

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



Application No. 20507 of 93 Hawaii Ventures, LLC, 98 Webster Ventures, LLC, and Solid Brick Ventures, LLC, pursuant to 11 DCMR Subtitle X, Chapter 9 for special exceptions under Subtitle U § 421 to allow a new residential development and under Subtitle F § 5201 from the side yard requirements of Subtitle F § 306.2 and the open court width requirements of Subtitle F § 202.1 to allow additions to and increases in the number of residential units in 11 existing detached apartment houses in the RA-1 Zone at 65-97 Hawaii Avenue, N.E., 66 Webster Street, N.E., and 98 Webster Street, N.E. (Square 3674, Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 19).

HEARING DATES: October 6 and November 17, 2021
DECISION DATE: November 17, 2021

DECISION AND ORDER

This self-certified application was filed on April 12, 2021 by 93 Hawaii Ventures, LLC, and 98 Webster Ventures, LLC, and Solid Brick Ventures, LLC (collectively, the “Applicant”), the owners of the property that is the subject of the application. Following a public hearing, the Board voted to approve the application subject to conditions requiring implementation of a transportation demand management (“TDM”) plan.

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 memoranda dated May 17, 2021 to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), Office of State Superintendent of Education, the Department of Parks and Recreation, the National Park Service, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 5 as well as the Chairman and three at-large members of the D.C. Council, Advisory Neighborhood Commission (“ANC”) 5A, the ANC in which the property is located, Single Member District ANC 5A06, the owners of all property within 200 feet of the subject property, and lessees located on the subject property. Notice was published in the *D.C. Register* on May 21, 2021 (68 DCR 05393).

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Parties. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 5A were automatically parties in this proceeding. The Board denied an untimely request for party status in opposition to the application submitted on November 11, 2021 by the Hawaii Webster Tenants Association. (Exhibits 77-77B1.)

Applicant's Case. The Applicant provided evidence and testimony in support of the application from Mark Mlakar on behalf of the owners of the subject property and from R. Michael Cross and Elizabeth Stuart, the architects for the Applicant's project. The Applicant proposed to enlarge 11 existing apartment houses at the subject property and to create new apartments in each building, thereby increasing the number of dwelling units by 46, to a total of 134.

OP Report. By memorandum dated September 24, 2021, the Office of Planning recommended approval of the zoning relief requested by the Applicant. (Exhibit 54.)

DDOT Report. By memorandum dated September 23, 2021, the District Department of Transportation indicated no objection to approval of the application subject to a condition requiring the Applicant to implement a TDM plan. (Exhibit 53.)

ANC Report. By letter dated October 5, 2021, ANC 5A stated that, at a duly noticed public meeting on September 22, 2021 with a quorum present, the ANC voted in support of the relief requested. (Exhibit 70.)

Persons in opposition. The Board received letters and heard testimony in opposition to the application primarily from tenants of the apartment houses at the subject property. The persons in opposition generally stated concerns regarding poor conditions in the existing buildings, a lack of maintenance and repairs, and potential rent increases and tenant relocation or displacement, and also objected to a lack of communication and conflicting messages from the Applicant.

FINDINGS OF FACT

1. The property that is the subject of this application comprises 11 record lots on the south side of Hawaii Avenue, N.E. or the north side of Webster Street, N.E. to the west of First Street, N.E. The lots have addresses of 65, 69, 73, 77, 81, 85, 89, 93, and 97 Hawaii Avenue, N.E., 66 Webster Street, N.E., and 98 Webster Street, N.E. (Square 3674, Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 19).
2. Each of the 11 lots is generally rectangular.
 - (a) Lots 2, 3, 4, and 5 (65, 69, 73, and 77 Hawaii Avenue, respectively) are 52.33 feet wide and 90 feet deep, with lot areas of 4,710 square feet.
 - (b) Lot 6 (81 Hawaii Avenue) is 43.85 feet wide and 90 feet deep, with a lot area of 4,749 square feet.
 - (c) Lot 7 (85 Hawaii Avenue) is 51.93 feet wide and approximately 95 feet deep, with a lot area of 4,958 square feet.

- (d) Lot 8 (89 Hawaii Avenue) is 51.93 feet wide and approximately 100 feet deep, with a lot area of 5,180 square feet.
 - (e) Lot 9 (93 Hawaii Avenue) is 41.51 feet wide and 98.78 feet deep, with a lot area of 5,598 square feet.
 - (f) Lot 10 (97 Hawaii Avenue) is 41.5 feet wide and approximately 128 feet deep, with a lot area of 5,331 square feet.
 - (g) Lot 11 (98 Webster Street) is 66 feet wide and approximately 100 feet deep along its west side lot line, with a lot area of 5,118 square feet.
 - (h) Lot 19 (66 Webster Street) is 52.33 feet wide and 100 feet deep, with a lot area of 5,233 square feet.
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- 3. The nine lots fronting on Hawaii Avenue are contiguous. Lot 19 (66 Webster Street) is located to the southwest of Lots 2 and 3 (65 and 69 Hawaii Avenue). Lot 11 (98 Webster Street) is located to the southeast of Lots 9 and 10 (93 and 97 Hawaii Avenue). The seven lots fronting on Webster Street between two of the Applicant's lots (66 and 98 Webster Street) are not part of this application.
 - 4. All of the Applicant's properties are interior lots except for two corner lots – Lot 10 (97 Hawaii) and Lot 11 (98 Webster) – which have more than 100 feet of frontage on First Street, N.E.
 - 5. A public alley, 16 feet wide, extends generally east-west through Square 3674 and provides access to each of the Applicant's lots at the rear.
 - 6. Each of the Applicant's properties is improved with an apartment house built in 1941. Each of the buildings is two stories and 25 feet in height, and each currently contains eight apartments, for a total of 88 dwelling units at the subject property. Each of the existing apartments is configured as a one-bedroom unit (approximately 350 square feet).
 - 7. The existing lot occupancy at each of the Applicant's lots ranges from 36 to 40 percent.
 - 8. Each building on an interior lot at the subject property provides two side yards of at least 10 feet.
 - 9. The existing buildings on the two corner lots, Lot 10 (97 Hawaii) and Lot 11 (98 Webster), both have side yards of 10 feet on their west sides and no side yard on the east side, along First Street. The minimum requirement for the existing buildings is one side yard of at least eight feet. (Subtitle F § 306.2.)
 - 10. The existing buildings on the two corner lots both have open courts on the east side that are nonconforming with respect to court width. The existing open courts have widths that range from 0 feet to 4.5 feet on Lot 10 and from 0 feet to 17.75 feet on Lot 11, where the minimum width requirement is four inches per foot of court height but not less than 10 feet. (Subtitle F § 202.1.)

11. Each of the Applicant's apartment houses has a rear yard at least 20 feet deep. On most of the 11 lots the existing rear yard is approximately 20 to 25 feet deep, although the depths vary and range from 20 feet, three inches to 38 feet, eight inches.
12. The Applicant proposed to enlarge each of the existing buildings with a new third-floor addition. The Applicant also proposed to increase the number of dwelling units in each building so that the total number of dwelling units at the subject property will increase by 46, from 88 to 134.
13. Six of the enlarged buildings will provide nine units each while five buildings will contain 16 dwelling units each. The nine-unit buildings will be on Lots 2 through 7 (65, 69, 73, 77, 81, and 85 Hawaii Avenue, NE, the buildings on the western portion of the subject property fronting on Hawaii Avenue). The 16-unit buildings will be on Lots 11 and 19 (98 and 66 Webster Street) and Lots 8 through 10 (89, 93, and 97 Hawaii Avenue, the three buildings closest to First Street).
14. The nine-unit buildings will be configured as three dwelling units in the cellar level and two units on each of the three upper floors. Two of the units in the cellar will each have one bedroom and one bathroom; the seven other units will each contain two bedrooms and two bathrooms. The 16-unit buildings will be configured as one-bedroom, one-bathroom units, with four units on each floor (cellar through third floor).
15. The Applicant's project will provide 16 Inclusionary Zoning ("IZ") dwelling units, one in each of the nine-unit buildings and two in each of the 16-unit buildings, consistent with applicable locational, size, and square footage requirements.¹ The Applicant testified that 10 of the IZ units will be one-bedroom units and six will be two-bedroom units.
16. The new third-floor additions will generally occupy the existing footprint of each building, with some relatively small areas of new construction or demolition of portions of the existing buildings. The buildings will be enlarged as follows:
 - (a) Lot 2 (65 Hawaii Avenue): The building will be enlarged with a new third floor and a three-story addition on the east side of the building; a portion at the rear will be demolished. Building height will increase to 35 feet, four inches and the floor area ratio ("FAR") will increase from 0.81 to 1.08. Lot occupancy will decrease from 40 to 35 percent as the rear yard will increase from 22 feet, three inches to 32 feet, seven inches.
 - (b) Lot 3 (69 Hawaii Avenue): The building will be enlarged with a new third floor and a three-story addition on the east side of the building; a portion at the rear will be demolished. Building height will increase to 36 feet and the FAR will increase from

¹ See Subtitle C, Chapter 10 "Inclusionary Zoning." Under Subtitle F § 302.2, a floor area ratio of 1.08 is permitted, including the IZ bonus density of 20 percent authorized by Subtitle C § 1002.3. According to the Office of Planning, the 16 IZ units will be offered for sale to households earning up to 80 percent of the Median Family Income.

- 0.81 to 1.08. Lot occupancy will decrease from 40 to 35 percent as the rear yard will increase from 22 feet, three inches to 32 feet, seven inches.
- (c) Lot 4 (73 Hawaii Avenue): The building will be enlarged with a new third floor and a three-story addition on the east side of the building; a portion at the rear will be demolished. Building height will increase to 34 feet, 10 inches and the FAR will increase from 0.81 to 1.08. Lot occupancy will decrease from 40 to 35 percent as the rear yard will increase from 22 feet, three inches to 32 feet, seven inches while the eastern side yard will be reduced from 10 to eight feet.
 - (d) Lot 5 (77 Hawaii Avenue): The building will be enlarged with a new third floor and a three-story addition on the east side of the building; a portion at the rear will be demolished. Building height will increase to 35 feet and the FAR will increase from 0.81 to 1.08. Lot occupancy will decrease from 40 to 35 percent as the rear yard will increase from 22 feet, three inches to 32 feet, seven inches while the eastern side yard will be reduced from 10 to eight feet.
 - (e) Lot 6 (81 Hawaii Avenue): The building will be enlarged with a new third floor and a three-story addition on the east side of the building; a portion at the rear will be demolished. Building height will increase to 35 feet, eight inches and the FAR will increase from 0.81 to 1.08. Lot occupancy will decrease from 40 to 35 percent as the rear yard will increase from 22 feet, eight inches to 32 feet, four inches while the eastern side yard will be reduced from 10 to eight feet.
 - (f) Lot 7 (85 Hawaii Avenue): The building will be enlarged with a new third floor and a three-story addition on the east side of the building; a portion at the rear will be demolished. Building height will increase to 36 feet, 11 inches and the FAR will increase from 0.77 to 1.08. Lot occupancy will decrease from 39 to 36 percent as the rear yard will increase from 22 feet to 29 feet, 11 inches while the eastern side yard will be reduced from 10 to eight feet.
 - (g) Lot 8 (89 Hawaii Avenue): The building will be enlarged with a new third floor and a cellar-level addition. Building height will increase to 35 feet, six inches and the FAR will increase from 0.74 to 1.08.
 - (h) Lot 9 (93 Hawaii Avenue): The building will be enlarged with a new third floor and a cellar-level addition, with some demolition at the rear of the building. Building height will increase to 37 feet, six inches and the FAR will increase from 0.81 to 1.04. Lot occupancy will decrease from 36 to 35 percent as the rear yard will increase from 25 feet, six inches to 29 feet, nine inches.
 - (i) Lot 10 (97 Hawaii Avenue): The building will be enlarged with a new third floor and a cellar-level addition. Building height will increase to 38 feet, 7 inches and the FAR

- will increase from 0.72 to 1.08. The rear yard will increase from 38 feet, eight inches to 39 feet as a result of some demolition at the rear of the building.
- (j) Lot 11 (98 Webster Street): The building will be enlarged with a new third floor, with some demolition at the rear of the building. Building height will increase to 37 feet, six inches and the FAR will increase from 0.75 to 1.08. Lot occupancy will decrease from 37 to 36 percent as the rear yard will increase from 20 feet, three inches to 23 feet.
- (k) Lot 19 (66 Webster Street): The building will be enlarged with a new third floor that will increase building height to 35 feet, four inches and increase the FAR from 0.73 to 1.08.
17. The Applicant's project will add outdoor space to the apartment houses at the subject property. Each building will have a roof deck, and balconies will be provided for some units.
18. Long-term bicycle parking will be provided in the cellar level of each building. The nine-unit buildings will provide four long-term bicycle spaces and the 16-unit buildings will provide six long-term bicycle spaces. The Applicant will also provide at least two short-term bicycle parking spaces for each building.
19. None of the 11 lots comprising the subject property currently provides any vehicle parking spaces. The Applicant's project will provide a total of 54 vehicle parking spaces accessible from the rear alley. Five spaces (three full-size and two compact) will be located at the rear of Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, and 19; Lot 11 will contain four spaces (two compact and two full spaces).²
20. A secure, screened trash storage area will be provided at the rear of each building adjacent to the vehicle parking spaces. Trash collection will occur via the public alley.
21. The Applicant will implement a landscaping plan calling for new plantings around each building, the retention of existing trees along Hawaii Avenue and First Street, and the installation of green roofs. The Applicant will create several new bioretention areas throughout the subject property to collect stormwater runoff and will use a pervious surface for the parking pads at the rear of each building. (Exhibit 52A.)
22. The Applicant provided a grading plan showing that the project will not entail any changes in grade at the site except to accommodate the provision of parking spaces at the rear of the lots. (Exhibit 52A.)

² The Applicant testified at the public hearing that the project will provide 55 parking spaces, five at the rear of each lot; however, the self-certification form and plat submitted in the application show four vehicle parking spaces at the rear of Lot 11 (see Exhibits 12, 14).

23. Existing public schools at the elementary, middle, and high school levels have been assigned to the area containing the subject property. According to information located by the Applicant on the website of D.C. Public Schools, the subject property is “in-boundary” for Bunker Hill Elementary School, Brookland Middle School, and Dunbar High School.
24. The subject property is located approximately 0.8 miles from the Fort Totten Metrorail station and near Metrobus routes.
25. The subject property is located less than a quarter-mile from Fort Totten Park, approximately one mile from Turkey Thicket Recreation Center, and two miles from the North Michigan Park Recreation Center.
26. Properties in the immediate vicinity of the subject property are devoted to residential use, primarily in two- to four-story apartment houses, including one immediately to the west of the subject property at 61 Hawaii Avenue. Several institutional uses are located nearby, including Catholic University.
27. The subject property is located in a Residential Apartment zone, RA-1.
28. The Residential Apartment (RA) zones permit urban residential development and compatible institutional and semi-public buildings. The RA zones are designed to be mapped in areas identified as moderate- or high-density residential areas suitable for multiple dwelling unit development and supporting uses. (Subtitle F §§ 100.1 and 100.2.)
29. The RA-1 zone provides for areas predominantly developed with low- to moderate-density development, including detached dwellings, rowhouses, and low-rise apartments. (Subtitle F § 300.2.) The purposes of the RA-1 zone include 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. (Subtitle F § 300.1.)
30. The provisions of the RA zones are intended to (a) provide for the orderly development and use of land and structures in areas characterized by predominantly moderate- to high-density residential uses; (b) permit flexibility by allowing all types of residential development; (c) promote stable residential areas while permitting a variety of types of urban residential neighborhoods; (d) promote a walkable living environment; (e) allow limited non-residential uses that are compatible with adjoining residential uses; (f) encourage compatibility between the location of new buildings or construction and the existing neighborhood; and (g) 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 § 100.3.)

CONCLUSIONS OF LAW

The Applicant seeks special exceptions under Subtitle U § 421 to allow a new residential development and under Subtitle F § 5201 from the side yard requirements of Subtitle F § 306.2 and the open court width requirements of Subtitle F § 202.1 to allow additions to, and increases in, the number of residential units in 11 existing detached apartment houses in the RA-1 zone at 65-97 Hawaii Avenue, N.E., 66 Webster Street, N.E., and 98 Webster Street, N.E. (Square 3674, Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 19). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.), to grant special exceptions, as provided in the Zoning Regulations, when, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, subject to specific conditions. (*See* 11 DCMR Subtitle X § 901.2.)

New residential development. Pursuant to Subtitle U § 421.1, the Board may approve a new residential development in the RA-1 zone that does not comprise all detached and semi-detached principal dwellings by special exception subject to the specified standards and requirements. As required by Subtitle U § 421.2, the application was referred to the relevant agencies for comment on the capacity of area schools to accommodate the number of students who could be expected to live in the project as well as the streets, recreation, and other services to accommodate residents expected to live in the project. The application was also referred to the Office of Planning, in accordance with Subtitle U § 421.3, for comment and recommendation on the proposed site plan; arrangement of buildings and structures; the provision of light, air, parking, recreation, landscaping, and grading as they relate to the surrounding neighborhood; and the relationship of the proposed project to public plans and projects. As required by Subtitle U § 421.4, the Applicant submitted a site plan, typical floor plans, elevations, a grading plan (existing and final), and a landscaping plan. (See Exhibits 2-12, 15, 16, and 52A.) The application did not propose significant changes in grading or any new rights of way or easements.

Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning and to the report of ANC 5A, the Board concludes that the application, subject to the conditions adopted in this order, satisfies the requirements for special exception approval consistent with Subtitle U § 421. The Applicant proposed to enlarge 11 existing apartment houses, thereby increasing the total number of dwelling units at the subject property to 134, including 16 IZ units. The project represents an increase of 46 apartment units over existing conditions, and will provide approximately 42 two-bedroom units in addition to 92 one-bedroom units, where the existing buildings were configured entirely as one-bedroom units.

Given the relatively small increase in the number of apartment units, the sizes of the units, and the presence of public schools in the surrounding neighborhood, serving children from elementary through high school, the Board concludes that the number of students who can be expected to reside in the expanded apartment houses can be accommodated at existing and planned area schools. The Board also concludes that the public streets, recreation, and other services can accommodate the residents who can be expected to reside in the expanded buildings. The subject

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property is located on improved streets, with alley access to the rear of each lot, in proximity to larger streets such as North Capitol Street. At least three public recreation centers, as well as other services and amenities, are located within walking distance of the subject property. The Applicant's project will provide secure, dedicated enclosures for trash storage for each building, where the alley access will facilitate trash collection from the rear of the property. The project will create approximately 54 vehicle parking spaces on lots that currently do not provide any off-street parking, and will also accommodate bicycle storage within each building. The subject property is within walking distance of a Metrorail station and is also served by Metrobus.

To illustrate aspects of the planned development, the Applicant submitted site plans and a set of typical floor plans and elevations as well as a landscaping plan. The existing apartment houses will be retained and enlarged with third-floor additions generally consistent with the existing building footprints. The new construction will meet applicable development standards with respect to height and lot occupancy as well as yards (with the exception of the buildings on the two corner lots, discussed below), thereby ensuring the adequate provision of light and air to neighboring properties. The Applicant will install landscaping to enhance the appearance of property and to help address stormwater management concerns.

Side yard and open court width. The buildings on the two corner lots (Lot 10, 97 Hawaii Avenue and Lot 11, 98 Webster Street) are both currently configured as eight-unit apartment houses and comply with zoning requirements with respect to side yard. The Applicant did not propose any change to the existing side yards, but once the buildings are enlarged and re-configured as 16 units, the zoning requirement will be two side yards greater than nine feet for each building.³ Similarly, the Applicant did not propose any change to the existing open courts on the east side of the corner-lot buildings, but the planned third-floor additions will increase the non-conforming aspects due to the increase in building height.⁴ The new court width requirements will be 12.86 feet on Lot 10 and 12.5 feet on Lot 11. Accordingly, the Applicant requested special exceptions under Subtitle F § 5201 from the requirements for side yard under Subtitle F § 306.2 and from the requirements for open court width under Subtitle F § 202.1 to allow the planned additions to the buildings on each of the corner lots.

³ Subtitle F § 306.2(a) states the side yard requirement as:

one (1) side yard shall be provided unless the building is a multiple dwelling that contains three (3) or more dwelling units per floor, in which case two (2) side yards shall be provided; in either case such side yards shall have the minimum distance equal to three inches (3 in.) per foot of building height but not less than eight feet (8 ft.)....

After construction of the planned third-floor additions, the building heights will be 38 feet, seven inches on Lot 10 and 37 feet, six inches on Lot 11. As a result, the new side yard requirements will be approximately 9.6 feet on Lot 10 (3 x 38.58 feet in building height = 115.74 inches or 9.65 feet) and approximately 9.4 feet on Lot 11 (3 x 37.5 feet in building height = 112.5 inches or 9.38 feet).

⁴ Subtitle F § 202.1 specifies that a court is not required, but if provided at a residential building with more than three units, an open court is subject to a minimum width requirement of four inches per foot of court height, but not less than 10 feet.

The Board is authorized to grant relief as a special exception from certain development standards, including side yard and court requirements, for an addition to a principal residential building on a non-alley lot subject to certain provisions and the general special exception criteria of Subtitle X, Chapter 9. (Subtitle F § 5201.1.) An application for a special exception under Subtitle F § 5201 must demonstrate that the proposed addition will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property; specifically, (a) the light and air available to neighboring properties must not be unduly compromised; (b) the privacy of use and enjoyment of neighboring properties must not be unduly compromised; and (c) the proposed addition, together with the original building, as viewed from the street, alley, and other public way, must not substantially visually intrude on the character, scale, or pattern of houses along the street and alley frontage. (Subtitle F § 5201.4.) Noting that the Applicant submitted graphical representations including plans, photographs, and elevation and section drawings sufficient to represent the relationship of the proposed additions to adjacent buildings and views from public ways, the Board concludes that the application has met the requirements for the requested relief from side yard and court width requirements.

The planned additions to the two corner-lot buildings will not unduly compromise the light, air, or privacy of use and enjoyment of any neighboring properties. The existing west side yard will not be altered by the additions, and the buildings, as enlarged, will not be located in close proximity to any nearby buildings in part due to the width of the First Street right of way. The Board credits the testimony of the Office of Planning that the right of way provides a green space approximately 30 to 35 feet in width, in addition to any setback on the Applicant's lots, and that the "properties that would be most impacted by a reduced side yard are located on the east side of 1st Street and are separated from the apartment houses by about 80 feet." (Exhibit 54.)

The Board also concludes that the additions, together with the original buildings, as viewed from the street and alley, will not substantially visually intrude on the character, scale, or pattern of houses along the street and alley frontage. The two corner-lot buildings are located in an area that contains a variety of building types, including numerous apartment houses ranging from two to four stories in height. The corner-lot buildings are part of the Applicant's plan to create similar third-story additions to the existing two-story apartment houses at the subject property to the west of the corner lots.

Subtitle X, Chapter 9. The Board concludes that approval of the application will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, as is required for approval of the application under Subtitle X § 901.2. The Board agrees with the Office of Planning that approval of the application will be consistent with the purposes of the Residential Apartment zone, which permits urban residential development in an area identified as a moderate-density residential area suitable for a multiple dwelling unit development. Consistent with the provisions of the RA zone, the Applicant's project will provide for the orderly residential development and use of land and structures in an area characterized by predominantly moderate- to high-density residential uses, promote a stable urban residential neighborhood and a walkable living environment, and encourage compatibility between the

location of new construction and the existing neighborhood. Approval of the application will be consistent with the purposes of the RA-1 zone by allowing a type of urban residential development, the enlargement of existing low-rise apartment houses, that will generally conform to the height, density, and area requirements established for the RA-1 district.

Approval of the application will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. The Applicant proposed additions to existing apartment houses, generally on the same building footprints so that the buildings, as enlarged, will maintain existing setbacks and thereby avoid creating any adverse impacts with respect to light, air, or privacy. The Applicant will implement a landscaping plan calling for the retention of existing trees and new plantings as well as installation of measures to address potential impacts relating to stormwater. The project will meet or exceed minimum zoning requirements with respect to vehicle and bicycle parking, and will utilize the public alley for access to vehicle parking spaces as well as trash collection. The Board notes that DDOT commented favorably on the Applicant's planned use of the alley for trash collection and vehicle parking, thereby avoiding the need for new curb cuts. The Board agrees with DDOT and the Applicant that implementation of the proposed TDM plan will mitigate any potential adverse impacts related to traffic or parking arising from approval of the requested zoning relief, and therefore adopts conditions requiring implementation of the specified TDM measures.

The Board heard testimony in opposition to the application from persons who criticized the existing conditions in the buildings, including a lack of maintenance, and asserted that approval of the application would cause rent increases and displacement. The Board acknowledges the gravity of this testimony but concludes that the matters raised by the persons in opposition are outside the Board's purview in deliberating on this application, which is a request for zoning relief in accordance with specific provisions of the Zoning Regulations. The Board's authority does not extend to matters governed by the Construction Code or rental housing law but is limited to the factors specified in the Zoning Regulations, which relate generally to the protection of nearby property as well as, in this case, the capacity of area schools and streets, access to recreation and other services, the arrangement of buildings, landscaping, grading, as well as the impacts on light, air, privacy, and neighborhood character (see Subtitle F § 5201, Subtitle U § 421, and Subtitle X § 901).

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.).) For the reasons discussed above, the Board agrees with OP's recommendation that, in this case, the application should be approved.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976.) (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.).) In this case, ANC 5A voted to approve a resolution in support of the relief requested, noting that the Applicant agreed "to conform with community workhours, and surrounding neighborhood architectural structures" and "where feasible, to consider DC residents and businesses for hiring and contracting opportunities" as well as "to attend and participate in community meetings." (Exhibit 70.) For the

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reasons already discussed, the Board concurs with the ANC's support for approval of the requested zoning relief. The Board acknowledges the areas of interest stated by ANC 5A, but concludes that the matters addressed in the ANC report are outside the scope of the Board's purview in this application for zoning relief because they do not address the requirements for approval stated in the specific provisions of the Zoning Regulations governing the Applicant's project at the subject property.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof for special exceptions under Subtitle U § 421 and under Subtitle F § 5201 from the side yard requirements of Subtitle F § 306.2 and the open court width requirements of Subtitle F § 202.1 to allow additions to and increases in the number of residential units in 11 existing detached apartment houses in the RA-1 zone at 65-97 Hawaii Avenue, N.E., 66 Webster Street, N.E., and 98 Webster Street, N.E. (Square 3674, Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 19) consistent with the plans submitted as Exhibit 61A in the record, as required by Subtitle Y §§ 604.9 and 604.10. Accordingly, it is **ORDERED** that the application is **GRANTED** subject to the following **CONDITIONS** requiring the Applicant to implement the transportation demand management (TDM) plan shown in Exhibit 53:


1. The Applicant shall unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit and charge a minimum rate based on the average market rate within a quarter mile.
2. The Applicant shall identify transportation coordinators for the planning, construction, and operations phases of development, who will act as points of contact with DDOT, goDCgo, and Zoning Enforcement.
3. The Applicant shall provide the transportation coordinators' contact information to goDCgo, conduct an annual commuter survey of employees on-site, and report TDM activities and data collection efforts to goDCgo once per year.
4. The Applicant shall direct the transportation coordinators to develop, distribute, and market various transportation alternatives and options to the project's residents, including promoting transportation events (e.g., Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications.
5. The Applicant shall direct the transportation coordinators to subscribe to goDCgo's residential newsletter and to receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM plan.
6. The Applicant shall provide welcome packets to all new residents that should, at a minimum, include the Metrorail pocket guide, brochures of local transit lines (Streetcar, Circulator, and Metrobus), carpool and vanpool information, a Capital Bikeshare ("CaBi") coupon or rack card, a Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map.

VOTE: 4-0-1 (Frederick L. Hill, Lorna L. John, Chrishaun S. Smith, and Anthony J. Hood to APPROVE; Carl H. Blake not participating)

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

A majority of the Board members approved the issuance of this order.

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: May 24, 2023

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

PURSUANT TO 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 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.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER,

IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX 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.