subject property is consistent with the provisions of the RA-1 zones, which are intended to provide for areas predominantly developed with low- to moderate-density development, including low-rise apartment buildings. Approval of the application is also consistent with the intent of the RA zones to permit flexibility by allowing a type of residential development, promote a stable residential area while permitting a variety of types of urban residential neighborhoods, promote a walkable living environment, and encourage compatibility between the location of new buildings or construction and the existing neighborhood. The Applicant's project will provide a residential building that will be consistent with applicable development standards and, as discussed above, will meet the requirements for a new residential development stated in Subtitle U § 421.

[5] The Applicant will implement TDM measures described by the Applicant as better "tailored to the application" than DDOT's recommendation. (Transcript of February 11, 2026 at 92.) These measures will include unbundling the cost of vehicle parking from the lease or purchase agreement for each dwelling unit, charging a minimum rate based on the average market rate within a quarter mile, and identifying a transportation coordinator whose duties will including acting as the point of contact with DDOT, goDCgo, and zoning enforcement officials; distributing information regarding various transportation alternatives and options to residents of the apartment house, including promoting transportation events (e.g. Bike to Work Day, National Walking Day, Car Free Day) on available websites, internal newsletters, and communications; receiving TDM training from goDCgo to learn about transportation conditions and available options for implementing TDM measures; and providing welcome packets to all new residents that will contain, at a minimum, a Metrorail pocket guide, information regarding local bus lines, carpool and vanpool information, and the most recent DC Bike Map. (Exhibit 42.)

The Board concluded that approval of the requested special exception will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, in accordance with Subtitle X § 901.2. The Applicant's proposal will meet applicable development standards with respect to building height, both in terms of feet and number of stories, on a lot that will meet zoning requirements for side yards and rear yard, lot occupancy, and FAR. For the reasons discussed above, the proposed building will not create adverse impacts with respect to the light, air, or privacy available to any nearby property.

The Board determined that the Applicant's proposal will not adversely affect the use of neighboring property with respect to other potential adverse impacts such as noise or parking. The project will provide a residential use at the subject property consistent with the development standards applicable in the RA-1 zone. Potential noise impacts will be mitigated by the location of utility equipment on the roof of the building, which will be situated at a significant distance from nearby dwellings. The Applicant's project will meet or exceed the zoning requirements for vehicle and bicycle parking.

Great weight. The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04.) For the reasons discussed above, the Board agreed with OP's recommendation that the application should be approved.

The Board is also required to give "great weight" to the issues and concerns raised by an affected ANC. (D.C. Official Code § 1-309.10(d)(3)(A).) In this case, ANC 7E voted to oppose the application, citing "significant concerns about the applicant's process, lack of meaningful

community engagement, and unresolved cumulative impacts on the surrounding neighborhood." The ANC also expressed concern about "a well-documented history of poor property maintenance" at the existing apartment houses at the Applicant's property. (Exhibit 44.) The Board recognized the unique vantage point of ANC 7E but did not conclude that its issues and concerns provided a persuasive reason to deny the application.

Some of the ANC's objections, including an alleged lack of engagement and history of poor property management,[6] were outside the scope of this proceeding and did not state any issue or concern germane to the Board's deliberations on whether the application for an area variance and a special exception to allow a new apartment house on new Lot A met the requirements for approval as stated in the Zoning Regulations. The Board is required to accord "great weight" only to the issues and concerns of the affected ANC that are legally relevant to the application at issue. *See Concerned Citizens of Brentwood v. District of Columbia Bd. of Zoning Adjustment*, 634 A.2d 1234, 1241 (D.C. 1993), *citing Bakers Local 118 v. District of Columbia Bd. of Zoning Adjustment*, 437 A.2d 176, 180 (D.C. 1981). For the reasons discussed above, the Board did not agree with the unsubstantiated assertion by ANC 7E that approval of the application would adversely affect nearby properties.

Exceptions to the Proposed Order. Because a majority of the Board members participating in the issuance of this order did not personally hear the evidence in this application, a proposed order

[6] The Applicant, which acquired the property now configured as Lots 1 and 2 on January 31, 2024, disputed the ANC's allegations. See Exhibit 43.

was provided to the parties to afford them an opportunity to present written exceptions, in accordance with D.C. Official Code § 2-509(d).

Based on the findings of fact and conclusions of law, the Board determined that the Applicant has satisfied the burden of proof with respect to the request for an area variance from Subtitle C § 303.4 to allow the creation of a new lot for use by an apartment house with street frontage of less than 30 feet and for a special exception under Subtitle U § 421.1 to allow a new residential development (a 28-unit apartment house in a new three-story building) in the RA-1 zone at 4750 and 4730 Benning Road, SE (Square 5344, portion of Lots 1 and 2). Accordingly, it is **ORDERED** that the application is **GRANTED** in conformance with the plans in the record, including Exhibits 36A1, 36A2, 36A3, consistent with Subtitle Y §§ 604.9 and 604.10.

VOTE: **3-0-2** (Carl H. Blake, Brittney Drakeford, and Tammy Stidham to APPROVE, two Board seats vacant))

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE

DEPARTMENT OF BUILDINGS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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