

EXHIBIT A

PROPOSED SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

PRELIMINARY MATTERS

[To be inserted at the end of the OP Report summary]:

OP Report

The Board notes that OP stated in its report that closure of the curb cut on Connecticut Avenue would provide additional on-street parking spaces. After OP issued its report, the Applicant and DDOT agreed that this area would be used for loading with after-hours parking. The Board finds that this clarification does not change the Board's reliance on OP's recommendation to approve the application.

FINDINGS OF FACT

[To be inserted after FOF 7]:

8. There are 24 existing driveways on Newark Street, from Highland Place to Connecticut Avenue. (Tr. at 156.) As persons in opposition testified, many immediate residents have driveways. (Tr. at 101.) Neighbors also testified that existing parking conditions are very poor because their driveways are often blocked. (Tr. at 103.) As the Applicant noted, these curb cuts themselves contribute to the existing parking difficulties on Newark Street. (Tr. at 157.)

Contested Issues

[FOFs 13 and 14 to be replaced by the following]:

Inability to Provide Parking On-Site

13. Mark Rosenman and the persons in opposition challenged the Applicant's request for relief from the requirements of 11-C DCMR § 701.5 to provide parking on-site at the Property. The opposition cited the existing high demand for parking in Cleveland Park and argued that the Project would put additional strain on that demand, explaining that current traffic congestion in the area caused by drivers seeking parking poses risk to pedestrians. The opposition noted that the parking requirement applicable to the Project has already been reduced by 50% due to its close proximity to a Metrorail station and, therefore, the Applicant should not benefit from an additional 50% reduction. (Tr. at 76-83, 89-93, 98-99, 101-104; Ex. 40, 41, 43, 45, 62, 64, 68, 71, 78, 82, 83, 84, 85, 86, 87, 89, 92, 93, 94, 96, 97, 104, 105, 107, 108, 109, 111, 112, 113, 114, 115, 116, 117, 118, 119, 123, and 128.) The Board understands the opposition's concerns over on-street parking demand in Cleveland Park. However, as the Applicant compellingly demonstrated, provision of parking spaces on-site is infeasible for several reasons. As the Applicant's architect, Mr. Sperry, testified, parking is infeasible on the eastern portion of the Property beneath the proposed townhome building due to insufficient width for a ramp. To

achieve below-grade parking at that location would require between approximately 85 and 100 feet of ramp length. Given the existing Macklin building, which is historically significant and contains existing housing, there is only 45 feet available. Furthermore, to locate a ramp at that location would eliminate the proposed pedestrian plaza, one of the key benefits that the Project provides to the neighborhood. (Tr. at 34-35.) Next, the Applicant explored providing parking on the western portion of the Property, beneath the new apartment building. However, given the substantial rock formation below grade, the required excavation would pose significant risk to the neighboring properties. (Tr. at 35.) Were the Applicant to provide on-grade parking, an entire level of residential units would need to be eliminated, which would eliminate 25% of the proposed units, in addition to creating an inefficient relocation of the stairs and elevator. *Id.* As the Applicant, OP, and DDOT explained, the existing 15 commercial parking spaces located on the Property cannot remain. The curb cut on Connecticut Avenue is non-compliant and needs to be closed. Additionally, the surface parking lot itself violates 11-C DCMR §§ 710.2(b)(2) and 714. (Tr. at 23, 65, 67, 133, 135, 138, 140-141; Ex. 12, 73.) The Applicant also noted that it does not own any other property or have the ability to provide parking within 600 feet of the Property. (Ex. [REDACTED].)

14. The opposition claimed that the Applicant had not demonstrated why the existing 15 parking spaces on the Property must be removed and that eliminating those parking spaces and adding 35 new units to the site would exacerbate on-street parking problems. (Tr. at 76-83, 89-93, 98-99, 101-104; Ex. 40, 41, 43, 45, 62, 64, 68, 71, 78, 82, 83, 84, 85, 86, 87, 89, 92, 93, 94, 96, 97, 104, 105, 107, 108, 109, 111, 112, 113, 114, 115, 116, 117, 118, 119, 123, and 128.) The Board finds that the existing commercial parking lot is underutilized and therefore its elimination would not have a substantial effect on demand for on-street parking nearby. As ANC Commissioner Nancy MacWood testified, the existing lot is restricted to the commercial tenants at the Macklin, which do not generate significant parking demand and therefore the lot is very frequently empty. (Tr. at 152-153.) Therefore, the Board does not find that elimination of that parking lot will automatically cause further strain to the surrounding area's on-street parking availability, and the additional retail space only comprises 17% of the total retail of the Project.

15. Ms. Anderson also argued that the curb cut and parking lot were grandfathered and should be allowed to remain. (Tr. at 64; Ex. 123.) However, Ms. Anderson presented a legal conclusion rather than factual evidence to support this claim. Both DDOT and the Applicant explained that DDOT's policy is to re-review every curb cut in when a redevelopment is proposed. While a curb cut might be grandfathered if there is simply a change in tenancy but not a change in use, any major renovation, change of land use, or redevelopment triggers a new review of curb cuts. The existing curb cut on the Property is non-compliant. (Tr. at 65, 140-141; Ex. 12, 73.) The opponents argue that the existing parking could remain if the Applicant were to refrain from developing Assessment and Taxation Lot 817 because the status quo would be maintained and the curb cut would therefore be grandfathered. (Ex. 138, 139.) However, as both OP and DDOT testified, any redevelopment of the Property would trigger review of the existing curb cut on Connecticut Avenue and that curb cut would not be allowed to remain. (Tr. at 135, 138, 140, 141.) DDOT explained that eliminating such a curb cut has safety benefits because it removes a conflict point for vehicles and for pedestrians. DDOT reiterated that without the curb cut, the existing parking lot likewise could not remain. The idea that the Applicant could not develop a single tax lot to retain the existing parking is inconsistent with the fact that the Zoning Regulations review compliance with development standards based on the record lot, not the tax

lot, and that DDOT testified it reviews curb cuts for an entire project. (Tr. at 140.) As OP testified, the existing parking lot is not compliant with the Zoning Regulations. (Tr. at 135, 138.) As referenced in FOF 13, the Applicant thoroughly explored several alternatives to provide on-site parking and demonstrated that providing parking on the Property was not feasible. The Board finds that without the existing curb cut, the existing surface parking lot is infeasible and the existing parking on-site cannot remain because the curb cut on Connecticut Avenue does not comply with DDOT policy.

16. Accordingly, the Board finds that despite the Applicant's efforts, parking on-site is logistically infeasible and that the requested parking relief is necessary given the physical constraints of the property. The Applicant has committed to restricting residential parking permits for all future residents of the Project and making all commercially reasonable efforts to procure eight off-site parking spots for Project residents. (Ex. 32A, 89.) The Board also notes that any potential adverse parking impacts will be mitigated through the Applicant's TDM Plan and LMP.

[To be inserted after FOF 23]:

Adverse Impacts on Neighboring Properties

24. The ANC acknowledged that the Project could potentially cause adverse impacts on neighboring properties due to the existing lack of parking supply in the neighborhood which could be exacerbated by a potential increase in traffic generated by the Project. The ANC therefore conditioned its support for the application on the incorporation of certain loading conditions into the order that address the anticipated loading needs of the Project. (Ex. 98.) The Board finds that the ANC conditions to which the Applicant agreed adequately mitigate these concerns and therefore the Board includes these loading conditions in this order.

Business Demand for Parking

25. The persons in opposition claim that by not providing additional parking, the Project fails to provide consumer support to the local businesses in the area. (Ex. 138 and 139.) However, Joe McCarthy, the owner of Tino's Pizzeria, testified that the Cleveland Park businesses need foot traffic more than parking. Mr. McCarthy noted that a mixed-use public space could help to promote such foot traffic and improve the vibrancy of the neighborhood. With 37,000 residents located within one mile of Tino's Pizzeria, promoting foot traffic would benefit his business. He also cited current loading difficulties which the proposed LMP would help to alleviate. (Tr. at 111-112.) Consumer support for local businesses goes beyond the provision of parking for those businesses. The Board finds that the Project will provide consumer support to the nearby businesses by attracting car-less residents and thereby promoting foot traffic to those local businesses.

Alley Capacity to Handle Loading

26. The opponents allege that the businesses on the west side of Connecticut Avenue do not contract for trash pick-up through the alley accessed from Ordway Street, but rather have their waste containers stored next to the Uptown Theater and collected on Connecticut Avenue. (Ex. 139.) Further, the opponents argue that the alley is unsuitable for loading because it is difficult

for trucks to turn safely into the alley from either Ordway or 29th Streets. *Id.* However, the Applicant's expert witnesses testified that the alley is currently utilized by the commercial businesses along Connecticut Avenue for trash pick-up. (Tr. at 53, 66.) The Applicant's experts further testified that the alley had capacity to serve the loading traffic for the rear loading berth at the Project. (Tr. at 52-53, 66) Additionally, DDOT noted the rear loading berth's use of the alley and included the LMP conditions utilizing the alley in its report. (Ex. 33) Therefore, the Board finds that the alley is sufficient to support the loading needs as envisioned in the Applicant's LMP.

CONCLUSIONS OF LAW

[Replace COL 3(b) with the following]:

3. b. The Board finds that the application would advance the goals of the NC-3 Zone by improving pedestrian safety, contributing much-needed housing to the Cleveland Park neighborhood, retaining a contributing structure in the Cleveland Park Historic District, and providing consumer support for businesses along Connecticut Avenue. By closing the existing curb cut on Connecticut Avenue, the application improves pedestrian safety. DDOT strongly discourages curb cuts along major arterials as they present a hazard to pedestrians. The Property's location along the busy Connecticut Avenue makes closure of this curb cut all the more impactful. The Project also will replace an existing underutilized surface parking lot with a pedestrian plaza, thus enhancing pedestrian activity. By crafting a project dependent on alternative modes of transportation – mass transit, walking, biking – the Project encourages a pedestrian-friendly environment. The Project also meets the need for more housing in Cleveland Park by contributing 35 new residential units, including affordable and family-size housing, and retaining the existing 17 units. The Project also provides consumer support to local businesses in the area by increasing foot traffic along the Connecticut Avenue corridor. The mixed-use nature of the Project as well as its discouragement of car ownership will attract new, pedestrian-focused residents and retail clientele to the neighborhood. The pedestrian plaza will also provide a gathering place for consumers frequenting the nearby retail. By promoting foot traffic in the area, the Project improves consumer support for the nearby businesses. Accordingly, the Board finds that the Project is consistent with the goals set forth for the NC-3 Zone pursuant to 11-H DCMR § 500.1 and is in harmony with the general purpose and intent of the Zoning Regulations.

[Insert the following after COL 9]:

10. The Applicant presented expert witness testimony from a transportation consultant and architect, whereas the persons in opposition presented only lay testimony. The opinions of experts are "not to be lightly disregarded" and an agency must articulate reasons for rejecting expert testimony in favor of lay witnesses. *Washington Ethical Soc. v. District of Columbia Bd. of Zoning Adjustment*, 421 A.2d 14, 17 (D.C. 1980). Here, the Applicant's expert testimony was more persuasive than that of the opposition's lay testimony. Although the opposition's lay witnesses anecdotally assumed significant potential traffic generated by the Project, the Applicant's expert transportation consultant refuted this claim with studies that demonstrated a minimal parking demand generated by the Project, which would be adequately mitigated by the

Applicant's TDM Plan and LMP. (Ex. 32A.) This evidence was further supported by DDOT, which found that the Project would have no adverse impacts on the District's transportation network. (Ex. 33.) The Applicant's witnesses explained why parking is infeasible on-site and why the existing parking lot cannot remain, in accordance with the Zoning Regulations. Accordingly, the Board concludes that the Applicant's expert witness testimony, including the evidence set forth regarding parking studies and the infeasibility of providing parking on-site, should be weighed more heavily than the opposition's lay testimony.

DECISION

[Per a comment from OP, replace Condition 1 with the following]:

1. The Applicant shall have flexibility with the Project in the following areas:
 - a. Interior Components: To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, and mechanical rooms, provided that the variations do not change the exterior configuration of the building as shown on the plans approved by the order;
 - b. Exterior Materials – Color: To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges shown on the plans approved by the order;
 - c. Exterior Details – Location and Dimension: To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the building or design shown on the plans approved by the order. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
 - d. Number of Units: To provide a range in the approved number of residential dwelling units of plus or minus ten percent (10%), except that (i) the total square footage of the residential dwelling units shall not be reduced, and (ii) the number of units and the square footage reserved for affordable housing shall not be reduced;
 - e. To vary the final design of the Project in response to final comments from the Historic Preservation Review Board (“HPRB”) in connection with the historic approval process.