

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19960 of MCF Montana LLC and MCFI LP, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the zone boundary line requirements of Subtitle A § 207.2, under the new residential development requirements of Subtitle U § 421.1, and under Subtitle C § 714.3 from the surface parking screening requirements of Subtitle C § 714.2, to permit the construction of a new 108-unit apartment house in the MU-4/RA-1 zones at the premises at 1400 Montana Avenue, N.E. (Square 4023, Lot 1).

HEARING DATES: April 3, 2019 and May 1, 2019
DECISION DATE: May 22, 2019

DECISION AND ORDER

MCF Montana LLC and MCFI LP (the “**Applicant**”) filed a self-certified application requesting that the Board of Zoning Adjustment (the “**Board**”) to consider the following relief from Title 11 of the D.C. Municipal Regulations (Zoning Regulations of 2016, the “**Zoning Regulations**”, to which all references are made unless otherwise specified):

- a special exception under Subtitle A § 207.2 to extend a zone boundary line;
- a special exception under the new residential development requirements of Subtitle U § 421.1; and
- a special exception under Subtitle C § 714.3 from the surface parking screening requirements of Subtitle C § 714.2 (the “**Application**”),

to permit the construction of a new 108-unit apartment house at premises 1400 Montana Avenue, N.E. (Square 4023, Lot 0001) (the “**Property**”), located in both the MU-4 and RA-1 zones. The Board conducted the public hearing and considered the Application in accordance with the provisions of Subtitle Y. For the reasons explained below, at its May 22, 2019 public meeting, the Board voted to **APPROVE** the Application.

FINDINGS OF FACT

Notice

1. Pursuant to Subtitle Y §§ 400.4 and 402.1, the Office of Zoning (“**OZ**”) sent notice of the Application and the April 3, 2019 hearing by a February 13, 2019 letter to
 - the Applicant;
 - Advisory Neighborhood Commissions (“**ANC**”) 5B and 5C, the “affected ANCs” per Subtitle Y §§ 101.8 and 403.5;
 - the single-member district ANC 5C06;

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- the Office of ANCs;
- the Office of Planning (“**OP**”)
- the District Department of Transportation (“**DDOT**”);
- the Deputy Mayor for Education (“**DME**”);
- the Department of Parks and Recreation (“**DCPR**”);
- the Councilmember for Ward 5, the Chairman of the Council, and the At-Large Councilmembers; and
- the owners of all property within 200 feet of the Property. (Ex. 18-33.)

OZ published a notice of the April 3, 2019 public hearing in the *D.C. Register* on February 8, 2019 (66 DCR 1819) as well as on the calendar on OZ’s website.

2. In response to questions from Zoning Commission Vice Chair Robert Miller at the May 1, 2019 public hearing, OZ made additional referrals on May 3, 2019 to
 - the District’s Fire Marshal and Emergency Medical Service Department (“**FEMS**”);
 - the DC Water and Sewer Authority; and
 - the District of Columbia Metropolitan Police Department (“**MPD**”). (Ex. 84-86.)

Parties

3. The Applicant, ANC 5B, and ANC 5C were automatically parties in this proceeding per Subtitle Y § 403.5.
4. A request for party status in opposition was filed by Bootz on the Ground Community Coalition (“**BGCC**”), through counsel on March 20, 2019. (Exhibit [“**Ex.**”] 42.)
5. BGCC’s party status request listed BGCC’s members as three individuals: Dorothy Davis, Minnie Elliot, and Yvonne Johnson. In support of its argument for party status, BGCC asserted that its three members had been residents of long-term rentals in the vicinity of the Property for at least 15 years. BGCC further claimed that one of its members lived “only one-half block away and arguably within 200 ft. of the site.” (Ex. 42.)
6. BGCC’s party status request stated that it would testify as to the “adverse impacts of allowing significant upzoning, gaps in screening for parking, bulk expansion, and multi-family use with only IZ and limited, if any, family housing” and that such impacts would include “traffic intensification, parking concerns, increased pollution from emissions, inconsistency with the comprehensive plan, and displacement pressures.” (Ex. 42.)
7. BGCC’s party status request alleged that the “changes to the existing zoning maps” would “undermine [Subtitle A § 101.1] because the proposed changes [would] not be in harmony with the general purposes and intents of the zoning regulations and maps pursuant to D.C. [Official] Code § 6-641.01.” (Ex. 42.)
8. BGCC’s party status request stated that its members were residents of Brookland Manor, and alleged that “the lack of family housing” in the Project would be “particularly injurious

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to BGCC membership” because “this Application is being proposed by the same developer – Mid-City – and the proposed building is to be built in synergy” with the re-development of Brookland Manor. (Ex. 42.)

9. The Applicant responded in opposition to BGCC’s party status request, arguing that the BGCC had not met its burden under Subtitle Y § 404 because the Applicant asserted that BGCC had not proved that any of its members’ interests “would likely be more significantly, distinctly, or uniquely impacted than the general public”. The Applicant provided documentation that none of BGCC’s named members lived within 200 feet of the Property. (Ex. 44, 61.)
10. The Applicant also raised procedural objections that BGCC’s party status request:
 - had failed to adequately designate witnesses (Y § 404.1(h));
 - had failed to serve the Applicant or submit a certificate of service (Y § 404.6 and 404.7); and
 - incorrectly sought to combine the issues raised in the Brookland Manor planned unit development case (Z.C. Case No. 14-18A) with the Board’s review of the Application. (Ex. 44.)
11. The Board considered the party status request of BGCC at its April 3, 2019 public hearing.
12. BGCC’s counsel argued for party status because two of its members lived within half of a block of the Project and that they would be uniquely impacted because the Project would:
 - Change the “character of the neighborhood.”
 - Create issues with traffic and parking, especially traffic flow and pedestrian traffic by the Property because of the nearby school; and
 - Result in changes to the viewsheds.(Transcript of the April 3, 2019 Hearing [“**April 3 Tr.**”] at 112, 113.)
13. BGCC did not provide additional BGCC members to testify or satisfy BGCC’s burden of proof and BGCC provided no supplemental documentation at the April 3, 2019 hearing. (April 3 Tr. at 110-131.)
14. The Applicant responded by asserting that BGCC had not met its burden of proving that any of its members were uniquely affected by the proposed zoning action because the Board has frequently used a 200-foot radius as a threshold for determining “unique” impacts and the closest member of BGCC lived 457 feet from the Property. (April 3 Tr. at 116; Ex. 44.) The Applicant noted that the Zoning Regulations require requests for party status to include “the distance between the person’s property and the property that is the subject of the application before the Board.” (Subtitle Y § 404.1(i)(3).)
15. In rebuttal, BGCC conceded that the Property was “more than 200 feet away” from the homes of BGCC’s members but asserted that the 200-foot distance was not a prerequisite

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for party status. BGCC argued that, despite not meeting the 200-foot distance, BGCC nonetheless satisfied the party status standard because its members would be uniquely impacted because its members often “cut across” the Property as part of their normal commute. (April 3 Tr. at 121-22.)

16. Subtitle Y § 404 establishes the standard for evaluating party status requests:

Y § 404.12 *The Board shall determine who will be recognized as a party. In so determining, the Board shall consider whether the provisions of Subtitle Y § 404.1 have been complied with and whether the specific information presented qualifies the person as a party.*

Y § 404.13 *The Board shall grant party status only if the person requesting party status has clearly demonstrated that the person’s interests¹ would be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than those of the general public.*

17. At its April 3, 2019 public hearing, the Board concluded that BGCC had not met its burden under Subtitle Y §§ 404.12 and 404.13 to demonstrate how any of its members were “uniquely affected” by the proposed zoning relief because BGCC’s concerns were of a broader, neighborhood-wide character that were not significantly distinct from those of the general public, nor were BGCC’s members uniquely affected by the Application in comparison to the general public. The Board noted that the ANC had also raised several of the same neighborhood-wide concerns, including traffic impacts and landscaping, in its report. Moreover, the Board noted that BGCC’s individual members would be able to testify as individuals at the public hearing. (April 3 Tr. at 127, 131.)
18. The Board credited the evidence provided by the Applicant, confirmed by BGCC, that none of BGCC’s members lived within 200 feet of the Property. While the Board acknowledged that proximity was not the sole factor in determining whether impacts were unique, it noted that proximity serves as a baseline measure for the Board to begin its evaluation of a party status request. (April 3 Tr. at 116; Ex. 61.)
19. Moving beyond the issue of proximity to the site, the Board found that BGCC’s claims were of a general nature relating to the overall “character of the neighborhood”. The Board was not persuaded by BGCC’s claim that its members would be uniquely impacted because its members walk through or past the site during their normal commute because the Board noted that the Property is privately owned and as such, members of the general public cannot claim a right to use it as an alternative pedestrian route. (April 3 Tr. at 121-122.)

¹ Subtitle Y §404.1(i)(4) defines “interests” as “the environmental, economic, social, or other impacts likely to affect the person and/or the person's property”.

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20. The Board therefore concluded that BGCC had failed to demonstrate that its members were “uniquely” affected and voted to deny the party status request by a vote of 5-0-0. Since BGCC failed to meet this threshold requirement, the Board did not address the other issues raised by the Applicant in its response. (April 3 Tr. at 124-131.)

The Property

21. The Property is triangularly shaped and is bounded by Evarts Street, N.E. to the north; Montana Avenue, N.E. to the southwest; and Saratoga Avenue, N.E. to the southeast. (Ex. 7.)
22. The Property contains 38,873 square feet of land area. (Ex. 43.)
23. As shown as early as 1943 on the Baist’s Real Estate Atlas of Surveys of Washington, D.C., the Property (shown therein as Parcel No. P143/35) was in single ownership prior to May 12, 1958. (Ex. 89.)
24. The Property is currently improved with a one-story building and surface parking lot. (Ex. 7.)
25. The Property is currently surrounded by low to moderate density residential buildings and locally serving retail uses. (Ex. 43.)
26. The Rhode Island Avenue Metro Station is located one-half mile from the property and there are nine Metrobus lines near the property. (Ex. 7.)
27. Walkscore.com indicates that the property is considered “Very Walkable”, “Bikeable” and with “Good Transit”. (Ex. 7.)
28. The property is split between the MU-4 zone (23,717 sq. ft.) on the western side of the property and the RA-1 zone on the eastern side of the property along Saratoga Avenue N.E. (15,156 sq. ft.). (Ex. 7, 89A1.)
29. Both the MU-4 and the RA-1 zones permit apartment development. The MU-4 zone permits apartments as a matter of right and the RA-1 zone permits them by special exception. (Subtitle U §§ 421.1, 501.)
30. The purpose and intent of the MU-4 zone is to permit moderate density mixed-use development, including housing, with access to main roadways or rapid transit stops. (Subtitle G § 400.3.)
31. The purpose and intent of the RA-1 zone is to provide for areas predominantly developed with low- to moderate-density development, including detached dwellings, rowhouses, and low-rise apartments. (Subtitle F § 300.2.)

The Application

32. The Application proposed to construct a 108-unit apartment house consisting of four stories and a penthouse on the MU-4 zone portion of the Property, and three stories on the RA-1 zone portion of the Property (the “**Building**”). The Application also proposed to construct a surface parking lot (collectively, the “**Project**”). (Ex. 7, 82A1-82A2.)
33. The Building will be subject to the Inclusionary Zoning (“**IZ**”) program, which the Applicant estimates would require 11 units at 60% Area Median Income (“**AMI**”). (Ex. 93; Transcript of May 1, 2019 Hearing [“**May 1 Tr.**”] at 13.)
34. The Application asserts that the Project will meet the development standards of by the MU-4 and the RA-1 zones if relief is granted from Subtitle A § 207.2 and Subtitle C § 714.3. (Ex. 43, 89A1.)²
35. The Application proposed the equivalent of 34 parking spaces, composed of 32 standard surface parking spaces, and one car-share space,³ which would be accessed by a 24-foot wide driveway off Saratoga Street, N.E. (Ex. 7, 82A1-82A2.)
36. The Applicant submitted updated plans on April 30, 2019, to provide one additional parking space, and updated façade and landscape plans. (Ex. 82A1 and A2.)
37. The Applicant stated that it had presented the Application to the surrounding community and the full ANC at the public meeting on May 15, 2019.

Zoning Relief Requested

38. The Application requested a special exception under the zone boundary line provision of Subtitle A § 207.2 to permit a 35-foot adjustment of the zone boundary line to permit the bulk regulations of the MU-4 zone to extend to a portion of the Property zoned RA-1.
39. The Application also requested special exception relief pursuant to the new residential requirements of Subtitle U § 421.1 to permit a new residential development in the RA-1 zone.
40. Finally, the Application requested a special exception under Subtitle C § 714.3 from Subtitle C § 714.2(b)’s maximum 20-foot gap in driveway screening to allow a 24-foot-wide driveway.

² The plans at Ex. 89A1 provide the correct standards, but incorrectly reference Subtitle E for the development standards for the RA-1 Zone which are found in Subtitle F.

³ Per Subtitle C § 708.2, one car share space may count as up to three required parking spaces.

OP Report

41. OP submitted a report dated March 22, 2019 (the “**OP Report**,” Ex. 43) that analyzed the Application’s satisfaction of the requirements for the requested special exceptions. The OP Report concluded that the Application satisfied the special exception standards and therefore recommended approval of the Application.
42. The OP Report noted that the Applicant would need to coordinate with DDOT and the Public Space Committee for the improvements in the public right of way.

DDOT Report

43. DDOT submitted a report dated March 22, 2019 (the “**DDOT Report**”, Ex. 46).
44. The DDOT Report concluded that that the Project would not have an adverse impact on the District’s transportation network, although it would lead to a minor increase in vehicular, transit, pedestrian, and bicycle trips and might also lead to minor impacts to on-street parking availability.
45. The DDOT Report had no objection to the Application, provided that the following conditions were adopted by the Board:
 - a. The Applicant be required to modify the building entrance to comply with public space regulations (provided no additional BZA relief required);
 - b. The Applicant implement the Transportation Demand Management (“**TDM**”) Plan as proposed by the Applicant’s transportation memo (Ex. 34); and
 - c. The Applicant install the proposed new crosswalk across Evarts Street, N.E. where it connects to Saratoga Avenue, N.E.⁴
46. After the submission of the DDOT Report, MPD submitted an email dated May 14, 2019 which noted that its only concern was that the Project would result in increased vehicular and pedestrian traffic. (Ex. 90.)
47. DDOT responded to MPD’s comments noting that it concurred with the Applicant’s traffic study and had concluded that the impacts to the District transportation network would be relatively low and that it continued to recommend approval of the Application. (Ex. 91.)

Persons in Support

48. The Board received a letter in support of the Application from Historic Berean Baptist Church, the current occupant of the site. (Ex. 17.)

⁴ The Board concluded that this condition was beyond the Board’s authority to impose. The Applicant has stated on the record that it will work with DDOT to implement the crosswalk. (Ex. 93.)

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49. The Board also received 21 letters in support from neighbors. (Ex. 49-58, 69-79)

50. Two persons testified in support at the May 1, 2019 public hearing.

Persons in Opposition

51. The Board received no letters from persons in opposition to the Application.

52. One person testified in opposition at the May 1, 2019 public hearing.

Public Hearing of May 1, 2019

53. At the public hearing, the Applicant presented testimony from its architect, landscape architect, transportation consultant, and planning expert. (May 1 Tr. at 11-32.)

54. In response to the Applicant's testimony, multiple Board members raised concerns regarding the Project's relationship to and impact on the surrounding neighborhood. (May 1 Tr. at 46-48, 53-59.) The Board noted that it needed to consider the Project's impacts on a wider area than just the immediately adjacent properties. (May 1 Tr. at 60-61.)

55. Commissioner Kirsten Williams of ANC 5C06 (the "**5C06 Commissioner**") raised concerns about the impacts of construction traffic and noise on the surrounding neighborhood but agreed that other construction projects are proposed for the surrounding area. (May 1 Tr. at 65-73.) Although the 5C06 Commissioner stated that she represented ANC 5C in her testimony, as noted by the Applicant, she did not provide any written statement authorizing her to represent ANC 5C. (May 1 Tr. at 83-86.)

56. In response to the Applicant's objection to the 5C06 Commissioner's testimony, the Board requested that ANC 5C submit a written authorization for the 5C06 Commissioner. The Board reminded the 5C06 Commissioner that the Board can only give "great weight" to a written report by the ANC, which can include ratifying the prior testimony of the ANC's authorized representative. (May 1 Tr. at 85.)

57. OP testified in support of the Application. In addressing the requested relief, OP noted:

- a. The location of the zone line allowed the project to "step down" in density as it moved towards to single family residential development to the east. (May 1 Tr. at 87-88.)
- b. By providing a single, wider driveway entrance, the Applicant was eliminating the need for a second 20-foot entrance which would ultimately help minimize both the visual and traffic impacts of the driveway. (*Id.* at 88.)
- c. The Application was also in conformance with the requirements for new residential developments in the RA-1 and was not expected to have an adverse impact on

District services or programs. (*Id.* at 88.)

- d. That both zones permitted apartment houses and that the building would comply with the zoning requirements for the respective zones. (*Id.* at 89.)
58. In response to questions from the 5C06 Commissioner, OP testified that it did not believe that the Project would have any adverse impacts in terms of light and air available to the adjacent properties because of the separation between the Property and the nearby residential neighborhoods. (May 1 Tr. at 98-99.)
 59. Two neighbors, D’Andre Phillips and Ross Ridenour, testified in support of the Project, noting that the Project would bring additional housing and will “help bring life to that location.” Both neighbors also testified that the Applicant’s parking and traffic plans would accommodate the Project and Mr. Phillips noted that it would be “great to have a completed sidewalk.” (May 1 Tr. at 101-07.)
 60. Ms. Dorothy Davis testified in opposition. (Ex. 83; May 1 Tr. at 108-112). At the hearing, Ms. Davis expressed her concerns regarding the height of the Project in relationship to the nearby single-family homes and the potential traffic issues at the intersection of Saratoga Avenue and Montana Avenue.) Ms. Davis also noted that “a lot of senior and disabled people” walk past the Property to reach the Rite Aid and 7-Eleven on Rhode Island Avenue and that crossing the street was difficult. (May 1 Tr. at 109-111.)
 61. At the conclusion of the hearing the Board requested that the Applicant submit:
 - a. Updated plans showing additional elevations and perspective renderings of the Project from each street illustrating the Project’s relationship to the surrounding current and future neighborhood;
 - b. A construction management plan, and a construction traffic management plan; and
 - c. Additional information regarding the changes in pervious surface between the existing conditions and the proposed Project. (Ex. 88; May 1 Tr. at 127-134.)

Post-Hearing Submissions

62. On May 10, 2019, in response to the Board’s requests, the Applicant submitted the following to the record:
 - a. Updated plans showing elevations and perspective renderings of the Project illustrating the compatibility of its materials, design, and massing with the current and future neighborhood, including contextual illustrations of the Project with and without the zone boundary line extension. (Ex. 89A1-A2.)

- b. Shadow studies showing the Project in context with the surrounding neighborhood and illustrating that there would be no impact from the Project on the light and air of the current and future neighborhood, especially the single-family dwellings on Saratoga Avenue. (Ex. 89A1 and A2.)
- c. Draft construction management agreement and construction traffic management agreements. (Ex. 89B and 89C.)
- d. An updated landscaping plan and additional information regarding the changes in the pervious surface between the existing conditions and the proposed Project. (Ex. 89A, 89E.)

ANC Report

- 63. ANC 5B did not file a response to the Application or participate in the case.
- 64. After the May 1, 2019, public hearing, ANC 5C submitted a written report (the “**ANC 5C Report**,” Ex. 92), stating that at a duly noticed and scheduled public meeting on May 15, 2019, at which a quorum was present, the ANC voted to adopt the hearing testimony of the ANC Commissioner for 5C06 and to support the Application.
- 65. The ANC 5C Report raised several issues and concerns including:
 - a. The amenities that would accrue to the community;
 - b. Project staging and mediation;
 - c. Distribution of IZ units;
 - d. Traffic management;
 - e. Sidewalks and landscaping;
 - f. ADA street crossing improvements; and
 - g. Ongoing communications with the ANC and the public.
- 66. The ANC 5C Report also recommended that the Applicant reduce the total number of units and make the appearance of the proposed building congruent with the nearby buildings and residences.
- 67. The Applicant responded to the ANC 5C Report’s concerns and suggestions in a May 20, 2019 letter (Ex. 93) that addressed the ANC 5C Report’s concerns as follows:

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- a. Neighboring development projects will be staggered in the stages of development and construction along Montana Avenue, N.E., and the Applicant will work with ANC 5C to mediate concerns.
 - b. The Project will have 11 IZ units, distributed proportionally throughout the Project.
 - c. A traffic management plan will be implemented during construction, a draft of which is at Ex. 89C.
 - d. The sidewalks and landscaping of the Project will be improved as indicated in the Applicant's post-hearing filings at Ex. 89A-E.
 - e. As noted in the traffic report at Ex. 34 and 89D, the sidewalks and street crossings at the perimeter of the Project will become ADA compliant.
 - f. As described in the Applicant's draft Construction Management Plan and draft Construction Traffic Management Plan at Ex. 89B-C, notifications will be made to the ANC and neighborhood regarding any impacts on the community from construction of the Project, including any sidewalk and/or street closures.
68. The Applicant also noted in its statement that reducing the number of units would not be financially viable.

CONCLUSIONS OF LAW

1. Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(2) (2018 Repl.); *see also* Subtitle X § 901.2) authorizes the Board to grant special exceptions, as provided in the Zoning Regulations, where, in the judgement of the Board, the special exception
 - a. will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map,
 - b. will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, and
 - c. complies with the special conditions specified in the Zoning Regulations.
2. For the relief requested by the Application, the "specific conditions" are those of Subtitle A § 207.2, Subtitle U § 421, and Subtitle C § 714.3.
3. Relief granted by the Board through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the

specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the Board's discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and "if the applicant meets its burden, the Board ordinarily must grant the application." *First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).

Subtitle A § 207.2 - Relief from the Zone Boundary Line Requirements of Subtitle A § 207

4. If approved by the Board as a special exception, the regulations applicable to that portion of a lot located in a lesser restrictive use zone that control the use, height, and bulk of structures and the use of land may be extended to that portion of the lot in a more restrictive use zone; provided:

The extension shall be limited to that portion of the lot in the more restrictive use zone but not exceeding thirty-five feet (35 ft.);

The Board concludes that the Application meets this criterion because the Applicant is only requesting to extend the boundary of the MU-4 zone 35 feet into the portion of the Property zoned RA-1. (Finding of Fact ["**FF**"] 37.)

In authorizing an extension, the Board of Zoning Adjustment shall require compliance with Subtitle A § 207.1(d);

The Board concludes that this subsection is not applicable as the boundary line extension will not be into either a lower density R or RF zone. (Ex. 43.)

The extension shall have no adverse effect upon the present character and future development of the neighborhood;

The Board concludes that the proposed boundary extension would not result in any adverse effects on the present character or future development of the neighborhood because the portion of the property fronting on Saratoga Avenue, which is closest to the low density residential development, would continue to be zoned and controlled by the RA-1 designation and would effectively create a buffer between these lower intensity uses and the Project's greater bulk and density on the other side of the property. (Transcript of May 22, 2019 Public Meeting ["**May 22 Tr.**"] at 7.) The Board also notes that apartment buildings are permitted as a matter of right in the MU-4 zone and as a special exception in the RA-1 and that the Application was not seeking relief from any of the development standards for either zone. (May 22 Tr. at 8.)

The Board of Zoning Adjustment may impose requirements pertaining to design, appearance, screening, location of structures, lighting, or any other requirements it deems necessary to protect adjacent or nearby property.

The Board concluded that no additional requirements were necessary.

Subtitle U § 421 – Special Exception for New Residential Development

5. Subtitle U § 421.1 requires that all new residential developments in the RA-1 zone, except those comprising all one-family detached and semi-detached dwellings, shall be reviewed by the Board as a special exception in accordance with the standards and requirements of the following sections.

U-421.2 The Board of Zoning Adjustment shall refer the application to the relevant District of Columbia agencies for comment and recommendation as to the adequacy of the following:

- a) *Existing and planned area schools to accommodate the numbers of students that can be expected to reside in the project; and*

The Office of Zoning referred the Application to the Deputy Mayor for Education by a letter dated February 13, 2019. (Ex. 24.) No comments were received.

- b) *Public streets, recreation, and other services to accommodate the residents that can be expected to reside in the project.*

OZ referred the Application to DPR (Ex. 25) as well as DDOT (Ex. 23).

DPR did not submit any comments. DDOT submitted a report recommending “No Objection” and recommending three conditions be imposed on the Project. (FF 42-44.) DDOT also responded to concerns raised by MPD about the increased pedestrian and vehicular traffic surrounding the Property.

The Board concurred with DDOT’s findings and proposed conditions, except for the third condition regarding the implementation of a new crosswalk across Evarts Street, N.E. where it connects to Saratoga Avenue, N.E. The Board determined that this condition was beyond the scope of the Board’s authority to impose and would need to be addressed separately by the Applicant and DDOT. (May 22 Tr. at 9 and 11.)

U-421.3 The Board of Zoning Adjustment shall refer the application to the Office of Planning for comment and recommendation on the site plan, arrangement of buildings and structures, and provisions 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.

The Application was referred to OP, which submitted a report in support of the Application. (Ex. 43.) The OP Report concluded that the design and layout of the site was generally

acceptable. The OP noted that while it did not favor the use of surface parking lots, they were permitted, and noted that the Applicant should ensure that the all parking lot landscaping requirements of Subtitle C § 715 are met or exceeded. (Ex. 43.)

U-421.4 In addition to other filing requirements, the developer shall submit to the Board of Zoning Adjustment with the application a site plan and set of typical floor plans and elevations, grading plan (existing and final), landscaping plan, and plans for all new rights-of-way and easements.

The Applicant submitted all of the required plans and elevations. (Ex. 89A1 and 89A2.)

Subtitle C § 714.3 - Relief from the Surface Parking Screening Requirements of Subtitle C § 714.2

6. Per Subtitle C § 714.3, when evaluating a request for a special exception from the screening requirements of Subtitle C § 714.2, the Board of Zoning Adjustment may consider:
 - a. *Impacts on the pedestrian environment within adjacent streets, sidewalks, and other public areas;*
 - b. *Existing vegetation, buildings or protective and screening walls located on adjacent property;*
 - c. *Existing topographic conditions;*
 - d. *Traffic conditions; and*
 - e. *In granting a modification or waiver, the Board of Zoning Adjustment may require any special treatment of the premises that it deems necessary to prevent adverse impacts on neighboring properties or the general public.*

The Board concurred with the conclusions of the OP and DDOT Reports that the Applicant's proposed 24-foot wide break in the parking lot screening would allow the Applicant to consolidate all vehicular ingress and egress to the site. The Board credited the Applicant's argument, and the conclusions of DDOT, that a singular, widened vehicular access point, instead of two points at 20-feet each for a total of 40-feet, would have less of an impact on the pedestrian environment and would cause fewer conflicts with vehicles using the surrounding streets. In addition, because the Project occupies the entire lot and there are no adjacent properties, the Board did not feel the need to impose any special treatment of the premises.

General Special Exception Relief – Subtitle X § 901

7. The Board concludes that the Application, in addition to meeting the specific conditions of the special exceptions from the zone boundary, RA-1 new residential development, and surface parking screening requirements, also meets the general special exception standards in Subtitle X § 901.2 to be in harmony with the purpose and intent of the Zoning Regulations and Zoning Maps and to not adversely affect the surrounding properties.

8. The Board concludes that granting the requested special exceptions would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps because the portion of the Project in the MU-4 zone meets the intent of the zone to permit moderate density development, including residential, that meets the other development standards of the MU-4 zone. The portion of the Project located in the RA-1 also meets the intent and standards of the RA-1 zone. The Board also notes that the configuration of Building, with the greater bulk positioned towards the eastern side of the Property, allows it to be compatible with the higher intensity uses along Rhode Island Avenue, N.E. while still providing a lower density transition to the residential neighborhoods east of Saratoga Avenue, N.E.
9. The Board concludes that granting the requested special exceptions would not tend to adversely affect the use of neighboring properties. The Board credits the findings of DDOT that the Project would not result in unacceptable traffic or parking impacts on the surrounding neighborhood.
10. The Board therefore concludes that the Applicant met its burden of proof to demonstrate that the Application met the general conditions, as well as the specific conditions, for the requested special exceptions from Subtitle A § 207.2, Subtitle U § 421.1, and Subtitle C § 714.3.

“Great Weight” to the Recommendations of OP

11. Pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Y § 405.8, the Board must give “great weight” to the recommendation of OP. *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1086-87 (D.C. 2016).
12. The Board concludes that the OP Report, which provided an in-depth analysis of how the Application met each of the requirements for the requested special exception relief, is persuasive and concurs with OP’s recommendation that the Application be approved, as discussed above.

“Great Weight” to the Written Report of the ANC

13. Pursuant to § 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) (2012 Repl.) and Subtitle Z § 406.2, the Board must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting. To satisfy the great weight requirement, the Board must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016). The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues

and concerns.” *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).

14. Since ANC 5B did not submit a written report stating its issues and concerns with the Application, there is nothing to which the Board can give great weight.
15. The Board considered the ANC 5C Report and concluded that only the concerns regarding traffic management, sidewalks, and landscaping were “legally relevant” to the Board’s review and could be given “great weight”. In finding that the Applicant had satisfied the special exception criteria, the Board concluded that the Applicant had suitably addressed the ANC’s concerns regarding sidewalks and landscaping. With regard to the concerns regarding traffic management, the Board concluded that the Applicant’s DDOT-approved TDM Plan would address the traffic management concerns stated in the ANC 5C Report. The remainder of the issues and concerns were found to be outside of the scope of the Board’s review. The Board notes that the ANC 5C Report supported the Application and the Board concurs in that judgement.

DECISION

Based on the case record, and the Findings of Fact and Conclusions of Law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the following relief:

- a special exception under Subtitle A § 207.2 to extend a zone boundary line;
- a special exception under the new residential development requirements of Subtitle U § 421.1; and
- a special exception under Subtitle C § 714.3 from the surface parking screening requirements of Subtitle C § 714.2

and therefore, orders this relief be **GRANTED**, subject to the following **CONDITIONS**:

1. Development of the Property that uses the relief granted in this Order shall comply with the approved plans⁵ at Exhibit 89A1 and 89A2, as required by Subtitle Y §§ 604.9 and 604.10.
2. The Applicant shall modify the building entrance to comply with public space regulations, provided such modification does not require further zoning relief from the Board.

⁵ Self-Certification. The zoning relief requested in this case was self-certified, pursuant to Subtitle Y § 300.6. (Ex. 16.) In granting the requested self-certified relief subject to the plans submitted with the Application, the Board made no finding that the requested relief is either necessary or sufficient to authorize the proposed construction project described in the Application and depicted on the approved plans. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application that would require additional or different zoning relief from that is granted by this order.

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3. The Applicant shall implement the TDM plan proposed by the Applicant's transportation memo (Exhibit 34) as follows:
- a. The Applicant, or subsequent owner of the Property will identify a TDM Leader (for planning, construction, and operations) at the building, who will act as a point of contact with DDOT/Zoning Enforcement with annual updates. The TDM Leader will work with residents to distribute and market various transportation alternatives and options;
 - b. The Applicant, or subsequent owner of the Property, will provide TDM materials to new residents in the Residential Welcome Package materials;
 - c. The Applicant, or subsequent owner of the Property, will meet Zoning requirements by providing approximately 36 long-term bicycle parking spaces on the ground floor of the building;
 - d. Five (5) short-term bicycle parking spaces will be provided along Montana Avenue, meeting zoning requirements;
 - e. The Applicant, or subsequent owner of the Property, will unbundle the cost of residential parking from the cost of lease or purchase of each unit; and
 - f. The Applicant, or subsequent owner of the Property, will provide a bicycle repair station to be located in the secure long-term bicycle storage room.

VOTE (May 22, 2019): 5-0-0 (Frederick L. Hill, Carlton E. Hart, Lorna L. John, Lesylleé M. White, and Robert E. Miller (by absentee ballot), to **APPROVE.**)

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: February 21, 2020

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 AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS 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 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.