

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 19450 of D.C. Department of General Services**, as amended, pursuant to 11 DCMR Subtitle X, Chapters 9 and 10, for a special exception under the RA-use requirements of Subtitle U § 420.1(f) and variances from the number of primary structure requirements of Subtitle C § 302.2, the loading requirements of Subtitle C § 901.1, and the height and number of stories requirements of Subtitle F § 303.1 to allow a six-story emergency shelter in the RA-1 Zone at premises 3320 Idaho Avenue N.W. (Square 1818, Lot 849), and pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle U § 203.1(j) to allow accessory parking on Lot 848 in Square 1818.<sup>1</sup>

**HEARING DATE:** March 1, 2017  
**DECISION DATE:** April 5, 2017

Page 33 - "the connection of two structures devoted to two very different uses would create operational difficulties for both the emergency shelter and, likely, the MPD facility"

**DECISION AND ORDER**

This self-certified application was submitted on January 3, 2017 by the District of Columbia Department of General Services, the owner of the property that is the subject of the application (the "Applicant"). The application, as subsequently amended, requested special exception relief to allow an emergency shelter and area variance relief from requirements relating to building height in feet and number of stories, loading, and the location of two principal buildings on a single lot of record in the RA-1 Zone at 3320 Idaho Avenue, N.W. (Square 1818, Lot 849), as well as special exception relief to allow accessory parking not on the same lot as the principal use. Following a public hearing, the Board of Zoning Adjustment ("Board") voted to grant the application.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda dated January 4, 2017, the Office of Zoning provided notice of the application to the Office of Planning ("OP"); the District Department of Transportation ("DDOT"); the Department of Human Services ("DHS"); the

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<sup>1</sup> The caption has been modified to reflect a change in the relief initially requested. A request for special exception relief from the parking requirement for the emergency shelter use under Subtitle C § 703.1 was withdrawn by the Applicant, and the application was amended to add a request for special exception relief under Subtitle U § 203.1(j) to allow accessory parking elsewhere than on the same lot as the principal use for the temporary relocation of parking for the Metropolitan Police Department from the subject property to the adjoining lot until completion of a new parking garage on the subject property to serve both the Metropolitan Police Department and the emergency shelter.

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Councilmember for Ward 3 as well as the Chairman and the four at-large members of the D.C. Council; Advisory Neighborhood Commission 3C (the ANC”), the ANC in which the subject property is located; and Single Member District/ANC 3C06. Pursuant to 11 DCMR Subtitle Y § 402.1, on January 5, 2017 the Office of Zoning mailed letters providing notice of the hearing to the Applicant, the Councilmember for Ward 3, ANC 3C, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on January 13, 2017 (64 DCR 330).

Party Status. The Applicant and ANC 3C were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Neighbors for Responsive Government (“NRG”), a group of residents living near the subject property.

Applicant’s Case. The Applicant provided evidence and testimony about the proposed emergency shelter from witnesses including Rashad M. Young, the City Administrator; Laura Green Zeilinger, the Director of the District Department of Human Services and an expert in matters relating to homelessness, including best practices in providing services for the homeless; Greer Gillis, the Director of the Department of General Services; Joseph McNamara, the principal architect of the proposed emergency shelter building and an expert in architecture; and Nicole White, an expert on matters related to traffic and transportation.

The Chairman of the Council of the District of Columbia, Phil Mendelson, testified “to present the public policy underlying [the application], to explain the process behind [the Council’s site selection] decision, and to state the Council’s support for these sites [selected by the Council] for emergency shelters.” (Exhibit 224.)

OP Report. By memorandum dated February 17, 2017, the Office of Planning recommended approval of the zoning relief initially requested by the Applicant. (Exhibit 124.) At the public hearing, OP also recommended approval of the special exception requested by the Applicant to allow the temporary relocation of accessory parking. (Hearing Transcript (“Tr.”) of March 1, 2017 at 110.)

DDOT. By memorandum dated February 16, 2017, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 125.) At the public hearing, DDOT also indicated no objection to the Applicant’s proposed temporary relocation of the accessory parking. (Tr. at 111.)

Other Agency Reports. By letter to the Applicant dated February 17, 2017, the Zoning Administrator recognized the planned use of the new building to provide “up to 50 units of emergency housing for families experiencing homelessness.” The Zoning Administrator concluded that the “proposed use satisfies the definition of ‘emergency shelter,’ as that term is defined in Subtitle B § 100.2” of the Zoning Regulations. The Zoning Administrator’s letter also confirmed that the zoning relief needed for the project was the same relief that the Applicant had self-certified in the application: special exceptions to allow an emergency shelter and to relocate

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accessory parking spaces currently located on the subject property, and area variances to build a building exceeding 40 feet in height and three stories, not to provide a loading berth or a service/delivery area, and to allow a second primary structure on the property. (Exhibit 202A.)

The Board received letters indicating no objection to the proposed emergency shelter from the Second Police District of the Metropolitan Police Department (“MPD”), whose headquarters are located at the subject property (Exhibit 75B), and from the D.C. Homeland Security and Emergency Management Agency (Exhibit 75C), the D.C. Fire and Emergency Medical Services Department (Exhibits 75D, 209), and the District of Columbia Public Schools (Exhibit 189).

The U.S. Commission of Fine Arts (“CFA”) submitted comments by letter dated February 24, 2017, indicating that CFA had reviewed concept designs for the Ward 3 shelter and commending “this innovative building program that recognizes the value of decentralized short-term housing and provides residents with safe and dignified accommodations.” The CFA members “strongly endorsed the overall goal of building transitional housing for homeless families in established residential neighborhoods, and they expressed support for the development of programmatic and operational guidelines for these facilities.” (Exhibit 206.)

With respect to the proposed Ward 3 emergency shelter, the members of the Commission of Fine Arts commented that “the new building would act as a transitional structure between single-family houses and adjacent blocks of larger institutional buildings, and they agreed that a multi-family project here could be sympathetic with the context of the neighborhood.” However, the CFA members also “observed that the programmatic ideal of ten families per floor has resulted in a design that is too tall for its immediate context of single-family houses and a low-rise police station,” and consequently “suggested more flexibility in the programmatic guidelines for the building itself, commenting that other configurations – such as a two-wing floor plate with clusters of seven to ten units separated by common spaces – could allow for a lower building with a larger footprint.” (Exhibit 206.)

ANC Report. By resolution dated February 21, 2017, ANC 3C indicated that, at a properly noticed public meeting on the same date with a quorum present, the ANC adopted a report partially in support of and partially in opposition to the application. The ANC also provided testimony at the public hearing.

In its resolution, ANC 3C expressed support for creating temporary housing in Ward 3 in furtherance of the Homeward DC initiative, but expressed concern that “the unusual proposal to co-locate the Ward 3 shelter with the Second District police station and build a three-deck parking garage behind the station raises issues regarding...the potential degradation of the Newark Street playground, tennis courts and community garden, which are public community assets....” The ANC also raised concerns about the planned height of the building, the potential impacts of the emergency shelter use on the nearby public elementary school, and with respect to noise from a shelter playground and “multiple per week trash pick-ups adjacent to single-family residences....” ANC 3C opposed the requested special exception to relocate MPD’s accessory parking, which the

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ANC described as “an extreme way to deal with a short-term problem” that could be addressed in a less costly and less disruptive manner. (Exhibit 170.)

Party in Opposition. Neighbors for Responsive Government stated “concerns about the *size and scope* of the proposed shelter structure on this particular site, and about the impact of its size and scope on neighbors and the community at large.” (Exhibit 164A1; emphasis in original.) The party in opposition also objected to the number of residents at the planned shelter, which would be “more than *45 times as many residents* as permitted as a [matter] of right under current zoning regulations.” (Exhibit 164A1; emphasis in original.) NRG asserted that approval of the application would authorize construction of

this enormous facility without [the Applicant’s] having conducted a reasonable inquiry into alternative sites, with no loading dock of any kind, without having developed a plan for essential police parking during construction, and without properly ameliorating the noise, traffic, and congestion that the addition of 185 residents plus visitors and more than a dozen staff on a single lot will bring to this otherwise quiet residential neighborhood, to neighborhood playgrounds, and to the local elementary school.

(Exhibit 164A1.)

The party in opposition argued against approval of the variances requested by the Applicant, partly on the ground that none of the variances could be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan. NRG also opposed the special exception requested by the Applicant to allow relocation of MPD’s accessory parking because, according to NRG, the Applicant had not satisfied the burden of proof or other requirements for approval of the relief. In opposing the application, NRG argued that all the zoning relief requested in the application “relates directly to problems with the site that [the Applicant] has selected for its Ward 3 shelter,” and the “fundamental flaws in the selected site do not justify the massive zoning incompatibilities between the proposed shelter, zone RA-1 and the surrounding neighborhood.” (Exhibit 164A1.)

Persons in support. The Board received letters and heard testimony from persons in support of the application. The persons in support generally cited the need for the emergency shelter and stated that the subject property was an appropriate location for the use, that the size and operation of the planned shelter would not be objectionable, and that the emergency shelter use would not generate adverse impacts in the surrounding neighborhood, including with respect to parking and neighborhood character, given the mix of building heights and types in close proximity to the site as well as the buffers that would separate the emergency shelter from residences in low-density areas nearby.

Person in opposition. The Board also received letters and heard testimony from persons in opposition to the application. The persons in opposition commented unfavorably on the site selection process for the proposed emergency shelter use and the cost of the facility. With respect

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to the proposed emergency shelter use, the persons in opposition generally objected to the size of the proposed building, in terms of both its height and the number of units, and asserted that the location of the shelter on the subject property would cause adverse impacts with respect to traffic, parking, noise, light pollution, and privacy; would interfere with MPD operations and overcrowd a nearby public elementary school; would destroy nearby community gardens, parks, and tennis courts; and would not be consistent with zoning requirements or with the character of the surrounding neighborhood.

**FINDINGS OF FACT**

1. The subject property is a large parcel located on the southwest corner of the intersection of Idaho Avenue and Newark Street, N.W. (Square 1818, Lot 849).
2. The subject property is irregularly shaped but generally rectangular, with approximately 429 feet of frontage on Idaho Avenue. The lot area is 200,965 square feet.
3. The subject property is improved with a three-story building used as the headquarters of the Second District of the Metropolitan Police Department. The MPD building fronts on Idaho Avenue on the northern portion of the parcel. A refueling station, for use by police and other public service vehicles, is located at the northwest corner of the property. A parking lot, providing 157 parking spaces and an impound lot, is located on the same lot to the west and south of the MPD building.
4. The adjoining parcel to the west of the subject property, known as Lot 848, is owned by the federal government. Lot 848 is used as small garden plots known as “community gardens,” play areas, and tennis courts. The western portion of the subject property, almost half of the parcel, is also used as community gardens and a play area. Several tennis courts are located south of the community gardens; one is located on the subject property and the others are located on Lot 848.
5. An L-shaped brick fence or wall, up to 10 feet high, extends from Newark Street to a point approximately 24 feet from the southern edge of the property and then east toward Idaho Avenue. The fence separates the MPD parking lot from the community gardens and adjoining residential area.
6. The subject property slopes down from Newark Street to the south, and from Idaho Avenue at the site of the planned emergency shelter down toward the community gardens to the west. A topographic survey provided by the Applicant indicates a change in elevation of 18 feet from north to south on the subject property. (Exhibit 75A1, p. 3.) The western portion of the subject property, on the west side of the retaining wall, drops “considerably at the south end of the site.” (McNamara, Tr. at 55.)

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7. The subject property is located within convenient walking distance of Metrobus stops on Idaho, Wisconsin, and Massachusetts Avenues. Three Red Line Metrorail stations are located within a mile of the site. (Exhibit 37.)
8. Bicycle- and car-sharing options are accessible within two blocks of the subject property. Bicycle facilities in the area include cycle tracks and shared bicycle lanes on several nearby streets. (Exhibit 37.)

**Program needs**

9. More than 7,000 persons experience homelessness in the District of Columbia on any given night. (Exhibit 228.) They currently include 941 families in emergency shelter, including approximately 600 families now staying in “overflow” hotels. (Zeilinger, Tr. at 91.) Almost half of the families now served in emergency shelters are headed by a parent – usually a mother age 24 or younger – with infant children. (Exhibit 227.) Approximately 60 percent of residents at emergency shelters are children. (Exhibit 2.)
10. The Department of Human Services administers the Homeless Services Reform Act of 2005 (“Homeless Services Reform Act”), effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code §§ 4-751.01 *et seq.*), which established requirements for the delivery of publicly funded services for homeless persons and specified that eligible clients had the right to shelter in certain severe weather conditions. The District was required to make available appropriate space in District of Columbia public or private buildings and facilities for any person in the District who was homeless and could not access other shelter. The Mayor was directed not to place homeless families in non-apartment style shelters. (D.C. Official Code §§ 4-753.01, 4-754.11.)
11. The Homeless Services Reform Act specified that the District’s provision of homeless services must be based on a Continuum of Care that offers a comprehensive range of services through various member agencies and is designed to meet the specific, assessed needs of individuals and families who are homeless or at imminent risk of becoming homeless. (D.C. Official Code § 4-753.01.) The District is required to respond to the changing needs of individuals and families by ensuring that transfer between and among services within the Continuum of Care is fluid and allows clients to modify the intensity of services they receive to meet their needs, preferences, and changing circumstances. (D.C. Official Code § 4-753.01(a).)
12. The Continuum of Care may include a range of services, including (a) shelter to meet the housing needs of individuals and families who are homeless through the provision of temporary shelter for families for the purpose of meeting short-term housing needs and other supportive service needs, and (b) supportive services for the purpose of providing families who are homeless or at imminent risk of becoming homeless with services that address their housing, employment, physical health, mental health, alcohol and other

substance abuse recovery, child care, case management, transportation, and other health and social service needs which, if unmet, may be barriers to obtaining or maintaining permanent housing. These services may be delivered through shelters. (D.C. Official Code §§ 4-753.01(b)(3)(C), 4-753.01(b)(5).)

13. The Homeless Services Reform Act created the D.C. Interagency Council on Homelessness (“ICH”) for the purpose of facilitating interagency, cabinet-level leadership in planning, policymaking, program development, provider monitoring, and budgeting for the Continuum of Care of homeless services. (D.C. Official Code § 4-752.01(a).) The ICH is chaired by the City Administrator and is charged with providing leadership in the development of strategies and policies that guide the implementation of the District’s policies and programs for meeting the needs of individuals and families who are homeless or at imminent risk of becoming homeless. (D.C. Official Code §§ 4-752.01(a), 4-752.01(a).)
14. The District previously sheltered homeless families at the D.C. Village shelter “in conditions described as ‘overcrowded,’ ‘pest infested,’ and ‘inhumane’” until beginning to shelter families at D.C. General, a former hospital that “was not intended to be used for the purpose of sheltering families,” in 2007. The D.C. General family shelter was intended as a temporary measure but “remains the District’s primary emergency family shelter, housing 250 to 300 families experiencing homelessness. (Exhibit 225.)
15. In 2015 the Interagency Council on Homelessness participated in the development of Homeward DC, the District’s strategy to end homelessness. Homeward DC is a five-year strategic plan to prevent and end homelessness that was devised based on research and experience and in recognition of best practices and evidence-based models from across the country. Homeward DC calls for the development of “service-enriched, community-based shelters” that are smaller in scale than the D.C. General family shelter, which is proposed to be closed by the 2019-2020 hypothermia season. According to DHS, the temporal aspect of the Homeward DC goal is critically important from a cost perspective and to provide suitable shelter for families who are experiencing homelessness. (Exhibits 227, 228; Zeilinger, Tr. at 35.)
16. Two principal components of Homeward DC are the need to provide a total of 280 residential units to replace the D.C. General family shelter, and the need to provide emergency shelters that will serve families in a smaller, more dignified environment than is provided at the D.C. General family shelter. Each new community-based shelter was intended to be “economically feasible and able to be developed within a 24-30 month timeline,” and located on a site close to Metrobus transportation and other services and amenities. (Exhibits 227, 228.)
17. By letter dated September 18, 2015, Mayor Muriel Bowser transmitted legislation to the Council entitled the “Advancing Year Round Access to Shelter Policy and Prevention of

Homelessness Amendment Act of 2015 (now known as "Interim Eligibility and Minimum Shelter Standards Act of 2015") ("the Interim Eligibility Act").

18. The Committee Report for the bill<sup>2</sup> explained the need for the legislation as follows:

[t]he problems with D.C. General as a shelter are myriad.... The size of this facility has proven difficult to manage. Moreover, the building is old and outdated with basic systems that work poorly and are costly to maintain, including its heating, cooling, electrical, and water systems. In addition, the facility has been reported to be infested with pests and vermin. Also, outbreaks of scabies and reports of filthy communal bathrooms have been made. Further, reports of drug dealing and fights in and around the facility are rampant.... [N]umerous complaints of staff misconduct ... have been made.

(Exhibit 225.)

19. The Committee Report indicated that there was “widespread agreement that D.C. General is inadequate to meet the needs of families experiencing homelessness and should be closed.” The report noted that Mayor Vincent Gray had “offered a plan to replace D.C. General with a network of smaller shelters located throughout the city” in 2014. In order to implement this model Mayor Bowser sought Council “authorization to depart from the existing legal preference to provide apartment-style shelter” and instead “to utilize private room units to replace D.C. General.”
20. The Committee Report emphasized that “the District’s strategy should be not only to close D.C. General, but to replace the inappropriate existing facilities with new facilities that meet the needs of those they serve and to do so in a way that adheres to the standards of dignity we expect as a government. Thus ... we should also seek to provide our homeless population with housing that is safe, humane, and in the interest of public health.”
21. As enacted, the Interim Eligibility Act, *inter alia*, amended the Homeless Shelter Reform Act to authorize the Mayor to provide shelter to a family in a private room meeting certain minimum standards and constructed for the purpose of closing the D.C. General family shelter.
22. Those private rooms are referred to as “DC General Family Shelter replacement unit”, a term defined 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.” (D.C. Official Code § 4–751.01(11A).) A “private room” is defined as a part or division of a building that has: (A) four continuous non-portable walls meeting both the

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<sup>2</sup> Council of the District of Columbia, Committee of the Whole, Committee Report on Bill 21-352, “Interim Eligibility and Minimum Shelter Standards Amendment Act of 2015.”



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- ceiling and floor; (B) a door that locks from both the inside and outside as its main point of access; (C) sufficient insulation from sound; (D) lighting within the room that the occupants can turn on or off as desired; and (E) access to on-site bathroom facilities, including a toilet, sink, and shower. (D.C. Official Code § 4-751.01(28A).)
23. Buildings composed of D.C. General Family Shelter replacement units (“Replacement Units”) must include, at minimum, a private bathroom – including a toilet, sink, and bathtub or shower – in at least 10 percent of the Replacement Units. One private, lockable bathroom that includes a toilet, sink, and bathtub and is accessible to all residents must be provided for every five Replacement Units. At least two multi-fixture bathrooms must be provided per floor, with multiple toilets, sinks, and showers. (D.C. Official Code § 4-753.01(d)(3).)
  24. The Mayor was directed to maintain a minimum of 280 D.C. General Family Shelter Replacement Units in the District’s shelter inventory, once the Replacement Units were constructed. (D.C. Official Code § 4-753.01(d)(5).)
  25. In 2016 Mayor Muriel Bowser announced an initiative entitled “A Plan to Close D.C. General: Short Term Family Housing in All 8 Wards.” The plan called for the replacement of the family shelter at the former D.C. General Hospital with smaller shelters on sites throughout the District. (Exhibits 124, 224.)
  26. Under the 2016 initiative to close the D.C. General family shelter and establish new emergency shelters with a maximum of 50 family units each, the Mayor proposed seven sites as potential locations for the new shelters, and proposed to build some of the shelters on sites leased by the District. (Exhibit 224.)
  27. The sites proposed by the Mayor were identified after the District undertook a search for properties in each ward that could meet the relevant criteria: that is, sites capable of providing a total of at least 280 units, so as to replace the emergency shelter at D.C. General; were economically feasible; were close to public transportation and other services and amenities; and could be developed within 24 to 30 months. The search considered District-owned properties as well as properties to purchase or lease. (Exhibit 228.)
  28. In Ward 3, the Mayor selected, as the site for a new emergency shelter, a parcel at 2619 Wisconsin Avenue, N.W.
  29. Under District law, the Mayor could not proceed with the leases, land acquisition, and construction proposed without Council approval.
  30. Therefore, through a letter from Mayor Muriel Bowser to Council Chairman Mendelson, dated February 11, 2016, The Mayor proposed legislation, entitled the “Homeward DC Omnibus Approval of Facilities Plan for Short-term Housing for Persons Experiencing

Homelessness Act of 2016,” to seek Council approval for the Mayor’s acquisition and construction plan and for certain proposed transactions for the development of short-term housing facilities for families and individuals experiencing homelessness.

31. In her letter Mayor Bowser “committed to closing DC General” and recognized that, to do so, “we need alternative, safe, and dignified places for families experiencing homelessness,” noting that “[b]est practices suggest that children and families do best when short-term housing is provided in smaller-scale, service-enriched, community-based settings.” The Mayor proposed legislation so that the Council could “express support for and intent to approve impending contracts for short-term housing for persons experiencing homelessness [and to] specify the process for Council approval of these contracts .... The Mayor stated that

It is critical that the Council express its intent to approve the proposed leases and construction contracts in advance, so that the Department of General Services will be able to complete negotiations of the leases and advance the process for construction contracts. It is imperative that the District provide developers with a demonstrated commitment to ensure their willingness to assume risk for advancing designs, securing financing and initiating predevelopment activities.

32. The transactions included a lease between the District and Glover Park Developers LLC for a facility in Ward 3 for approximately 40 families experiencing homelessness, at a cost of approximately \$2.1 million annually, consistent with a letter of intent entered into between the District and Glover Park Developers LLC, dated December 10, 2015. (Homeward DC Omnibus Approval of Facilities Plan for Short-term Housing for Persons Experiencing Homelessness Act of 2016, Sec. 2(a)(2).)
33. The Council of the District of Columbia endorsed aspects of the Mayor’s plan – especially the intention to end use of D.C. General as an emergency shelter for families – but “disagreed with three of the seven sites proposed by the Mayor, and disagreed with the economics of the Mayor’s plan – namely that five of the seven sites would be leased ....” On March 17, 2016, the Council held a public hearing to address site selection for the emergency shelters, which lasted almost 12 hours and for which more than 80 citizens registered to testify. In May 2016, the Council voted unanimously to direct the Mayor to change three of the sites selected for new shelters – among them the site in Ward 3 – and “to change the economic structure of the plan so that all of the sites would be owned, not leased” by the District. The Council also appropriated a capital budget of \$125 million for the plan. (Exhibit 224; Mendelson, Tr. at 17.)
34. The Councilmembers received suggestions for alternative sites at the public hearing and subsequently, including at least three potential locations for the Ward 3 shelter. As described in the testimony of Council Chairman Phil Mendelson, the Council “considered

a number of suggested locations.” The subject property “was considered the best for various reasons,” including “the easiest” site acquisition, since the property was “already city-owned, and this, in turn meant site acquisition would be the least expensive.” Other factors supporting the selection of the subject property included its size; its access to public transportation and to grocery and other stores; and its proximity to fewer single-family homes than the other sites under consideration. The Council concluded that “[w]hen all of the factors ... [were] taken together, all of the suggested locations, including the Mayor’s proposal [for a site on Wisconsin Avenue], were less reasonable” for the proposed shelter than the subject property. The Council endorsed the selection of the subject property and found no other reasonable sites for an emergency shelter in Ward 3. (Exhibit 224; Mendelson, Tr. at 17-18, 22.)

35. The “Homeward DC Omnibus Approval of Facilities Plan for Short-Term Housing for Persons Experiencing Homelessness Act of 2016” was renamed the “Homeless Shelter Replacement Act of 2016.” In its report on the Act (Bill 21-620), the Council stated that Bill 21-620 presented “a clear plan for how the District will replace D.C. General and, notably, will be fully funded through Bill 21-668, the *Fiscal Year 2017 Local Budget Act of 2016*. The Council report also stated that Bill 21-620 was

a strong statement of the District’s commitment to making homelessness rare, brief, and non-recurring and that doing the right thing can be done in a manner that is both an effective and efficient use of the District’s financial resources and capital assets. The District’s strategy cannot be simply to close D.C. General, but to close and replace D.C. General with new facilities and a full complement of services and supports that truly meet the needs of families experiencing homelessness.

(Exhibit 225.)

36. The Homeless Shelter Replacement Act of 2016 (D.C. Law 21-141, effective July 29, 2016; D.C. Official Code § 4-754.01 Note) authorized the Mayor, at Section 3(a), to use designated funds to provide temporary shelter for families experiencing homelessness by constructing six facilities containing D.C. General Family Shelter replacement units, as defined in The Homeless Services Reform Act, to replace the D.C. General family shelter. Section 3(a)(2) authorized the Mayor “to use funds appropriated for capital project HSW03C—Ward 3 Shelter to construct a facility to provide temporary shelter for families experiencing homelessness containing up to 50 DC General Family Shelter replacement units on District-owned land at 3320 Idaho Avenue, N.W., Square 1818, Lot 849 ....” The Act appropriated up to \$100 million for the specified purposes. (Section 3(b).) The Mayor was authorized to use funds appropriated for capital project THK16C – Temporary and Permanent Supportive Housing Pool Project for any acquisition or construction authorized by the Act, the cost of which exceeded the amount appropriated for HSW03C – Ward 3 Shelter. (Section 3(c).)

37. The Homeless Shelter Replacement Act reflected the Council’s findings, in Section 2, that:

Best practices suggest that children and families do best when short-term housing is provided in smaller-scale, service-enriched, community-based settings, and it is therefore in the best interest of the District to replace the DC General Family Shelter with a series of facilities throughout the District that provide temporary shelter. (Paragraph 4.)

To close the DC General Family Shelter ... the District needs to construct new facilities that are safe and dignified spaces for families experiencing homelessness. (Paragraph 6.)

It is in the best interest of the District to construct these new temporary-shelter facilities on District-owned land, in part to avoid the disruption to the provision of services in the continuum of care that would accompany the eventual expiration of leases. (Paragraph 7.)

38. The D.C. Council’s Committee Report on Bill 21-620, “*Homeless Shelter Replacement Act of 2016*,” provides an overview of homelessness in the District of Columbia and the “new approach to sheltering families experiencing homelessness.” The report notes that replacement of the D.C. General family shelter by “a similar number of new family units, but in smaller facilities purposely designed with the intention of housing families experiencing homelessness will immediately eliminate some of the most pressing problems that exist at D.C. General” in part because “smaller facilities with fewer families will likely be easier to manage.” The Committee Report concludes that “[r]eplacement of D.C. General offers the District a unique opportunity to design a system of shelter facilities with a focus on prioritizing the needs of clients and takes into account lessons learned over decades of providing shelter and services in inadequate facilities.” (Exhibit 225.)

39. The Applicant’s proposed emergency shelter was designed to comply with the statutory requirements and to incorporate standards and guidelines devised by the Interagency Council on Homelessness and the Department of Human Services based *inter alia* on research including studies of best practices. As a result:

(a) The emergency shelter will provide 50 sleeping units, consistent with the policy to replace the beds currently provided at the D.C. General family shelter with smaller facilities in locations around the District. (Exhibit 2.)

(b) The number of sleeping units per floor is limited to 10, to encourage a predictable environment in which each family could experience greater privacy, without excessive noise or turbulence in the hallways, at a scale where the common rooms on each floor would feel more like community living rooms than anonymous cafeterias or auditoriums.

- (c) Each floor is designed to provide a direct line of sight down the floor's single central hallway, which will enhance personal safety by removing hiding places so that the program operator can ensure safety without the need for more intrusive security measures. Activities in the common areas and hallways will be monitored by staff stationed at the security desk on each floor 24 hours per day. (Exhibit 227.)
  - (d) The emergency shelter will not use congregate, dormitory-style bathrooms but will provide bathrooms that will accommodate only one person at a time, with at least one private bathroom for every two family units and some rooms having en-suite private bathrooms to accommodate families with special needs. (Exhibit 227.)
40. The design process undertaken by DGS, DHS, and the project architect included consultations with other District agencies, including the District of Columbia Fire and Emergency Medical Services Department and MPD, during concept development as a means to address safety and security concerns at an early stage of the development of the Ward 3 emergency shelter. (Exhibit 226.)
41. The director of the Department of General Services, the implementing agency that leads the effort to design, entitle, construct, deliver, and manage the emergency shelter facilities, testified that the District's goals and objectives cannot be achieved by a facility providing fewer residential units, which would require more facilities to meet the need, and that a shorter facility would create a practical difficulty in accomplishing the great public need to provide emergency shelter for families. (Gillis, Tr. at 52.)

### **Emergency shelter use**

42. The Applicant proposes to construct and operate an emergency shelter at the subject property. The new building will be located on the southern portion of the site that is now part of the parking lot used by the MPD facility.
43. The emergency shelter will meet all applicable code and licensing requirements, and will be operated consistent with the Short-Term Family Housing programs administered by the Department of Human Services for the purpose of providing immediate support to families experiencing homelessness.
44. The emergency shelter will provide 50 residential units, with a capacity of approximately 185 beds, in a six-story building containing approximately 45,345 square feet of gross floor area. The building will contain space for services and functions related to the emergency shelter use, including a dining area, administrative offices, and recreational areas for residents.

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45. The ground floor of the new building will include a small one-story reception area. The northern portion of the ground floor will be devoted primarily to a computer lab, medical clinic, and staff lounge. The southern portion of the ground floor will be occupied primarily by an administrative wing located near the lobby, a multipurpose room, an indoor play area, and dining area with an adjacent warming kitchen. Meals will be prepared off-site.
46. Consistent with the Short-Term Family Housing programs, the emergency shelter will provide private meeting space for the provision of “wrap-around” services designed to assist residents in obtaining permanent housing more quickly. The services are intended to provide connections to permanent housing programs, housing search assistance, credit counseling, and budgeting, as well as to offer assistance in meeting needs such as childcare, health care, training, and employment services. Much of the space devoted to the provision of wrap-around services will be located on the ground floor. (Exhibits 2, 227.)
47. Floors two through six of the new building will each contain 10 residential units accessed by a single central corridor. The eastern end of each residential floor will be devoted to common areas laid out as a community room with laundry facilities and a microwave, and a study room. Staff monitors will be stationed at the east end of each residential floor in a location providing a line of sight encompassing the elevators and the entire length of the corridor.
48. The residential units will be arranged so that two units will have private bathrooms and the other eight units will share four bathrooms. Two pairs of units will have adjoining doors to accommodate larger families when needed. Each unit will have its own small refrigerator.
49. The residential units and common areas in the emergency shelter will be fully furnished. Residents found eligible for emergency shelter will be permitted to bring personal belongings but not large furniture. (Exhibits 2, 227.)
50. An outdoor play area will be provided at the rear of the building along the western edge of the subject property. The playground, containing approximately 3,600 square feet of space, will be divided into two or three zones to provide recreational space for children of different ages, and will be bordered by the planned parking garage and the existing brick fence. (Exhibit 165A, p. 6.)
51. Trash will be stored for collection in bins on the north side of the building, accessible via a driveway that will also serve a new parking garage to be constructed behind the MPD building. Trash collection is expected to occur three times per week.

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52. The driveway will have a designated area on the north side of the emergency shelter building for deliveries. (Exhibit 165A, p. 6.) Meals will be delivered twice daily in vans. (Exhibit 2.)
53. The emergency shelter will be operated by a staff typically ranging from 10 to 22 employees. At least 10 employees will be on-site at all times, and as many as 27 could be at the facility during shift changes. Because of the timing of the shift changes, including at 7:00 a.m. and 11:00 p.m., the arrival times of most employees will not coincide with the times of peak traffic on streets in the vicinity of the subject property.
54. Residents of the emergency shelter will not have access to the building's roof. The roof will not have a penthouse but will contain some rooftop equipment that will be located behind a screen six feet higher than the parapet to minimize views of the equipment.
55. Residents of the shelter will not be permitted to park vehicles on site. Based on experience at other emergency shelters, the Applicant projects that less than one percent of shelter residents will own a vehicle, and that most residents will likely utilize non-automobile transportation options such as public transit, bicycles, or walking to travel to and from the emergency shelter. Residents will have access to bicycle storage on-site and will receive transit subsidies. (Exhibits 37, 125.)
56. The shelter building will be set back more than 20 feet from Idaho Avenue, and will be located at a distance of approximately 63 feet from the southern boundary of the subject property. The grounds will be landscaped with trees and other plantings. (Exhibit 165A, p. 6; Exhibit 243.)
57. In conjunction with the LEED Gold certification of the shelter building, night-sky lighting fixtures, with cut-off, will be installed so that no light will leave the confines of the site. (McNamara, Tr. at 267.)
58. Pursuant to Subtitle C § 901.1, an emergency shelter use with a gross floor area between 30,000 and 100,000 square feet must provide one loading berth and one service/delivery space. The Applicant is proposing not to provide a loading berth or a service-delivery area, although the driveway serving the shelter building will have a designated area for deliveries.
59. Pursuant to Subtitle C § 302.2, each new primary structure must be erected on a separate lot of record. The proposed emergency shelter will be housed in a new primary structure on a lot of record, Lot 849, that is already improved with a principal building, the MPD Second District headquarters.
60. A "community advisory team" was formed as part of the Mayor's community engagement process related to the emergency shelter initiative in Ward 3 to coordinate community

feedback and input, share information on issues and concerns, and comment on building designs to help ensure that the new shelter building would reflect the character the surrounding neighborhood. The Ward 3 community advisory team will conduct “ongoing discussions about specific concerns” with respect to the emergency shelter and will “provide feedback on concerns related to resident quality of life during construction and help develop” a “good neighbor agreement” for the program. The good-neighbor agreement, between the service provider of the emergency shelter and the advisory team on behalf of the community, will address expectations and commitments regarding exterior facility and landscape maintenance, community safety, neighborhood codes of conduct, and communication, problem-solving, and mutual respect. (Exhibits 227, 228.)

### **Building height**

61. The Applicant proposes to construct a building 69 feet and six stories in height to house the emergency shelter use. Pursuant to Subtitle F § 303.1, a maximum height of 40 feet and three stories is permitted as a matter of right in the RA-1 Zone.
62. The Applicant originally proposed a building height of 72 feet based on a corridor ceiling height of eight feet, six inches, resulting in a floor-to-ceiling height of 11 feet, four inches, taking into account the organization of the systems above the ceiling. By reorganizing the systems, the Applicant was able to lower the floor-to-ceiling height to 10 feet, eight inches, resulting in a reduction in planned building height of 69 feet. (McNamara, Tr. at 59.)
63. The eight-inch interval of the reduction in the floor-to-ceiling height was purposeful since the building will be constructed using brick masonry: the eight-inch module must be maintained to support the brick at every level. Reduction by another eight-inch increment would lower the ceiling height from eight feet, four inches to seven feet, eight inches, which is not a height recommended for a public space but is more typically used for a utility closet or a storage room. (McNamara, Tr. at 59.)
64. The building site will be partially excavated to provide a basement below a portion of the new building. The basement will be devoted primarily to utility space, storage space for DHS materials, and bicycle storage. The Applicant decided against further excavation of the basement level due to the cost and site constraints affecting utilities.
65. The Applicant also cited a lack of appropriate program, suitable for location in a basement, as a reason not to excavate the basement level completely. While the computer room and medical clinic could perhaps be located in a basement, the Applicant’s ability to provide supportive services to persons experiencing homelessness would be compromised if case management functions were located in a basement. Accordingly, much of the ground floor of the new shelter building will be devoted to common areas designed to serve residents in areas receiving natural light so as to create a warm, welcoming environment and to help foster a familiar relationship between residents and the case workers who provide the wrap-



around services through an everyday interaction that would not be possible if the administrative offices were located in the basement. The Applicant stressed the importance of having administrative offices directly adjacent to the lobby so that the shelter staff “can start to foster relationships with the residents .... Creating a separate area [in the basement] that is almost ... a dungeon ... would have the opposite effect.” (McNamara, Tr. at 253-254; Zeilinger, Tr. at 41.)

66. The Applicant submitted a shadow study to illustrate the shading impact of the new building and garage on the surrounding area. The new construction will not create any shadow impacts on nearby residences, since all shadows cast by the shelter building will remain within the boundaries of the subject property. Some shade will be cast on the nearby community gardens during morning hours, but will affect only an area already designated for shade planting due to nearby tree cover. (McNamara, Tr. at 61.)

### **RA Zoning classification**

67. The subject property is located in an RA-1 Zone that also encompasses areas to the north and west of the subject property.
68. The Residential Apartment (RA) zones permit urban residential development and compatible institutional and semi-public buildings. (Subtitle F § 100.1.) The RA zones are designed to be mapped in areas identified as moderate- or high-density residential areas suitable for multiple dwelling unit development and supporting uses. (Subtitle F § 100.2.)
69. The provisions of the RA zones are intended to: (a) provide for the orderly development and use of land and structures in areas characterized by predominantly moderate- to high-density residential uses; (b) permit flexibility by allowing all types of residential development; (c) promote stable residential areas while permitting a variety of types of urban residential neighborhoods; (d) promote a walkable living environment; (e) allow limited non-residential uses that are compatible with adjoining residential uses; (f) encourage compatibility between the location of new buildings or construction and the existing neighborhood; and (g) ensure that buildings and developments around fixed rail stations, transit hubs, and streetcar lines are oriented to support active use of public transportation and safety of public spaces. (Subtitle F § 100.3.)
70. The purposes of the RA-1 Zone are to: (a) permit flexibility of design by permitting all types of urban residential development if they conform to the height, density, and area requirements established for these districts; and (b) permit the construction of those institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive residential zones.<sup>3</sup> (Subtitle F § 300.1.)

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<sup>3</sup> The purposes are the same for zones RA-2, RA-3, RA-4, and RA-5.

71. The RA-1 Zone provides for areas predominantly developed with low- to moderate-density development, including detached dwellings, rowhouses, and low-rise apartments. (Subtitle F § 300.2.)
72. The bulk of structures in the RA zones is controlled through the combined requirements of the general development standards of Subtitle F (governing Residential Apartment zones), the zone-specific development standards of Subtitle F, and the requirements and standards of Subtitle C (stating General Rules). (11 DCMR Subtitle F § 101.1.)
73. The development standards of Subtitle F are intended to (a) control the bulk or volume of structures, including height, floor area ratio, and lot occupancy; (b) control the location of building bulk in relation to adjacent lots and streets, by regulating rear yards, side yards, and the relationship of buildings to street lot lines; (c) regulate the mixture of uses; and (d) promote the environmental performance of development. (11 DCMR Subtitle F § 101.2.)
74. The proposed shelter building will comply with development standards applicable in the RA-1 Zone with the exception of building height. As a result of the new construction, lot occupancy will increase from 10 percent to 28 percent, where a maximum of 40 percent is permitted as a matter of right. (Subtitle F § 304.1.) The floor area ratio (“FAR”) will increase from 0.2 to 0.65, where a maximum FAR of 0.9 is permitted. (Subtitle F § 302.1.) A rear yard of 205 feet will be provided, where a minimum of 20 feet is required (Subtitle F § 305.1.) The side yards will be 60 feet on the north side and 23 feet on the south side of the building, where the minimum required is 18 feet, calculated as three inches of side yard setback per foot of building height. (Subtitle F § 306.2.)<sup>4</sup> (Exhibit 108.)

### **Nearby properties**

75. Properties to the south of the subject property are zoned R-1-B. An approved planned unit development (“PUD”), known as “Cathedral Commons” and located to the east and northeast of the subject property, is split-zoned RA-1 along Idaho Avenue and NC-1 along Wisconsin Avenue. The PUD includes a grocery store and other retail uses as well as residential uses. The RA-1 portion of the PUD site, directly to the east across Idaho Avenue from the proposed shelter site, is improved with eight three-story attached dwellings. The PUD site also contains two apartment buildings that are three and five stories in height. The NC-1 zone, containing restaurants and other retail uses, also extends along a portion of Wisconsin Avenue to the south of the PUD site. Other properties along Wisconsin Avenue in the vicinity of the subject property are zoned RA-2 or RA-4.

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<sup>4</sup> The southern side yard of 23 feet apparently reflects the distance of the existing brick wall from the southern property line. The Applicant’s revised plans depict a “planted side yard” of 39 feet, two inches along the southern edge of the shelter building, and another 23 feet, 11 inches between the “planted side yard” and the property line, for a total distance of 63 feet, one inch. The area closer to the property line will also be landscaped with trees and other plantings. (Exhibit 165A.)

76. Properties to the north, across Newark Street, include McLean Gardens, a development of three- and four-story apartment buildings; a five-story building housing a radio station; and a nine-story apartment house with retail uses on the ground floor.
77. No other property in Square 1818 or within 500 feet of the subject property is presently used as an emergency shelter or related use. (Exhibit 2.)

**Relocation of Accessory parking**

78. The subject property currently contains 157 parking spaces that serve the MPD use.
79. The Applicant plans to replace the existing MPD parking lot with a new two-story garage addition to the existing MPD building in the northwestern portion of the property. The garage will provide approximately 239 parking spaces on three levels for use by MPD and by the emergency shelter. The impound lot will be relocated. (Exhibits 2, 75, 165.)
80. View of the new garage from Idaho Avenue will be substantially blocked by the MPD building. The garage will be visible from Newark Street, but at a significant distance, and the western façade will be screened with landscaping, including vines intended to cover the building wall. The garage will not be adjacent to any residential use. (Exhibit 124.)
81. Approximately 50 to 60 parking spaces will be provided on the subject property during the construction of the parking garage, which the Applicant estimates as a period of eight months.
82. The Applicant proposes the temporary relocation of some of the parking now provided on the subject property, mostly to Lot 848, until the parking garage is placed into service. The temporary parking area will span the property line between Lot 848 and Lot 849 in the area now used as tennis courts. Approximately one-third of the temporary parking spaces will be located on the subject property. The temporary parking will provide approximately 70 spaces for use by MPD officers to park their personal vehicles, and will not be used as parking for police vehicles. A paved road, using a new curb cut on Newark Street, will provide vehicle access to the temporary parking area.
83. The Applicant requested special exception approval for the relocation of accessory parking as a temporary use under Subtitle B §§ 203 and 204. Pursuant to Subtitle B § 204.2, any use allowed only with conditions in a zone shall be allowed as a temporary use in the zone subject to all applicable conditions. The temporary use must have a time period of allowance not to exceed one year, and must not result in the erection of any new permanent structures. (Subtitle B § 204.3.)

## **CONCLUSIONS OF LAW AND OPINION**

The Applicant seeks a special exception under Subtitle U § 420.1(f), in addition to certain area variance relief and a special exception relating to the temporary relocation of accessory parking to another site, to allow an emergency shelter in the RA-1 Zone at 3320 Idaho Avenue, N.W. (Square 1818, Lot 849). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11 DCMR Subtitle X § 901.2.)

### **Emergency shelter use**

Pursuant to Subtitle U § 420.1, certain uses, including an emergency shelter use, may be permitted in the RA-1 Zone if approved by the Board as a special exception under Subtitle X, Chapter 9, subject to the provisions applicable to each use. In the case of an emergency shelter use considered under Subtitle U § 420.1(f), the provisions specify that no other property containing an emergency shelter for seven or more persons may be located either in the same square or within a radius of 500 feet from the site of the proposed emergency shelter (Subtitle U § 420.1(f)(1)); the proposed emergency shelter must provide adequate, appropriately located, and screened off-street parking to provide for the needs of occupants, employees, and visitors to the facility (Subtitle U § 420.1(f)(2)); the proposed emergency shelter must meet all applicable code and licensing requirements (Subtitle U § 420.1(f)(3)); the proposed emergency shelter must not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area (Subtitle U § 420.1(f)(4)); and a facility for more than 25 persons, not including any resident supervisors or staff and their families, can be approved only if the Board finds that the program goals and objectives of the District of Columbia cannot be achieved by a facility of a smaller size at the location and if there is no other reasonable alternative to meet the program needs of that area of the District (Subtitle U § 420.1(f)(6)).<sup>5</sup>

Based on the findings of fact, the Board concludes that the new building will be devoted to use as an emergency shelter, as that term is defined in the Zoning Regulations, and that the application satisfies the requirements for special exception relief in accordance with Subtitle U § 420.1(f). The Zoning Regulations define an “emergency shelter” as “[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 ... ; an emergency shelter use may also provide ancillary services such as counseling, vocational training, or similar social and career assistance.” (11 DCMR Subtitle B § 100.2.) The Department of Human Services has publicly referred to the

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<sup>5</sup> Another provision – that the Board may approve more than one emergency shelter in a square or within 500 feet only when the cumulative effect of the facilities will not have an adverse impact on the neighborhood because of traffic, noise, or operations (Subtitle U § 420.1(f)(5)) – is not applicable in this instance because no other facility is now located in the same square or within 500 feet.

facility as “short-term family housing” to avoid use of the term “shelter” and to convey that the facility is intended to provide “a supportive program for residents that is respectful and harmonious with the variety of housing types in the surrounding community.” (See Exhibit 227 at 5.) The Short-Term Family Housing programs implemented by DHS are subject to requirements in the Homeless Services Reform Act related to “temporary shelter” for families. The Board concurs with the Applicant that the planned use of the subject property is as a facility providing temporary housing under the Homeless Services Reform Act “and fits wholly into the zoning definition despite the publicized name of ‘Short Term Housing Facility.’” (Exhibit 227 at p. 6.)

The party in opposition argued that an emergency shelter is presumptively limited to a maximum of 25 residents, since the Zoning Regulations state the requirements for an emergency shelter in the RA-1 Zone as an emergency shelter use for five to 25 persons. According to NRG, a facility of the size proposed in this proceeding – 50 family units potentially serving 185 residents – cannot be considered an “emergency shelter” due to its size. The Board does not agree. The relevant zoning provision, Subtitle U § 420.1(f)(6), plainly allows a facility for more than 25 persons so long as the applicable requirements are met. In creating the provision that allows for special exception approval of an emergency shelter, the Zoning Commission could have imposed a limit on the size of the facility, but the Commission did not do so. The party in opposition did not identify an alternative use category, but argued only that the Applicant’s planned use would not be an emergency shelter due to its size. The Board finds no reason to conclude that the number of residents alone would transform an emergency shelter use into some other use.

Certain requirements of Subtitle U § 420.1(f) are satisfied or do not apply to this application since the proposed emergency shelter will be the only such use in its vicinity. They are Subtitle U § 420.1(f)(1), concerning other emergency shelters in the same square or within 500 feet, and Subtitle U § 420.1(f)(5), concerning the cumulative effect of multiple facilities. With respect to Subtitle U § 420.1(f)(3), the Board credits the Applicant’s testimony, confirmed by the Office of Planning and not disputed by any testimony or evidence, that the proposed emergency shelter will meet all applicable code and licensing requirements.

Pursuant to Subtitle U § 420.1(f)(2), the proposed emergency shelter must provide adequate, appropriately located, and screened off-street parking to provide for the needs of occupants, employees, and visitors to the facility. The Applicant has demonstrated that the emergency shelter at the subject property will be allocated parking spaces in the new parking garage that will be constructed behind the MPD building before the shelter is built. The parking spaces devoted to the emergency shelter use will be appropriately located very near the shelter building, at a considerable distance from any neighboring dwelling. Views of the garage will be minimal, since much of the new parking facility will be located behind the existing MPD facility, at a considerable distance from both Idaho Avenue and Newark Street. The western façade, facing the community gardens, will be planted with vines that will create a green screen wall to obscure the garage.

The number of parking spaces provided in the new garage will be adequate for the needs of occupants, employees, and visitors to the facility, consistent with the minimum zoning requirement

of 23 spaces set forth in Subtitle C § 701.5. Both DDOT and the Applicant's traffic expert concluded that the emergency shelter will not generate a significant demand for parking. Based on the Applicant's experience at other emergency shelters, very few residents will have personal vehicles (and in fact more than half of the residents are likely to be young children). All the residents will receive transit subsidies to encourage use of public transportation, and the number of employees will be relatively small, generally 10 to 22 employees, with a maximum of 27 during shift changes. The use of personal vehicles is not necessary for convenient access to the site, since the location is well-served by public transportation and conveniently located near car- and bicycle-sharing facilities, and the shelter building will provide both short-term and long-term bicycle storage.

In accordance with Subtitle U § 420.1(f)(4), the Board finds that the proposed emergency shelter will not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area. The emergency shelter at the subject property will be the only such facility in the vicinity. DDOT concurred with the Applicant's method of calculating trip generation estimates for the project, and concluded that "impacts to the surrounding vehicle network [associated with shelter operation] are expected to be minimal." (Exhibit 125.) The emergency shelter is not expected to generate significant increases in traffic, at a level that would have an adverse impact on the neighborhood, because most shelter residents likely will not travel to the site by personal vehicle, the shelter will be staffed by a relatively small number of employees who will work in shifts on a schedule that will not coincide with peak traffic periods on nearby streets, the residents will move in without bringing furniture or other large items typically delivered by trucks, and the internal circulation of the site, including a designated loading area and trash storage area on the north side of the building, will be adequate to accommodate twice-daily food deliveries by van and trash collection. DDOT also concurred that the Applicant's "proposed loading area is sufficient to accommodate the project," noting the relatively limited use of the facilities for meal deliveries and trash pick-up, and that all loading activity will occur via a delivery space. (Exhibit 125.)

The emergency shelter use is not likely to generate any adverse impacts relating to noise or operations. Operation of the emergency shelter will be supervised by staff who will be on-site 24 hours each day. All operations will be contained within the building with the exception of the small play area, which will be located on the western edge of the property adjacent to an area of community gardens. Trash storage and pickup will occur on the northern side of the building, at a considerable distance from the nearest neighboring residences. Operation of the emergency shelter use will be guided by a "good neighbor agreement" devised by a community advisory team that will conduct ongoing discussions to address any concerns about the emergency shelter that may arise in the future.

Several District agencies indicated no objection to the proposed emergency shelter. The Second Police District of the Metropolitan Police Department, whose headquarters are also located on the subject property, stated that the emergency shelter would "not impact the ability of police officers to perform their normal duties and protect the public and surrounding community at the Second

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District headquarters ...,” including that the shelter use would “not impede ingress and egress access to the rear of the police station” or “disrupt the operation of the re-fueling station ....” (Exhibit 75B.) The D.C. Homeland Security and Emergency Management Agency (“HSEMA”) stated that colocation of the emergency shelter on the site of the existing MPD building would not “degrade the ability of HSEMA to perform its duties and to protect this or any area of the city.” (Exhibit 75C.) The D.C. Fire and Emergency Medical Services Department (Exhibits 75D, 209) and the District of Columbia Public Schools (Exhibit 189) also indicated no objection to approval of the requested zoning relief.

The ANC expressed concern that the request for special exception approval “raises issues of ... noise from a shelter playground and multiple per week trash pick-ups adjacent to single family residences.” (Exhibit 170.) However, the ANC’s resolution was adopted before changes were made to the Applicant’s proposal, which resulted in the relocation of the shelter playground from the south side of the building to the rear, and relocation of the proposed trash storage area to the north side of the building, thereby increasing the distance of the playground and trash storage from any residences.<sup>6</sup> The playground or trash operations, as now proposed, are not likely to create any adverse impacts on the neighborhood.

Pursuant to Subtitle U § 420.1(f)(6), an emergency shelter for more than 25 persons can be approved only if the Board finds that the program goals and objectives of the District of Columbia cannot be achieved by a facility of a smaller size at the location and if there is no other reasonable alternative to meet the program needs of that area of the District.<sup>7</sup> The Board concludes that the District’s program goals and objectives cannot be achieved by a facility of a smaller size at the subject property because the size of the planned emergency shelter, in terms of the number of units, is required by the District policy to close the D.C. General family shelter and to provide a like number of emergency shelter units in smaller facilities on sites in locations around the District. By statute, the District of Columbia is required to maintain an inventory of 280 Replacement Units, once constructed. Provision of a total of 280 residential units is also a key component of the Homeward DC initiative devised by the Interagency Council on Homelessness. To achieve a total of 280 Replacement Units District-wide, each individual emergency shelter for families must contain between 46 and 50 sleeping units.

The decision to provide 50 residential units in the emergency shelter was also driven by program needs related to the provision of wrap-around services. The Applicant determined that a larger number of units in a single facility would help achieve program efficiencies and manage the costs

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<sup>6</sup> At the public hearing, the chair of ANC 3C testified that the proposed locations of the playground and trash were moved, to the rear and to the north side of the building respectively, at the ANC’s suggestion to “avoid the need for a very tall buffer wall proximate to the existing homes” and to “avoid the twice a week noise that accompanies trash pick-ups.” (Exhibit 229; MacWood, Tr. at 120.)

<sup>7</sup> The emergency shelter proposed in this application will not include any resident supervisors or staff and their families.

of the services by allowing the provision of services to a larger number of people at one location, rather than building and operating multiple smaller facilities. The desire for efficiency and cost-management was balanced by the need to provide a smaller, family-scale environment on each floor and in the emergency shelter as a whole. The number of sleeping units was set at 50 as the optimal balance between legal requirements and the program needs and costs.

The Board was also persuaded that construction of multiple smaller facilities on various sites in Ward 3 or the construction of a lower, multi-wing building on the subject property were not feasible options. The Applicant's witnesses described the importance of the six-story, 50-unit shelter considering the relevant legal requirements, the costs of providing the services, and the program needs of an emergency shelter facility for families with small children.<sup>8</sup> The Applicant decided against building smaller shelters because the operation of multiple structures would require the operation of multiple programs, with significantly higher annual operating costs than a single 50-unit shelter.

Construction of multiple smaller facilities would also "extend the timeline" by years until sufficient Replacement Units would become available to allow the closure of the D.C. General family shelter. (Zeilinger, Tr. at 260.) Homeward DC calls for the development of "service-enriched, community-based shelters" on a schedule such that the D.C. General family shelter can be closed by the 2019-2020 hypothermia season. According to DHS, the temporal aspect of the Homeward DC goal is critically important from a cost perspective and to provide suitable shelter for families who are experiencing homelessness. (Zeilinger, Tr. at 35.)

The size of the planned emergency shelter in terms of the dimensions of the building similarly reflects requirements of District laws and policies. The Homeless Services Reform Act, as amended by the Interim Eligibility Act, establishes standards for the provision of services for families by specifying the minimum requirements for a private room, for bathrooms, and for access to related services. Specific design elements of the emergency shelter proposed in this application were derived from the legal requirements as well as from research and experience, concerning especially the maximum of 10 sleeping units per floor and the provision of a single hallway on each floor, so that the entire length is visible to staff, to enhance the residents' security. The Board credits the Applicant's testimony about the need to offer inviting areas on the ground floor for the provision of services, the unsuitability of the basement, even if it could be expanded cost-effectively, as a location for the wrap-around services, and the inability to lower building height without creating interior spaces with inappropriately low ceiling heights.

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<sup>8</sup> The City Administrator described the proposal to construct a six-story emergency shelter at the subject property as "a critical element of the District's eight-ward initiative to developing a more effective crisis response system." (Exhibit 228.) The director of DHS testified that "the six stories and size of the project [are] critical to meeting the city's goals, complying with the programmatic needs of DHS, and accomplishing the objective to making homelessness rare, brief, and nonrecurring in the District." (Zeilinger, Tr. at 46.)



The ANC expressed concern that the request for special exception approval “raises issues of loss of light and air from a 72-foot plus penthouse building with curtain walls (a high-density structure in a low- to moderate-density zone).” (Exhibit 170.) Noting that the proposed building height has been reduced to 69 feet and that the building will not have a penthouse, the Board does not find that the planned height of the emergency shelter will raise any issues of light and air, given the size of the subject property; the front, side, and rear yard setbacks that will be provided so that the new building will be located a significant distance from any other building aside from the MPD headquarters; and the continued compliance of the subject property with applicable area restrictions including lot occupancy after the new construction is completed. For the same reasons, the Board was not persuaded by NRG that the proposed building “is fundamentally incompatible” with the neighborhood due to its size, or that the height of the building will adversely affect the privacy of adjoining residential uses.

The Board notes the comments of the Commission of Fine Arts that “the programmatic ideal of ten families per floor has resulted in a design that is too tall for its immediate context of single-family houses and a low-rise police station.” However, the Board does not agree that the building will be too tall for its context, considering also the larger buildings located near the subject property. The Board was persuaded that the maximum of 10 units per floor is an institutional necessity, rather than an “ideal,” and concludes that the Applicant has demonstrated that the other configurations suggested by the CFA are not feasible because they would not achieve all of the program needs faced by the Applicant, including the need to provide an adequate number of Replacement Units while achieving a suitable environment in a secure location for residents, also considering the costs of providing the necessary services.

The Board finds that the proposed density is appropriate at the site, considering especially the public need for the facility and the lack of adverse impacts associated with the emergency shelter on the use of neighboring property. An increase in density is not necessarily incompatible with a residential neighborhood where an increase in the population of an area would not demonstrably bring about an increase in traffic or indicate a significant change in the level of noise. *Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 295 (D.C. 1974).

The Board concludes that the Applicant has satisfied the requirement of Subtitle U § 420.1(f)(6) in showing that there is no other reasonable alternative to the proposed Ward 3 emergency shelter to meet the program needs of that area of the District. This application grew out of a process, undertaken over a period of years, to devise and implement policies addressing homelessness in the District of Columbia. As part of the process, the responsible District agencies identified certain criteria to assess whether a given property would be a suitable location for an emergency shelter designed to serve families in D.C. General Replacement Units. The Mayor identified sites in each ward. The Council considered the Mayor’s proposal, as well as other possible sites, before making a determination that the subject property best fit the selection criteria. “The Council endorsed 3320 Idaho Avenue and found that there were no other reasonable sites in Ward 3.” (Mendelson, Tr. at 22.) The director of the Department of General Services also testified that no other reasonable alternative was practical to meet the needs of the District, considering the results of

efforts by DGS to locate a suitable site and the results of the search conducted by the D.C. Council. (Exhibit 226; Gillis, Tr. at 106.) The Office of Planning recommended approval of the emergency shelter proposed at the subject property, and the ANC “supports locating the shelter at this site ...” (Exhibit 229; Tr. at 118) despite its objection that “the ability to assess the reasonableness of this placement in comparison to others ... has been hampered by the unwillingness of the District to provide evidence of an exhaustive search for a shelter site or explain why DGS concluded in April 2016 that the Second District police station was not an appropriate site for a shelter.”<sup>9</sup> (Exhibit 170.)

The Board does not agree that any additional proof of an “exhaustive search” is necessary, and concludes instead that the Applicant provided substantial evidence of the site selection process that ultimately led to the Council’s endorsement of the subject property. The Board finds no reason to require the Applicant now to “conduct a reasonable search for alternative sites,” as urged by NRG, or to “second guess” the program needs identified by experts, including those at the Interagency Council on Homelessness and the Department of Human Services, as those needs and the best way to meet them in a cost-effective manner are outside the scope of the Board’s expertise in zoning. *Compare D.C. Library Renaissance Project/West End Library Advisory Group v. District of Columbia Zoning Comm’n*, 73 A.3d 107 (D.C. 2013) (Zoning Commission was not required to consider the value of land rights to be transferred to a developer as an “adverse effect” under zoning regulations where the Mayor and Council had negotiated and entered into a land distribution agreement under which the developer agreed to construct an important facility at no direct cost, and the Commission declined to “second guess the calculations that led the District ... to conclude this was a good deal”; the Commission reasonably concluded that zoning regulations did not require consideration of the financial underpinnings of the land transfer, which did not fall within the core of the Zoning Commission’s expertise in land-use matters.)

In accordance with Subtitle X § 901.2, the Board concludes that approval of the requested special exception to allow an emergency shelter will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. As discussed above, the Board does not find that operation of the shelter will create any adverse impacts on the use of neighboring property.

Approval of the requested special exception will be in harmony with the RA-1 Zone and its purposes to permit flexibility of design in urban residential development and the construction of

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<sup>9</sup> By letter dated April 29, 2016 to Councilmember Mary Cheh, the then Director of the Department of General Services, Christopher Weaver, stated that “complicating factors” “create an unknown delay and thus make this site [i.e. the subject property] unsuitable” as the location for the Ward 3 shelter. (See, e.g. Exhibit 66.) Those “complicating factors” – relating to a “need to lease a facility to relocate the Second District” or to renovate the MPD building, as well as potential interference with a “master plan for park availability for this neighborhood” – do not alter the Board’s deliberations on this application, which does not request any zoning relief relating to the MPD building and potentially would affect the park availability only temporarily to accommodate MPD parking during the construction period.

institutional and semi-public buildings compatible with adjoining residential uses. The Residential Apartment (RA) zones are designed to be mapped in areas identified as moderate- or high-density residential areas suitable for multiple dwelling unit development and supporting uses. The RA-1 Zone provides for areas *predominantly* developed with low- to moderate-density development, but anticipates some higher density development as well, since buildings up to 90 feet in height are permitted, without zoning relief, under certain circumstances.<sup>10</sup> The Applicant's proposal satisfies the area requirements applicable in the RA-1 Zone, with the exception of height. The Board does not find that the proposed building height of 69 feet and six stories is incompatible with the RA-1 Zone mapped at the subject property, especially considering the mix of uses and building types in the immediate vicinity.

### **Area variances**

The Applicant seeks area variances from requirements relating to the number of primary structures on one record lot under Subtitle C § 302.2, loading under Subtitle C § 901.1, and building height and number of stories under Subtitle F § 303.1.<sup>11</sup> The Board is authorized under § 8 of the Zoning Act to grant variance relief where, "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property," the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. (*See* 11 DCMR Subtitle X § 1000.1.)

Extraordinary or exceptional situation. For purposes of variance relief, the "extraordinary or exceptional situation" need not inhere in the land itself. *Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Rather, the extraordinary or

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<sup>10</sup> Subject to certain exceptions, the maximum permitted height of buildings specified in each RA zone may be exceeded as specified in Subtitle F § 203. Pursuant to Subtitle F § 203.2, a place of worship may be erected to a height not exceeding 60 feet and three stories, not including the penthouse. In accordance with Subtitle F § 203.3, an institutional building can be constructed to a height not exceeding 90 feet, not including a penthouse, if the building is set back from all lot lines a distance of at least one foot for each one foot of building height in excess of the authorized limit. Under Subtitle F § 203.4, any building may be erected to a height not exceeding 90 feet, not including a penthouse, if the building is set back from each lot line for a distance equal to the height of the building above the natural grade.

<sup>11</sup> Pursuant to Subtitle C § 302.2(a), "[e]ach new primary building...shall be erected on a separate lot of record in all...RA zones," except as provided for in the theoretical lot subdivision regulations of Subtitle C § 305.1. The latter provision authorizes the Board to approve, as a special exception, a waiver allowing multiple primary buildings on a single lot of record in the RA zones, provided that certain requirements are met. Because the self-certified application requested an area variance for this relief, and because the Board concludes that the Applicant has satisfied the more stringent requirements for area variance relief, the Board finds no need to address the criteria that could have allowed the two primary structures on a single record lot by special exception in this case.

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exceptional conditions that justify a finding of uniqueness can be caused by subsequent events extraneous to the land at issue, provided that the condition uniquely affects a single property. *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939, 942 (D.C. 1987); *DeAzcarate v. District of Columbia Bd. of Zoning Adjustment*, 388 A.2d 1233, 1237 (D.C. 1978) (the extraordinary or exceptional condition that is the basis for a use variance need not be inherent in the land but can be caused by subsequent events extraneous to the land itself.... [The] term was designed to serve as an additional source of authority enabling the Board to temper the strict application of the zoning regulations in appropriate cases....); *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979) (for purposes of approval of variance relief, “extraordinary circumstances” need not be limited to physical aspects of the land). The extraordinary or exceptional conditions affecting a property can arise from a confluence of factors; the critical requirement is that the extraordinary condition must affect a single property. *Metropole Condominium Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1082-1083 (D.C. 2016), citing *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

The Board may consider the property owner’s needs in finding an exceptional situation or condition when the applicant is a non-profit organization and the proposed use is a public service. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091 (D.C. 1979) (BZA considered permissible factors in applying the first branch of the variance test to a public service organization; the organization’s wish to move to a particular site did not make the site unique, but the Board properly recognized that the site’s location made it “uniquely valuable” to the organization and “uniquely suitable for [its] headquarters.”) Generally, an applicant’s desire to utilize property for a certain use is not by itself sufficient to create an extraordinary or exceptional situation or condition under the zoning regulations, *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540 (D.C. 1972), but subsequent decisions modified *Palmer*, permitting the Board to weigh more fully the equities in an individual case. *National Black Child Development Institute, Inc. (“NBCDI”) v. District of Columbia Bd. of Zoning Adjustment*, 483 A.2d 687, 690 (D.C. 1984). Consistent with “a well established element of our governmental system,” the Board “may be more flexible when it assesses a non-profit organization,” even if “a commercial user before the BZA might not be able to establish uniqueness in a particular site’s exceptional profit-making potential.” *Monaco* at 1098, quoting 3 R. Anderson, *American Law of Zoning* s 14.78 (1968) (the public need for a use is an important factor in granting or denying a variance and “the apparently objective standards of the enabling acts are applied differently to the several kinds of uses....”). The characterization of a proposed use as a public service is significant, and “when a public service has inadequate facilities and applies for a variance to expand..., then the Board of Zoning Adjustment does not err in considering the needs of the organization as possible ‘other extraordinary and exceptional situation or condition of a particular piece of property.’” *Monaco* at 1099. *See also NBCDI*, 483 A.2d 687 (D.C. 1984) (BZA did not exceed its authority in granting variance relief to a nonprofit entity whose work promoted the public welfare by benefitting “black children and families within the District,” when, absent variance relief, “the great expense of operating offices at another site would cause serious detriment” to the nonprofit.)

The need to expand does not automatically exempt a public service organization from all zoning requirements. In applying for an area variance, a public service organization must show (1) that the specific design it wants to build constitutes an institutional necessity, not merely the most desired of various options, and (2) precisely how the needed design features require the specific variance sought. *Draude v. District of Columbia Bd. of Zoning Adjustment*, 527 A.2d 1242, 1256 (D.C. 1987).

In this proceeding, the Applicant asserts that the subject property “is unusual and affected by an exceptional situation and condition as a result of a confluence” of factors: (1) the locations of the existing structures on the subject property, which restrict the area where a new building can be sited on the lot; (2) the existing community gardens and tennis court, which also restrict the area where a new building can be sited on the lot and limit design alternatives for the new building; (3) the site’s topographical change; and (4) the program needs of the project. (Exhibit 75.) NRG argued that the “confluence of factors” cited by the Applicant “is driven entirely by ... the alleged ‘programmatically needs’ – because the other three factors [i.e. the location of the existing structures on the lot, the community gardens, and the site’s topographical changes] arise from the District’s decision to select the Site without regard to alternatives, i.e., properties the District owns or could acquire suitable for a 50-family emergency shelter that are not beset with the need for multiple variances.” (Exhibit 164A1.) Because the proposed use of a property is not a sufficient basis for determining the presence of exceptional conditions, *Metropole Condominium Ass’n*, 141 A.3d at 1083, the Board concurs with NRG that the Applicant’s program needs “cannot be a justification for finding this particular Site unique” because the program needs “are not unique to this particular property; they apply to every property where the District might seek to locate the shelter deemed sufficient to satisfy those needs.” (Exhibit 164A1.)

The Board concludes that the subject property is faced with an exceptional situation and condition as the result of a confluence of factors including the existing structures and uses on the lot, its topography, and the designation of the lot, in legislation enacted by the D.C. Council, as the site for a new emergency shelter in furtherance of Homeward DC, a District-wide initiative to comply with statutory requirements and to implement public policy by creating an adequate supply of emergency shelter units for use by eligible families facing homelessness. The Council selected the site as the best option relative to criteria determined by the Council, which in large measure reflected the criteria used by the Mayor and by District agencies in defining the parameters for locations best suited for emergency shelters providing D.C. General Replacement Units, and appropriated funds for use in building and operating an emergency shelter at that site. As discussed *supra*, the Board accepts the Council’s determination.

NRG disputed the Applicant’s contention that the proposed site was mandated by the Mayor or by the District of Columbia Council, stating that “[t]he law...does not require the use of this site – rather it authorizes [the Applicant] to proceed, subject to the need to obtain zoning relief under applicable zoning standards.” (Exhibit 164A1; emphasis omitted.) According to NRG, “there is no compulsion to use this Site, as there is no evidentiary record in this case that the District’s programmatic needs cannot be met using some other site. This site is simply the one the District

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chose, and it did so knowing full well [of the need for zoning relief so] the problem is one of self-creation.” (Exhibit 164A1.)

First, although the Council technically did not (and could not) mandate the use of the subject property as a practical matter, that is the only site within Ward 3 that could be used. Council approval would have been required to acquire any other site and to enter into a construction contract at the price needed. In fact, the Council rejected the Mayor’s original site choice. For the District to have not gone forward with the site approved, but instead have analyzed the feasibility of other sites in Ward 3, would have been an exercise in futility. Second, the consideration of this application is limited to its deliberations on the request for certain zoning relief to allow the operation of an emergency shelter at the subject property. The Board also finds that NRG’s suggestion of self-created hardship is not germane to the Applicant’s requests for area variance relief. *See, e.g., Ass’n for the Preservation of 1700 Block of N Street v. District of Columbia Bd. of Zoning Adjustment*, 384 A.2d 674 (D.C. 1978) (grant of a parking variance was upheld even though the property owner, a YMCA, had “full knowledge” of all problems with the shape of the land, zoning, and costs of putting in parking before buying the property; the YMCA had no feasible alternative method to provide both a pool and all required parking spaces, and its self-created hardship was not a factor to be considered in an application for an area variance, as that factor applies only to a use variance.); *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1169 (D.C. 1990) (Prior knowledge or constructive knowledge or that the difficulty is self-imposed is not a bar to an area variance.); *A.L.W. v. District of Columbia Bd. of Zoning Adjustment*, 338 A.2d 428, 431 (D.C. 1975) (prior knowledge of area restrictions or self-imposition of a practical difficulty did not bar the grant of an area variance).

For purposes of the requests for variance relief to allow two principal buildings on a single lot of record as well as for building height in feet and in number of stories, the Board finds that the subject property is faced with an exceptional situation and condition especially as the result of the designation of the lot as the site for the Ward 3 emergency shelter. The Applicant has shown that the District has a need to use the subject property in furtherance of providing a public service, the provision of shelter and services to homeless families. The site is “uniquely valuable” to the Applicant in light of the goals and policies set forth in the Homeward DC initiative, and is “uniquely suitable” as the location for the proposed emergency shelter in light of the site selection process undertaken by District agencies and finally voted on by the Council. The Applicant demonstrated a need for the proposed building height, as a lower building with multiple wings or the operation of several smaller facilities at multiple locations would complicate the provision of services while greatly increasing the costs, and would not comport with the District’s policy decisions with respect to the optimal size and layout of emergency shelter facilities. The Board finds that the six-story height, with each floor providing an adequate floor-to-ceiling height, is an institutional necessity with respect to the construction of an emergency shelter for families that will meet statutory requirements with respect to the provision of private rooms, adequate bathroom facilities, and suitable space to offer wrap-around services while also meeting security requirements and achieving cost efficiencies in the operation of the shelter.

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In addition to the designation of the subject property as the site for the Ward 3 emergency shelter, the site's topography and the location of existing structures and features, such as the community gardens and tennis court, are germane to a finding of an exceptional situation and condition with respect to the request for a variance from the loading requirement. The existing development on the subject property restricts the area where the new shelter building can be sited and how vehicular circulation can be routed internally on the lot. Similarly, the topography of the site diminishes the area potentially available to provide the loading facilities required by the Zoning Regulations.

Practical difficulties. An applicant for area variance relief is required to show that the strict application of the zoning regulations would result in "practical difficulties." *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995), quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980). A showing of practical difficulty requires "[t]he applicant [to] demonstrate that ... compliance with the area restriction would be unnecessarily burdensome...." *Metropole Condominium Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1084 (D.C. 2016), quoting *Fleishman v. District of Columbia Bd. of Zoning Adjustment*, 27 A.3d 554, 561-62 (D.C. 2011). In assessing a claim of practical difficulty, proper factors for the Board's consideration include the added expense and inconvenience to the applicant inherent in alternatives that would not require the requested variance relief. *Barbour v. District of Columbia Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976).

The Applicant asserted that, absent variance relief, the District would be unable to meet its programmatic needs, since the requested variances are needed to carry out the public purpose of providing the necessary emergency shelter facility at the site designated for Ward 3. The strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the Applicant by precluding the construction of an emergency shelter building on the site consistent with legal and public policy requirements. A building limited to the height and number of stories permitted as a matter of right would be unnecessarily burdensome to the Applicant by preventing its implementation of a design derived from extensive research and consideration of operational efficiencies and the costs of providing the necessary services. The provision of loading facilities would also create practical difficulty for the Applicant in light of the building constraints on the site and the Applicant's showing that the emergency shelter operation will not create the need for the loading facilities required by the strict application of the Zoning Regulations.

The Board finds no merit in NRG's argument, with respect to the variance to allow the erection of a new primary structure on the same lot as an existing primary structure, that the Applicant "is actually seeking a *use variance* disguised as an area variance, and does not even attempt to argue that it satisfies the requirements for the grant of a use variance." (Exhibit 164A1; emphasis in original.) NRG notes that "a variance from the one-primary-structure-per-lot requirement is not among the examples of area variances" listed in Subtitle X § 1001.3(a) and (b). However, the reason for the omission is easily explained by the fact that relief from the restriction is allowed by special exception in Subtitle C:

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305.1 In the R, RF, and RA zones, the Board of Zoning Adjustment may grant, through special exception, a waiver of Subtitle C § 302.1 to allow multiple primary buildings on a single record lot provided that, in addition to the general special exception criteria of Subtitle X, Chapter 9, the requirements of this section are met.

Since the Applicant nevertheless sought variance relief, the Board concludes that it was properly characterized as an area variance. The requirement of Subtitle C § 302.2 is that each “new primary building and structure shall be erected on a separate lot of record.” Subtitle X § 1001.2 indicates that an “area variance is a request to deviate from an area requirement applicable to the zone district in which the property is located, whereas Subtitle X § 1001.4 provides that a use variance is a request to permit:

- a) A use that is not permitted matter of right or special exception in the zone district where the property is located;
- b) A use that is expressly prohibited in the zone district where the property is located; or
- c) An expansion of a nonconforming use prohibited by Subtitle C.

Clearly, none of the three use variance criteria are met here. Rather, the emergency shelter use is specifically allowed by special exception.

NRG nevertheless argues that a use variance is required because “a second primary structure on one lot is not permitted as of right and such use is not sought by special exception.” The fault with this argument is that it is premised upon a “structure” being a use, rather than the edifice that houses a use. The Court of Appeals recognized this distinction when it noted that “[o]rdinarily, the building permit is the document that reflects a zoning decision about whether a proposed structure, and its intended use as described in the permit application, conform to the zoning regulations,” See, e.g. *Basken v. D.C. Bd. of Zoning Adjustment*, 946 A.2d 356, 364 (D.C. 2008) (emphasis added). Here the existing primary structure is lawfully used as an MPD facility. The Board has approved the use of new primary structure as an emergency shelter. The Applicant wishes to erect the new primary structure on the same record lot as the existing primary structure and, as such, seeks a deviation from the area requirement that the new structure be erected on a separate lot of record. The relief therefore squarely falls within the description of an area variance as set forth in 11 DCMR § 1001.2.

With respect to the Applicant’s request for an area variance to allow the erection of new primary structure on the same record lot improved with an existing primary structure, the Board was persuaded that the strict application of the Zoning Regulations would result in practical difficulties for the Applicant. The subject property is a very large lot that can accommodate more than one primary structure, such that both structures would be capable of complying with applicable area requirements such as lot occupancy and yard setbacks. The need for variance relief to allow another principal structure could be avoided if the Applicant undertook to subdivide the lot, but the Applicant has argued persuasively that delays in the development of the new shelter would



hinder the provision of needed services and unnecessarily drive up the costs of the project. The need for the variance could also be avoided if the new construction were undertaken as an addition to the existing primary structure; a meaningful connection between the two structures would render them one building for zoning purposes. However, the connection of two structures devoted to two very different uses would create operational difficulties for both the emergency shelter and, likely, the MPD facility. Accordingly, the Board concludes that the strict application of the Zoning Regulations, so as to preclude location of another primary structure on the subject property, would be unnecessarily burdensome to the Applicant.

No substantial detriment or impairment. The Board finds that approval of the requested variance relief would not result in substantial detriment to the public good or cause any impairment of the zone plan. As previously discussed, the proposed emergency shelter use satisfies the requirements for special exception approval, such that the use is consistent with zoning requirements and will not cause adverse impacts on the use of neighboring property.

The Board concurs with the testimony of the Office of Planning, which found that the subject property “is of sufficient size to accommodate the two structures and accessory uses without overcrowding the single lot” since the buildings would comply with the lot occupancy and FAR limits applicable in the RA-1 Zone, would meet side yard and rear yard requirements for the lot, and would be “fully landscaped.” The Office of Planning also found no substantial detriment to the public good likely to result from approval of the requested variances for building height, noting the existence of buildings of similar heights, or taller, to the north and east of the subject property and that the new emergency shelter building would be “substantially set back and buffered from adjacent streets and residences and would therefore not overwhelm the nearby lower scale buildings.” With respect to the loading variance, OP found that no substantial detriment to the public good was likely to result because the Applicant will provide an area on-site to accommodate deliveries in a location that will not be visible from adjacent streets or residences. The Office of Planning found that approval of the requested variances would not cause substantial impairment to the intent, purpose, and integrity of the zone plan since the emergency shelter use “is permitted as a special exception and thus presumed appropriate in the zone,” and the proposal is necessary to meet the goals of the District’s short-term family housing initiative. (Exhibit 124.)

The ANC contended that “[c]o-locating two critical public uses on one lot raises potential concerns about compatibility,” stating that “[s]ubdividing the lot would have avoided creating this zoning anomaly” and that “[c]reating a meaningful connection between the new structure and the police station would also have avoided this variance request.” (Exhibit 170.) ANC 3C did not specify its potential concerns, except to suggest that the presence of a new building on the site, along with the planned parking garage, may affect “development capacity in the future.” The ANC’s concerns apparently do not relate to the proximity of the two structures, since the ANC did not state any objection to subdivision or a connection that would create a single building for zoning purposes but noted that “these options ... comply with the intent and purpose of the zoning plan.” In any event, “ANC 3C supports this variance because of the public need to help those experiencing homeless[ness] and to close D.C. General.” (Exhibit 170.)

ANC 3C also expressed support for the requested loading variance, which the ANC found would not harm the intent, purpose and integrity of the zoning plan. The ANC concurred that the “twice-a-day meal deliveries by van could be accommodated at the northern end of the shelter building, and other types of deliveries should not require the use of a 30-foot truck and the need for a dock.” (Exhibit 229.)

However, ANC 3C opposed the requested variances for height in feet and number of stories, stating its belief that “a shorter building would be more appropriate given the nearby single-family homes and townhomes, and the site’s zoning.” According to the ANC, permitting the requested increase “would substantially impair the intent, purpose and integrity of the zoning plan, because the height is not within the range of a low- to moderate-density zone.”<sup>12</sup> The ANC contended that, in light of the size of the subject property, the Applicant “could have designed a lower building that still met development standards and programmatic needs” such as by excavating “more of the building footprint ... to house more administrative and infrastructure functions, which would leave ground floor space for residential units,” by lowering the floor-to-floor height, or by adding to the footprint at the ground level, which would “permit moving some rooms to this level and would maintain proposed administrative spaces, especially if a lower level were used.”

For reasons already discussed, the Board does not agree with the ANC that the planned height of the new emergency shelter building is inappropriate at its location. The building will be sited at a distance from neighboring residences such that the new development will not affect the available light, air, or privacy. The proposed height of the emergency shelter is less than the maximum height permitted as a matter of right under certain circumstances (*i.e.* buildings permitted up to 90 feet in height in accordance with Subtitle F § 203), and therefore will not substantially impair the intent, purpose, or integrity of the RA-1 Zone. Also for reasons already discussed, the Board does not agree with the ANC’s assertion that the emergency shelter building could have been designed in the different ways suggested by the ANC and still have met all of the relevant program needs of the facility while achieving the same efficiencies.

### **Accessory parking**

The Applicant requests a special exception to allow the temporary use of Lot 848 to provide parking, now located on Lot 849, accessory to the MPD facility.<sup>13</sup> Under Subtitle U § 203.1(j), the Board may permit, as a special exception under Subtitle X, Chapter 9, accessory parking

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<sup>12</sup> The ANC’s resolution was based on the initial application, which requested variance relief to allow 72 feet and six stories in building height. At the public hearing, ANC 3C reiterated its opposition to the amended proposal for 69 feet. (MacWood, Tr. at 119.)

<sup>13</sup> Lot 848 is federally owned land; according to NRG, jurisdiction was transferred to the District of Columbia in 1973 “for recreation and related purposes.” (See Exhibit 164A2, pp. 2-6.) The Board deems the self-certification of this application as the Applicant’s representation that Lot 848 may be used for the proposed temporary parking use.

elsewhere than on the same lot as the principal use, subject to the specified conditions. Consistent with those conditions, the Applicant proposes to provide parking spaces in an open area that will satisfy the requirements of Subtitle C, Chapter 7<sup>14</sup> as well as the provision requiring that at least 80 percent of the parking surface will utilize a pervious pavement. No commercial advertising signs are proposed, as the accessory parking will be utilized only by MPD personnel during the construction of the parking facility on the subject property.

The Board finds that the Applicant's proposal will locate the parking spaces in a way that will not likely become objectionable to adjoining or nearby property because of noise, traffic, or other objectionable conditions. Much of the adjoining property is used for recreational purposes, and the new parking arrangement will comply with zoning requirements with respect to landscaping, pervious pavement, and other measures to avoid creating objectionable conditions for neighboring residences. The present character and future development of the neighborhood will not be adversely affected because the parking arrangement will be of a limited duration, until completion of the new garage on the subject property, and will avoid an increase in demand for on-street parking during the construction process. The current recreational uses will be fully restored when the accessory parking use is no longer needed. The temporary relocation of the accessory parking is reasonably necessary to provide parking spaces, convenient to the MPD facility, for the personal vehicles of police officers arriving at the subject property by car.

The Office of Planning recommended approval of the special exception requested for the relocation of the MPD accessory parking. DDOT had no objection to the requested relief.

ANC 3C opposed the Applicant's proposed relocation of MPD parking, finding that "establishing parking on the tennis courts would take away a valuable community amenity and would destroy an undetermined portion of another valuable community asset: the community gardens." The ANC also expressed concern about "pedestrian and child safety, storm water runoff and groundwater pollution." (Exhibit 170.) The ANC's concerns about safety were based in part on an "understanding ... that there would be police cars as well using the temporary parking structure." (MacWood, Tr. at 141.) The Board acknowledges the ANC's concerns about the community amenities that will be displaced by the accessory parking, but – in light of the Applicant's commitment to restore those amenities after the temporary use of the tennis courts for parking – finds that those amenities will not be "taken away" and that approval of the Applicant's proposal is necessary to avoid creating parking impacts during the construction process. The Applicant's compliance with traffic and zoning regulations, including those relating to pervious paving, will address the ANC's concerns with respect to pedestrian safety and environmental impacts. The Board acknowledges the ANC's testimony about the urgency of some trips undertaken from the subject property by police vehicles, but notes that the relocated accessory parking will be used only by police officers commuting in their own vehicles, not while responding to emergencies.

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<sup>14</sup> Subtitle C, Chapter 7 sets forth requirements for parking spaces, including with respect to restrictions on their location and requirements for access, size and layout, maintenance, screening, and landscaping.

**Great weight**

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.)) For the reasons discussed above, the Board concurs with OP’s recommendation that the application should be approved in this case.

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC. Section 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)(3)(A) (2012 Repl.)) In this case ANC 3C expressed support for the Applicant’s proposal to operate an emergency shelter at the subject property but raised issues and expressed concerns about certain aspects of the application. The Board has addressed those issues and concerns in this order, and was not persuaded that they warrant disapproval of any of the zoning relief requested in this application.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception to allow an emergency shelter and area variances from requirements relating to building height in feet and number of stories, loading, and the location of two principal buildings on a single lot of record in the RA-1 Zone at 3320 Idaho Avenue, N.W. (Square 1818, Lot 849), as well as special exception relief to allow accessory parking not on the same lot as the principal use (Square 1818, Lot 848). Accordingly, it is **ORDERED** that the application is **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 237 – APPLICANT’S UPDATED PLANS.**

**VOTE: 4-0-1** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Robert E. Miller voting to APPROVE; one Board seat vacant.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of Board members approved the issuance of this order.

**ATTESTED BY:**

  
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**SARA A. BARDIN**  
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** August 30, 2017

PURSUANT TO 11 DCMR 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 11 DCMR 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 11 DCMR 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.

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.