

LAW OFFICES

GRIFFIN, MURPHY, MOLDENHAUER & WIGGINS, LLP

MARK G. GRIFFIN (DC, MD)
BRIAN P. MURPHY (DC, MD)
ASHLEY E. WIGGINS (DC, MD)
MERIDITH H. MOLDENHAUER (DC, MD)
SAMANTHA MAZO (DC, MD)
Y. AJOKE AGBOOLA (MD, DC)
BRUCE M. JAMES (MD, DC)
LENEHN N. RICKS (MD, DC*)
W. LAWRENCE FERRIS (MD, DC)

*PENDING

DIRECT DIAL: 202-530-1482

DIRECT EMAIL: mmoldenhauer@washlaw.com

February 8, 2017

VIA IZIS

Frederick L. Hill, Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Suite 210S
Washington, DC 20001

**Re: Application No. 19450 – 3320 Idaho Avenue, NW (Square 1818, Lot 849)
Prehearing Statement of the Applicant**

Chairperson Hill and Honorable Members of the Board:

On behalf of the District of Columbia Department of General Services, please find enclosed the Prehearing Statement for the above referenced application. The application is scheduled to be heard before the Board of Zoning Adjustment on March 1, 2017.

Thank you for your attention to this matter.

Sincerely,
GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS,
LLP



Meridith H. Moldenhauer

Board of Zoning Adjustment
District of Columbia
CASE NO. 19450
EXHIBIT NO. 75

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

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

**BZA APPLICATION NO. 19450
HEARING DATE: MARCH 1, 2017**

PREHEARING STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of the District of Columbia Department of General Services (the “Applicant”), the owner of the property located at 3320 Idaho Avenue, NW, (Square 1818, Lot 849) (the “Property”) in support of its application for variance relief, pursuant to 11 DCMR Subtitle X § 1000.1, from the requirements regarding height and number of stories (Subtitle F § 303.1), loading (Subtitle C § 901.1), and number of primary structures on one lot (Subtitle C §302.2), as well as special exception relief, pursuant to 11 DCMR Subtitle X § 901.2, to allow construction of an emergency shelter in the RA-1 Zone District (Subtitle U § 420.1(f)) at the Property. The proposed shelter will include 50 residential units, space for on-site wrap-around services, administrative offices, and appropriate recreational space for the residents (the “Project”).

In response to community concerns regarding parking, the Applicant has revised the parking plan for the Project and will no longer seek parking relief from the Board. The Applicant will now construct a two-story parking deck located to the rear of the existing MPD station. The parking deck will create additional parking spaces for shelter employees, occupants and visitors that will satisfy the minimum parking requirement and add more parking spaces for MPD. Accordingly, the Applicant no longer seeks special exception relief from the minimum parking requirement. This is a significant change from the original application as the Applicant originally intended to build a one-story parking deck that would have simply replaced in-kind any MPD parking lost to the Project. The net result of the revised parking plan is that the Applicant has decreased the amount of relief it is seeking from the Board.

II. EXHIBITS IN SUPPORT OF THE APPLICATION

Tab A: Revised Architectural Plans
Tab B: Letter from Commander Gresham (MPD)

Tab C:	Letter from Director Geldart (HSEMA)
Tab D:	Letter from Chief Falwell (FEMS)
Tab E:	Timeline of Applicant’s Community Outreach
Tab F:	Summary of Witness Testimony with Resumes

III. REVISED ARCHITECTURAL PLANS

Since the filing of the initial application, the Applicant has updated and revised the architectural plans for the Project. *See*, Revised Architectural Plans (the “Revised Plans”) at **Tab A**. While the general design parameters of the Project have not changed, the updated plans offer additional site information and contextual renderings.¹ The updated plans incorporate detailed site dimensions for the Project, including square footage of interior dwelling rooms and exterior measurements. The exterior measurements highlight the significant side and rear yards that buffer the Project from the surrounding area. The updated plans further provide sighting illustrations with perspectives of the Project in relation to the surrounding neighborhood and the existing police station. Additionally, the Revised Plans include a topographical survey of the Property.

Overall, the updated plans highlight the Project’s safe and thoughtful design that is respectful of the nearby community.

IV. DESCRIPTION OF PROPERTY AND PROJECT

The Property, also known as Lot 849 in Square 1818, contains approximately 200,965 square feet of land area. As noted in the initial statement, the Property is improved with the Metropolitan Police Department’s (“MPD”) Second District headquarters, and the Newark Street Community Garden (the “Community Garden”) and tennis courts occupy the western portion of the Property. The Community Garden, tennis courts and playground are divided into two lots, lot 849 and lot 848; however, approximately half of the Community Garden is located on Lot 848, which is federally-owned land that cannot be utilized for the Project.

¹ The Revised Plans do not reflect the two-story parking deck, as the Applicant only recently confirmed the addition of the second story. The architecture team is in the process of designing the two-story deck, and, upon completion, will provide updated plans that reflect the two-story parking deck to the Board, ANC 3C, Office of Planning, DDOT, and any other interested party.

The Property is located in the RA-1 Zone District, which is designated for low and moderate-density developments, including detached dwellings, rowhomes and low-rise apartments. See Subtitle F § 300.2. The surrounding area features a variety of residential and non-residential uses, including the MPD station and the Community Garden. The nearby residential uses consist of large apartment buildings, mid-size walkups, and single-family homes. To the north of the Property across Newark Street is a five-story building utilized by WTOP. The “Vaughan Place” apartment building, a nine-story mixed use building, is adjacent to the WTOP along Idaho Avenue. Notably, an NC-1 Zone District abuts the Property, running along Newark Street, NW and Wisconsin Avenue, NW to the east of the Project. Within this NC-1 Zone District is the “Cathedral Commons” development, which includes several mixed-use buildings.

The Project represents a vital aspect of the District’s goal of making homelessness in the District a rare, brief, and non-recurring experience in the District by 2020. A key strategy in achieving this goal includes developing a more effective crisis response system and closing D.C. General, the District’s largest family shelter. D.C. General is inadequate and insufficient to provide the services that families need to quickly exit a shelter and get back into permanent housing. Thus, the District proposes to replace D.C. General, which has 280 family units, with smaller, more dignified short-term family housing programs, with on-site services, in all eight wards of the District. The Applicant’s proposal to construct a six-story short-term family housing facility at the Property is a critical element of the District’s eight-ward initiative to developing a more effective crisis response system.

V. APPLICANT MEETS BURDEN OF PROOF FOR AREA VARIANCE

The Board is authorized to grant an area variance where it finds exceptional conditions for the Property, practical difficulties to the applicant and no substantial detriment to the public good or substantial impairment to the Zone Plan. See *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); see also, *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). Importantly, when the applicant is a public service, the

Board may apply a more flexible standard when applying the variance test. *See Nat'l Black Child Dev. Inst. v. District of Columbia Bd. of Zoning Adjustment*, 483 A.2d 687, 690 (D.C. 1984) (citing *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091, 1096 (D.C. 1979)).

As described in the Statement of the Applicant, this Prehearing Statement, and as will be further explained at the public hearing, all three prongs of the area variance test are satisfied.

A. The Property is affected by an Exceptional Situation or Condition

The phrase “exceptional situation or condition” in the variance test applies not only to the land, but also to the property’s history. *See, Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation may arise from a confluence of factors which affect a single property. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). As described in the initial submission, the Property is unusual and affected by an exceptional situation and condition as a result of a confluence of the following factors: (1) the location of the existing structures on the lot; (2) the pre-existing community gardens; (3) the site’s topographical change and (4) the Project’s programmatic needs.

1. Location of Existing Structures on the Lot

The MPD Station occupies a significant portion of the land area on Lot 849. The MPD Station also has a pre-existing parking lot, which occupies a large swath of the Property. Moreover, there is a refueling station for police vehicles and other public service vehicles located on the northern side of the property along Newark Street, NW, which cannot be disturbed. The existing curb cuts and traffic flow to the MPD Station further circumscribe the Project’s location. In this respect, the goal is to maintain the existing number of curb cuts and minimize movement of existing curb cuts, so as to limit any effect on off street parking spaces. Therefore, the Project’s building area is severely restricted as to where it can be located on the lot.

2. The Pre-Existing Community Garden

As noted above, the pre-existing Community Garden and tennis courts are located on the western portion of the Property. In fact, the Community Garden occupies almost *half* of the Property’s land area.

The existence of the gardens, which is an important source of pride for the city and surrounding community, greatly restricts the Project's location on the Property as well as the Applicant's ability to offer alternative designs for the building. As noted above, the portion of the Community Garden located on Lot 848 is federal land and cannot be utilized for the Project, thus further limiting additional alternatives.

3. *The Lot's Topography*

There is a significant topographical change on the Property that creates an exceptional condition for the Project. Since filing the initial application, the Applicant commissioned a topographical survey, *see Tab A*, pg. C1.1, to better depict the grade change on the Property. As reflected on the survey, there is a change in elevation of 18 feet from north to south on the Property. The land also slopes downward toward the western portion of the Property and the Community Garden. As will be discussed below, the grade significant diminishes the building height and limits the location of the Project on the Property.

4. *Programmatic Needs*

Another unique factor affecting the Property is the proposed use and programmatic requirements associated with the District's initiative to end family homelessness, which includes closing D.C. General, the District's largest shelter, and opening smaller, more dignified short-term family housing programs across the District. As noted in previous filings, the D.C. Court of Appeals has held that there is no requirement that the uniqueness "inhere in the land at issue." *Gilmartin*, 579 A.2d at 1168 (citing *Capitol Hill Restoration Society v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939, 942 (D.C. 1987)). Thus, the programmatic needs, which uniquely affect the Project, are an exceptional condition affecting this Property.

In the initial submission, the Applicant outlined the specific programmatic needs that drive the Project. The Applicant proposes to develop the Property with a facility designed to accommodate 50 families, with wrap around services on-site that can assist families to make a successful transition to permanent housing as quickly as possible. Consequently, the building must provide certain design features, including, but not limited to, space to accommodate on-site wrap around services; recreational

space for children of all age groups; a computer lab and multipurpose room; dining and laundry facilities; as well as private and family bathing rooms. These design features circumscribe the parameters of the Project and create an exceptional condition for the Project in complying with the zoning regulations.

B. Strict Application of the Zoning Regulations would Result in Practical Difficulty

Due to the Property's exceptional conditions, strict application of the Zoning Regulations with respect to height and number of stories (Subtitle F § 303.1), loading (Subtitle C § 901.1), and number of primary structures on one lot (Subtitle C §302.2) would result in a practical difficulty to the Applicant.

1. Height and Number of Stories (Subtitle F § 303.1)

The maximum permitted building height in the RA-1 Zone District is 40 feet and three stories. The Applicant seeks an area variance from these requirements because the Project has a proposed height of 72 feet with six stories. As a result of the exceptional conditions affecting the Property and the Project, strict application of the zoning regulations as to height and number of stories would result in a practical difficulty for the Applicant.

The need for zoning relief is directly related to the programmatic needs of the Project. The program requirements of the Project are driven by D.C. Council legislation, including D.C. Law 21-75² and D.C. Law 21-141³. Under D.C. Law 21-75, the Council established certain legislative parameters for short-term family shelters used to replace D.C. General. Importantly, D.C. Law 21-141 designates funds for the District to construct shelters that will replace D.C. General and establishes that the Project must be constructed at 3320 Idaho Avenue, NW and must include 50 units.

It must also be noted that the programmatic needs for the Project are further informed through the Interagency Council on Homelessness ("ICH"), a statutorily created group comprised of experts in homeless services from the District government, federal government and other third-party service providers. See D.C. Code § 4-752.01. The ICH was commissioned for the purpose of planning and developing programs for homeless services in the District, including outlining standards to replace D.C.

² D.C. Law 21-75 was enacted by the Council on December 29, 2015, and the law became effective on February 27, 2016.

³ D.C. Law 21-141 was enacted by the Council on June 13, 2016, and the law became effective on July 29, 2016.

General. In a report issued to Mayor Bowser dated October 16, 2015, the ICH concluded that the number of sleeping units on each floor should be limited to 10 in order to ensure a small, familial environment for each shelter. The ICH recommended that a space for security/staff be located on each floor, with a view of common areas. Accordingly, the Project's design, which incorporates 10 units per floor, is driven by ICH recommendations.

Under D.C. Law 21-75, each shelter unit must consist of "a private room that includes space to store and refrigerate food." *See* D.C. Code § 4-750.01(11A). D.C. Law 21-75 further requires certain design standards for bathroom facilities. The law establishes that, at a minimum, shelters must provide "[a] private bathroom, including a toilet, sink, and bathtub or shower, in at least 10% of" units and for every five shelter units "one private lockable bathroom that includes a toilet, sink, and bathtub and shall be accessible to all residents." *See* D.C. Code § 4-750.03(3)(A-B). Maximizing private bathroom space was of significant concern to the ICH due to concerns over "privacy, safety, cleanliness, and convenience." For the Project, the Applicant has worked to exceed the legislatively established "family-unit to bathroom" ratio, by ensuring that only two families, at most, share a family bathroom.

The Project must also dedicate building space to on-site wrap-around services, which are also mandated by law. *See* D.C. Code § 4-753.01. D.C. Law 21-141 identifies these vital wrap-around services, noting that "[b]est practices suggest that children and families do best when short-term housing is provided in smaller-scale, service-enriched, community-based settings. . ." These on-site services offer a "continuum of care" designed to assist homeless individuals and families in quickly exiting the shelter and returning to permanent housing. The requirement to include on-site wrap-around services further drives the Applicant's need for zoning relief.

Accordingly, the need to provide safe, dignified, small-scale, community-based, short-term housing facilities has driven the design of the building. The District's goal is to provide a District-wide solution to homelessness and to close D.C. General, as reflected in the aforementioned legislation. Yet, in order to close D.C. General and replace it (and the capacity it holds) with smaller facilities in each ward, the Project must provide 50 sleeping units. To provide 50 sleeping units, while limiting each floor to 10

units, along with a floor dedicated to wrap-around services, requires six stories and the additional height proposed. Each floor must have direct lines of sight so that parents and security staff can easily observe activity on the floor, limiting alternative designs for the Project. Simply put, the Project cannot provide the requisite units while complying with the shelter's programmatic needs in a matter-of-right facility.

Similarly, the location of existing structures on the Property and the Community Garden drive the need for zoning relief as to height and number of stories. Namely, the existing structures, including the MPD Station, parking lot, and refueling area, limit the available space for the Project. This limitation is compounded by the Community Garden, which must be preserved and, accordingly, cannot be built upon. The result of these restrictions is that the Project faces a practical difficulty in complying with the maximum height and number of stories.

Finally, the site's topography further limits the Project's location on the Property. There is a significant change in grade as the Property move east to west toward the Community Garden. This change in elevation means that any construction beyond the pre-existing 10-foot rear wall, which separates the MPD station and the Community Garden, would require the Applicant to conduct extensive civil engineering and site work to level the area in order to build a safe and structurally secure facility. Thus, the change in grade creates a practical difficulty to extend the building toward the Community Garden.

In summation, compliance with the maximum height and number of stories creates a practical difficulty for the Applicant because the Project must incorporate 50 units in an efficiently designed, safe and welcoming facility that includes private rooms, a specific ratio of bathrooms to occupants, and on-site wrap-around services. The goal of implementing a District-wide, all eight Ward solution to closing D.C. General would not be attainable without zoning relief from the Board.

2. *Loading (Subtitle C § 901.1)*

Pursuant to Subtitle C § 901.1, an emergency shelter use with a gross floor area between 30,000 and 100,000 square feet, must provide one loading berth and one service/delivery space. The Project does not provide a loading berth or a service-delivery area and requests relief from this requirement. Although,

it must be noted that the Applicant does provide a 15 minute parking zone for loading and delivery in the rear parking lot area. See **Tab A**, Pg. C1.2.

The need for relief arises from the pre-existing structures and Community Garden, the site's topography, and the Project's programmatic needs. The MPD building and Community Garden limit the amount of area the building may occupy on the lot and, therefore, inhibit the Applicant's ability to incorporate a loading berth and service/delivery space. Likewise, the Project's design must take into account street access to the MPD building and the MPD parking deck. Thus, the Project cannot expand its footprint toward the MPD station in order to incorporate a loading dock or service/delivery area. The Project is similarly limited in expanding toward the rear of the Property, as the vehicle parking for the shelter is currently located in the rear yard. If the Project were to add a loading dock or service/delivery area in the rear yard, then the Applicant would necessarily require additional relief from the minimum parking requirements. Additionally, there is a pre-existing 10-foot brick wall to the rear of the Property, which separates the MPD building and parking lot from the Community Garden. This brick wall further minimizes space at the rear of the Property to locate a loading dock or delivery/service area as part of the Project.

The Project must also incorporate various programmatic elements, including space for wrap-around services and recreational space for children. The recreational space is located in the southern-facing side yard, and, therefore, a loading dock and service area cannot be located on that portion of the Property. Importantly, the side yard creates a buffer between the Project and the surrounding neighborhood. The Property's topography, particularly the grade change from the Project's location toward the Community Garden, makes it practically difficult to expand toward the rear of the site because the Applicant would have to fill-in land to level the Property.

Notably, the Applicant's traffic assessment concludes that the Project provides sufficient on-site circulation as well as loading and unloading areas. See BZA Exhibit No. 37, Pgs. 3, 24. The Project will not be receiving large shipments or deliveries, and a majority of the families moving into the Property will not have many personal items; thus, a loading berth is not a necessity. See BZA Exhibit No. 37, Pgs.

3, 24. The shelter units will be fully furnished, which further decreases residents' need for a loading berth. Trash pickup will take place in the parking area to the rear of the Project. *See* BZA Exhibit No. 37, Pg. 24. The most frequent delivery to the Property will be food delivery, which will be done by a van, not a large truck. The 15-minute parking zone in the rear of the Project will offer a short-term parking space for such food deliveries.

For these reasons, the Applicant requests relief from the loading berth and service/delivery space requirement.

3. *Two Primary Structures on One Lot (Subtitle C §302.2)*

Under Subtitle C § 302.2, each new primary structure must be erected on a separate lot of record in the RA-1 Zone District. The Project proposes a new primary structure on Lot 849 where, as previously mentioned, the MPD Station is located. The Applicant would face a practical difficulty in complying with this requirement due to the legislative parameters of the Project.

As noted above, pursuant to D.C. Law 21-141, the short-term family shelter in Ward 3 must be located at the Property. An important factor in the D.C. Council's selection of the Property is that the Property is owned by the District; this factor was cited as a means to decrease costs for the "Homeward D.C." program. The legislation explicitly cites this factor, noting that "[i]t is in the best interest of the District to construct these new temporary-shelter facilities on District-owned land, in part to avoid the disruption to the provision of services in the continuum of care that would accompany the eventual expiration of leases."

Accordingly, the Applicant is required to construct the shelter on the Property, which necessarily includes sharing the lot with another primary structure, the MPD second district station. Alternative remedies, such as connecting the Project to the MPD station, would be practically difficult and not in the best interest of both uses. Absent the requested zoning relief from Subtitle C §302.2, the Applicant will face a practical difficulty in complying with this section.

C. No Substantial Detriment to the Public Good or Impairment of the Zone Plan

There will be no substantial detriment to the public good and no substantial impairment to the intent, purpose, and integrity of the zone plan by approving the variance relief. The Project represents a step toward meeting the goal of the “Homeward D.C.” initiative, which seeks to make homelessness in the District rare, brief and non-recurring by 2020. The Project will provide families who are experiencing homelessness with a safe and dignified shelter facility that will further assist families in stabilizing and returning to permanent housing. In this regard, the Project is a positive contribution to the community and the District as a whole.⁴

The Project will have no substantial detriment on public services in the area, including police operations at the MPD station that will share the Property with the shelter. *See* letter from Commander Gresham attached at **Tab B**. The Project will maintain a separate entrance for the shelter, which will not disturb egress or ingress access to the rear of the MPD Station. The Project was specifically designed so as to not affect the MPD’s refueling station on the northern side of the Property. Further, all MPD parking lost to the Project will be replaced in-kind through the construction of a parking deck at the rear of the MPD station. The existing impound lot will be re-located.

The Project will not degrade the ability of the D.C. Homeland Security and Emergency Management Agency (“HSEMA”) to perform its duties and protect the District’s residents. Notably, HSEMA does not have plans to use the Property for emergency management or homeland security purposes. *See* letter from Director Geldart at **Tab C**. Accordingly, the Project will have no substantial detriment to the public good in this respect.

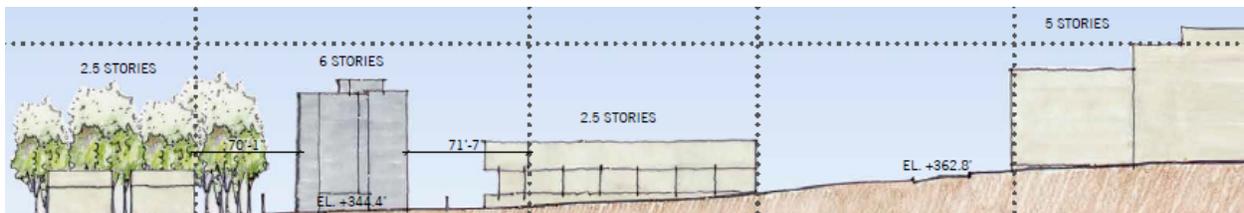
Similarly, D.C. Fire and EMS Department’s Office of the Fire Marshall confirms that the Project will not compromise fire access to the Property or the surrounding area that is part of Square 1818. *See* letter from Chief Falwell attached at **Tab D**. The Project, as designed, will be developed and maintained

⁴ In 2016, the District obtained zoning relief from this Board for short-term family housing shelters located in Wards 4, 7 and 8. *See* BZA cases 19287, 19288 and 19289. Notably, all three projects requested and obtained relief to operate an emergency shelter in the applicable zone. Wards 4, 7 and 8 were granted relief from the applicable height limitation as well. Additionally, both Wards 7 and 8 requested and obtained relief from the minimum parking requirement. Ward 8 obtained relief from the loading requirement.

in accordance with the relevant sections of the International Fire Code. See **Tab D**. Therefore, the Project will have no effect on the duties of DC FEMS.

The design of the Project is further intended to minimize any detriment to the surrounding neighborhood. The building will be substantially setback from adjacent buildings and Idaho Avenue, NW. The Project has a rear yard of 205 feet, which creates a substantial buffer from the Community Garden and homes on the far side of Newark Street. As noted above, the pre-existing 10-foot brick wall to the rear of the MPD station offers further separation from the Community Garden, tennis courts, and playground. The Project also features significant side yards; the side yard on the northern portion of the Project will be 60 feet and the side yard on the southern portion of the Project will be 23 feet. Notably, the Project will be separated from neighboring residential properties to the south by landscaping elements, including a tree line, as well as a fence. There is a pre-existing 7-foot brick wall in the southwestern corner of the Property, which provides additional separation with the surrounding neighborhood.

The site's topography diminishes the Project's height in relation to the surrounding neighborhood. As noted above, the Property has a change in elevation of 18 feet from the northern lot line along Newark Street to the southern lot. See **Tab A**, pg. C1.1. The resulting view of Idaho Avenue is illustrated below.



While the Project reaches six stories, the net effect of the site's topography is that the Project fits into the existing streetscape, particularly in comparison to the buildings just north of the Property.

To that end, there are numerous buildings in the nearby area that have similar height and density to the Project. To the north of the Property - across Newark Street - is the five-story WTOP building and the nine-story "Vaughan Place" apartment building. Due to the aforementioned change in grade on the Property, the height of the WTOP building is approximately even with the Project while the "Vaughan

Place” apartments greatly exceed the Project in height. Additionally, the NC-1 zone to the east of the Project features mixed-use developments, including five story buildings. Accordingly, the Project blends in with the surrounding community despite the existence of nearby residences.

The Project will have minimal disruption of light and air on neighboring properties. The Applicant’s sun study, which was submitted as part of the initial application, illustrates that the Project will cast a shadow only on a small portion of the Community Garden and pre-existing MPD parking lot. *See Initial Application, Tab B, Pg A1.10.* The Project will not affect the light and air of neighboring residential properties across the street or to the south. *See Initial Application, Tab B, Pg A1.10.*

Finally, the Project and the relief requested will not cause a substantial impairment to the intent, purpose, and integrity of the zone plan because the Emergency Shelter use is permitted as a special exception in the RA-1 Zone District, and, thus, presumed appropriate in the zone. Furthermore, the Project aligns with the stated goals of the District’s Comprehensive Plan. The Comprehensive Plan’s Housing Element establishes, “[p]rovisions to assist the homeless must include emergency shelter, transitional housing, and permanent housing, along with supportive services.” 10A DCMR § 516.4. The Project will provide an emergency shelter facility in compliance with the Comprehensive Plan. The Project further embodies the Comprehensive Plan directive to:

Encourage the provision of homeless services through neighborhood-based supportive housing and single room occupancy (SRO) units, rather than through institution-like facilities and large-scale emergency shelters. The smaller service model can reduce the likelihood of adverse impacts to surrounding uses, improve community acceptance, and also support the reintegration of homeless individuals back into the community. (Policy H-4.2.8: Neighborhood-Based Homeless Services, 10A DCMR § 516.14)

As a short-term family housing facility with 50 units, the Project applies the Comprehensive Plan’s goal of providing a smaller service model. The District of Columbia’s plan to end homelessness, developed in partnership with the ICH, proposes the closure of D.C. General - a former hospital and “institution-like” facility - that has served as the District’s largest family shelter for eight years. D.C. General is too big, too old and geographically removed from the services that individuals experiencing homelessness need to

exit a shelter and get back on their feet. The replacement of D.C. General with short-term family housing facilities across the city furthers the goals of the Comprehensive Plan, and this Project is a critical element of that initiative. For these reasons, approval of the zoning relief requested will not cause a detriment to the public good or Zone Plan.

VI. APPLICANT MEETS THE BURDEN OF PROOF FOR A SPECIAL EXCEPTION AS TO EMERGENCY SHELTER USE

Special exception relief is required to operate an emergency shelter in the RA-1 Zone District. Under D.C. Code § 6-641.07(g)(2) and Subtitle X § 901.2, the Board is authorized to grant a special exception where it will be in harmony with the general purpose and intent of the zone plan and will not tend to adversely affect the use of neighboring property, subject to the conditions specified in each case. Subtitle U § 420.1(f) sets forth special conditions the Project must meet in order to operate an emergency shelter in the RA-1 zone. As set forth in the initial submission, the Project complies with the general requirements for special exception relief as well as the conditions for an emergency shelter use in the RA-1 zone.

A. The Project will not adversely affect the use of neighboring property and the Project is in harmony with the general purpose and intent of the zone plan

The Applicant outlined that the Project will not adversely affect the use of neighboring property as set forth in Section V(C). The Project will not adversely affect the operations of MPD, HSEMA, or FEMS. *See **Tab B-D***. The Project has sufficient front, side and rear yards to buffer the Project from neighboring properties. The height of the Project is diminished by the Property's significant change in grade. The Project will be of a similar size and density as numerous buildings in the nearby area. The construction of a new short-term family housing facility with safe and secure accommodations is consistent with the law and policies of the District, as reflected in legislation including D.C. Law 21-75 and D.C. Law 21-141. The Project will offer a great benefit to families in the District experiencing homelessness. Moreover, the provision of a short-term family housing facility with 50 family units and wrap around services on-site aligns with the stated goals in the Comprehensive Plan's Housing Element to provide small-scale emergency shelters.

B. The Project satisfies the conditions in Subtitle U § 420.1(f) for an Emergency Shelter use in the RA-1 Zone District

Pursuant to Subtitle U § 420.1(f), the Board may approve an emergency shelter in the RA-1 Zone District subject to the following requirements.

420.1(f)(1) - There shall be no other property containing an emergency shelter for seven (7) or more persons either in the same square or within a radius of five hundred feet (500 ft.) from any portion of the property.

There is no emergency shelter located in Square 1818 or within 500 feet of the Property. In fact, the Project would be the first emergency shelter in Ward 3.

420.1(f)(2) - There shall be adequate, appropriately located, and screened off-street parking to provide for the needs of occupants, employees, and visitors to the facility;

The Project, with the two-story parking deck, will provide adequate parking to satisfy the zoning regulations. In addition to the 12 parking spaces provided at the rear of the Project, parking in excess of the minimum requirement for the Project will be provided through the expanded parking deck to be located at the rear of the MPD station. The Project's parking spaces will be screened from Idaho Avenue, NW and the properties located to the south of Lot 849 by landscaping elements. The Project's parking spaces will be screened to the west by the pre-existing 10-foot wall that separates the Project from the Community Garden.

420.1(f)(3) - The proposed facility shall meet all applicable code and licensing requirements;

The Project will meet all code and licensing requirements.

420.1(f)(4) - The facility shall not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area;

The Project will not have an adverse impact on the neighborhood. The facility will be self-contained, with all necessary services provided on-site and sufficient buffers between the Project and abutting properties. Additionally, there are no emergency shelters located in the nearby area. As reflected in the traffic study, which is described above, the Project will have a minimal effect on traffic in the neighborhood, as most residents will not have vehicles.

The Applicant will provide the number of parking spaces required by the zoning regulations. The parking deck, originally planned as a one story structure, will not only replace in-kind all MPD parking lost to the Project, but will provide a significant number of additional parking spots for the Emergency Shelter use and MPD. The Project will help to alleviate the existing condition for MPD parking, as the current MPD parking lot does not feature enough parking spaces for MPD's purposes.

The Applicant's traffic study, conducted by Symmetra Design, concludes that the Project will not adversely impact the neighborhood. *See* BZA Exhibit No. 37, Pg. 30. The traffic study confirms that only a fraction of homeless residents will use vehicles to access the shelter. *See* BZA Exhibit No. 37, Pg. 23. The traffic study further confirms that the Property is well serviced by public transportation options, including several Metrobus lines. *See* BZA Exhibit No. 37, Pg. 7-12. There is a Capital Bikeshare station and a Zipcar pickup station only 1-½ blocks from the Property. *See* BZA Exhibit No. 37, Pg. 12. 15. Notably, the vast majority of District families accessing homeless services rely on public transportation and do not have access to personal vehicles. *See* BZA Exhibit No. 37, Pg. 23. Furthermore, meals will be delivered to the Property and other social services will be provided on-site, so the need for residents to have a vehicle will be greatly reduced. *See* BZA Exhibit No. 37, Pg. 24.

The programmatic requirements of the Project will minimize noise. The Project will be staffed by security personnel at all times. The building will be key-card accessible only, limiting those coming and going from the facility to residents, staff and third-party vendors. The outdoor recreation space will be buffered to the south by a wood slat grow wall and a thick tree line. The recreation space will be accessible during a certain range of hours. Finally, the pre-existing 10-foot wall will limit any effect on the Community Garden and tennis courts to the west.

420.1(f) (5) The Board of Zoning Adjustment may approve more than one (1) community-based residential facility in a square or within five hundred feet (500 ft.) only when the Board of Zoning Adjustment finds that the cumulative effect of the facilities will not have an adverse impact on the neighborhood because of traffic, noise, or operations; and

There are no emergency shelters in Square 1818 or within 500 feet of the Property. As such, this section is not applicable for the Project.

420.1(f) (6) The Board of Zoning Adjustment may approve a facility for more than twenty-five (25) persons, not including resident supervisors or staff and their families, only if the Board finds that the program goals and objectives of the District of Columbia cannot be achieved by a facility of a smaller size at the subject location and if there is no other reasonable alternative to meet the program needs of that area of the District.

As the detailed discussion above makes clear, the Project's goals and objectives cannot be achieved with a smaller facility that serves 25 people or less. The residential capacity of 50 units for the Project is legislatively mandated by the D.C. Council. Without 50 units, the goal of closing D.C. General cannot be achieved. Further, from an efficiency perspective, the Project must serve a larger number of people to justify the extensive wrap-around services that will be provided on-site. To that end, the concept proposed by the Homeward D.C. initiative aims to create smaller, family-scale environments on each floor of the Project, but comprehensive on-site services are not as efficient for a facility with fewer than the 50 sleeping units proposed. Accordingly, the program goals and objectives of the District of Columbia, including the Mayor's office and the D.C. Council, cannot be achieved by a facility of a smaller size at the Property.

VII. COMMUNITY OUTREACH

The Applicant has conducted significant community outreach that dates back to early-2016. In addition to meetings for the general public, the Applicant commissioned an advisory team for the Project. The advisory team is composed of representatives from District agencies including the Department of General Services, Department of Human Services and the Mayor's office as well as members of the community, including ANC 3C members. The goal of the advisory team is to discuss a myriad of topics concerning the Project and disseminate information through the community members. A timeline of the Applicant's community outreach for the Project is attached at **Tab E**. This extensive community outreach reflects that the Applicant has worked with the community both before and after the filing of this BZA application.

VIII. WITNESSES

The following witnesses will appear on behalf of the Applicant:

1. Rashad M. Young, City Administrator

2. Councilmember Phil Mendelson, Chairman of the D.C. Council
3. Laura Zeilinger, Director of the District Department of Human Services
4. Sharon McDonald, Director for Families and Youth Services at the National Alliance to End Homelessness
5. Joseph McNamara, Ayers Saint Gross
6. Nicole White, Symmetra Design
7. Any other witnesses as deemed necessary⁵.

IX. CONCLUSION

For the reasons stated above, and for the reasons enumerated in the Applicant's prior filings in this case, we hereby submit that the application meets the requirements for area variance and special exception relief.

We look forward to presenting our case to the Board on March 1, 2017.

Respectfully submitted,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS,
LLP



Meridith H. Moldenhauer
Eric J. DeBear
1912 Sunderland Place, N.W.
Washington, D.C. 20036
(202) 429-9000

⁵ The Applicant requests flexibility in substituting or adding witnesses in response to the Party in Opposition's filing on February 17, 2017. Additionally, the Applicant seeks flexibility in substituting witnesses based on District staff availability.

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2017, I served a copy of this Prehearing Statement via email, to the following:

D.C. Office of Planning
1100 4th Street, SW, Suite E650
Washington, DC 20024
Maxine.BrownRoberts@dc.gov

D.C. Department of Transportation
55 M Street, SE, Suite 400
Washington, DC 20003
evelyn.israel@dc.gov

Advisory Neighborhood Commission 3C
Nancy MacWood, Planning and Zoning Committee Chairperson
nmacwood@gmail.com

Angela Bradbery, Single Member District 3C06
3C06@anc.dc.gov

Neighbors for Responsive Government
David W. Brown, Esq.
401 E. Jefferson Street, Suite 206
Rockville, MD 20850
brown@knopf-brown.com
joy@knopt-brown.com



Meridith H. Moldenhauer