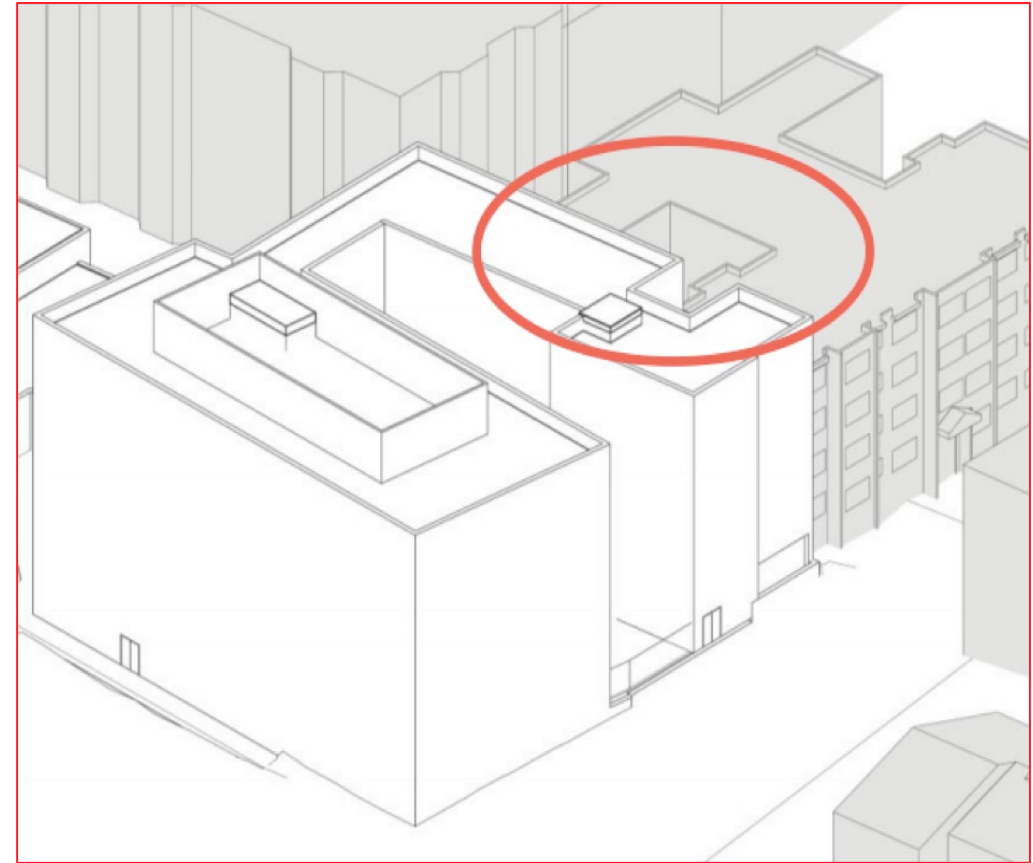


# BZA 20183

Residences of Columbia Heights

1420 Clifton Street NW

- Failure to Apply for Special Exception: U-513.1(b)
- Failure to Provide Meaningful Connection: B-309.1
- Parking shortfall: C-701.5
- Loading shortfall: C-901.1
- No ANC Endorsement of Building



*Residents do not oppose Ward 1 shelter;  
they oppose violations of regulations.*

# Homeless Shelter Replacement Act

Purpose: Replace DC General Family Shelter with  
“temporary shelter for families experiencing homelessness”  
in Wards 1, 3-8

- Ward 3: BZA Special Exception Order 19450
- Ward 4: BZA Special Exception Order 19289
- Ward 5: BZA Special Exception Order 19452
- Ward 6: BZA Special Exception Order 19451
- Ward 7: BZA Special Exception Order 19287
- Ward 8: BZA Special Exception Order 19288

# Homeless Shelter Replacement Amendments Act

Purpose: Replace Ward 1 DC General Family Shelter for “temporary shelter for families experiencing homelessness” original site with 2500 14<sup>th</sup> Street, N.W.

29 emergency shelter units increased to:

- 35 “apartment-style” units (no change in statutory authorization)
- 15 permanent supportive housing (PSH) units

# DC General Replacement Units

## Referred to as Emergency Shelters or Short Term Family Housing (STFH)

- Ward 1: *The new building will be comprised of 50 residential apartments. Of these, 35 will be 2- and 3-bedroom apartments for families in need of short term **emergency housing** (STFH). (Sheet A0.11, Approved Plans)*
- Ward 3: *To allow construction of an **emergency shelter** in the RA-1 Zone District (Case 19450, Applicant's Prehearing Statement, Exhibit 75)*
- Ward 4: *The District of Columbia Government, proposes an **emergency shelter** for 49 families or up to 148 people in the C-2-A District (Office of Planning Report, 6/21/16, Exhibit 38)*
- Ward 5: *46-housing unit **emergency family shelter** (Statement of the Applicant, Case 19452, Exhibit 7)*
- Ward 6: *A new building with **emergency shelter** (Statement of the Applicant, BZA Application, Case 19451, Exhibit 9)*
- Ward 7: *A four-story **emergency shelter** for families with wrap around services on-site (BZA application for Case 19287, Exhibit 34)*
- Ward 8: *A six-story **emergency shelter** for families with wrap around services on-site (Case 19288, Exhibit 34)*

# Failure to Apply for Special Exception

“Emergency shelter” is a **special exception** use in MU-5A zone. (U-513.1(b))

**Emergency Shelter:** A facility providing temporary housing for one (1) or more individuals who are otherwise homeless as that arrangement is defined in the Homeless Services Reform Act of 2005, effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code §§4-751.01 *et seq.*); an emergency shelter use may also provide ancillary services such as counseling, vocational training, or similar social and career assistance. (B-100.2)

# DGS “Apartment Building” Claim

**Apartment:** One (1) or more habitable rooms with kitchen and bathroom facilities exclusively for the use of and under the control of the occupants of those rooms. Control of the apartment may be by rental agreement or ownership.

Building has multiple uses:    15 PSH units = 15 apartments

35 emergency shelter units

no rental agreement or ownership

B-202.1, Applicability of Multiple Uses: “When a site contains more than one (1) use and these uses fall within different use categories, each use is subject only to the regulations of the applicable use category.”

# Ward 1 STFH Defined by City Officials as an **Emergency Shelter**

## Mayor Bowser Breaks Ground on Ward 1 Short-Term Family Housing

Tuesday, July 2, 2019



(Washington, DC) – Today, Mayor Bowser broke ground on the Ward 1 Short-Term Family Housing, the final building in the Mayor’s plan to replace the DC General Family Shelter with dignified, service-enriched programs across DC. Programs in Wards 4, 7, and 8 opened in Fall 2018, programs in Wards 5 and 6 will open in Fall 2019, and Ward 3’s program is scheduled to open in 2020.

“When our neighbors experience a housing crisis, we’re going to be there for them with programs in all eight wards that are safe, service-enriched, and support a quick return to permanent housing,” said Mayor Bowser. “Closing DC General was only the first step. We’re also investing in resources and supports to ensure fewer families in our city ever experience homelessness in the first place. When they do, though, we will have the shelter and programming in place to help them get back on their feet quickly.”

Establishing an effective crisis response system, including the development of smaller, community-based short-term family housing programs, is one part of Mayor Bowser’s strategic plan to end homelessness in the District. Short-term family housing buildings provide a safe, clean, and private place for up to 50 families while they work to obtain permanent housing. Each building is equipped with places for children of all ages to play and do homework and will include services to help families quickly stabilize and exit shelter. The Ward 1 site will include 35 apartment-style emergency shelter units for families and 15 permanent supportive housing apartments for senior women.

*“The Ward 1 site will include 35 apartment-style **emergency shelter** units for families and 15 permanent supportive housing apartments for senior women.”*

*“**Emergency shelter** is a critical component of any homeless service system,” said DC Interagency Council on Homelessness Director Kristy Greenwalt.*

# Ward 1 STFH Good Neighbor Protocol created from duplicate file of Ward 4 Emergency Shelter Protocol

## Roles and Responsibilities/Definitions

- **The Department of Human Services (DHS)**, through contracts with providers, offers emergency shelter for families experiencing a housing crisis. DHS is responsible for oversight of contracted providers who provide this emergency shelter.
- **The Department of General Services (DGS)** is the real estate arm of the District government responsible for managing the construction at 2500 14<sup>th</sup> Street, NW and provides building management services for facilities owned or operated by the District.
- **[The Provider]** is the organization who operates the short-term family housing program for families experiencing homelessness at 2500 14<sup>th</sup> St. NW through a contract with DHS.
- **The Advisory Team** is made up of community and ANC representatives and is responsible for

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W1\_Good Neighbor Protocol\_DRAFT\_7.29.19.docx, circulated by email to Design Advisory Team



# Mayor Bowser Remarks – 8/21/19 Ward 5 Shelter Ribbon Cutting



# Mayor Bowser States All STFH Facilities Secured BZA Approval

“We made the decision to present all of our Short Term Housing facilities to the Board of Zoning Adjustment for approval.”

*- 8/21/19 Ward 5 Shelter Ribbon Cutting*

# RECAP: Why a Special Exception is Required

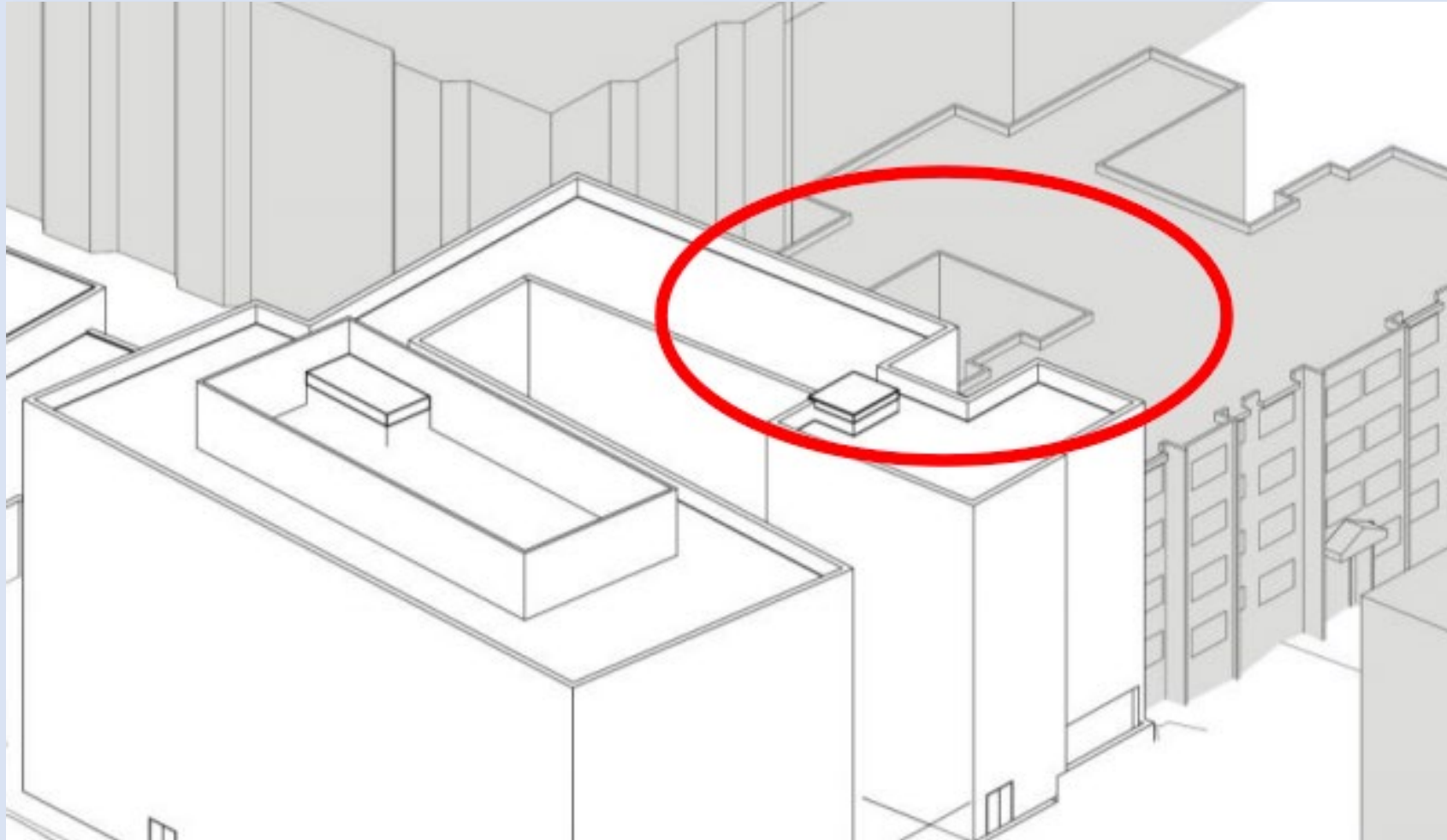
Per U-513.1(b)

1. Ward 3-8 DC General replacement shelters sought and obtained, BZA approval
2. All DC General Replacement shelters are defined as emergency shelters
3. Ward 1 is referred to by the City as an emergency shelter
4. Emergency shelters are referred to as Short Term Family Housing (STFH)
5. Ward 1 building is both STFH (35 units) and Permanent Supportive Housing (PSH) (15 units)
6. Mayor Bowser: all DC General Replacement Shelters presented to BZA for Special Exception approval.
7. Building is primarily an “emergency shelter”

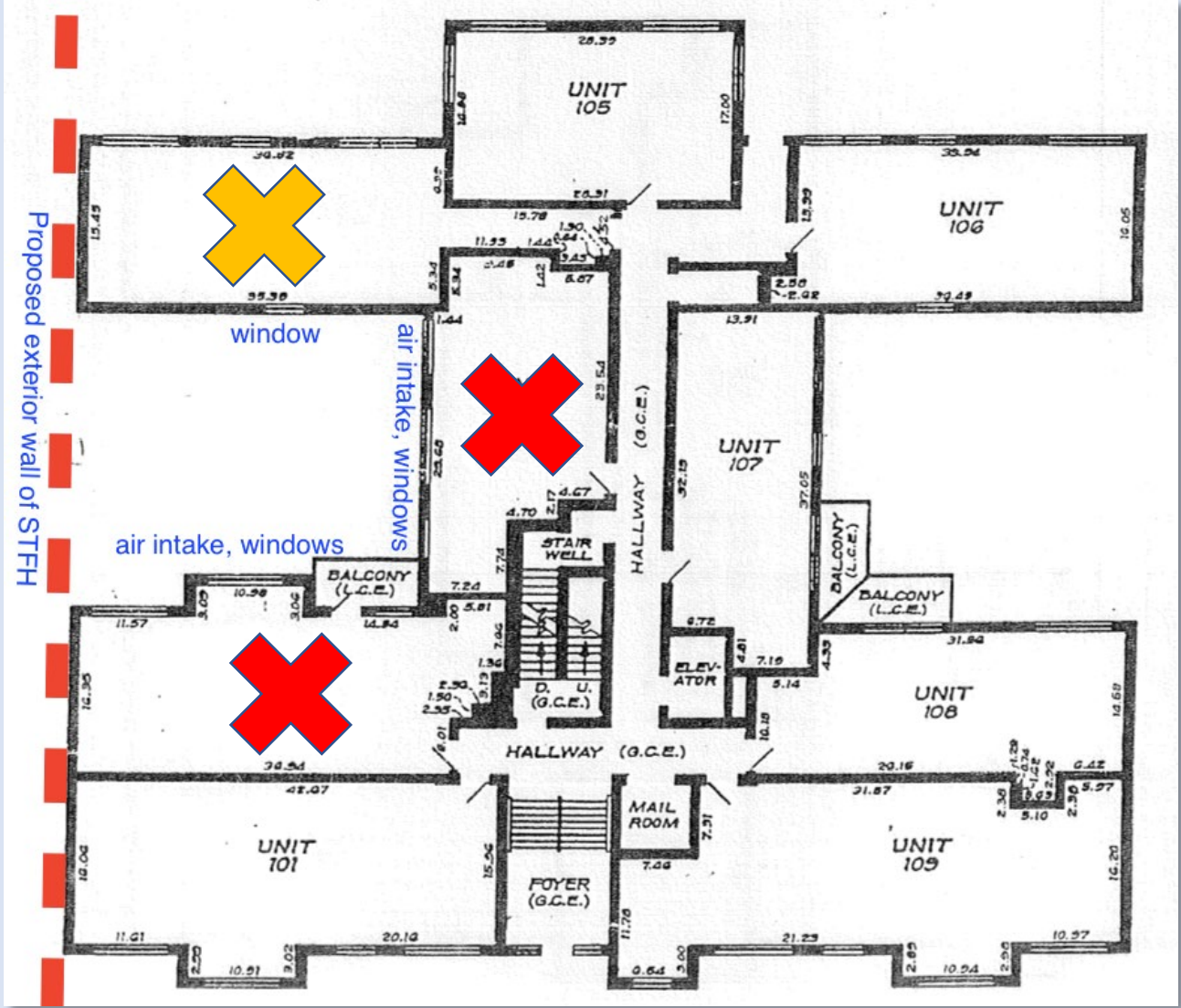
# Failure to Provide Rear Yard Setback

- MU-5A requires a 15-foot rear-yard setback (G-405.2)
- City avoids setback by making spurious claims:
  - Clifton St is the “front” of the building; rear yard is on Chapin
  - Existing community center and STFH are “one building” for zoning purposes because of an alleged “meaningful connection”
- Requirements violated:
  - Connection between community center and STFH is not “meaningful connection”; STFH must be considered separate building with rear-yard setback requirement

# Effects of Failure to Provide Rear Yard Setback



# Effects of Failure to Provide Rear Yard Setback



# Meaningful Connection Requirements (B-309.1)

Two buildings can be considered a "single building" when their connection is:

- a) fully above grade;
- b) enclosed;
- c) heated and artificially lit; and
- d) either common space shared by users or space that is designed and used to provide free and unrestricted passage between separate portions of the combined buildings.

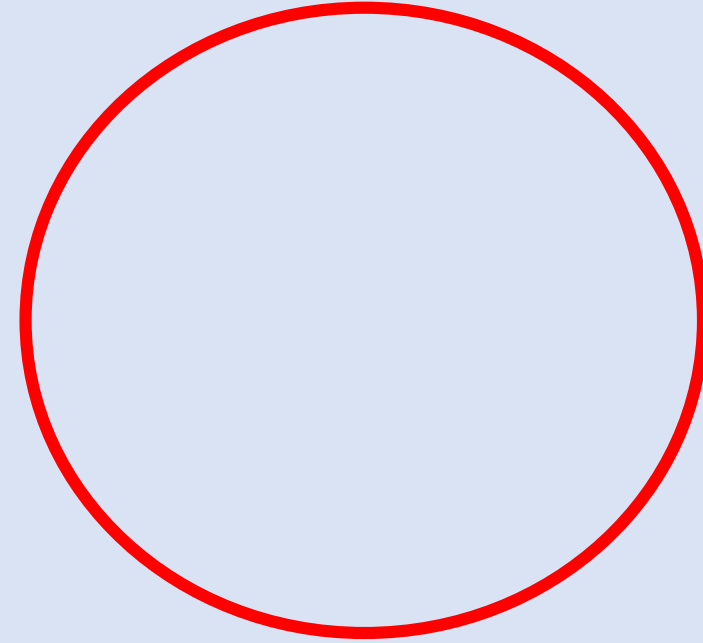
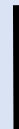
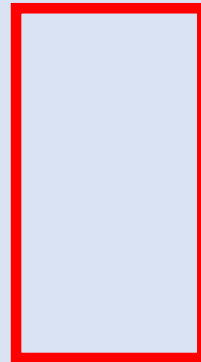
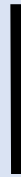
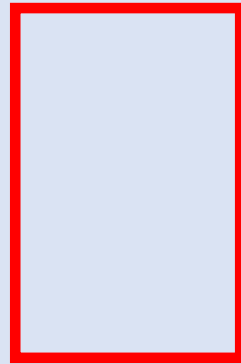
# Ward 1 Shelter Fails B-309.1 Requirements for Meaningful Connection

B-309.1	Criteria	Explanation
fully above grade;	No	<ul style="list-style-type: none"> <li>• DGS represented to ZA that connection is fully above grade; however, connection is at P1 and is not fully above grade; approved plans confirm that P1 is not fully above grade</li> <li>• ZA uses B-304.5 (partly above/partly below) grade definition, but B-309.1(a) is a “fully above grade” requirement;</li> <li>• ZA email is inconsistent with 3 other meaningful connection Zoning Determination Letters (2013, 2017, 2018)</li> </ul>
enclosed;	Yes	Yes
heated and artificially lit; and	No	Parking garage is not heated
either common space shared by users or space that is designed and used to provide free and unrestricted passage between separate portions of the combined buildings.	No	Access doors do not allow for unrestricted access



# Connection Not Fully Above Grade

Level P1 GFA	1" = 30'-0"
CUNNINGHAM   QUILL ARCHITECTS	03/22/19



# Building code analysis: Connection is not fully above grade

Building Code / 2013 District of Columbia Building Code Analysis:

Definitions		
Table / Section	Requirement	Proposed
Section 201 : Definitions	GRADE PLANE: A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than 6 feet from the building, between the building and a point 6 feet from the building.	Grade Plane as defined by the IBC is 173.46 for the project
Section 201 : Definitions	STORY ABOVE GRADE PLANE: Any story having its finished floor surface entirely above grade plane, or in which the finished surface of the floor next above is: 1. More than 6 feet (1829 mm) above grade plane 2. More than 12 feet (3658 mm) above the finished ground level at any point.	1. Ground Level is at 179.28', which is 5' - 10" above Grade Plane (173.46). 2. The lowest finished ground level is 167.92. The Ground Level is 10' - 11 1/4" above this point.  Therefore P1 is NOT considered a story above grade plane and does not count towards the allowable stories of a building per table 503.

“Therefore P1 is NOT considered a story above grade plane and does not count towards the allowable stories of a building per table 503.”

# Ward 1 Shelter Fails B-309.1 Requirements for Meaningful Connection

B-309.1	Criteria	Explanation
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heated and artificially lit; and	No	Parking garage is not heated
either common space shared by users or space that is designed and used to provide free and unrestricted passage between separate portions of the combined buildings.	No	Access doors do not allow for unrestricted access

## Parking Garage is Not Heated

Jim Schulman, Architect for Appellant: *“So, in the winter it will be cold, and in the summer it will be humid?”*

Datillio Radcliffe, DGS: *“Yes.”*

– Status Meeting, OAH Appeal 2019-DCRA-00155, December 11, 2019

## Parking Garage is Not Heated

*“DGS intends to specify a garage door for the new underground parking on its property with **penetrations adequate to permit natural ventilation of the parking level** of the proposed construction that will thereby inhibit but not eliminate, automobile exhaust from migrating into The Residences.”*

– Joint Status Report, OAH Appeal 2019-DCRA-00155, December 18, 2019

# Ward 1 Shelter Fails B-309.1 Requirements for Meaningful Connection

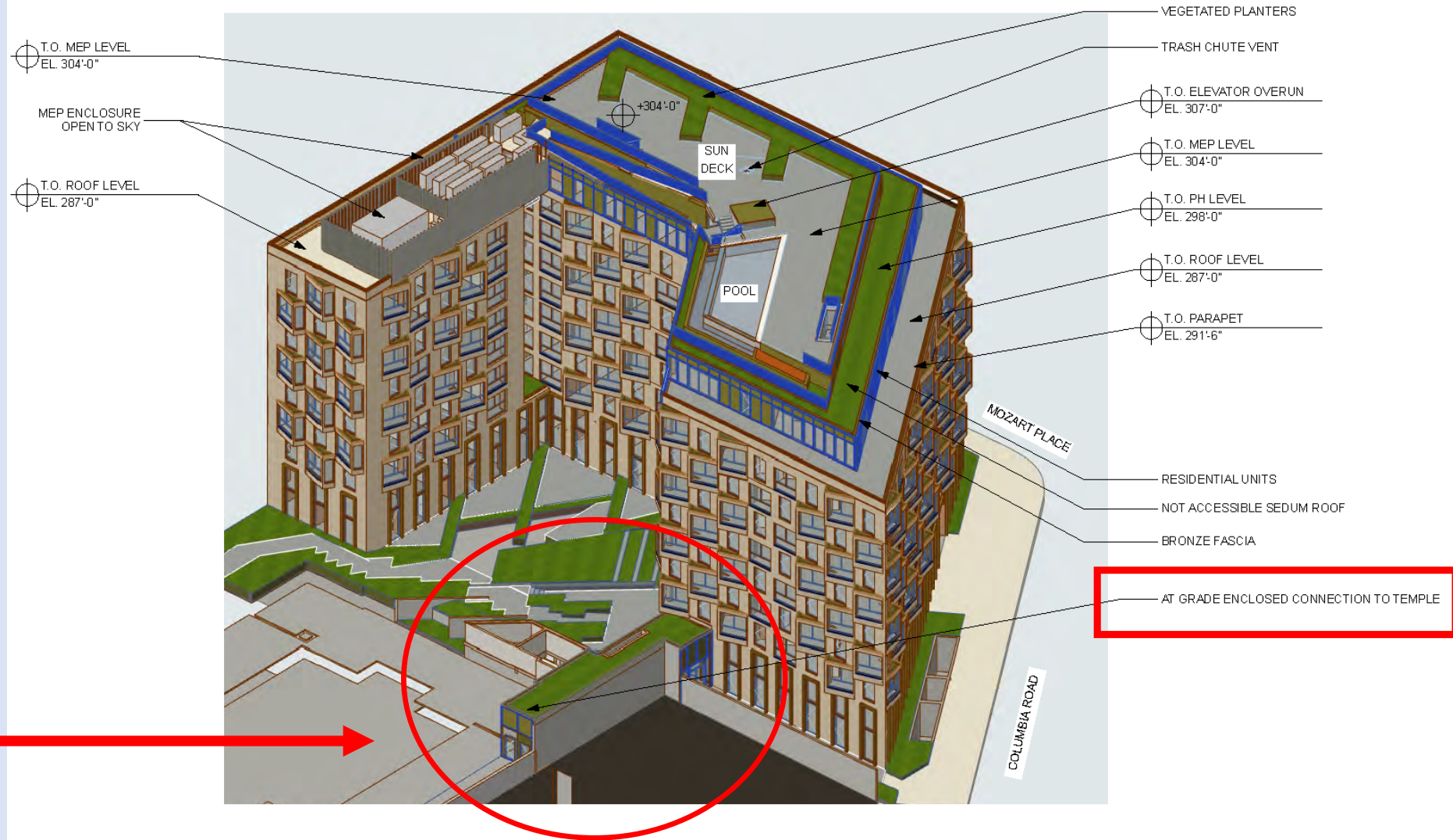
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# ZA Interpretation of B-309.1 Inconsistent with Recent Cases

- 2800 Columbia Road, NW
- 33 N Street, NE
- 1311 R Street, NW

# 2800 Columbia Road NW

2017 Zoning Determination Meaningful Connection is Fully Above Grade



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**1630 Columbia Road** **SK.11**  
**EASTBANC**  
 Project Number 18007.00  
 Printed 3/21/19  
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3D VIEW 01



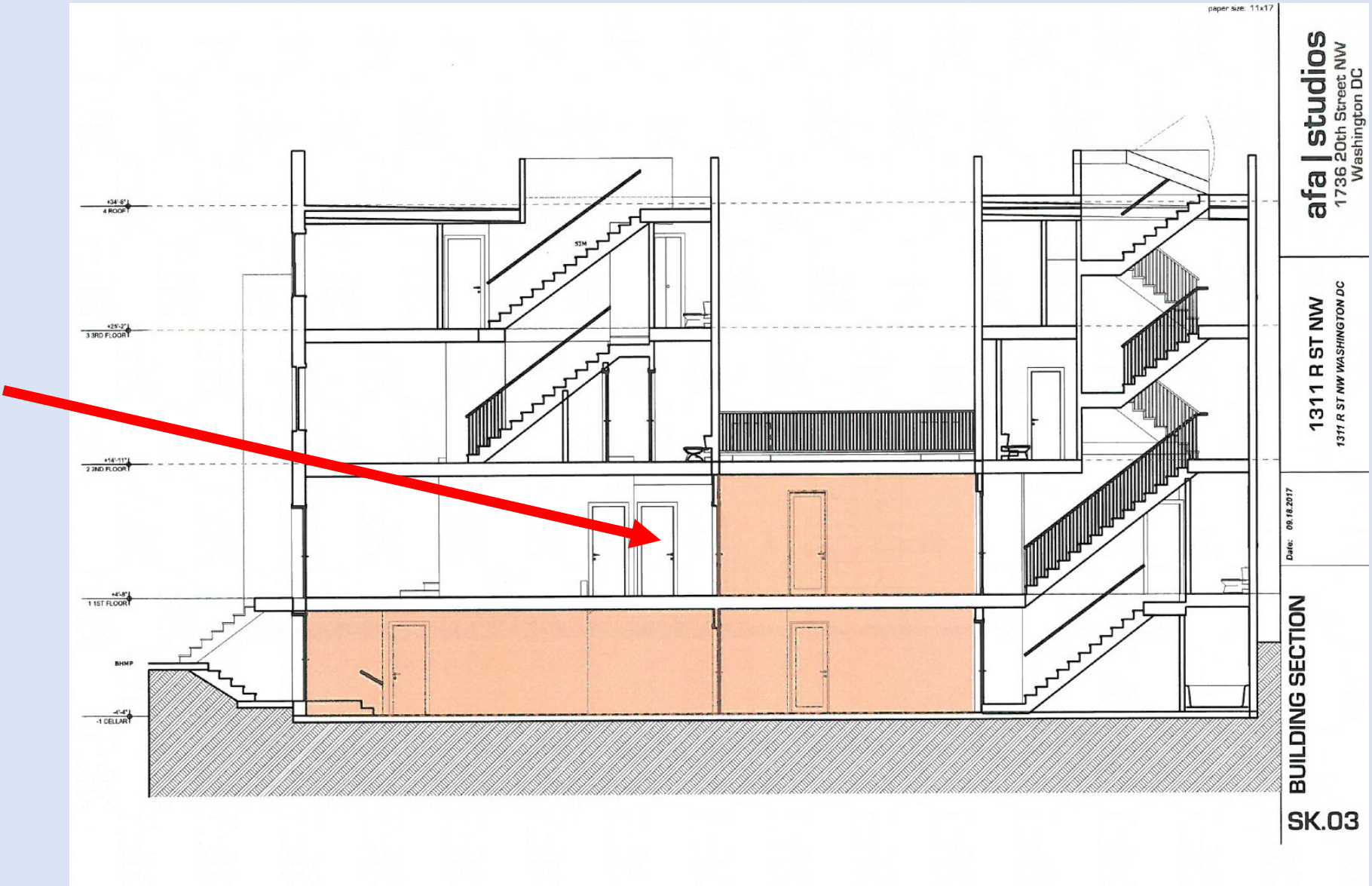
# 33 N Street NE: 2013 Zoning Determination Letter

## Single Building Connections:

The Zoning Regulations provide that the existence of communication below the level of the main floor does not make a single building. Conversely, the existence of communication at or above the level of the main floor does create a single building. Assuming that the separate structures (i.e., each phase) are connected at or above the level of the main floor (the floor on which the principal entrance to the building is located), as required by the regulations currently in effect, the entire building will be considered as a single building and will be eligible for a maximum height of 130 feet and a maximum FAR of 10.0, provided that sufficient TDRs are vested in the property.

*“...existence of communication below the level of the main floor does not make a single building.”*

# 1311 R Street NW: 2018 Zoning Determination





# DGS Sought Zoning Guidance from ZA Only After Neighbor Concerns

City sought and secured “advisory statement” (not a Zoning Determination Letter) from Zoning Administrator (ZA) well after designs were in place:

- 18 months after site selected
  - 9 months after first plans developed and permits applied for
    - 1 month after residents pointed out the lack of rear setback
    - MU-5A zone allows 2 primary buildings on one lot

# Summary: Permitted Building & Community Center Lack Meaningful Connection

1. Connection at P1 level and is not fully above grade
2. Connection is not heated
3. Connection does not allow unrestricted access
4. ZA email on meaningful connection is inconsistent with other Zoning Determination Letters

**Permitted Building Requires a Separate 15-Foot Setback**

# Parking and Loading

## Parking C-701.5, 709.3

- Requirement is 14 spaces (with 50% bus corridor reduction) but only 8 spaces provided

## Loading C-901.1

- Plans do not provide the required C-901.1 minimum of one loading berth and one delivery space for an emergency shelter between 30,000 and 100,000 sq ft of gross floor area

# No ANC Endorsement of Approved Permit/Plans

- ANC1B resolution (December 7, 2017) endorses only **location** of Ward 1 STFH.
  - *...we stand ready to work with the Administration to develop a plan where all the requirements of this project are exceeded, the walls between neighbors remain low, and the neighborhood continues to realize the tangible and intangible benefits that come from supporting each other.”*
- No additional ANC1B resolutions on the Ward 1 STFH have been introduced or approved.

# Consequences of Evading Rear-Yard Setback

- Snowdrift (OAH)
- Carbon monoxide buildup through garage walls (OAH)
- Loss of light
- Enclosed fresh air intake

# Consequences of Evading Rear-Yard Setback

## **Snowdrift:**

*Based on our calculations [...], that snow drift load will be 45.4 psf and 50.4 psf on the 1420 Clifton St building. DC code minimum design snow loads for roof structures is uniform 30 psf or 25 psf+ snow drift.*

- Yun Associates, Engineers for DGS, December 9, 2019



# Consequences of Evading Rear-Yard Setback

## **Snowdrift:**

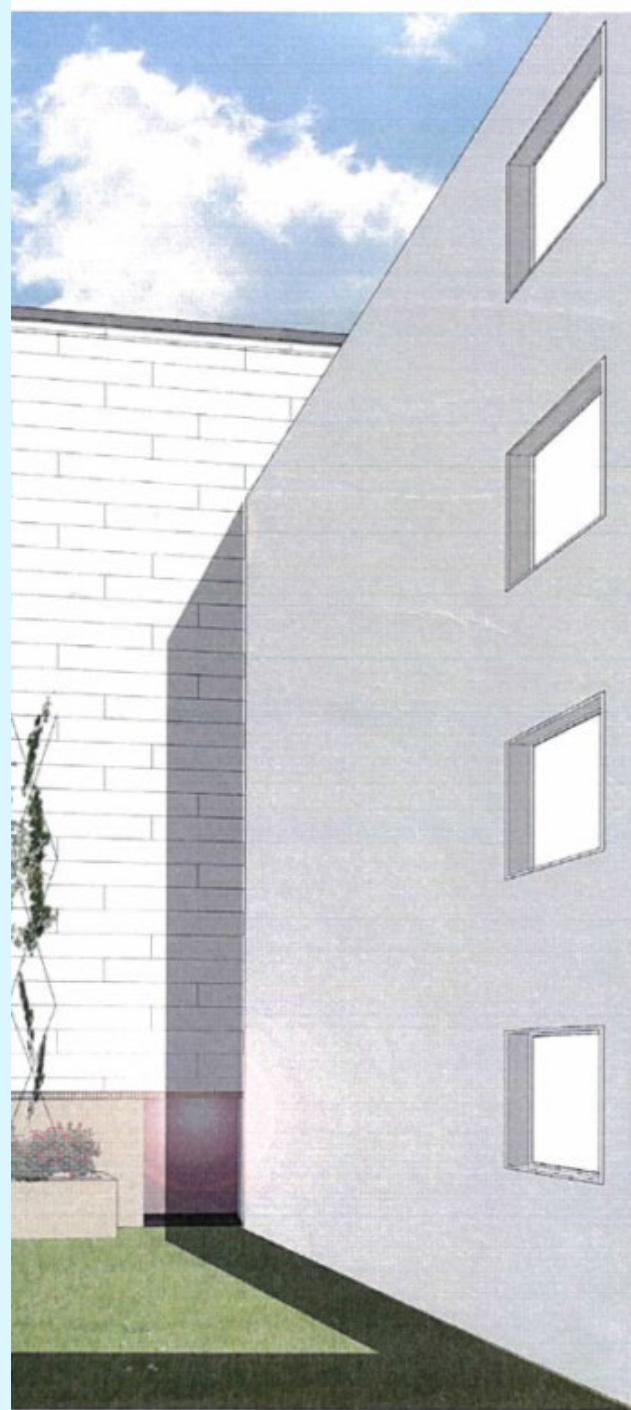
*Their construction is clearly increasing the load onto your roof, with the added load more than twice the code-minimum snow load, which your roof is likely to have been designed for.*

- Rob Field, S Street Structural Engineers, Consultant for RCH

# Clifton Courtyard Before



# Clifton Courtyard Options Offered by DGS



Unit 403  
Purchased 2/2001 for \$242,500  
Sold 9/2019 for \$250,000



Unit 403  
Purchased 2/2001 for \$242,500  
Sold 9/2019 for \$250,000



# Disregard of Efforts of Clifton Residents

- Ignored requirement for Special Exception BZA hearing
- Advisory Team said it was “too late” to address concerns
- Councilmember’s Chief of Staff said “zoning was on another track”
- No responses to emails to DGS, ZA
- No response to FOIA requests
- Disregard of zoning regulations by DGS, DCRA, ZA

# Disregard of Regulations

“There’s obviously a greater good here,” she [Nadeau] told DCist.

D.C. Breaks Ground On Ward 1 Homeless Shelter. DCist. July 2, 2019

Nelson, chair of the 1B Zoning Preservation and Development Committee said, “their argument is basically, they don’t want to lose their view.”

*15 feet and a wall: Why some homeowners feel marginalized by the city’s plan to help families without homes. Street Sense Media. August 29, 2019*



# BZA Has Precedent for Special Exception and Setback

BZA 19705 (2018) – similar conditions as Ward 1 site

- Project identifies frontage as side street (W Street, like Clifton)
- Impact on neighbors examined (like Clifton, but this site abuts alley)
- Both sites with setback concerns (height vs. rear-yard)

**OP, ANC1B, BZA, and developer agreed to increase height setback**



# Neighbor Testimony

Barbara Bridges

Amity Kirby

Jordan MacKenzie

Jumana Qamruddin

# RECAP of the Facts

- **Special Exception is Required:** STFH is an emergency shelter (U-513.1(b))
- **Rear Yard Setback is Required:** Plans lack meaningful connection (B-309.1)
- **Parking and Loading Requirements Not Met:** 14 spaces required (C-701.5) but only 8 spaces provided; plans do not provide the required minimum of one loading berth and one delivery space (C-901.1)
- **No ANC Endorsement of Permit/Plans**
- **Appeal Filing Timely:** 24 days after permit issuance; zoning email not first writing

## CERTIFICATE OF SERVICE

IT IS CERTIFIED that this 8<sup>th</sup> day of January 2020, two paper copies of the Petitioners' Powerpoint Presentation [to be discussed at hearing] (Exhibit 33) was mailed, first class, postage prepaid to the Office of Zoning, and one copy was mailed, first class, postage prepaid to the applicant and owner of the building permit, Department of General Services, 1250 "O" Street, NW, Washington, DC 20009; and one copy was sent via email to Advisory Neighborhood Commission 1B, Suite #100 B, 2000 14th Street NW, Washington, DC 20009, [oanc@dc.gov](mailto:oanc@dc.gov); and emails to the Single Member District 1B06, [1B06@anc.dc.gov](mailto:1B06@anc.dc.gov); , and by email to Commissioner Jen Bristol, who represents the Single Member District, [1B06@anc.dc.gov](mailto:1B06@anc.dc.gov).

A handwritten signature in black ink, reading "David W. Brown", is written over a horizontal line.

David W. Brown, attorney for appellant