



COUNCIL OF THE DISTRICT OF COLUMBIA
1350 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, DC 20004

Mary M. Cheh
Councilmember, Ward 3
Chair, Committee on Transportation & the Environment

Office: (202) 724-8062
Fax: (202) 724-8118
mcheh@dccouncil.us
www.marycheh.com

October 5, 2018

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

Dear Chairperson Hill,

I write to ask that the Board of Zoning Adjustment (“Board”) reject the application of MED Developers, LLC, in Case No. 19751 for special exceptions from the minimum requirements of Subtitle C §701.5, on the basis that the applicant is not in compliance with the legal requirements for the special exception they seek. Specifically, they are not in compliance with the minimum parking requirements that the special exception mandates. And, it is not possible to justify that noncompliance on the basis of the report submitted to the Board in this case by the District Department of Transportation (“DDOT”) on September 12, 2018, as DDOT’s analysis to flows from the use of an improper legal standard.

In Case No. 19751, MED Developers, LLC, seeks to build a memory care facility in an R-1-B single-family residential neighborhood. To do so, the developer is requesting two special exceptions: (a) a use exception under Subtitle U §203.1(f) for Continuing Care Retirement Community use and (b) a parking exception, to permit relief from the residential parking standard in Subtitle C §701.5, assertedly because the proposed use meets one of the criteria in Subtitle C §703.2.

As a general matter, minimum parking requirements are governed by Title 11 DCMR Subtitle C, chapter 701. Deviations from those minimums pursuant to a special exception occur pursuant to Title 11 DCMR Subtitle C, chapter 703, which provides in pertinent part that the Board “may grant a full or partial reduction in number of required parking spaces, *subject to the general special exception requirements of Subtitle X...*” (emphasis added). In turn, that subtitle provides that the Board may grant special exceptions where the exception “[w]ill meet such special conditions as may be specified in this title.” 11-X DCMR § 901.2(c). And, the special conditions for Continuing Care Retirement Communities provides, among other things, that “[t]he use and related facilities shall provide sufficient off-street parking spaces for employees, residents, and visitors.” 11-U DCMR § 203.1(f)(4). This means, then, that at a baseline, the facility must have off-street parking sufficient for employees, residents, and visitors. MED Developers, LLC does not meet this standard.

In DDOT’s report, the agency states that, although the applicant “anticipates that the use will require approximately 18 daytime and three (3) overnight staff members,” the applicant proposes only “to provide nine (9) spaces accessible via the site’s rear 15-foot public alley.” By the face of the requirements for grant of a special exception, the applicant

Board of Zoning Adjustment
District of Columbia
CASE NO.19751
EXHIBIT NO.260

has not met the standard required under law. Yet DDOT concludes that the agency “has no objection to the approval of the requested relief.” To reach this conclusion, the agency appears to rely heavily on the ability of the applicant to divert employees, residents, and visitors from using personal vehicles. Again, as a baseline matter, this is inconsistent with the requirements of the special exception, and that fact is not mentioned in the report. But, even assuming that such an approach were consistent with the law, DDOT’s analysis nonetheless incorporates many facts that are either unclear, undocumented, or inapplicable.

First, the report references the number of employees expected at the facility, but that information is not established in the application or pre-hearing statement. Whatever information the applicant has provided to the agency should be appended to the report to document the anticipated number of employees, visitors (including all vendors), and other traffic to include proposed off-site group outings referenced in the pre-hearing statement and Office of Planning report.

Second, the report considers the number of on-street spaces available to accommodate the applicant’s needs. The regulations allow consideration of the “[q]uantity of existing public, commercial, or private parking, *other than on-street parking*, on the property or in the neighborhood, that can reasonably be expected to be available when the building or structure is in use.” 11-C DCMR §703.2(g) (emphasis added). Nonetheless, the agency spends considerable time reviewing the implications on blocks with Residential Parking Permit zoning. And, the report concludes that “[o]n typical weekdays, the study suggests that there would not be enough Non-RPP or unrestricted spaces to accommodate all employees. However, employees could either locate curbside parking options further away from the site or choose alternate means to commute.” Again, it is at odds with the regulations for this to serve as a basis for a positive recommendation.

Third, residents have raised substantial concerns that will need to be addressed. For example, is the staffing model proposed sufficient? Will more staff be required such that more trips than are being suggested will be necessary? What is the timing of shift changes and has that been incorporated into the analysis? Why is the alley referenced in the report at all if dedicated loading facilities are not required by zoning? Has the applicant performed a traffic assessment or study? Has it been reviewed by DDOT and, if it has, why is that not referenced?

DDOT has produced a report that suggests that this project satisfies the required legal standards; however, precisely what legal standards are being applied and why, is not at all clear in the report. Based on my reading of the law, the agency has used an incorrect legal standard. Even if my reading is not correct, though, I see no factual predicate in the report to satisfy a different standard. Where information is required for legal analysis, it should be provided and documented. Where information is not required or is expressly excepted from consideration, it should be left out. Doing otherwise has produced a report on a contentious issue that engenders little faith in the work product. As matters stand now, this report seems to be a product of a rushed and ill-conceived analysis driven by the needs and desires of the applicant. I have asked DDOT to withdraw the report and reissue it with a clear statement of the standards it uses and an explanation documenting its basis for finding they have been met. The agency, however, has declined to do so.

I believe that an evaluation of this case based on an application of the correct legal standards to the documented facts must result in a finding that the applicant has not met the standard. As such, I ask that you reject the application for a special exception in Case No. 19751.

Regards,

A handwritten signature in blue ink, appearing to read 'Mary M. Cheh', with a stylized flourish at the end.

Mary M. Cheh