

September 21, 2020

**VIA IZIS**

D.C. Board of Zoning Adjustment  
441 4<sup>th</sup> Street, N.W.  
Suite 200-S  
Washington, D.C. 20001

Re: **BZA Case No. 20266 – 3400 Connecticut Partners LLC (the “Applicant”) – BZA Application for 3400 Connecticut Avenue NW (Square 2069, Lots 817-821) (the “Property”) – Response to Party in Opposition’s Post-Hearing Submission**

Dear Members of the Board:

Please accept for filing the Applicant’s response to the Party in Opposition’s post-hearing submission dated September 8, 2020 in the record at Exhibits 138 and 139 (the “**Opposition Draft Order**”). The Applicant has requested a special exception pursuant to 11-C DCMR § 703.2 for relief from the parking requirements in order to create a new mixed-use project that will retain the existing 17 residential units, provide 35 additional new residential units, and expand the existing ground floor retail space to a total of 16,097 square feet (the “**Project**”). The Applicant’s post-hearing submission in the record at Exhibit 137, details how the Project more than meets the requirements for the requested parking relief. The Applicant wishes to respond to the allegations in the Opposition Draft Order in an effort to create a full record for the Board’s decision.

Set forth below is (1) a summary of how the Project meets the standards required for the parking special exception, clarifying distinctions raised in the Opposition Draft Order; (2) a response to the Opposition Draft Order’s allegation that the relief would harm neighborhood businesses; (3) a response to the Opposition Draft Order’s presumption that the existing parking could be maintained with similar relief as that requested by the Project; and (4) a response to the Opposition Draft Order’s assertion that the alley to the rear of the Property cannot accommodate the loading anticipated by the Project. Additionally, attached as Exhibit A is a supplement to the Draft Order the Applicant submitted in its post-hearing submission to address the Opposition Draft Order and this response.

**I. Summary of the Application’s Satisfaction of the Standards for Relief**

Despite the allegations in the Opposition Draft Order, the application exceeds the minimum requirements for the Board to grant the parking special exception relief requested. In order to grant the relief, a project must meet both the special exception standards in 11-C DCMR §703 and the general special exception standards. As detailed below, the Project fully satisfies these requirements.

*Parking Relief Special Exception Standards*

11-C DCMR §703 requires an applicant to show (1) the property meets at least one of several characteristics that justify parking relief; (2) that the requested reduction in spaces is not greater than the number of parking spaces a project could accommodate, and (3) that the District Department of Transportation (“DDOT”) has approved a Transportation Demand Management Plan (“TDMP”) for the project.

Satisfaction of Section 703.2 Standards: The Applicant and the Office of Planning (“OP”) have previously detailed how the Project satisfies several of the 11-C DCMR 703.2 characteristics to justify parking relief, including (1) that the Property is well-served by public transit, (2) that the neighborhood is rich in resources that minimize the need for parking, and (3) that the Property cannot accommodate the required parking. The Opposition Draft Order attempts to argue that the neighborhood is not well-served by public transit merely because some residents and businesses have previously expressed an interest in more parking. This deliberately misunderstands what it means to be “well served by public transit.” It is undeniable that the Project is well-served by Metrorail’s red line and by several bus routes. Both the OP and DDOT reports note that the Property is very well-served by mass transit. Additionally, as repeatedly asserted by the Applicant and OP, the Project meets nearly each of the ten characteristics laid out in § 703.2, when the Project must only meet only one of the designated characteristics to be eligible for a special exception for parking.

Relief is no Greater than Required: The Applicant’s architectural expert, Kevin Sperry, demonstrated in filings and in testimony at the hearing that it is not feasible for the Project to provide any parking on-site, and OP agreed with that conclusion in its report. The Applicant’s experts, OP, and DDOT all testified that the existing retail parking spaces cannot legally remain on-site if there is to be any redevelopment of the Property. The Board should credit Mr. Sperry’s expert testimony and accord great weight to OP’s report. Additionally, the Applicant cannot provide parking within 600 feet of the Property as the Applicant does not have control over any other property within 600 feet of the Property.<sup>1</sup>

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<sup>1</sup> The Opposition Draft Order also alleges that since there is existing parking, the Applicant cannot satisfy the requirement that relief can only be granted in the amount that cannot be provided on site. While the Applicant acknowledges each application must be evaluated on its own merits, the Board has previously approved complete parking relief where there was existing parking on site that was similarly not zoning compliant and inconsistent with

DDOT Approved TDMP: As demonstrated in the record and in testimony at the hearing, the TDMP agreed to by the Applicant has been approved by DDOT.

*Special Exception Standards*

Adverse Impacts: As Chair Hill acknowledged at the hearing, “anything that happens will have some kind of an impact.” (Transcript at 136.) The question here is whether there are any undue adverse impacts. 11-X DCMR § 901.3. That is, whether the impacts, when considering the benefits to the community that redevelopment would provide, as well as the mitigation proposed for any adverse impacts, are sufficiently objectionable to neighboring properties to justify a denial of the application. They are not. As the Advisory Neighborhood Commission (“ANC”) acknowledged in its resolution, the Project, without mitigation, could cause adverse impacts to the neighborhood by increasing traffic and loading. For that reason, the Applicant has agreed to a robust TDMP and a Loading Management Plan (“LMP”) that not only mitigates impacts from the Project’s expanded use of the Property, but also resolves existing operations that concern the community, such as loading from Newark Street.

Due to the robust TDMP and LMP, the Project will not adversely affect neighboring properties and will in fact fix some existing transportation issues in the vicinity of the Project. This assessment is shared by the Applicant’s experts, OP, DDOT, and the ANC. All of these assessments must be given proper deference. OP and the ANC must be accorded great weight and the Applicant’s experts and DDOT must be accorded more value than the speculative testimony of the Opposition witnesses. The Opposition Draft Order relies on lay testimony regarding existing conditions, which presupposes that the Project would exacerbate existing conditions. However, those conclusory assertions cannot outweigh the evidence and expertise regarding improvement of existing conditions and mitigation of Project impacts presented by the Applicant, OP, and DDOT.

Consistent with the Zoning Regulations: As detailed in the Applicant’s prior filings, the Project is consistent with the Zoning Regulations and other planning priorities in the District. The Project serves the purposes of the NC-3 Zone by providing a public plaza for local business, removing an existing curb cut that creates pedestrian safety issues (and which would not be permitted today) and by providing additional housing and retail to support the Cleveland Park community. Additionally, the Project is transit-oriented by (1) removing a surface parking lot that does not comply with the Zoning Regulations or DDOT’s public space policies and (2) bringing residents and business to a community that is well-served by public transit and rich in neighborhood amenities. Therefore, the Project is consistent with the Zoning Regulations and other planning policies.

**II. The Project’s Impact on the Business Community**

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planning priorities to minimize curb cuts. *See, e.g.*, BZA Case No. 19882 (approving full parking relief for Jubilee Housing’s redevelopment of a property in Adams Morgan).

As the record established, the Project will benefit local businesses by providing an attractive public plaza that can be utilized by local business customers, and by increasing the customer base in the neighborhood through the additional residential units. The Project's benefit to local business is established in the record by the many letters in support and the testimony from Joe McCarthy, the owner of a neighborhood pizzeria. The Opposition Draft Order points to complaints from local businesses over the past five years to allege that the Project does not support business in the Cleveland Park neighborhood. However, many of the letters and testimony in support noted that the existing Park & Shop parking lot is often underutilized, and the ANC testified that the existing retail parking lot, which is limited to patrons of the commercial property at the Property —not surrounding businesses is also underutilized. Therefore, while the Applicant has acknowledged that there are parking concerns within the neighborhood, the Project itself supports local business by (1) providing a public plaza for the community, including retail customers, (2) adding additional retail to expand and support the surrounding business community, and (3) increasing the local customer base. Finally, the Applicant acknowledged at the hearing that the Project would be targeted toward retail businesses that rely primarily on foot traffic and do not require parking.

### **III. Inability to Retain Existing Parking**

The Applicant, DDOT, and OP explained that it is not feasible to retain the existing parking lot at the Property. First and foremost, there is no “grandfathering” of curb cuts. DDOT reviews curb cuts each time a property is redeveloped, and, as DDOT testified at the hearing, a curb cut on Connecticut Avenue would not be allowed for safety and other reasons. Additionally, as OP and the Applicant noted, the existing parking violates several provisions of the Zoning Regulations and planning priorities, including the Connecticut Avenue curb cut, a large surface parking lot along a major thoroughfare, parking within a front yard, and the lack of screening. The Opposition Draft Order alleges that the Applicant could simply not redevelop Assessment and Taxation Lot 817, the portion of the Property that contains the parking lot, in order to prevent the re-evaluation of the curb cut. No such workaround exists. First, the Zoning Regulations require compliance with development standards based on the record lot which comprises the entirety of the site, not the tax lot. Additionally, as DDOT noted in its testimony, the change in the intensity of use of the property will trigger an evaluation of the curb cut. Therefore, for all of the reasons provided in the Applicant's prior filings, the Applicant's presentation at the hearing, and OP and DDOT's testimony, the Project is unable to retain the existing parking.

### **IV. Use of Rear Alley**

The Project proposes a 24-foot loading area at the rear of the Property accessed from the 15-foot public alley that serves the square, including other commercial businesses along Connecticut Avenue. The Applicant's expert architect and transportation consultant both testified at the public hearing that the alley could accommodate the loading traffic that would utilize the rear loading berth. Additionally, DDOT approved of the use of the public alley for loading in its report. Finally, the Applicant explicitly agreed to certain loading conditions utilizing the rear

loading berth at the request of the ANC due to community concerns about on-street loading currently occurring on Newark Street NW. Therefore, the ability of the rear alley to absorb the limited loading traffic accessing the Project's rear loading berth is supported by the Applicant's experts, DDOT, and the ANC.

**V. Conclusion**

We look forward to the virtual public meeting scheduled for September 30, 2020. If you have any questions, please do not hesitate to contact Allison at (202) 721-1106 or Meghan at (202) 721-1138. Thank you for your attention to and consideration of this application.

Sincerely,

/s/  
Allison C. Prince  
Meghan Hottel-Cox

Enclosure

