

April 26, 2022

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VIA IZIS

Anthony Hood, Chairperson
D.C. Zoning Commission
441 4th Street, NW, Suite 200S
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**RE: ZC Case No. 22-08
Applicant's Prehearing Statement**

Chairperson Hood and Honorable Members of the Commission:

The following constitutes the prehearing statement of Applicant NRP Properties, LLC (the "Applicant") in support of the subject application for voluntary design review at 4401-4435 Benning Road NE (Lots 40 and 61, Square 5085) (the "Property"). As set forth in the initial application, the Applicant proposes a new residential development with 109 all-affordable dwelling units (the "Project").

I. Architectural Plan Updates

The Applicant is enclosing an updated architectural plan set (the "Updated Plans") at **Tab A**. The design and development parameters of the Project remain consistent with the original application, but the Applicant wishes to highlight the following revisions:

• **Garage and Parking/Loading Arrangement**

The Updated Plans incorporate changes to the garage layout on the Project's ground level. See **Tab A**, Sheet A-10. The changes were made in order to accommodate the necessary turning movements to access the loading berth. As originally proposed, a 30-foot truck could not access the loading berth if the adjacent service-delivery space was occupied. Both the 30-foot loading space and service-delivery space are required by the Zoning Regulations.

To account for the turning movements, the Updated Plans remove two parking spaces at the southeastern corner of the garage. The two parking spaces will be replaced with a small storage locker, but otherwise the southeastern corner of the garage will remain open. This open space will allow a 30-foot truck to drive "head-first" into the garage and then back into the loading space even when the service-delivery space is occupied. The Updated Plans also adjust the loading platform from an "L-shape" to a square.

Despite removing two parking spaces, the total parking count remains at 13 spaces. The two garage spaces will be replaced with two designated parking spaces in the Property's large front setback located adjacent to the drive aisle. See **Tab A**, Sheets A.10, L-100 The Applicant envisions these spaces as marked or labeled "pick-up/drop-off" parking spaces ("PUDO Spaces"). The Zoning Regulations do not distinguish regular parking spaces from PUDO Spaces. As such, the two PUDO Spaces will count toward the total parking requirement under zoning and must comply with all parking location restrictions.

Pursuant to Subtitle C § 710.2, parking spaces "shall be located...on an open area of the lot, except... surface parking spaces shall not be located between the front façade of a building, as extended for the full width of the front of the lot, and the front lot line." See Subtitle C § 710.2(c)(2). Accordingly, the Applicant is now seeking special exception relief to locate required parking spaces within the Property's front setback. The standard for this relief is outlined below in **Section II** of this submission.

- **Ground Floor Plan**

The Updated Plans incorporate minor changes to the ground floor plan. See **Tab A**, Sheet A-10. On the Project's northwestern side, the previously proposed conference room will be replaced with a residential amenity space off the main lobby. The conference room will be reduced in size and replace the storage area. As noted above, the storage area was moved to the southeastern corner of the garage. In order to accommodate the D.C. Department of Transportation's ("DDOT") request to incorporate larger bicycle parking spaces for tandem bicycles, the bicycle parking has been rearranged to hold spaces for 45 bicycles (previously 46 spaces). The bicycle storage room is also approximately 30 square feet smaller than originally proposed.

During the Applicant's interagency meeting on April 19, 2022, the Office of Planning ("OP") requested a better understanding of the Applicant's choice to place the residential lobby entrance on the western side of the Project (and farther from the Metro station). This design decision was made due to site constraints and other programming needs for the ground level. The Applicant seeks to incorporate office space with windows, which can only be provided along the western side lot line because the Project is setback. From a functional stand-point, the Applicant proposes direct exterior access to the bicycle room and utility rooms, which can only be provided at the front of the building. The location of the residential lobby is limited by these Project programming and functionality concerns.

Additionally, the WMATA vents on the western side of the Property would make it challenging to provide a drive aisle on that side. The proposed drive aisle on the eastern side of the Property, on the other hand, is in the approximate location of one of the existing curb cuts on the site. A drive aisle down the center of the Property would not be recommended from a design and planning perspective. As such, the Applicant has designed the Project with the residential lobby on the western side of the building and the drive aisle on the eastern side of the Property.

- **Front Façade Revisions**

The Updated Plans make minor design changes to the Project's front façade at the ground level. Previously, the Applicant proposed a vertical green wall along the eastern side of the façade.

The Updated Plans remove the green wall and incorporate decorative metal paneling and a pergola feature. See **Tab A**, Sheets A-20, A-44, A-45. The metal paneling and pergola will be in a weathered corten color with the intention to increase visual interest along the eastern side of the ground level where there is otherwise a blank wall and utility doors. There will be seating under the pergola as well. The Updated Plans also incorporate new artistic detailing above the entryways on the western side of the ground level.

- **Landscaping Plans**

The Updated Plans provide more detailed landscaping plans with information on plantings, seating, and other elements. See **Tab A**, Sheets L-100 – L-108. Of particular note, the Applicant will provide two childrens' play structures for the use of families living in the Project. There will be seating throughout the front setback, including under the pergola and along both walkways. There will also be seating adjacent to the Project's western walkway to and from Benning Road. The Applicant proposes six large shade trees along the front lot line, which will provide a buffer from Benning Road. There will be many other plantings throughout the front setback area, which are detailed in the planting palette.

The Applicant has worked with DDOT on the location of the Project's transformers, which are proposed on the western side of the Property by the drive aisle. Although the front setback is not a desirable location for transformers, the site challenges necessitate this location. As outlined in the original application, the Property is restricted by several encumbrances, including a building restriction line along Benning Road, two WMATA vent shafts, a WMATA underground tunnel easement, and a utility easement (collectively, the "Encumbrances"). As a result of the Encumbrances, the Project is pushed to the back of the Property with no rear yard or side yards, locations that are typically preferred for transformers. PEPCO also requires direct access to the transformers from a roadway or a driveway in order to properly service the transformers. Therefore, the front setback is the only viable location for the transformers.

The utility easement restricts uses at grade level and, therefore, a new structure with a foundation cannot be built there. However, the WMATA easement and building restriction area do not restrict new structures at or above grade. For these reasons, the transformers must be sited within the building restriction area at the front of the Property and outside of the utility easement area. To minimize views of the transformers, the landscape plan incorporates screening of the transformers with plantings. The Applicant will continue to work with DDOT on the positioning of the transformers during the public space process.

Finally, the Applicant will incorporate a piece of public art in the landscaping plan. The public art is to be located on the western side of the Property. As with the transformers, the art (which will likely take the form of a sculpture) cannot be built within the utility easement area. Nonetheless, the art is positioned between two of the shade trees to ensure view-sheds from Benning Road and adjacent public space.

II. Special Exception Relief to Locate Surface Parking Spaces in Front Setback

Pursuant to Subtitle C § 710.3, special exception relief may be granted to allow surface parking spaces to be located anywhere on a lot. Due to the aforementioned revisions to the

Project's garage area, the Applicant proposes to locate two PUDO Spaces within the Project's front setback. The Applicant meets the special exception standard as follows:

The Relief is in Harmony with the Purpose and Intent of the Zoning Regulations

Although located within the Project's front setback, the two parking spaces will be substantially removed from the Property's front lot line and the Benning Road right-of-way. The Applicant has outlined the Encumbrances that necessitate the Project's 47-foot setback. In addition to the setback, there is ample public space adjacent to Benning Road. This condition means the Project's front façade is setback 80 feet from the right-of-way. The abnormally large front setback provides a large open area to locate two parking spaces without the parking spaces being directly adjacent to public space.

The site challenges greatly restrict the Applicant's ability to provide parking located in compliance with the Zoning Regulations. Due to the Encumbrances, the Project must be located on the rear half of the Property. To recapture buildable area, the Project does not propose a rear yard or side yards. As such, there is no ability to locate parking spaces in the rear yard or side yard.

The relatively small footprint also limits the garage space where additional parking can be located. The Applicant originally proposed 13 parking spaces spanning most of the width of the rear lot line. As outlined above, this created internal movement challenges for a truck to access the loading space. These factors reflect the challenges created by the site and the building footprint. Accordingly, the Applicant is seeking to maximize the number of parking spaces by providing two parking spaces within the front setback.

The Applicant's transportation expert from Gorove Slade concluded that the PUDO Spaces are consistent with good transportation planning practices for the site. *See Ex. 12A.* Gorove Slade found that the PUDO Spaces "are designed to minimize the disturbance of green and open space by taking advantage of the proposed driveway which a more typical design like a port-cochere (i.e., driveway/layby loop) would." *See Ex. 12A, pg. 28-29.* As such, the PUDO Spaces will "minimize curbside conflicts between short-term delivery vehicles (e.g., Uber, Lyft, food/grocery deliveries, etc.) and vehicular traffic along Benning Road NE as well as the future Benning Road Streetcar extension." *See Ex. 12A, pg. 28-29.* To further these practices, the spaces "will be designed to include appropriate signage and be screened from the sidewalk." *See Ex. 12A, pg. 28-29.*

Finally, DDOT has indicated it is supportive of the Applicant's proposal for two parking spaces in the front setback.

The Relief Will Not Adversely Affect the Use of Neighboring Property

In addition to being substantially setback from Benning Road, the two parking spaces in the front setback will be screened by plantings and landscaping. The screening is intended to limit visibility of the surface parking spaces from adjacent public space. Further, the Applicant is maintaining the approximately 12,960 sq. ft. of large open green space originally envisioned for the Project. This open space will continue to provide beautification of the Property and a recreation area for residents.

The location relief will allow two additional on-site parking spaces for the Project that otherwise could not be provided. Therefore, the relief directly limits any impact of the parking relief sought by the Applicant. Overall, the two spaces in the front setback will be a net positive for the Project and the surrounding neighborhood.

The Relief Meets the Special Conditions of Subtitle C § 710.3

In addition to the general special exception criteria, the Applicant must demonstrate that the relief meets the special conditions set forth under Subtitle C § 710.3, as follows:

(1) It is not practical to locate the spaces in accordance with Subtitle C § 710.2 for the following reasons:

- (A) Unusual topography, grades, shape, size, or dimensions of the lot;*
- (B) The lack of an alley or the lack of appropriate ingress or egress through existing or proposed alleys or streets;*
- (C) Traffic hazards caused by unusual street grades; or*
- (D) The location of required parking spaces elsewhere on the same lot or on another lot would result in more efficient use of land, better design or landscaping, safer ingress or egress, and less adverse impact on neighboring properties.*

In accordance with subsection (A), it is not practical to provide the parking spaces within the garage or elsewhere on the lot due to the unusual shape, size and dimension of the Property. As outlined above, the encumbrances along the Property's frontage create an unusual condition where the Project's footprint is limited to the rear portion of the Property, and the Project only provides a lot occupancy of 50% where up to 80% is permitted.¹ The Property also narrows substantially from front to back, thereby limiting the Project's width. As a result, the Project does not have a rear yard or a side yard, and there is limited ground level space to provide more parking. Since the original application, the Applicant reconfigured the garage space to provide a sufficient turning radius for truck access to the loading space. Accordingly, the ground floorplate is already compact with no additional area for parking without losing important programming for the residences.

(2) The accessory parking spaces shall be located so as to furnish reasonable and convenient parking facilities for the occupants or guests of the building or structures that they are designed to serve.

The parking spaces are located off the drive aisle from Benning Road to provide quick and convenient access from the street. The Project proposes a new walkway directly adjacent to the parking spaces that will provide access to the residential lobby.

(3) The Board of Zoning Adjustment may impose conditions as to screening, coping, setbacks, fences, the location of entrances and exits, or any other requirement it deems

¹ The Project's first and second floors have a lot occupancy of 50%. Floors three to nine have a lot occupancy of 56.38%.

necessary to protect adjacent or nearby property. It may also impose other conditions it deems necessary to assure the continued provision and maintenance of the spaces.

The Applicant will consider additional conditions if requested by the Commission for the two parking spaces. As noted, the Applicant is already proposing screening.

III. Racial Equity Lens Analysis

Under the recently enacted amendments to the Comprehensive Plan, the Zoning Commission is now required to “evaluate all actions through a racial equity lens as part of its Comprehensive Plan consistency analysis.” *See* 12A DCMR § 2501.7. The Comprehensive Plan defines “racial equity” as “the moment when ‘race can no longer be used to predict life outcomes and outcomes for all groups are improved.’” *Id.* § 213.8. Accordingly, the Comprehensive Plan calls for “[a]ddressing issues of equity in transportation, housing, employment, income, asset building, geographical change, and socioeconomic outcomes through a racial equity lens.” *Id.* § 213.10.

The Project furthers the Comprehensive Plan’s “racial equity” goals by providing a new residential building that reserves all of its units for low- and moderate-income families in perpetuity. Since the Property is improved with a one-story office building, the Project will not result in the displacement of any existing residents. Instead, the Project will provide new and modern housing opportunities to a broad range of income levels, with 87 units at or below 50% AMI, and household sizes, with 27 two-bedroom units and 22 three-bedroom units. Accordingly, the Project offers an opportunity for existing neighborhood families to stay within the community.

Through the Marshall Heights Community Development Organization (“MHCDO”), the Project will also provide a Resident Resource Center with a wide range of services tailored to specific residents’ needs. Planned services and offerings include training and educational programming in topics such as financial planning, workforce development skills, environmental, health and wellness, community-building, and more. These services offer residents an important opportunity to gain more education and life skills.

From a transportation and employment perspective, the Project’s proximity to Metrorail and Metrobus will offer residents excellent public transit access to move around the city. The planned Benning Road Streetcar Expansion will also have a stop adjacent to the Metrorail station (steps from the property), providing a direct line to the H Street corridor and Union Station. The equity in transportation will make commuting to jobs and the city’s employment sector easier.

The Applicant has also demonstrated equity as part of this zoning process through its outreach to the community. As detailed below, the Applicant met with the ANC and community members four times and the ANC is issuing a resolution in support of this application.

IV. Height Flexibility

The Applicant is requesting zoning flexibility for a building height of 93’6”. As part of the design review process, the Zoning Commission “may grant no greater height than that permitted if the application were for a PUD.” Under Subtitle X § 303.7, a PUD in the MU-7B

zone may have a building height of 90 feet, which may be increased by 5% (to 93'6") under Subtitle X § 303.10.

The height flexibility is essential to the successful functioning of the Project by allowing for a 15-foot floor-to-ceiling height on the ground level, which is industry-standard for market rate residential buildings, while still maintaining a viable all-affordable project. As detailed in the original application, the ground level is designed to be consistent with the Commission's standards for urban design, including attractive and inspired façade design and reinforcing the pedestrian realm. Without the 5% height increase, the Project would be reduced to eight stories or would require a re-design of the ground level to decrease the floor-to-ceiling height. Notably, as a result of the Encumbrances, a below-grade level is not viable for additional dwellings, vehicle parking or other amenities.

The flexibility request is otherwise consistent with the Commission's evaluation standards, including that it will not adversely impact neighboring properties. The proposed height is driven by the Encumbrances on the Property's frontage, which restrict any portion of the building from being located on the front half of the Property. Nonetheless, the large front setback maintains open space on the Property. Benning Road is an 80-foot-wide right-of-way that supports the proposed height. There is an unimproved 15-foot-wide alley to the rear of the Property and all three abutting properties have substantial setbacks adjacent to the Project.

In connection with the height flexibility request, OP also requested clarification on the Project's compliance with the Height Act. Under the Height Act, a building located on a business street² can be constructed to a height equal to the width of the street plus 20 feet, with a maximum of 130 feet. *See* D.C. Code § 6-6-601.05(a-b). Additionally, on streets less than 90 feet wide with a building restriction line on adjacent private property, the width of the street is measured to include the building restriction lines. *See* D.C. Code § 6-601.05(e). While Benning Road is 80 feet, there are 15-foot-wide building restriction lines on both sides of Benning Road. Accordingly, for the purposes of the Height Act, the width of the street is 110 feet, thereby permitting the building to reach the maximum height of 130 feet.

The Project will have a building height of 93'6", well within the maximum of 130 feet under the Height Act. While the Project has a two-story penthouse totaling 19 feet, the Height Act exempts penthouses pursuant to D.C. Code § 6-601.05(h).

V. Enterprise Green Communities Plus

During the interagency meeting on April 19th, the Department of Energy and Environment ("DOEE") requested more information on the Project's green building status. The Applicant intends to obtain Enterprise Green Communities ("EGC") Plus certification for the Project, using the most recent 2020 EGC version. The 2020 EGC version requires significant, additional building performance measures, and the higher Plus level of achievement goes even further. Projects that earn the 2020 EGC certification will automatically be awarded certification to the WELL Building Standard, the benchmark standard for measuring how buildings impact occupant health and wellbeing. Projects pursuing the Green Communities Plus level certification will have also

² Benning Road is a business street for the purposes of the Height Act because this section of Benning Road is zoned MU-7B.

achieved at minimum, certification to DOE's Zero Energy Homes (ZERH) program. ZERH represents a significant elevation in energy performance that is essentially the mid-point between Energy Star Multifamily New Construction and PHIUS (Passive House) certifications. Projects pursuing the Green Communities Plus level certification will have also achieved at minimum, certification to DOE's Zero Energy Homes (ZERH) program. ZERH represents a significant elevation in energy performance that is essentially the mid-point between Energy Star Multifamily New Construction and PHIUS (Passive House) certifications.

With the additional levels of rigor described above, the 2020 Enterprise Green Communities Criteria can be fairly regarded as comparable to a LEED v4 Gold certification.

VI. Community Outreach

As part of the design review process, the Applicant has met with and presented to ANC 7D and the community on four occasions. On October 12, 2021, prior to filing the subject application, the Applicant attended a public meeting of ANC 7D and presented the general site layout of the Project. After filing this application, the Applicant met with SMD Commissioner Audain on March 10, 2022 to discuss the Project. On March 22, 2022, the Applicant presented the Project to ANC 7D's Executive Committee. On April 12, 2022, the Applicant presented to the full ANC, which voted to support this application and the Project.

VII. Conclusion

Based on the information herein and in the case record, the Applicant respectfully requests that the Commission grant the subject application at its hearing on May 16, 2022.

Sincerely,
COZEN O'CONNOR



Meridith Moldenhauer



Eric J. DeBear

Certificate of Service

I HEREBY CERTIFY that on this 26th day of April, 2022, a copy of this Prehearing Statement was served, via email, on the following:

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Commissioner Stephanie Audain, SMD
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A handwritten signature in blue ink, appearing to read 'M. Moldenhauer', is written over a light blue horizontal line.

Meridith Moldenhauer