

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**



Application No. 20266 of 3400 Connecticut Partners LLC, pursuant to 11 DCMR Subtitle X, Chapter 9 for a special exception under Subtitle C § 703.2 from the minimum parking requirements of Subtitle C § 701.5 to allow a new mixed-use retail/residential development in the NC-3 Zone at 3400 Connecticut Avenue, N.W. (Square 2069, Lots 817-821).

HEARING DATE: July 29, 2020
DECISION DATES: August 5 and September 30, 2020

DECISION AND ORDER

This self-certified application was filed February 21, 2020 on behalf of 3400 Connecticut Partners LLC (“Applicant”), the owner of the property that is the subject of the application. Following a public hearing, the Board voted to approve the application subject to conditions.

Preliminary Matters

Notice of Application and Notice of Hearing. In accordance with Subtitle Y §§ 400.4 and 402.1, the Office of Zoning provided notice of the application and of the public hearing by letters, dated March 12, 2020, to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), Advisory Neighborhood Commission (“ANC”) 3C, the ANC in which the subject property is located, and Single Member District ANC 3C05, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 3 as well as the Chairman of the Council and three at-large members of the D.C. Council, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on March 6, 2020 (67 DCR 2590) and on July 24, 2020 (67 DCR 9051) as well as through the calendar on the Office of Zoning website. The public hearing was originally scheduled on April 29, 2020 but was postponed indefinitely due to the state of emergency declared March 11, 2020 and then rescheduled to a virtual hearing on July 29, 2020. The Office of Zoning provided notice of the virtual public hearing to the owners of property within 200 feet of the subject property by memorandum dated July 14, 2020 and to the parties by memorandum dated July 17, 2020. Notice of the virtual public hearing was also posted at the subject property.

BZA APPLICATION NO. 20266
PAGE NO. 2

Parties. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 3C were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application submitted by Mark Rosenman on behalf of a group of residents of Newark Street.

Applicant's Case. The Applicant presented evidence and testimony from Phil Kang, representing Velocity Property Management, the owner of the subject property, Kevin Sperry, the project architect, and Erwin Andres, a traffic engineer, in support of the application for parking relief in connection with the redevelopment of the subject property. Mr. Sperry and Mr. Andres were recognized as expert witnesses in architecture and transportation, respectively. The Applicant requested approval of a special exception to eliminate the vehicle parking requirement subject to conditions recommended by DDOT and by the ANC comprising a transportation demand management ("TDM") plan and a loading management plan for the project.

OP Report. By report dated July 17, 2020, the Office of Planning recommended approval of the application. (Exhibit 73.)

DDOT Report. By memorandum dated April 20, 2020, the District Department of Transportation indicated no objection to approval of the application subject to conditions requiring the Applicant to implement a transportation demand management plan. (Exhibit 33.)

ANC Report. ANC 3C submitted a report stating that, at a public meeting on July 20, 2020 with a quorum present, the ANC voted to adopt a resolution in support of the application conditioned "on the BZA agreeing to add conditions to the zoning order that will address parking and loading issues, and if these conditions are not approved, the ANC opposes the requested waiver." (Exhibit 98.)

Party in Opposition. The party in opposition argued that "denial of the application is necessary and appropriate" primarily because the Applicant's proposal would exacerbate "already overburdened street parking" to the detriment of nearby residents and businesses, create "problems with alley usage," and create safety hazards on nearby streets. (Exhibit 44.)

Persons in Support. The Board heard testimony and received numerous letters in support of the application. The persons in support generally stated that the Applicant's project would not result in adverse impacts related to traffic or parking, especially considering the reduced need for parking in light of the walkable nature of the neighborhood with many amenities and shops, convenient access to numerous public transit options, and the Applicant's implementation of measures to mitigate potential parking and loading impacts. The persons in support asserted that ample street parking is available in the vicinity and that the Applicant's proposal would be beneficial to the neighborhood by providing additional residents who would provide foot traffic for local businesses, while any parking on the site would generate vehicle traffic or go unused. The parties in support commented favorably on the Applicant's plan to create a pedestrian plaza open to the public, noting the current absence of such an amenity in the neighborhood, and asserted that removal of the existing parking lot at the site, described as "barely used" and an "eyesore," would improve safety for pedestrians in the area.

Persons in opposition. The Board also heard testimony and received numerous letters in opposition to the application. The persons in opposition generally argued that approval of the Applicant's proposal would exacerbate existing traffic congestion and increase demand for the limited amount of parking available in the area, especially on Newark Street, hindering parking by existing residents and creating an impediment to the success of nearby businesses. The persons in opposition disputed the Applicant's claims that the provision of parking was not feasible at the site, noting that project could be scaled back to accommodate parking and that the existing parking lot could be retained.

FINDINGS OF FACT

1. The property that is the subject of this application is a corner lot on the west side of Connecticut Avenue and north side of Newark Street (Square 2069, Lots 817-821).
2. The subject property is irregularly shaped but generally rectangular, with shorter frontage on Connecticut Avenue (east) than on Newark Street (south).
3. The subject property is presently configured as five tax lots. The total lot area is 29,923 square feet.
4. A public alley, 15 feet wide, abuts the subject property at its northwestern corner. The alley extends both east-west and north-south, providing access to the interior of the square and to 29th Street (to the west) and Ordway Street (to the north).
5. The subject property is currently improved with two buildings and a parking lot. A four-story building containing 17 apartments above ground-floor retail is on Lot 819 and a one-story commercial building, abutting the apartment house, is located to the north on Lot 818.
6. The apartment house, known as The Macklin, is a contributing building in the Cleveland Park historic district. The building is a "historic resource" as defined in Subtitle B § 100.2 ("A historic landmark or a building, structure, object or feature, and its site, that contributes to the character of a historic district, as determined in accordance with the Historic Landmark and Historic District Protection Act of 1978").
7. The apartment house is sited roughly in the center of the subject property, set back at least 50 feet from Connecticut Avenue. The entrance to the residential component of the building is located on Newark Street.
8. The parking lot is located in the eastern portion of the subject property, bounded by the commercial building to the north and the apartment house to the west. The parking lot contains 13 vehicle parking spaces and is accessible via a curb cut, 30 feet wide, on Connecticut Avenue. The parking spaces are reserved for the commercial uses in the Macklin building and are not available for use by residents.

9. The existing curb cut and parking lot do not comply with current zoning requirements. The parking lot is accessible from Connecticut Avenue, in contravention of Subtitle H §§ 204.1 and 500.5 (no driveway providing access from any designated roadway to required parking spaces or loading berths is permitted; Connecticut Avenue is a designated roadway). The parking spaces are located in the front yard of the subject property, contrary to Subtitle C § 710.2(b)(2) (vehicle parking spaces shall be located on an open area of the lot except that surface parking spaces shall not be located within a front yard).
10. The subject property exhibits a significant change in grade, sloping up toward the west away from Connecticut Avenue so that the rear of the lot is approximately 26 feet higher than the front. The site also slopes up to the north away from Newark Street at the rear.
11. The Applicant proposed to redevelop the subject property with a mixed-use project that will retain the existing Macklin apartment house, including the ground-floor retail space, with new construction comprising a four-story residential building to the west of the existing apartment house and a new building at the southeast corner, to the east of the existing apartment house. The building on the west will contain 31 apartments, while the building to the east will provide four “townhouse-style” residential units above ground-floor retail. In total, the new development will provide 52 dwelling units (17 apartments in the Macklin building and 35 new residential units) and 16,097 square feet of ground-floor retail space (13,300 square feet existing and 2,700 square feet of new commercial space).
12. The existing parking lot will be redeveloped as a public courtyard bounded by the new retail/townhouse component to the south, the Macklin building to the west, and the existing commercial building to the north. The courtyard will be paved and contain plantings intended to provide visual appeal to pedestrians. The area will be accessible to the public, providing entrances to the ground-floor retail spaces in the project.
13. The entrances to the residential components of the project will be located along Newark Street.
14. The project will not provide any vehicle parking spaces at the subject property.
15. The development will provide both short-term and long-term bicycle parking spaces for the residential and retail components of the project. A total of 23 bicycle parking spaces will be provided, allocated as 16 for the residential use and seven for the retail uses.
16. The existing curb cut will be closed. The Applicant plans to provide a curbside loading area, 30 feet long, in the southbound lane of Connecticut Avenue in front of the subject property to serve the commercial uses in the new development. Outside the times when the curbside space is available for loading, that area will be available to the public for vehicle parking.

17. The new development will create a loading space accessible from the public alley at the northwest corner of the site. The rear loading area will be 24 feet deep and designated for use by residents of the project.
18. In the vicinity of the subject property, Connecticut Avenue is a major arterial 130 feet wide, where vehicle parking is provided subject to a two-hour limit at meters in effect between 9:30 a.m. and 4:00 p.m. Monday through Friday and between 7:00 a.m. and 6:30 p.m. on Saturdays. Newark Street is 50 feet wide and allows parking only on the south (eastbound) side of the street. Many of the dwellings on Newark Street in the vicinity of the subject property have driveways. Ordway Street, to the north of the site, is a local street where parking is allowed on both sides. Some unrestricted parking is provided on Porter Street two blocks north of the subject property.
19. A report prepared by the Applicant's transportation expert indicated that a total of 545 parking spaces were inventoried within a two-block radius of the subject property. Most of the streets in the vicinity of the subject property are subject to restrictions imposed by the Residential Parking Program ("RPP"), which limits vehicle parking to two hours between 7:00 a.m. and 8:30 p.m., Monday through Friday, for vehicles lacking the necessary permit. (Exhibit 32A.)
20. The planned development will satisfy applicable zoning requirements other than the requirement for vehicle parking spaces.
21. The Historic Preservation Review Board granted concept approval for the project on June 25, 2020 after the Applicant made some changes to the original design unrelated to vehicle parking.
22. Properties to the north of the subject property along both sides of Connecticut Avenue are improved with one- or two-story buildings generally devoted to commercial purposes. The existing neighborhood-serving retail options nearby include grocery stores, convenience stores, a pharmacy, hair salons, and a bank as well as eating establishments and a post office.
23. A public library is located across Newark Street immediately to the south of the subject property. Large apartment houses are located along Connecticut Avenue across from, and to the south of, the library.
24. Properties to the west of the subject property contain detached principal dwellings.
25. The subject property is located less than 600 feet from the Cleveland Park Metrorail station. Connecticut Avenue is served by several Metrobus lines, with bus stops located within convenient walking distance. The area is also served by shared transportation options, including bicycle and car services.

26. The subject property is located in a Neighborhood Mixed-Use (NC) zone, NC-3. The Neighborhood Mixed-Use zones are designed to provide for stable mixed-use areas permitting a range of commercial and multiple dwelling unit residential development in defined neighborhood commercial areas. The purposes of the NC zones are to (a) provide for a varied mix of residential, employment, retail, service, and other related uses in the area; (b) encourage safe and efficient conditions for pedestrian and motor vehicle movement; (c) preserve and enhance neighborhood shopping areas by providing the scale of development and range of uses that are appropriate for neighborhood shopping and services; (d) encourage a general compatibility in scale between new and older buildings; (e) encourage retention and establishment of a variety of retail, entertainment, and personal service establishments, predominantly in a continuous pattern at ground level, to meet the needs of the surrounding area's residents, workers, and visitors; (f) encourage a scale of development, a mixture of building uses, and other attributes, such as safe and efficient conditions for pedestrian and vehicular movement; (g) identify designated roadways within NC zones with limitations on driveways and curb cuts; and (h) identify designated use areas within NC zones within which use restriction apply to the ground floor. (Subtitle H §§ 100.1, 100.2.)
27. The purposes of the Cleveland Park Neighborhood Mixed-Use zone (NC-3) are to (a) encourage compatibility of development with the purposes of the Historic Landmark and Historic District Protection Act of 1978; (b) limit the height of new buildings and encourage a scale of development and a mixture of building uses that is generally compatible in scale with existing buildings; and (c) provide for retention of existing housing within the Cleveland Park commercial area to help meet the need for affordable housing and to enhance pedestrian activity, safety, and consumer support for businesses in the commercial area. (Subtitle H § 500.1.) The NC-3 zone is intended to permit mixed-use development at a moderate density. (Subtitle H § 500.2.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception, pursuant to 11 DCMR Subtitle X, Chapter 9 and Subtitle C § 703.2, from the minimum parking requirements to allow a new mixed-use retail/residential development in the NC-3 zone at 3400 Connecticut Avenue, N.W. (Square 2069, Lots 817-821). 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.)

Pursuant to Subtitle C § 701.5, the minimum vehicle parking requirement for the planned development for zoning purposes would be calculated as a total of 33 spaces, allocated as 16 vehicle parking spaces for the planned total of 52 dwelling units and 17 spaces for the retail

component (16,000 square feet). Pursuant to Subtitle C § 702.1(a), “the minimum vehicle parking requirement identified in the table of Subtitle C § 701.5 shall be reduced by fifty percent (50%)” at any site located within one-half mile of a Metrorail station that is currently in operation.¹ Accordingly, the zoning requirement for vehicle parking spaces for the Applicant’s proposal is a total of 17 spaces, allocated as eight spaces for the residential uses and nine for the commercial uses.

The Zoning Regulations provide for flexibility from the minimum parking requirements when the provision of the required number of vehicle parking spaces would be contrary to other District of Columbia regulations or impractical or unnecessary due to the shape or configuration of a site, a lack of demand for parking, or proximity to transit. (Subtitle C § 703.1.) The Board is authorized to reduce or eliminate the required number of parking spaces, subject to the general special exception requirements of Subtitle X, when an applicant demonstrates at least one of the 10 bases for parking relief listed in Subtitle C § 703.2. Based on the findings of fact, and in light of the conditions of approval adopted in this order, the Board concludes that the application satisfies several of the factors that warrant parking relief under Subtitle C § 703.2. Approval of the application is also consistent with Subtitle C §§ 703.3 and 703.4 because the subject property cannot feasibly provide any vehicle parking in compliance with applicable requirements and because the approval, granted subject to conditions that include implementation of a TDM plan recommended by DDOT, is proportionate to the reduction in parking demand demonstrated by the Applicant.

Subtitle C § 703.2(a). The required parking spaces cannot be provided either on the lot or within 600 feet of the lot in accordance with Subtitle C § 708.1. The subject property is relatively large but faces a number of constraints that preclude the provision of vehicle parking on the lot. The parcel contains two existing buildings, notably an apartment house in the center of the site that contributes to the surrounding historic district. The building’s location is one factor complicating the provision of parking on the site, along with physical constraints relating to a relatively narrow configuration that would impede the construction of ramps to a below-grade garage, significant changes in grade, and construction impediments related to the presence of below-grade rock, which would require excavation that would be cost-prohibitive and disruptive to other properties, including the nearby Metrorail tunnel. The Applicant provided evidence and testimony describing various alternatives considered in an effort to provide on-site parking, either in a surface lot or in a below-grade garage; however, each alternative was demonstrated to be infeasible.

Another impediment to the provision of parking at the subject property is the lack of viable vehicle access to the site. The Applicant studied whether a ramp could be provided from the public alley

¹ The Board was not persuaded by arguments in opposition to the application that the project already benefitted from a 50-percent waiver of the parking requirement and should not be allowed to “double dip” by obtaining additional relief to eliminate the parking requirement. The 50-percent reduction is not a waiver of an otherwise applicable parking requirement but is in fact the zoning requirement for vehicle parking at the subject property, calculated consistent with the directive in Subtitle C § 702.1 (“*shall be reduced*”) as half of the requirement that would be applicable to the same uses if located on a site not meeting any of the characteristics listed in Subtitle C § 702. The exemptions set forth in Subtitle C § 702 reflect a determination by the Zoning Commission that lower parking requirements are appropriate in the prescribed circumstances.

at the rear of the lot into the planned new apartment house but concluded that the arrangement would not be feasible for reasons including difficult maneuvering due to the tight layout and detrimental impacts that would make the project not viable financially; including the resulting reduction in the number of dwelling units possible in the building; and inefficient unit layouts resulting from the relocation of stairs and elevators to accommodate parking facilities.

The subject property currently has a curb cut on Connecticut Avenue, which provides vehicle access to the existing parking lot. However, the existing vehicle parking spaces do not meet current zoning requirements in terms of access or location. Redevelopment of the site with a parking lot in the front yard, accessible from Connecticut Avenue, would not be compliant with the Zoning Regulations. In addition, the Board credits the Applicant's testimony, corroborated by DDOT and OP, that redevelopment of the site would require the elimination of the existing curb cut because it does not meet current public space requirements, and that a curb cut on Newark Street would not be feasible due to the physical characteristics of the site.² Without a compliant means of providing vehicle access to the site, the Applicant is unable to provide on-site parking in any redevelopment undertaken at the subject property.³

The Applicant also demonstrated that parking spaces cannot be provided within 600 feet of the site in accordance with Subtitle C § 701.8. The Applicant described some preliminary discussions with a commercial parking provider about the potential use of its facilities in the neighborhood but indicated that parking leases cannot be arranged yet at the current stage of the project. (Transcript of July 29, 2020 at 51-52). The Applicant agreed to a condition recommended by ANC 3C requiring the Applicant to offer at least eight parking spaces, off-street and off-site, for future residents to lease after securing an agreement with a neighborhood parking garage.

Subtitle C § 703.2(b). The proposed use of the subject property is particularly well served by mass transit, shared vehicle, and bicycle facilities. The site is within easy walking distance of a Metrorail station and several Metrobus routes. Connecticut Avenue is a major arterial served by shared vehicle services, and the new loading area created in front of the development will provide an area convenient for pick-ups and drop-offs without hindering pedestrian movement at the site.

² With respect to any proposal to redevelop the subject property, a representative of DDOT's Planning and Sustainability Division testified that the Public Space Committee would seek to close the curb cut on Connecticut Avenue in favor of a curb cut on Newark Street, as the lower volume side street, consistent with the relevant design and engineering manual; however, the Newark Street frontage presented a number of grade issues. DDOT concluded that for reasons of safety and quality of streetscape, its preference was to forgo parking on the site so that no curb cut would be needed. (Transcript of July 29, 2020 at 140-141.)

³ The party in opposition contended that, as recently as 2018, the Public Space Committee "approved a new curb cut on another arterial roadway, Wisconsin Avenue, for access to on-site parking." (Exhibit 139.) This assertion was not supported by any information about the circumstances of the 2018 development, applicable zoning requirements, or whether a waiver was obtained to "grandfather" an existing curb cut. In any event, in this case the Board credits the testimony of DDOT, OP, and the Applicant in concluding that redevelopment of the subject property would require the elimination of the existing curb cut to comply with public space and zoning requirements. The Board was not persuaded by the party in opposition's contention that the Applicant could retain the existing parking lot simply by excluding that tax lot from a redevelopment of the site, because compliance with development standards would be determined based on a record lot (that is, the entire site) and a change in the intensity of use of the site would trigger a need for review of the curb cut by the Public Space Committee.

BZA APPLICATION NO. 20266
PAGE NO. 9

As part of its TDM plan, the Applicant will implement measures intended to facilitate the use of public transportation and carpooling options by residents.

The Applicant's project will provide bicycle facilities for both the residential and commercial components of the project and will facilitate the use of shared services such as Capital Bikeshare. Short- and long-term bicycle parking spaces will be provided to residents free of charge, in excess of the minimum zoning requirement for number of bicycle parking spaces. The area for long-term bicycle storage will provide a bicycle repair station and will accommodate non-traditional bicycles such as cargo and tandem bicycles as well as children's bikes. The Applicant will expand the existing Capital Bikeshare dock closest to the subject property and will provide free annual membership to residents and employees at the site during the first five years of building occupancy.

Subtitle C § 703.2(c). The land use and transportation characteristics of the neighborhood minimize the need for required vehicle parking spaces. In addition to the prevalence of transportation options available at the site, the area surrounding the subject property contains a variety of commercial, institutional, and service uses within convenient walking distance of the subject property. The Board credits the Applicant's testimony that "the immediate neighborhood is highly walkable and includes many of the day-to-day residential needs including a grocery store, pharmacy, and many restaurants and shopping venues." (Exhibit 12.)

Other elements. The Board may approve the elimination of required vehicle parking on the basis of any one of the factors listed in Subtitle C § 703.2. In addition to the three factors addressed above, the Board notes that the application addressed matters relevant to several of the other specified bases for parking relief.

Subtitle C § 703.2(d). The parties disputed the amount of traffic congestion existing or which the parking for the Applicant's proposal would reasonably be expected to create in the neighborhood. The party in opposition asserted that the neighborhood currently experiences traffic congestion and excess demand for a limited number of street parking spaces. The Applicant provided a study conducted by its transportation expert that examined the availability of parking within a two-block radius of the site. (Exhibit 32A.) The traffic study concluded that the availability of parking in the surrounding area could accommodate the vehicle traffic expected at the subject property based on the existing parking supply, the observed demand for street parking at present, and the TDM measures that the Applicant will implement, including provisions precluding residents' participation in the RPP program. The commercial space provided in the new development will be devoted to neighborhood-serving retail uses, accessible via a pedestrian plaza, decreasing the likelihood that the commercial uses will generate significant demand for vehicle parking to serve patrons.

The Board notes that DDOT found the Applicant's TDM proposal adequate to reduce the potential for the residents of the project to park on neighborhood streets. The DDOT report acknowledged that the project might create minor increases in vehicular, transit, pedestrian, and bicycle trips as well as the potential to generate minor impacts to on-street parking conditions in the area, inducing a higher level of parking utilization in the immediate area, but described the potential impacts as "minor" and concluded that the project, approved subject to conditions, will have no adverse

impacts on the travel conditions of the District's transportation network. As the DDOT representative testified at the public hearing, the amount of traffic will not increase significantly because the number of dwelling units at issue is relatively low and the lack of on-site parking will "chok[e] off the source of traffic generation" by eliminating the origin and destination for vehicle trips that would otherwise occur. (Transcript of July 29, 2020 at 142.)

With the implementation of the TDM plan, the proposed land use will also minimize the need for required vehicle parking spaces. The Applicant will employ measures to promote the use of alternative forms of transportation and restrict the use of street parking by residents. The Applicant indicated that the project will be marketed especially to potential residents who do not want or need dedicated vehicle parking spaces.

Subtitle C § 703.2(e). The nature of the planned use and the number of residents, employees, guests, customers, and clients who would reasonably be expected to use the proposed building at one time will generate demand for less parking than the minimum parking standards. As already mentioned, the Applicant will market the new dwelling units to appeal especially to persons who do not own personal vehicles, and the retail component will cater especially to neighborhood-serving uses. According to DDOT, a project of the size proposed by the Applicant is significantly smaller than the sort of residential project – one with at least 100 to 150 new dwellings – that would result in "noticeable traffic on the road generated by the project." (Transcript of July 29, 2020 at 142.) Access to the retail uses via the public plaza, rather than a parking lot, will encourage customers to travel to the site on foot.

Subtitle C § 703.2(f). The planned development will not dedicate a significant proportion of dwelling units as affordable housing units, since the majority of the residential space will be offered as market-rate dwellings. However, the Board notes that the project will satisfy applicable Inclusionary Zoning ("IZ") requirements. According to the Applicant, the redevelopment will provide six IZ rental units (a total of approximately 5,000 square feet) for households earning 60 percent of the area median income. (Transcript of July 29, 2020 at 51.)

Subtitle C § 703.2(g). A sufficient quantity of existing public, commercial, or private parking, other than on-street parking, can reasonably be expected to be available in the neighborhood when the building is in use. The party and persons in opposition to the application asserted that the neighborhood lacks sufficient parking to meet current demand, citing especially the needs of businesses along Connecticut Avenue. With respect to the reasonableness of the expectation for available parking, the Board notes that the subject property is located in a relatively dense urban area where much of the existing development predates the zoning requirements for parking and does not provide the number of parking spaces that is currently required. Many of the principal dwellings to the west of the subject property have driveways and can accommodate some vehicle parking on-site, but that arrangement reduces the number of curbside parking spaces that would otherwise be available.

Subtitle C § 703.2(h). The subject property has access to an open public alley at the rear of the lot. However, as discussed above, existing site constraints – especially the topography and presence of below-grade rock – preclude the use of that alley to provide access to viable parking facilities

on site. Accordingly, the only means by which a vehicle could access the lot is from an improved public street. Redevelopment of the site precludes retention of the existing curb cut on Connecticut Avenue, which does not comply with current requirements. A new curb cut would not likely be approved in that location due to its inconsistencies with zoning requirements and with chapter 6 (Parking Facilities and Valet Parking) of the Public Space and Safety regulations (Title 24 of the District of Columbia Municipal Regulations). A curb cut on Newark Street is not feasible due to the physical constraints of the site.

Subtitle C § 703.2(j). The location of a historic resource precludes the provision of parking spaces, or providing the required parking would result in significant architectural or structural difficulty in maintaining the integrity and appearance of the historic resource. The application demonstrated that the Macklin apartment house, a contributing structure in the Cleveland Park historic district, precluded the provision of parking spaces on site due to its location at the center of the subject property. The site cannot feasibly provide a curb cut on Newark Street or below-grade parking accessible from Connecticut Avenue for reasons related to the location of the historic resource in conjunction with site constraints including significant changes in grade, the cost and technical difficulties associated with excavation, and dimensions that precluded the provision of necessary facilities such as ramps and drive aisles of adequate size.

Subtitle X § 901.2. The Board concludes that approval of the application, subject to the conditions adopted in this order, 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 is required for approval of the application under Subtitle X § 901.2. Approval of the application is consistent with the purpose of Subtitle C § 703.1 to provide flexibility from the parking requirement when, as in this instance, the provision of the required number of spaces would be contrary to regulations, impractical, and unnecessary. The Board concurs with OP that approval of the application is also consistent with the Neighborhood Mixed-Use (NC) zone by facilitating a project that will provide commercial and multiple dwelling unit residential development in a neighborhood commercial area. The planned redevelopment will provide for a varied mix of uses, especially residential and retail, encourage safe and efficient conditions for pedestrian and motor vehicle movement by eliminating a curb cut not compliant with current requirements, enhance a neighborhood shopping area by providing the scale of development and range of uses appropriate for neighborhood shopping and services, encourage a general compatibility in scale between new and older buildings, encourage the establishment of a variety of retail establishments, predominantly in a continuous pattern at ground level, to meet the needs of the surrounding area's residents, workers, and visitors, and encourage a scale of development, a mixture of building uses, and other attributes, such as safe and efficient conditions for pedestrian and vehicular movement. The project will also be consistent with the specific purposes of the Cleveland Park Neighborhood Mixed-Use zone as a moderate-density development that will encourage compatibility of development with the purposes of the Historic Landmark and Historic District Protection Act of 1978, encourage a scale of development and a mixture of building uses generally compatible in scale with existing buildings, and provide development to help meet the need for affordable housing and to enhance pedestrian activity, safety, and consumer support for businesses in the commercial area.

Approval of the application will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. The Board credits the testimony of the Applicant's transportation expert, based on an analysis provided in the parking study, as well as the testimony of DDOT that approval of the request to eliminate a parking requirement of 17 vehicle spaces will not create adverse impacts on the travel conditions of the District's transportation network despite the potential for minor increases in vehicular, transit, pedestrian, and bicycle trips generated by the planned redevelopment. DDOT also concluded that the project has the potential to generate some additional demand for street parking in the area but described the potential impacts as minor, especially considering that the Applicant will implement TDM measures to discourage trips to and from the subject property by private vehicle. The Board concurs with these assessments and was not persuaded by arguments by the party in opposition that approval of the requested parking relief would adversely affect the use of neighboring properties, including nearby businesses. *Compare, Sheridan Kalorama Historical Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 229 A.3d 1246 (D.C. 2020) (Court upheld the Board's conclusion that nonprofit office use of a residential building would not create adverse impacts on traffic and parking where neighbors in opposition to the use downplayed conveniences such as proximity to public and shared transportation options; their concerns about blocked driveways and traffic back-ups on a narrow street overlooked the express conditions placed on the special exception approval, reports from OP and DDOT in support of the application, and substantial evidence in the record about likely traffic and parking impacts), affirming the Board's conclusion in Application No. 19659 (order issued October 30, 2018) with respect to the adequacy of parking to minimize traffic impacts on the adjacent neighborhood.

In this case, the subject property does not presently provide any parking for nearby businesses, since the existing lot is reserved for retail uses on-site. The Board was not persuaded that approval of the requested special exception, providing relief from a requirement of 17 vehicle parking spaces, would adversely affect the existing business uses, especially considering the parking restrictions already in place to facilitate parking for customers of those businesses and the conditions of approval adopted in this order to discourage the use of private vehicles by future residents at the subject property.

The party in opposition questioned whether the TDM measures would be effective or even implemented. The Board notes that conditions of approval of a special exception are enforceable⁴ and was persuaded by the testimony of the Applicant's traffic expert and DDOT that the conditions will be effective to minimize traffic and parking impacts of the planned redevelopment.

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 agrees with OP's recommendation that, in this case, the application should be approved.

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.)); *see also* Subtitle

⁴ *See* Subtitle A § 303.

BZA APPLICATION NO. 20266
PAGE NO. 13

Y § 406.2. In this case, ANC 3C submitted a resolution in support of the application subject to conditions related to parking and loading. The resolution stated that the ANC recognized “that there is a lack of parking supply in the neighborhood to meet the day to day demand particularly near the metro station and in the evenings” and that “the project will create loading needs and that the applicant is expecting to use a well-used alley and Connecticut Avenue for residential and retail load in/load out needs, and both of those expanded uses will create impacts if not managed professionally.” (Exhibit 98.) Accordingly, the ANC recommended certain conditions relating to parking and loading. For the reasons discussed above, the Board concurs with the ANC’s recommendation to approve the application subject to the proposed conditions.

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 pursuant to Subtitle C § 703.2 from minimum parking requirements to allow a new mixed-use residential/retail development in the NC-3 zone at 3400 Connecticut Avenue, N.W. (Square 2069, Lots 817-821). Accordingly, it is **ORDERED** that the application is **GRANTED** subject to the following **CONDITIONS**:

1. The Applicant shall implement the following Transportation Demand Management (TDM) Plan, for the life of the project, unless otherwise noted, consistent with the DDOT recommendation (Exhibit 33):
 - (a) The Applicant shall identify a Transportation Coordinator for the development, who will act as point of contact with DDOT, goDCgo, and Zoning Enforcement. The Transportation Coordinator shall:
 - (1) provide Transportation Coordinator contact information to goDCgo and coordinate with goDCgo;
 - (2) receive TDM training from goDCgo to learn about the TDM conditions for the development and available options for implementing the TDM Plan; and
 - (3) subscribe to goDCgo’s residential newsletter.
 - (b) The Applicant shall develop, distribute, and market various transportation alternatives and options to the residents, employees, and customers of the development, including promoting transportation events (e.g., Bike to Work Day, National Walking Day, Car Free Day) on the property website and in any internal building newsletters or communications.
 - (c) The Applicant shall post “getting here” information in a visible and prominent location on the property website with a focus on non-automotive travel modes, and provide links to goDCgo.com, CommuterConnections.com, transit agencies around the metropolitan area and instructions for customers discouraging parking on-street in Residential Permit Parking (RPP) zones.
 - (d) The Applicant shall provide residents and employees who wish to carpool with detailed carpooling information and refer them to carpool matching services

sponsored by the Metropolitan Washington Council of Governments (MWCOG) or other comparable service if MWCOG does not offer this in the future.

- (e) The Applicant shall post all TDM commitments on the property website, publicize availability, and allow the public to see what commitments have been promised.
- (f) The Applicant shall provide at least 16 long-term and eight (8) short-term bicycle parking spaces.
 - (1) Long-term bicycle storage space shall be provided free of charge to residents of the property.
 - (2) Long-term bicycle storage rooms shall accommodate non-traditional sized bikes including cargo, tandem, and kids bikes.
 - (3) The Applicant shall provide a bicycle repair station in the long-term bicycle parking storage room.
- (g) The Applicant shall identify nearby parking lot/garage facilities that can provide additional parking for guests, customers, and employees.
- (h) The Applicant shall provide two (2) Capital Bikeshare expansion plates (8 docks) for the adjacent station, which requires 20 additional linear feet. The larger Bikeshare station will be shown in permitting plans that the Applicant submits for permitting. The Applicant will pay for the expansion to the existing station and pay to have the Bikeshare station removed and relocated during construction.
- (i) The Transportation Coordinator shall demonstrate to goDCgo that commercial tenants with 20 or more employees are in compliance with DC Commuter Benefits laws and participate in at least one of the three transportation benefits outlined in the law (employee-paid tax benefit, employer-paid direct benefit, or shuttle service), as well as any other commuter benefits relate laws that may be implemented in the future.
- (j) The Applicant shall participate in Capital Bikeshare corporate at the Gold Level and offer free annual memberships to employees at the site for the first five (5) years of building occupancy.
- (k) The Applicant shall provide welcome packets to all new residents that should, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, Capital Bikeshare coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map. Brochures can be ordered from DDOT's goDCgo program by emailing info@godcgo.com.
- (l) The Applicant shall install a Transportation Information Center Display (electronic screen) within the lobby containing information related to local transportation

alternatives. At a minimum the display shall include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, carsharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles.

- (m) The Applicant shall prohibit residents at the property from participating in the Residential Parking Permit (RPP) program.
 - (n) The Applicant shall offer a free annual Capital Bikeshare membership to every resident during the first five (5) years of building occupancy
2. The Applicant shall implement the following Loading Management Plan (LMP) for the life of the project, unless otherwise noted:
- (a) A loading manager shall be designated by the building management who will be on duty during delivery hours. The loading manager shall be responsible for coordinating with vendors and tenants to schedule deliveries and shall work with the community and neighbors to resolve any conflicts should they arise.
 - (b) The Applicant shall implement a lease provision requiring all tenants to use only the loading area for all deliveries and move-in and move-out activities.
 - (c) All tenants shall be required to schedule deliveries that utilize the loading area (any loading operation conducted using a truck 20-feet in length or larger).
 - (d) The loading manager shall schedule deliveries using the berth such that the dock's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time when a berth will be available so as to not compromise safety or impede Connecticut Avenue NW or the public alley's functionality.
 - (e) The loading manager shall schedule residential loading activities so as not to conflict with retail deliveries. All residential loading will need to be scheduled with the loading manager and it is anticipated that residential loading will take place primarily during afternoons and evenings, when the retail loading activity is minimal.
 - (f) The loading manager shall monitor inbound and outbound truck maneuvers and ensure that trucks accessing the loading area do not block vehicular, bike, or pedestrian traffic along Connecticut Avenue NW except during those times when a truck is actively entering or exiting a loading berth.

- (g) The loading manager shall monitor service vehicle and truck traffic interfacing with Connecticut Avenue NW traffic during peak periods, and take management measures if necessary, to reduce conflicts between truck and vehicular movements.
 - (h) Residential and retail trash pickup shall occur outside of the peak hours at the residential loading area accessible from the commercial loading zone on Connecticut Avenue, NW.
 - (i) The loading manager shall monitor the timing of the retail and/or residential deliveries to see if any adjustments need to be made to ensure any conflicts with the retail loading and residential loading activities are minimized.
 - (j) Trucks using the loading areas shall not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the goDCgo Motorcoach Operators Guide, and the primary access routes shown on the DDOT Truck and Bus Route Map (godcgo.com/freight).
 - (k) The loading manager shall be responsible for disseminating suggested truck routing maps to the building’s tenants and to drivers from delivery services that frequently utilize the development’s loading areas as well as notifying all drivers of any access or egress restrictions (ex. No left turn onto Connecticut Avenue, NW). The loading manager shall also distribute flyer materials, such as the MWCOG Turn Your Engine Off brochure, to drivers as needed to encourage compliance with idling laws. The loading manager shall post these materials and other relevant notices in a prominent location within the loading area.
3. The Applicant shall implement the following conditions consistent with the recommendation of ANC 3C (Exhibit 98):
- (1) Condition on Parking: The residents, regardless of tenure, at the Macklin and the new housing at 2911 Newark Street and 3400 Connecticut Avenue, or any new additional address applied to the project, are not eligible to participate in the Restricted Residential Parking Program (“RPP”) and the Visitor Parking Program (“VPP”), and the applicant
 - A. Shall include this information in any and all lease or sale documents, and
 - B. Shall offer at least eight parking spaces off-street and off-site for future residents to lease, assuming the Applicant has secured an agreement with a neighborhood parking garage.
 - (2) Conditions on Loading:
 - A. The residents of the Macklin addition shall use the alley loading area for

1. Trash pick-up that is scheduled for the same time and days each week, and unscheduled deliveries provided the vehicles can fit into the 24-foot loading area, and
 2. Move-ins and move-outs provided the activity is scheduled with the building loading manager to occur after 9:30 a.m. and end by 4 p.m., Monday through Saturday. All delivery or loading/unloading activity, scheduled or unscheduled, where the vehicle exceeds the size of the alley loading area will use the Connecticut Avenue loading area. No moving in or moving out activities will be allowed on national holidays or Sundays.
- B. The residents of the Macklin shall use the alley loading area for move-ins and move-outs and deliveries according to A.2., and trash pick-ups will occur according to C.1.
- C. The residents of the townhomes and retail users shall use the Connecticut Avenue loading area only during non-rush hour periods when parking is allowed, provided that loading, unloading and delivery parking is limited to the area set aside for this purpose, and
1. Trash pick-up is scheduled for the same time and days each week,
 2. Move-ins and move-outs are scheduled with the building loading manager to occur after 9:30 a.m. and end by 4 p.m., Monday through Friday, and 1 p.m. to 5 p.m. on Saturday. No moving in or moving out activities will be allowed on national holidays or Sundays,
 3. Retail deliveries are scheduled and occur at times not set aside for residential moving activities or trash pick-ups.
- D. Weekend use of the Connecticut Avenue loading area is subject to the above conditions and is limited to 1 p.m. to 5 p.m. for the project users. The Cleveland Park farmers market is permitted to use the loading area on Saturday mornings when it is not in use by the project.
- E. The Connecticut Avenue loading area is permitted to be used for public parking after 7 p.m. on weekdays and after 5 p.m. on Saturday and all day on Sunday.
- F. A loading manager will be either on site or accessible at all times whenever the loading areas are available for use and will manage the scheduling of loading activities to ensure that the capacity of the loading areas is not exceeded and that the use of the loading areas are in compliance with conditions A-E, and
1. At least one maintenance person will be on site to manage any conflicts at the loading areas, and
 2. The alley loading area will be monitored with closed circuit video and an intercom system connected to the office of the maintenance person(s).


- G. Trucks using the loading areas shall comply with any truck restrictions on neighborhood streets per posted truck restriction signs and the truck routing and restriction map (<https://ddot.dc.gov/sites/default/files/dc/sites/ddot/publication/attachments/TruckandBusThroughRouteandRestrictions.pdf>), or its successor document.
- H. There shall be no loss of public parking spaces to accommodate truck movements accessing or exiting the loading areas.

VOTE: 4-0-1 (Frederick L. Hill, Lorna L. John, Chrishaun S. Smith, and Anthony J. Hood to APPROVE; one Board seat vacant)

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

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

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: March 15, 2022

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 A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER,

BZA APPLICATION NO. 20266

PAGE NO. 19

IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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.