February 7, 2020

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Frederick L. Hill, Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Suite 200S
Washington, DC 20010

RE: BZA Appeal No. 20183
DGS' Prehearing Statement

Chairperson Hill and Honorable Members of the Board:

On behalf of Intervenor DC Department of General Services ("DGS"), please find enclosed a prehearing statement for this matter. Thank you for your consideration of this statement and we look forward to presenting to the Board on February 26, 2020.

Sincerely,

Cozen O'Connor

By: Meridith H. Moldenhauer

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of February 2020 a copy of the foregoing Prehearing Statement was served, via electronic mail, on the following:

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Meridith H. Moldenhauer

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPEAL OF **BZA CASE NO. 20183**
THE RESIDENCES OF COLUMBIA HEIGHTS, A CONDOMINIUM

PREHEARING STATEMENT OF
DEPARTMENT OF GENERAL SERVICES

The Department of General Services ("DGS"), on behalf of the District of Columbia, the owner of the subject property, files this prehearing statement as to the merits of this appeal of Building Permit No. 1908601 (the "Building Permit"), which allows construction of an apartment-style, Short-Term Family Housing and permanent supportive housing addition to the Rita Bright Community Center (the "Project") at 2500 14th Street NW (Lot 205, Square 2662) (the "Property").[1] The Appellant, Residences of Columbia Heights, a Condominium (the "Condominium") claims that the Building Permit was issued in error because:

1. The Project is not a by-right residential apartment building in the MU-5A zone, but an emergency shelter use requiring special exception relief;
2. The Project is a second primary structure on the Property because there is no "meaningful connection" between the Project and the existing recreational center building;
3. The Project does not meet the rear yard requirement if there are multiple buildings on the Property; and
4. If the proposed use is deemed an emergency shelter, the Project does not meet the requirements for vehicular parking, bicycle parking and loading.

The Condominium's arguments should all fail. The Zoning Administrator did not err by issuing the Building Permit. The Project is an apartment use under the Zoning Regulations and constitutes a single building with a meaningful connection to the existing building on site. In turn, the arguments concerning rear yard, parking and loading are moot. This appeal should be denied.

[1] DGS has filed a motion to dismiss this case as untimely for the reasons stated at Exhibit Nos. 43-54; 58 and 58A-58B. The Board heard arguments on the motion on January 29, 2020. The Board decided to hold its decision on the timeliness argument in abeyance. DGS continues to assert that this appeal is untimely and should be dismissed for that reason. Accordingly, nothing in the foregoing pre-hearing statement or any argument on the merits should be construed or considered to waive that argument.

FACTUAL BACKGROUND

I. Council legislation clearly distinguishes the Project's Apartment-Style Units and Private Room DC General Replacement Units

Despite the Condominium's efforts to confuse the issues, the legislative and policy basis for the Project clearly distinguishes it from Short-Term Family Housing ("STFH") buildings in other wards. Accordingly, it is helpful to briefly review the history here to understand the differences.

By way of background, since her first term, Mayor Bowser has been pursuing an eight-ward "Homeward DC" initiative to make homelessness rare, brief, and non-recurring in the District of Columbia. As part of this initiative, the Mayor closed D.C. General. As the Court of Appeals found "there was 'widespread agreement that D.C. General [did] not meet the needs of families experiencing homelessness and should be closed.' New, 'more humane' family shelter arrangements were urgently needed." *See Neighbors for Responsive Govt. v. D.C. Bd. of Zoning Adjustment*, 195 A.3d 35, 42 (2018). The Bowser Administration is in the process of opening seven new shelter buildings for families experiencing homelessness. While the Project is part of this initiative, it stands in sharp contrast to the other buildings in use – because it contains Apartment-Style Units with no central dining areas, shared bathrooms, or floor-by-floor security. These distinctions are important and are directed in the governing legislation.

Relative to the closure of D.C. General, the Council of the District of Columbia (the "Council), has passed legislation over the last 15 years, creating and amending the standards for homeless shelters in the District.[2]

In 2005, the Council enacted the "Homeless Services Reform Act," which in part established a standard known as the "continuum of care" for individuals and families experiencing

[2] Only the legislation relevant to a discussion of the zoning issues in the appeal is discussed herein.

homelessness in the District. A copy of the Homeless Services Reform Act is attached at **Tab A**. As part of the Homeless Services Reform Act, the Council, among other things, created the definition of an "Apartment Style" unit (the "Apartment-Style Units"):

> **(A)** Separate cooking facilities and other basic necessities to enable families to prepare and consume meals;
> **(B)** Separate bathroom facilities for the use of the family; and
> **(C)** Separate sleeping quarters for adults and minor children in accordance with the occupancy standards of Title 14 of the District of Columbia Municipal Regulations (Housing). *See* D.C. Code § 4-751.01(3).

In September 2015, the Council, on behalf of Mayor Bowser, introduced and enacted the "Interim Eligibility and Minimum Shelter Standards Amendment Act of 2015" (the "Minimum Standards Act"). A copy of the Minimum Standards Act is attached at **Tab B**; a copy of the Committee of the Whole Report is attached at **Tab C**.[3] The Minimum Standards Act allows for private room "DC General Family Shelter replacement units" (the "Private Room DC General Replacement Units"). The Private Room DC General Replacement Units could consist of separate *rooms*, not separate, Apartment-Style Units. *See* D.C. Code § 4-751.01(11A); *see also* **Tab B**.

Specifically, the Minimum Standards Act defined Private Room DC General Replacement Units as "a private room that includes space to store and refrigerate food and is constructed by or at the request of the District for the purpose of sheltering a homeless family." *See* D.C. Code § 4-751.01(11A); *see also* **Tab B**. Further, a "private room" is defined as "a part or division of a building that has:

> **(A)** Four non-portable walls that meet the ceiling and floor at the edges so as to be continuous and uninterrupted; provided, that the room may contain a window if the window comes with an opaque covering, such as blinds or shades;
> **(B)** A door that locks from both the inside and outside as its main point of access;
> **(C)** Sufficient insulation from sound so that family members sheltered in the room may have a conversation at a normal volume and not be heard from the exterior;
> **(D)** Lighting within the room that the occupants can turn on or off as desired; and

[3] An excerpt of the Committee of the Whole's Report is attached. The full report is publicly available on the Council's Legislative Information Management System.

> **(E)** Access to on-site bathroom facilities, including a toilet, sink, and shower. *Id.* at 28(A); *see also* **Tab B**.

The Minimum Standards Act also establishes different bathroom standards than the required private bathroom for Apartment-Style Units. Specifically, Private Room DC General Replacement Units are allowed to have shared bathrooms that comply with:

> (A) A private bathroom, including a toilet, sink, and bathtub or shower, in at least 10% of the DC General Family Shelter replacement units;
> (B) For every 5 DC General Family Shelter replacement units, one private, lockable bathroom that includes a toilet, sink, and bathtub and shall be accessible to all residents; and
> (C) At least 2 multi-fixture bathrooms per floor that shall include multiple toilets, sinks, and showers. *Id.* at § 4-753.01(d)(3); *see also* **Tab B**.

Further acknowledging the difference between the two types of units, the Minimum Standards Act requires the Mayor to maintain a different number of Apartment-Style Units and Private Room DC General Replacement Units. Under the law, the Mayor must maintain no less than 121 Apartment-Style Units and, separately, at least 270 Private Room DC General Replacement Units. *See Id.* § 4-753.01(d)(4-5); *see also* **Tab B**.

In June 2016, Mayor Bowser introduced and the Council passed the "Homeless Shelter Replacement Act of 2016" (the "HSRA") authorizing the Mayor "to use designated funds, appropriated for the purpose of developing replacement shelter facilities for the DC General Family Shelter." A copy of the HSRA is attached at **Tab D**. The HSRA specifically identifies the type of building – i.e. whether it would be a structure that contains Private Room DC General Replacement Units *or* a structure that would contain Apartment-Style Units. As it concerns the Project, the HSRA appropriates funds for the Mayor to construct a facility for families containing "29 2-and 3 bedroom apartment style units." *See* **Tab D**.[4] Whereas, for STFH buildings in Wards

[4] The HSRA originally designated property located at 2105-2107 10th Street NW as the location for the Ward 1 STFH building. However, the location was later changed to the Property under the HSRAA.

3, 4, 5, 6, 7, and 8, the HSRA authorizes the Mayor to construct structures containing private room "DC General Family Shelter replacement units." *See* **Tab D**.

In accordance with the HSRA, DGS filed zoning relief applications in Wards 3, 4, 5, 6, 7 and 8 to allow for an "emergency shelter" use in the STFH buildings.[5] The Board approved the zoning applications to allow the construction of an "emergency shelter" use in Wards 3, 4, 5, 6, 7 and 8.

In December 2017, the Mayor introduced and the Council passed the "Homeless Shelter Replacement Amendment Act of 2018" ("HSRAA") designating the Property as the location for the Project. A copy of the HSRAA is attached at **Tab E**. The HSRAA authorized the construction of "35 2- and 3-bedroom apartment-style units" at the Property. *See* **Tab E**.

II. The Property and the Project

The Property is located in the MU-5A zone where an "apartment house" use is permitted by-right. *See* Subtitle U § 512.1(a). The Property is improved with the Rita Bright Community Center (the "Rita Bright Center"), which covers roughly the southern half of the lot. The Property's topography slopes downward considerably from north to south. The Property has frontage on three streets: 14th Street NW to the east, Clifton Street NW to the north, and Chapin Street NW to the south. As such, the Property constitutes a "through lot" under the Zoning Regulations.

Consistent with the HSRAA, the Building Permit allows DGS to construct 35 Apartment-Style Units for families experiencing homelessness and 15 units of "permanent supportive housing" for seniors (the "PSH Units").[6]

[5] *See* BZA Case Nos. 19287 (Ward 7), 19288 (Ward 8), 19289 (Ward 4), 19450 (Ward 3), 19451 (Ward 6), and 19452 (Ward 5). In Ward 2, the existing "N Street Village" shelter for women will constitute the Short-Term Family Housing building. The Board's approvals of in case numbers 19450 (Ward 3) and 19452 (Ward 5) were affirmed by the D.C. Court of Appeals.

[6] The Condominium does not contest that the PSH Units are a by-right apartment use.

The Building Permit is the result of a detailed and thorough review by Department of Consumer and Regulatory Affairs ("DCRA"), including input from the Condominium and its counsel. In January 2019, DGS began the permitting process to construct the Project as a by-right building at the Property. DGS applied for and obtained from the DCRA a foundation permit under FD1900028, a sheeting and shoring permit under SH1900029, and a building permit under B1908601 (referenced above as the "Building Permit").

As part of the Building Permit application, DGS submitted architectural plans (the "Plans") for the Project. A copy of the approved architectural plans are attached at **Tab F**. Under the Plans, the Project will be constructed as an addition to the Rita Bright Center with an above-grade connection on the parking level, which is further described in Section II below. *See* **Tab F**. On the parking level is the Project's resident lobby, a case manager office, conference room, lounge and 21 parking spaces. *See* **Tab F**. The first level includes Apartment-Style Units, a community room, trash room, a courtyard playground, and a second resident lobby. *See* **Tab F**. On the second through fifth floors are Apartment-Style Units and PSH Units. *See* **Tab F**. There is no communal dining area. The penthouse will be mechanical equipment only.

Notably, the Plans provide extensive detail on the layout of the Apartment Units. *See* **Tab F**. Overall, there are 26 two-bedroom Apartment-Style Units and 9 three-bedroom Apartment-Style Units. *See* **Tab F**. The Apartment-Style Units have their own kitchen and bathroom facilities. The living space is separate and distinct from the bedrooms. *See* **Tab F**. All the Apartment-Style Units will have keycard-controlled access, so that only the designated occupant(s) can access the unit. Residents of the Project will be required to sign an agreement establishing the terms of occupancy.

On September 30, 2019, DCRA issued the Building Permit to DGS. *See* BZA Ex. No. 9. The Building Permit authorizes "50 residential apartments for Short Term Family Housing," and

states that 35 of the units will be "2 and 3 bedroom apartments" and 15 PSH Units. *See* BZA Ex. No. 9. On October 24, 2019, the Condominium filed this appeal challenging the Building Permit.

ARGUMENT

I. The Project Is A By-Right Apartment House Use

The crux of the Condominium's appeal is that the Apartment Units do not qualify as an "apartment" use under the Zoning Regulations. In support, the Condominium makes three primary arguments concerning the Project's proposed apartment use. First, the Condominium argues there is no distinction between the Apartment Units and emergency shelter units in STFH buildings in Wards 3-8. Second, the Condominium claims there are multiple uses at the Project, and different standards must be applied to each distinct use. Third, the Condominium argues that the term "control" in the zoning definition of apartment requires a "legal responsibility" for the unit, or, in other words, there is a tenancy or ownership of the unit. These arguments lack merit. Plainly, the proposed use is as an "apartment" that is a by-right use in the MU-5A zone. *See* Subtitle U § 512.1(a).

As to the first argument, the legislative and policy history underlying the Project establishes there is an express distinction between the Apartment-Style Units and Private Room DC General Replacement Units constructed at other shelters. The Condominium acknowledges this distinction, noting "the specific authorizations for the Ward 1 units do differ from the [other STFH buildings] in terms of the internal configuration of the units." *See* Condominium Revised Prehearing Statement, Ex. No. 33, pg. 8.

The zoning definition of an "apartment" is substantially similar to the definition of Apartment-Style Units in the Mayor's legislation. Under the Zoning Regulations, an "apartment" is defined as:

> "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." *See* 11 DCMR Subtitle B § 100.2.

As required in the Homeless Services Reform Act and reflected in the Plans, each Apartment-Style Unit will consist of one or more habitable rooms with separate kitchen and bathroom facilities. Residents will be required to sign a written agreement with DHS, or its operator, that sets forth terms of occupancy for the Apartment-Style Units. The Apartment-Style Units can be accessed only by lock and keycard, and the family assigned to a particular Apartment-Style Unit will be the only residents who have exclusive access to and control of that Apartment-Style Unit. The Zoning Administrator relied on these conditions in affirming the "apartment use." *See* DCRA' Prehearing Statement, Ex. No. 38, pg. 5.

The Condominium's second argument concerning "multiple uses" is also misguided. The Condominium incorrectly argues that the PSH Units allow for the application of the "apartment" use standards to the Apartment-Style Units.[7] This is a misunderstanding of the Zoning Administrator's decision. There is one use type in the Project, **an apartment use**. All units at the Project, including the Apartment-Style Units, qualify as an "apartment" use. Therefore, Subtitle B § 202.1 is not relevant and should be disregarded.

Finally, the Condominium attempts to distinguish the holding in BZA Case No. 18151 and argues the definition of "apartment" requires a "legal responsibility" for the unit. However, the Board's holding is relevant regardless of any change to the definition of "apartment" in the Zoning Regulations.

[7] The Condominium claims DGS has "argued" this interpretation even though DGS had not made a filing in this appeal at that time. Simply put, DGS did not make this argument because the Apartment-Style Units qualify as an "apartment" use on their own use categorization.

In BZA Case 18151, the University of the District of Columbia ("UDC") leased 21 units in a larger apartment building in order to provide housing for students. A copy of BZA Order 18151 is attached at **Tab G**. The owner of the apartment building challenged the building permit claiming the UDC units were not an "apartment," but a "dormitory" or "rooming house" use. The Board did not agree.

The Board found the UDC units qualified as an "apartment" because the units would have their own kitchen and bathroom, and the units were under the exclusive use and control of the occupants. *See* **Tab G**. In finding "exclusive use and control" the Board concluded "the 21 units remain under the exclusive control of the occupancy of each unit, inasmuch as the occupants control the locks to their individual units, and are thereby able to exclude other residents from the units." *See* **Tab G**. The Board also noted UDC required students to sign an "Occupancy Agreement" in order to occupy the units. *See* **Tab G**. Therefore, the Board concluded that the units were a by-right "apartment" use.

The definition of "apartment" in the Zoning Regulations, as affirmed by the Board in BZA Case 18151, makes clear the criteria for an apartment use: the physical attributes of the unit, including the kitchen/bathroom facilities and a resident's ability to control access to the unit. Contrary to the Condominium's position, the definition of "apartment" does not require consideration of the *type of person* who will be at the Property.

The Condominium attempts to distinguish the Board's decision in BZA Case 18151 by arguing the definition of "apartment" changed in 2016 to include the phrase: "control of the apartment may be by rental agreement or ownership." The Condominium argues this *requires* a legal responsibility created through ownership or a leasehold. This argument must be rejected for two reasons. First, as DCRA points out, the definition of apartment does not *require* a rental agreement or ownership, but simply states that control of the apartment *may* be made by such a

document. DCRA Prehearing Statement, Ex. 38, pg. 8. Therefore, a rental agreement or ownership is not a necessary prerequisite to an apartment use. Second, even if there is a requirement of a "rental agreement," the Project meets this requirement because residents of the Apartment-Style Units will be required to execute a written document in order to establish occupancy at the Project. The written agreement will give residents exclusive access to their unit and set forth additional terms of occupancy. The occupancy terms, which are governed the HSRA, create obligations for residents and convey due process and other rights related to the occupancy.

To that end, the Condominium attempts to label the Apartment-Style Units as "transient" housing akin to a hotel use. *See* Condominium Revised Prehearing Statement, Ex. No. 33, pg. 10. However, by definition, a transient "lodging" use requires a stay of less than 30 days. *See* Subtitle B § 200.2(t). As discussed below, the Apartment-Style Units are not a transient "lodging" use, but a "residential" use that offers "habitation on a continuous basis of at least thirty (30) days." *See* Subtitle B § 200.2(aa). Thus, the Condominium misrepresents the nature of the Apartment-Style Units.

In sum, the Apartment-Style Units qualify as an apartment use as that term is defined in the Zoning Regulations and interpreted by the Board in BZA Case 18151. The Project proposes a by-right apartment use in the MU-5A zone, and, therefore, the Zoning Administrator did not err in issuing the Building Permit.

II. The Project Does Not Meet the Definition of Emergency Shelter

The Board's decision to uphold the proposed use can conclude with a finding that the Project meets the requirements for an apartment use. Nonetheless, it is important to note that the Project does not qualify as an "emergency shelter" use under the Zoning Regulations because it will not provide "temporary housing."

The zoning definition of an "emergency shelter" use reads as follows:

> 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. (emphasis added) *See* Subtitle B § 100.2.

While the term "temporary housing" is not defined under the Zoning Regulations, Miriam-Webster Dictionary defines "temporary" as "lasting for a limited time."[8] Notably, the term "temporary housing" is referenced in connection with the definition of a "lodging" use, which is defined as "a use providing customers with **temporary housing** for an agreed upon term of less than thirty (30) consecutive days; any use where **temporary housing** is offered to the public for compensation, and is open to transient rather than permanent guests." (emphasis added) *See* Subtitle B § 200.2. Therefore, under the Zoning Regulations, "temporary housing" allows a stay of less than 30 days.

The Apartment-Style Units are not "temporary housing," but, instead, will provide housing for residents similar to any other residential apartment use. Since the Apartment-Style Units are not "temporary housing," they cannot meet the definition of "emergency shelter."

Further, the Homeless Services Reform Act, which is cross-referenced in the zoning definition of "emergency shelter," does not define the term "temporary housing." *See* **Tab A**.[9] As such, the Zoning term "emergency shelter" **does not incorporate any defined term** from the Homeless Services Reform Act that would govern the use of the Project. In other words, the Homeless Services Reform Act requires Apartment-Style Units in the Project that meet the zoning definition for an apartment, but does not require "temporary housing" in the Project. Plainly, the use is an apartment.

[8] *See* https://www.merriam-webster.com/dictionary/temporary.
[9] The correct reading of "emergency shelter" is to incorporate the Homeless Service Reform Act's definition of "homeless," as that term is defined in the legislation. *See* **Tab A**.

The Condominium argues that other STFH buildings in Wards 3-8 required a special exception for an "emergency shelter" use and, therefore, the Project should too. Yet, the legislation crafted by the Bowser administration clearly distinguishes between the Apartment-Style Units at the Project and the Private Room DC General Replacement Units in STFH buildings in Wards 3-8. The policy basis and considerations of the Bowser administration for allowing Private Room DC General Replacement Units instead of Apartment-Style Units are outlined in the Council's Committee of the Whole Report on the Minimum Standards Act. *See* **Tab C**.[10] The Committee of the Whole found that Apartment-Style Units and Private Room DC General Replacement Units *are* different, highlighting:

> The Administration has asserted that in order to close D.C. General, **it must have authorization to replace D.C. General units with private rooms rather than apartment-style units, lowering the standard in existing law**. This assertion is premised on data which show that the average length of stay for persons experiencing homelessness in the District and in other jurisdictions **is notably longer when a person is sheltered in an apartment-style unit**. While this data is not conclusive, DHS has argued that this correlation is a reason to move to private room shelter units. (emphasis added) *See* **Tab C**, pg. 5.

The Mayor specifically set out to change the standards for shelter buildings in the District so that her administration could, in fact, meet the "Homeward DC" goal of making homelessness rare, brief and non-recurring, and closing D.C. General. *See* **Tab C**. As Director Laura Zeilinger of the D.C. Department of Human Services ("DHS") testified during the Committee's hearing on the Minimum Standards Act,

> specific design attributes (like a private bathroom and cooking facilities in each unit) without regard for the necessary cost and square footage implications that would impact our ability to develop the number of units we need to replace DC General. **Further, adding a private bathroom and kitchen in each unit makes**

[10] The Committee of the Whole Report also reflects dialogue within the Interagency Council on Homelessness concerning the minimum design standards for Private Room DC General Replacement Units. The Report notes "many advocates expressed concern about lowering the legal standard from apartment-style units to entirely private rooms. Advocates were concerned that private rooms would prevent families from accessing facilities for cooking and bathing privately, among other issues." *See* **Tab C**, pg. 7.

the unit an apartment, and we would not need a legislative fix to develop more apartments. (emphasis added) *See* **Tab C**, pg. 74.

The higher standard for Apartment-Style Units requires an independent dwelling unit with separate bathrooms, cooking facilities and a distinction between living and sleeping quarters. *See* **Tab B**. The administration highlighted in its efforts to pass legislation that there was data that "show that the average length of stay for persons experiencing homelessness in the District…is notably longer when a person is sheltered in an apartment-style unit."

As such, the HSRA and HSRAA expressly allocate funds for the construction of Apartment-Style Units in the Project, but only for Private Room DC General Replacement Units in Wards 3-8. *See* **Tab D-E**. Indeed, the Mayor is *required* to maintain different inventory between Apartment-Style Units and Private Room DC General Replacement Unit. *See* **Tab D**. This distinction results in different zoning use types: an "apartment" use at the Project but an "emergency shelter" use in Wards 3-8.[11]

Accordingly, the STFH buildings in Wards 3-8 are entirely distinct from the Project in terms of the proposed zoning use. The definition of the Private Room DC General Replacement Unit expressly does not require an "apartment" use at each STFH building because the "correlation [between longer stays in Apartment-Style Units] is a reason to move to private room shelter units." As such, the STFH buildings in Wards 3-8 have different design features that do not qualify as an "apartment" under the Zoning Regulations. For example, the STFH buildings in Wards 3–8 have:

- Shared kitchen facilities and a central dining area
- Shared bathroom facilities, with only a limited number of rooms having private bathrooms.
- Private rooms that do not have separate living and sleeping quarters

[11] The Project replaces "apartment-style units" that were previously located at 1433-1435 Spring Road NW, which is in the RA-2 zone. An "emergency shelter" use is only permitted by special exception in the RA-2 zone, but there is no past BZA case associated with this property. As such, the "apartment-style units" were operated as a by-right use at 1433-1435 Spring Road NW.

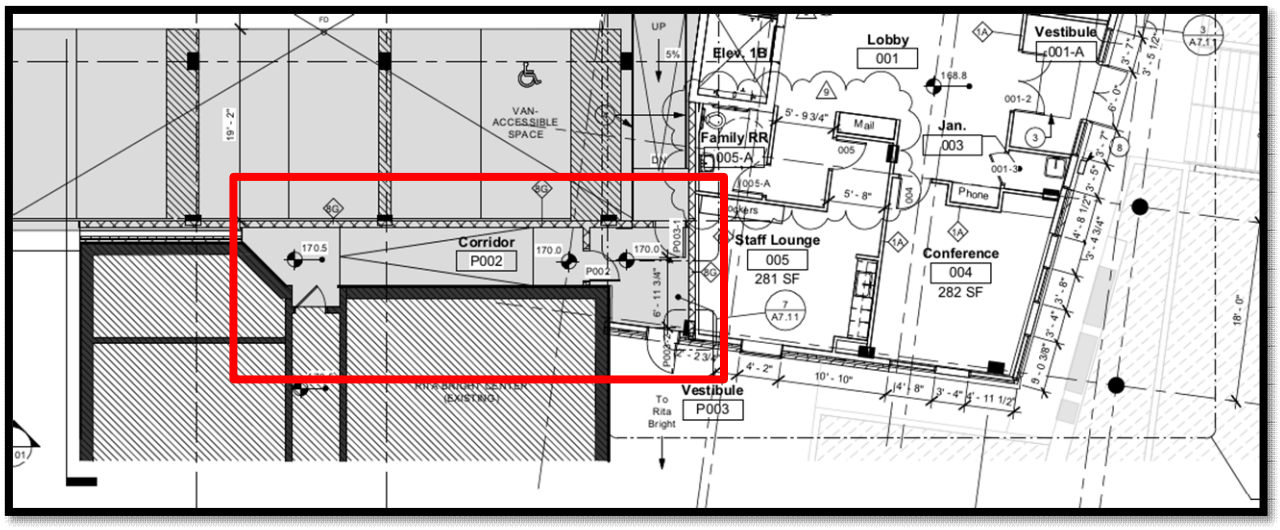
- Rooms that are not under the exclusive control of the occupants
- Security monitoring desks on each floor

As noted above, there were clear policy reasons for seeking authorization for Private Room DC General Replacement Units so that DGS would not have to construct apartments at each STFH building. The Council acknowledged the administration's policy reasons when passing the Minimum Standards Act, which resulted in different authorizations for the Project and Wards 3-8 under the HSRA and HSRAA. The Condominium's argument would have the Board ignore these stark distinctions and should be rejected.

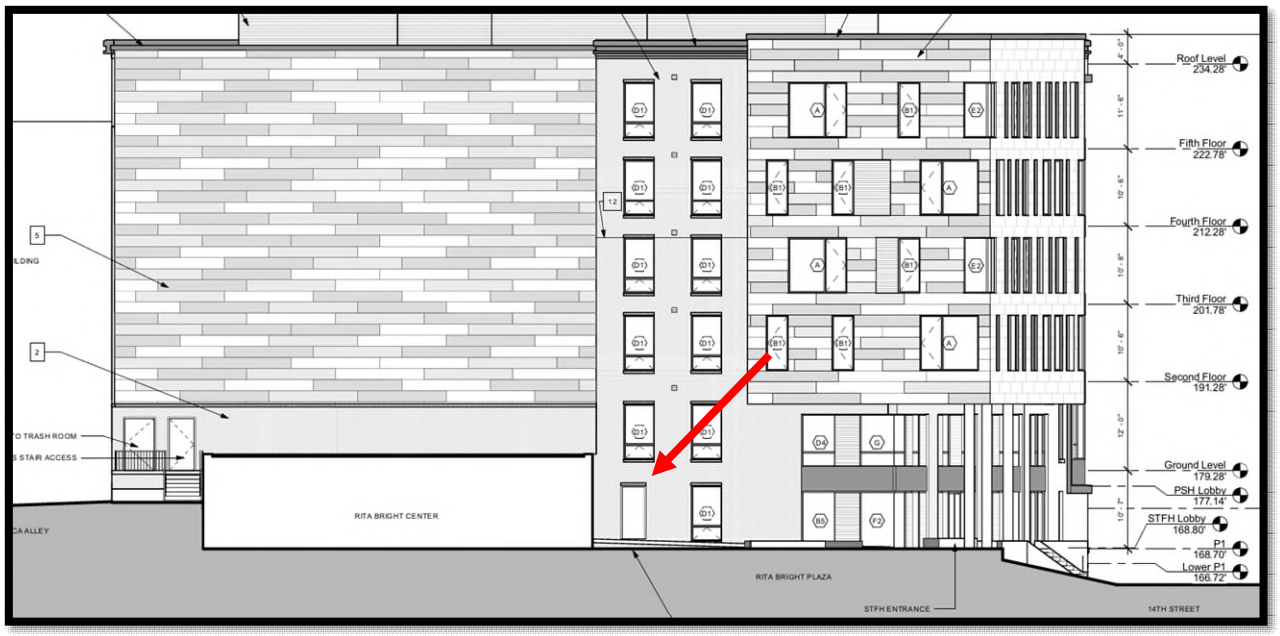
III. The Project Proposes a Meaningful Connection to the Rita Bright Center

The Condominium challenges the Zoning Administrator's determination the Project is a "single building" with the Rita Bright Center. The Condominium argues, in turn, the Project constitutes an impermissible second primary structure on the Property and will not meet its rear yard requirement.

The Condominium's arguments fail because the Project will be a single building through an internal connection between the Project and the Rita Bright Center. The internal connection is located on the Project's parking level at the southern end of the building, and is depicted in the Plans as follows:



The following section image depicts the southern-facing building elevation where the internal connection is located. As depicted, an external door leads directly outside (and above grade) from the internal connection:



To constitute a "single building" for zoning purposes, Subtitle B § 309.1 states:

> For purposes of this chapter, structures that are separated from the ground up by common division walls or contain multiple sections separated horizontally, such as wings or additions, are separate buildings. Structures or sections shall be considered parts of a single building if they are joined by a connection that is:

(A) Fully above grade;
(B) Enclosed;
(C) Heated and artificially lit;
(D) Either:
(1) Common space shared by users of all portions of the building, such as a lobby or recreation room, loading dock or service bay; or
(2) Space that is designed and used to provide free and unrestricted passage between separate portions of the building, such as an unrestricted doorway or walkway.

As to the first requirement, the Plans clearly reflect the internal connection is fully above grade. The Condominium questions this conclusion, but offers no support or reasoning to the contrary. As stated by DCRA, the Zoning Administrator has historically interpreted Subtitle B § 309.1 to require that the connection itself, not the entire common space or passageway, to be fully above grade. *See* DCRA Prehearing Statement, Ex. 38, pg. 10. As noted by DCRA, the Board recently upheld the Zoning Administrator's interpretation under Subtitle B § 309.1 where the stairs and landing leading to the connection was below grade, but the connection between two buildings was entirely above grade. *See* BZA Case 19950. The same conclusion should be made here where the internal connection between the Project and the Rita Bright Center is above grade.

Further, the internal connection meets the requirements of subsections (B) and (C) because it is located in an enclosed space that is heated and artificially lit. The internal connection likewise meets the requirements of subsection (D) because it is a space that provides free and unrestricted passage between the Project and the Rita Bright Center. As such, the requirements of Subtitle B § 309.1 have been met.

As a single building, the Project and the Rita Bright Center can utilize the same rear yard, which can be measured from the center line of the adjacent street. To that end, the Property constitutes a "corner lot" because it fronts "on two (2) or more streets at their junction, with the streets forming with each other an angle of forty-five degrees up to and including one hundred thirty-five degrees." *See* Subtitle B § 100.2. In turn, under Subtitle B § 318.8, the rear yard of a

corner lot can be measured from the center line of the street abutting the rear of the structure. The Project meets its rear yard requirement of 15' whether the rear yard is located on Chapin Street or Clifton Street, which are 65' and 50' in width, respectively. *See* Subtitle G § 405.2.

IV. The Project Meets the Parking and Loading Requirements for an Apartment Use

Finally, the Condominium asserts the Project would not meet its requirements for parking and loading if it is deemed to be an "emergency shelter" use. As set forth herein, this argument is moot because the Project is an "apartment" use and, therefore, meets the zoning requirements for parking and loading. At 50 units, the Project's parking requirement is 15 spaces. At approximately 15,079 sq. ft., the Rita Bright Center has a parking requirement of 8 spaces. The Project is entitled to a 50% reduction in its parking requirement due to its proximity within 0.25 miles of the priority bus route on 16th Street NW. *See* Subtitle C § 702.1(c)(3). It follows that the Project's overall parking requirement is 12 spaces with the reduction. The Project provides 21 parking spaces, which exceeds the minimum required parking.

Similarly, a loading berth is only required when a residential apartment use exceeds 50 dwelling units. *See* Subtitle C § 901.1. The Project will have 50 units and, therefore, loading under that criterion is not required. Likewise, the Rita Bright Center does not have a loading requirement because it is less than 30,000 sq. ft.

The Project will also meet both the long-term and short-term bicycle parking requirements. The Project must provide 17 long-term bicycle spaces and 3 short-term bicycle spaces. The Rita Bright Center must provide at least 6 short-term bicycle spaces, but no long-term bicycle spaces. In combination, the bicycle parking requirement is 17 long-term spaces and 9 short-term spaces. The Plans establish there will be 17 long-term spaces on the parking level. As depicted in sheet L1.01, there will be short-term bicycle racks located in public space along Chapin Street NW. The bicycle racks will exceed the minimum requirement of 9 short-term spaces.

EXPERT WITNESSES

DGS identifies Director Laura Zeilinger of the Department of Human Services to testify as an expert in homelessness and shelter programming for families with minor children. A copy of Director Zeilinger's resume is attached at **Tab H**.

CONCLUSION

The Building Permit was correctly issued for a by-right apartment use at the Property. The Apartment-Style Units meet the definition for an apartment use under the Zoning Regulations, and do not qualify for an "emergency shelter" use. The lengthy legislative and policy background underlying the Apartment-Style Units distinguishes them from Private Room DC General Replacement Units in Wards 3 through 8. Further, the Plans depict a compliant "meaningful connection" between the Project and the Rita Bright Center, creating one building at the Property. Accordingly, the Zoning Administrator did not err, and the appeal should be dismissed.

Respectfully submitted,
COZEN O'CONNOR

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