

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19452 of D.C. Department of General Services, as amended, pursuant to 11 DCMR Subtitle X, Chapters 9 and 10, for special exceptions under the MU-use requirements of Subtitle U § 513.1(b), parking requirements of Subtitle C § 701.5, the open court requirements of Subtitle G § 202.1, the lot occupancy requirements of Subtitle G § 404.1, and the rear yard requirements of Subtitle G § 405.2, and variances from the loading requirements of Subtitle C § 901.1, the floor area ratio (“FAR”) requirements of Subtitle G § 402.1, and the height requirements of Subtitle G § 403.1 to allow an emergency shelter as an addition to an existing building in the MU-4 zone at premises 1700 Rhode Island Avenue, N.E. (Square 4134, Lot 800).¹

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

DECISION AND ORDER

This self-certified application was submitted on January 4, 2017 by the District of Columbia Department of General Services, the owner of the property that is the subject of the application (the “Applicant”). The application, as subsequently amended, requested special exceptions to

¹ The caption has been modified to reflect changes in the requested relief. The Applicant originally requested a special exception under Subtitle U § 513.1(b)(6) to allow an emergency shelter for more than 25 persons as well as variances from requirements for height, floor area ratio, lot occupancy, rear yard, open court width, parking, and loading and delivery space. (*See Exhibit 7.*) The Applicant subsequently amended the application to request, pursuant to Subtitle X § 901.2, a special exception to allow an emergency shelter for more than 25 persons in the MU-4 zone under Subtitle U § 420.1(f) as well as special exception relief from requirements for building height under Subtitle G § 403.1, floor area ratio under Subtitle G § 402.1, lot occupancy under Subtitle G § 404.1, open court width under Subtitle G § 202.1, rear yard under Subtitle G § 405.5(a)(1) and (2), parking under Subtitle C § 701.5, and off-street loading and delivery space under Subtitle C § 901.1. (*See Exhibit 36.*) The application was again amended to request a special exception to allow an emergency shelter for more than 25 persons in the MU-4 zone under Subtitle U § 420.1(f) as well as special exception relief from requirements for lot occupancy under Subtitle G § 404.1, open court width under Subtitle G § 202.1, rear yard under Subtitle G § 405.5(a)(1) and (2), and parking under Subtitle C § 701.5, and area variances from requirements for building height under Subtitle G § 403.1, floor area ratio under Subtitle G § 402.1, and off-street loading and delivery space under Subtitle C § 901.1. (*See Exhibits 39, 43.*)

The caption was revised to substitute Subtitle U § 513.1(b) for Subtitle U § 420.1(f), which applies in RA zones, while the subject property is zoned MU-4 and is in Use Group E. (*See Subtitle U § 500.2.*) Subtitle G § 405.2, which states the minimum depth of a rear yard in the MU-4 zone, was substituted for Subtitle G § 405.5(a)(1) and (2), which prescribes methods for the measurement of a rear yard, depending on whether a lot abuts an alley.

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allow an emergency shelter use for more than 25 persons² and relief from requirements for parking, open court width, lot occupancy, and rear yard, as well as area variances from requirements for loading, floor area ratio (“FAR”), and building height to allow an emergency shelter as an addition to an existing building in the MU-4 zone at 1700 Rhode Island Avenue, N.E. (Square 4134, Lot 800). Following a public hearing, the Board of Zoning Adjustment (“Board” or “BZA”) voted to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated January 4 or 5, 2017, the Office of Zoning provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Department of Human Services (“DHS”); the Councilmember for Ward 5 as well as the Chairman and the four at-large members of the D.C. Council; Advisory Neighborhood Commission 5B (the “ANC”), the ANC in which the subject property is located; and Single Member District/ANC 5B03. Pursuant to 11 DCMR Subtitle Y § 402.1, on January 6, 2017 the Office of Zoning mailed letters providing notice of the hearing to the Applicant, the Councilmember for Ward 5, ANC 5B, ANC 5C,³ and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on January 13, 2017 (64 DCR 330).

Party Status. The Applicant, ANC 5B, and ANC 5C were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Citizens for Responsible Options (“CFRO”), a group of residents living near the subject property.

Applicant’s Case. The Applicant provided evidence and testimony about the proposed emergency shelter from witnesses Rashad M. Young, the City Administrator; Laura Green Zeilinger, the Director of the District Department of Human Services and an expert in matters relating to homelessness, including best practices in providing services for the homeless; Greer Gillis, the Director of the Department of General Services; Ronnie McGhee, the project architect of the proposed emergency shelter building and an expert in architecture; Ryan Moody, an expert in landscape architecture; and Dan VanPelt, an expert in transportation planning and engineering. The Chairman of the Council of the District of Columbia, Phil Mendelson, testified “to present the public policy underlying [the application], to explain the process behind [the Council’s site selection] decision, and to state the Council’s support for these sites [selected by the Council] for emergency shelters.” (Exhibit 183.)

² The emergency shelter will provide 46 residential units, with a capacity of up to 150 beds.

³ The subject property is located across a street from the boundary of ANC 5C, which therefore is also considered an “affected ANC” for purposes of this application. (See Subtitle Y § 101.8.) However, ANC 5C did not submit a report or otherwise participate in this proceeding. With respect to ANC 5C, there were no issues or concerns to which the Board was required to give great weight.

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OP Report. By memorandum dated February 17, 2017, the Office of Planning recommended approval of the application. (Exhibit 49.)

DDOT. By memorandum dated February 16, 2017, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 47.)

Other Agency Reports. The Board received letters in support of the proposed emergency shelter from the D.C. Fire and Emergency Medical Services Department (Exhibit 40) and the District of Columbia Public Schools (Exhibit 62.)

The U.S. Commission of Fine Arts (“CFA”) submitted comments by letter dated February 24, 2017, indicating that CFA had reviewed the concept design for the Ward 5 shelter and commending “this innovative building program that recognizes the value of decentralized short-term housing and provides residents with safe and dignified accommodations.” The CFA members “strongly endorsed the overall goal of building transitional housing for homeless families in established residential neighborhoods, and they expressed support for the development of programmatic and operational guidelines for these facilities.” (Exhibit 106.)

ANC Report. By resolution adopted at a public meeting March 17, 2017 with a quorum present, ANC 5B indicated its support for one aspect of the application (minimum court width) and its opposition to all other zoning relief requested.⁴ The ANC’s resolution objected to the site selection process and stated concerns raised by “many residents of ANC 5B,” including that “many residents of ANC 5B believe that the site is too small; ... the number of parking spots will create a burden to current residents, especially elderly residents; ... increased traffic poses a risk for pedestrians due to the lack of sidewalks in some of the streets directly surrounding the property; and the height of the proposed building is incompatible with some of the architecture of the community directly surrounding the property....” In addition, “many residents of ANC 5B have raised questions about whether the use is ‘emergency’ as that term is defined in the Zoning Regulations.” (Exhibit 208.)

Party in Opposition. Citizens for Responsible Options stated “concerns about the *size and scope* of the proposed shelter structure on this particular site, and about the impact of its size and scope on neighbors and the community at large.” (Exhibit 55; emphasis in original.) The party in opposition also objected to the number of residents at the planned shelter, which would be “more than *37 times as many residents* as permitted as of right under current zoning regulations.” (Exhibit 55; emphasis in original.) CFRO asserted that approval of the application would authorize construction of

this enormous facility without [the Applicant’s] having conducted a reasonable inquiry into alternative sites, with inadequate on-site parking, with no loading dock, and without properly ameliorating the noise, traffic, and congestion that the

⁴ ANC 5B described the relief requested as a special exception for an emergency shelter for more than 25 persons and variances for all other aspects of the relief requested by the Applicant. As previously noted, the Applicant amended the initial application to reflect that relief from some requirements is available by special exception.

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addition of 150 residents plus visitors and more than a dozen staff on a single lot will bring to this residential neighborhood.
(Exhibit 55.)

According to CFRO, the proposed emergency shelter building “is fundamentally incompatible with the neighborhood” and would “loom over the surrounding single-family homes, cut off their sunlight, air, and open sight-lines, and dwarf confronting single-family houses.” (Exhibit 55.) CFRO opposed all the Applicant’s requests for special exception relief, generally on the ground that the subject property was too small for the proposed use. The party in opposition also argued against approval of the variances requested by the Applicant, asserting that the degree of relief requested was excessive, and that the variance requests “arise from the presence of other uses on the property, which is not an ‘exceptional situation or condition.’”

Persons in support. The Board received letters and heard testimony from persons in support of the application. The persons in support generally cited the need for the emergency shelter and stated that the subject property was an appropriate location for the use, that the size and operation of the planned shelter would not be objectionable, and that the emergency shelter use would not generate adverse impacts in the surrounding neighborhood, including with respect to parking and neighborhood character, especially considering the presence of similarly sized buildings along Rhode Island Avenue. The persons in support commented favorably on the design of the planned emergency shelter, especially with respect to the retention of aspects of the existing building, and asserted that approval of the application would be consistent with policies stated in the Comprehensive Plan.

Persons in opposition. The Board also received letters and heard testimony from persons in opposition to the application. The persons in opposition commented unfavorably on the site selection process for the proposed emergency shelter. With respect to the emergency shelter use, the persons in opposition generally objected to the size of the proposed building, in terms of both its height and the number of residents, and asserted that the location of the shelter on the subject property would cause adverse impacts with respect to traffic, parking, noise, and light, and would not be consistent with zoning requirements or with the character of the surrounding neighborhood. The persons in opposition objected to changes to the existing building on the site and contended that the planned emergency shelter would not be consistent with the Comprehensive Plan or with a small-area plan for the area around Rhode Island Avenue in the vicinity of the subject property.

FINDINGS OF FACT

1. The subject property is located on the northeast corner of the intersection of 17th Street and Rhode Island Avenue, N.E. (Square 4134, Lot 800). The lot area is 12,336 square feet.
2. The subject property is irregularly shaped but generally rectangular, with approximately 113 feet of frontage on Rhode Island Avenue (on the south) and 150 feet of frontage on 17th Street (on the west). The northern property line, approximately 100 feet long, abuts a

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parcel improved with a four-story apartment house, now under construction. The subject property abuts a public alley, 15 feet wide, for approximately 97 feet along the eastern property line. The alley extends from Hamlin Street to the north to Rhode Island Avenue to the south.

3. As a corner lot, the subject property is bounded by public space along two streets, with setbacks of 20 feet along Rhode Island Avenue and 25 feet along 17th Street.
4. The subject property is improved with a brick building located in the southwestern portion of the parcel, and with a monopole communications antenna tower, 150 feet tall, and a small (360 square feet) utility building supporting the antenna functions, located in the northeastern corner of the property.⁵ The existing improvements result in a lot occupancy of 28 percent and a floor area ratio of 1.0 at the subject property.
5. The brick building was constructed in the 1920s as a police station but has been decommissioned and is now vacant. The building is three stories (approximately 41.3 feet) in height. A one-story rear addition was previously built to enlarge the building on the northern side.
6. The subject property is located within convenient walking distance of Metrobus stops on Rhode Island Avenues and other nearby streets. The Rhode Island Avenue Metrorail station is located approximately one mile southwest of the site. (Exhibit 7.)
7. Bicycle- and car-sharing options are accessible within a mile of the subject property. Bicycle facilities in the area include exclusive and shared bicycle lanes on several nearby streets, as well as access to the Metropolitan Branch Trail. (Exhibit 29.)

Program needs

8. More than 7,000 persons experience homelessness in the District of Columbia on any given night. They currently include 941 families in emergency shelter, including approximately 600 families now staying in “overflow” hotels. Almost half of the families now served in emergency shelters are headed by a parent – usually a mother age 24 or younger – with infant children. Approximately 60 percent of residents at emergency shelters are children. (Exhibits 185, 186, 210.)
9. The Department of Human Services administers the Homeless Services Reform Act of 2005 (“Homeless Services Reform Act”), effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code §§ 4-751.01 *et seq.*), which established requirements for the delivery

⁵ The antenna and telecommunications facility were approved by special exception, subject to conditions, as part of the District’s emergency communications network. *See* Application No. 16991; order issued March 19, 2003. The Applicant states that the antenna is “operational and would require adding over \$1 million to the project budget to re-locate it offsite.” (Exhibit 7.)

of publicly funded services for homeless persons and specified that eligible clients had the right to shelter in certain severe weather conditions. The District was required to make available appropriate space in District of Columbia public or private buildings and facilities for any person in the District who was homeless and could not access other shelter. The Mayor was directed not to place homeless families in non-apartment style shelters. (D.C. Official Code §§ 4-753.01, 4-754.11.)

10. The Homeless Services Reform Act specified that the District's provision of homeless services must be based on a Continuum of Care that offers a comprehensive range of services through various member agencies and is designed to meet the specific, assessed needs of individuals and families who are homeless or at imminent risk of becoming homeless. (D.C. Official Code § 4-753.01.) The District is required to respond to the changing needs of individuals and families by ensuring that transfer between and among services within the Continuum of Care is fluid and allows clients to modify the intensity of services they receive to meet their needs, preferences, and changing circumstances. (D.C. Official Code § 4-753.01(a).)
11. The Continuum of Care may include a range of services, including (a) shelter to meet the housing needs of individuals and families who are homeless through the provision of temporary shelter for families for the purpose of meeting short-term housing needs and other supportive service needs, and (b) supportive services for the purpose of providing families who are homeless or at imminent risk of becoming homeless with services that address their housing, employment, physical health, mental health, alcohol and other substance abuse recovery, child care, case management, transportation, and other health and social service needs which, if unmet, may be barriers to obtaining or maintaining permanent housing. These services may be delivered through shelters. (D.C. Official Code §§ 4-753.01(b)(3)(C), 4-753.01(b)(5).)
12. The Homeless Services Reform Act created the D.C. Interagency Council on Homelessness ("ICH") for the purpose of facilitating interagency, cabinet-level leadership in planning, policymaking, program development, provider monitoring, and budgeting for the Continuum of Care of homeless services. (D.C. Official Code § 4-752.01(a).) The ICH is chaired by the City Administrator and is charged with providing leadership in the development of strategies and policies that guide the implementation of the District's policies and programs for meeting the needs of individuals and families who are homeless or at imminent risk of becoming homeless. (D.C. Official Code §§ 4-752.01(a), 4-752.01(a).)
13. The District previously sheltered homeless families at the D.C. Village shelter "in conditions described as 'overcrowded,' 'pest infested,' and 'inhuman'" until beginning to shelter families at D.C. General, a former hospital that "was not intended to be used for the purpose of sheltering families," in 2007. The D.C. General family shelter was intended as a temporary measure but "remains the District's primary emergency family shelter,

housing 250 to 300 families experiencing homelessness. (Exhibit 184.)

14. In 2015 the Interagency Council on Homelessness participated in the development of Homeward DC, the District's strategy to end homelessness. Homeward DC is a five-year strategic plan to prevent and end homelessness that was devised based on research and experience and in recognition of best practices and evidence-based models from across the country. Homeward DC calls for the development of "service-enriched, community-based shelters" that are smaller in scale than the D.C. General family shelter, which is proposed to be closed by the 2019-2020 hypothermia season. According to DHS, the temporal aspect of the Homeward DC goal is critically important both from a cost perspective and as a means to provide suitable shelter for families who are experiencing homelessness. (Exhibit 186.)
15. Two principal components of Homeward DC are the need to provide a total of 280 residential units to replace the D.C. General family shelter, and the need to provide emergency shelters that will serve families in a smaller, more dignified environment than is provided at the D.C. General family shelter. Each new community-based shelter was intended to be "economically feasible and able to be developed within a 24-30 month timeline," and located on a site close to Metrobus transportation and other services and amenities. (Exhibits 185, 186.)
16. By letter dated September 18, 2015, Mayor Muriel Bowser transmitted legislation to the Council entitled the "Advancing Year Round Access to Shelter Policy and Prevention of Homelessness Amendment Act of 2015" (now known as "Interim Eligibility and Minimum Shelter Standards Act of 2015") ("the Interim Eligibility Act").
17. The Committee Report for the bill⁶ explained the need for the legislation as follows:

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

(Exhibit 184.)
18. The Committee Report indicated that there was "widespread agreement that D.C. General

⁶ Council of the District of Columbia, Committee of the Whole, Committee Report on Bill 21-352, "Interim Eligibility and Minimum Shelter Standards Amendment Act of 2015."

is inadequate to meet the needs of families experiencing homelessness and should be closed.” The report noted that Mayor Vincent Gray had “offered a plan to replace D.C. General with a network of smaller shelters located throughout the city” in 2014. In order to implement this model Mayor Bowser sought Council “authorization to depart from the existing legal preference to provide apartment-style shelter” and instead “to utilize private room units to replace D.C. General.”

19. The Committee Report emphasized that “the District’s strategy should be not only to close D.C. General, but to replace the inappropriate existing facilities with new facilities that meet the needs of those they serve and to do so in a way that adheres to the standards of dignity we expect as a government. Thus ... we should also seek to provide our homeless population with housing that is safe, humane, and in the interest of public health.”
20. As enacted, the Interim Eligibility Act, *inter alia*, amended the Homeless Shelter Reform Act to authorize the Mayor to provide shelter to a family in a private room meeting certain minimum standards and constructed for the purpose of closing the D.C. General family shelter.
21. Those private rooms are referred to as “DC General Family Shelter replacement unit,” a term defined as “a private room that includes space to store and refrigerate food and is constructed by or at the request of the District for the purpose of sheltering a homeless family.” (D.C. Official Code § 4–751.01(11A).) A “private room” is defined as a part or division of a building that has: (A) four continuous non-portable walls meeting both the ceiling and floor; (B) a door that locks from both the inside and outside as its main point of access; (C) sufficient insulation from sound; (D) lighting within the room that the occupants can turn on or off as desired; and (E) access to on-site bathroom facilities, including a toilet, sink, and shower. (D.C. Official Code § 4–751.01(28A).)
22. Buildings composed of D.C. General Family Shelter replacement units (“Replacement Units”) must include, at minimum, a private bathroom – including a toilet, sink, and bathtub or shower – in at least 10 percent of the Replacement Units. One private, lockable bathroom that includes a toilet, sink, and bathtub and is accessible to all residents must be provided for every five Replacement Units. At least two multi-fixture bathrooms must be provided per floor, with multiple toilets, sinks, and showers. (D.C. Official Code § 4-753.01(d)(3).)
23. The Mayor was directed to maintain a minimum of 280 D.C. General Family Shelter Replacement Units in the District’s shelter inventory, once the Replacement Units were constructed. (D.C. Official Code § 4–753.01(d)(5).)
24. In 2016 Mayor Muriel Bowser announced an initiative entitled “A Plan to Close D.C. General: Short Term Family Housing in All 8 Wards.” The plan called for the replacement

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of the family shelter at the former D.C. General Hospital with smaller shelters on sites throughout the District. (Exhibit 183.)

25. Under the 2016 initiative to close the D.C. General family shelter and establish new emergency shelters with a maximum of 50 family units each, the Mayor proposed seven sites as potential locations for the new shelters, and proposed to build some of the shelters on sites leased by the District. (Exhibit 183.)
26. The sites proposed by the Mayor were identified after the District undertook a search for properties in each ward that could meet the relevant criteria: that is, sites capable of providing a total of at least 280 units, so as to replace the emergency shelter at D.C. General; were economically feasible; were close to public transportation and other services and amenities; and could be developed within 24 to 30 months. The search considered District-owned properties as well as properties to purchase or lease. (Exhibit 183.)
27. In Ward 5, the Mayor selected, as the site for a new emergency shelter, a parcel at 2266 25th Place, N.E.
28. Under District law, the Mayor could not proceed with the leases, land acquisition, and construction proposed without Council approval.
29. Therefore, through a letter from Mayor Muriel Bowser to Council Chairman Mendelson, dated February 11, 2016, The Mayor proposed legislation, entitled the “Homeward DC Omnibus Approval of Facilities Plan for Short-term Housing for Persons Experiencing Homelessness Act of 2016,” to seek Council approval for the Mayor’s acquisition and construction plan and for certain proposed transactions for the development of short-term housing facilities for families and individuals experiencing homelessness.
30. In her letter Mayor Bowser “committed to closing DC General” and recognized that, to do so, “we need alternative, safe, and dignified places for families experiencing homelessness,” noting that “[b]est practices suggest that children and families do best when short-term housing is provided in smaller-scale, service-enriched, community-based settings.” The Mayor proposed legislation so that the Council could “express support for and intent to approve impending contracts for short-term housing for persons experiencing homelessness [and to] specify the process for Council approval of these contracts.... The Mayor stated that

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

31. The transactions included a lease between the District and Jemal's Tony LLC for a facility in Ward 5 for approximately 50 families experiencing homelessness, at a cost of approximately \$2.04 million annually, consistent with a letter of intent entered into between the District and Jemal's Tony LLC, dated November 2, 2015. (Homeward DC Omnibus Approval of Facilities Plan for Short-term Housing for Persons Experiencing Homelessness Act of 2016, Sec. 2(a)(4).)
32. The Council of the District of Columbia endorsed aspects of the Mayor's plan – especially the intention to end use of D.C. General as an emergency shelter for families – but “disagreed with three of the seven sites proposed by the Mayor, and disagreed with the economics of the Mayor's plan – namely that five of the seven sites would be leased...” On March 17, 2016, the Council held a public hearing to address site selection for the emergency shelters, which lasted almost 12 hours and for which more than 80 citizens registered to testify. In May 2016, the Council voted unanimously to direct the Mayor to change three of the sites selected for new shelters – among them the site in Ward 5 – and “to change the economic structure of the plan so that all of the sites would be owned, not leased” by the District. The Council also appropriated a capital budget of \$125 million for the plan. (Exhibit 183.)
33. The Councilmembers received suggestions for alternative sites at the public hearing and subsequently, including “approximately a dozen alternative sites” for the Ward 5 shelter. As described in the testimony of Council Chairman Phil Mendelson, the Council “considered a number of suggested locations” before considering two locations as “the most preferable: The Penn Center Building ... in Eckington (326 R Street)” and the subject property. “For each, site acquisition would be easiest and cheapest, since the properties are already city-owned and there was community support for the Rhode Island Avenue site.” Ultimately “the Council dropped the Penn Center site” after learning that D.C. Public Library “already had plans to use the building as it begins renovation of the Martin Luther King Library.” The Council concluded that, “[w]hen all of the factors ... [were] taken together, all of the suggested locations, including the Mayor's proposal, were less reasonable than 1700 Rhode Island Avenue.” The Council endorsed the selection of the subject property and found no other reasonable sites for an emergency shelter in Ward 5. (Exhibit 183; Mendelson, Transcript (“Tr.”) of March 1, 2017 at 16.)
34. The “Homeward DC Omnibus Approval of Facilities Plan for Short-Term Housing for Persons Experiencing Homelessness Act of 2016” was renamed the “Homeless Shelter Replacement Act of 2016.” In its report on the Act (Bill 21-620), the Council stated that Bill 21-620 presented “a clear plan for how the District will replace D.C. General and, notably, will be fully funded through Bill 21-668, the *Fiscal Year 2017 Local Budget Act of 2016*. The Council report also stated that Bill 21-620 was

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

(Exhibit 184.)

35. The Homeless Shelter Replacement Act of 2016 (D.C. Law 21-141, effective July 29, 2016; D.C. Official Code § 4-754.01 Note) authorized the Mayor, at Section 3(a), to use designated funds to provide temporary shelter for families experiencing homelessness by constructing six facilities containing D.C. General Family Shelter replacement units, as defined in The Homeless Services Reform Act, to replace the D.C. General family shelter. Section 3(a)(4) authorized the Mayor "to use funds appropriated for capital project 'HSW05C—Ward 5 Homeless Shelter' to construct a facility to provide temporary shelter for families experiencing homelessness containing up to 50 DC General Family Shelter replacement units on District-owned land at 1700 Rhode Island Avenue, N.E., Square 4234, Lot 800...." The Act appropriated up to \$100 million for the specified purposes. (Section 3(b).) The Mayor was authorized to use funds appropriated for capital project THK16C – Temporary and Permanent Supportive Housing Pool Project for any acquisition or construction authorized by the Act, the cost of which exceeded the amount appropriated for HSW05C – Ward 5 Shelter. (Section 3(c).)
36. The Homeless Shelter Replacement Act reflected the Council's findings, in Section 2, that:

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

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

It is in the best interest of the District to construct these new temporary-shelter facilities on District-owned land, in part to avoid the disruption to the provision of services in the continuum of care that would accompany the eventual expiration of leases. (Paragraph 7.)
37. The D.C. Council's Committee Report on Bill 21-620, "*Homeless Shelter Replacement Act of 2016*," provides an overview of homelessness in the District of Columbia and the "new

approach to sheltering families experiencing homelessness.” The report notes that replacement of the D.C. General family shelter by “a similar number of new family units, but in smaller facilities purposely designed with the intention of housing families experiencing homelessness will immediately eliminate some of the most pressing problems that exist at D.C. General” in part because “smaller facilities with fewer families will likely be easier to manage.” The Committee Report concludes that “[r]eplacement of D.C. General offers the District a unique opportunity to design a system of shelter facilities with a focus on prioritizing the needs of clients and takes into account lessons learned over decades of providing shelter and services in inadequate facilities.” (Exhibit 184.)

38. The Applicant’s proposed emergency shelter was designed to comply with the statutory requirements and to incorporate standards and guidelines devised by the Interagency Council on Homelessness and the Department of Human Services based *inter alia* on research including studies of best practices. As a result:
- (a) The emergency shelter will provide 46 sleeping units, consistent with the policy to replace the beds currently provided at the D.C. General family shelter with smaller facilities in locations around the District.
 - (b) The number of sleeping units per floor is generally limited to 10, to encourage a predictable environment in which each family could experience greater privacy, without excessive noise or turbulence in the hallways, at a scale where the common rooms on each floor would feel more like community living rooms than anonymous cafeterias or auditoriums. (Exhibit 186.)
 - (c) Each floor is designed to provide a direct line of sight down the floor’s single central hallway, which will enhance personal safety by removing hiding places so that the program operator can ensure safety without the need for more intrusive security measures. Activities in the common areas and hallways will be monitored by staff stationed at the security desk on each floor 24 hours per day. (Exhibit 186.)
 - (d) The emergency shelter will not use congregate, dormitory-style bathrooms but will provide bathrooms that will accommodate only one person at a time, with at least one private bathroom for every two family units and some rooms having en-suite private bathrooms to accommodate families with special needs. (Exhibit 186.)

Emergency shelter use

39. The Applicant proposes to construct and operate an emergency shelter at the subject property. A new addition will be constructed to the north and east of (but not over) the existing building, after the existing one-story addition is removed. The existing building will be renovated and adapted for use, together with the new addition, as an emergency

shelter containing 46 residential units, space for support services, administrative offices, and recreational space and other common areas for the residents.

40. The emergency shelter will meet all applicable code and licensing requirements, and will be operated consistent with the Short-Term Family Housing programs administered by the Department of Human Services for the purpose of providing immediate support to families experiencing homelessness.
41. The main entrance to the emergency shelter will be located in the new addition, accessible from 17th Street. The building will not be accessible from Rhode Island Avenue; the entrance to the existing building, which faces Rhode Island Avenue, will be converted to an emergency exit.
42. The ground floor will be used primarily for a large multipurpose room for dining and for group meetings, conference rooms, a computer room for residents, and work stations and other areas for employees of the emergency shelter.
43. Consistent with the Short-Term Family Housing programs, the emergency shelter will provide private meeting space for the provision of “wrap-around” services designed to assist residents in obtaining permanent housing more quickly. The services are intended to provide connections to permanent housing programs, housing search assistance, credit counseling, and budgeting, as well as to offer assistance in meeting needs such as childcare, health care, training, and employment services. Much of the space devoted to the provision of wrap-around services will be located on the ground floor. (Exhibits 29, 36.)
44. The emergency shelter will provide 46 residential units, with a capacity of up to 150 beds, in a six-story building containing approximately 47,000 square feet of gross floor area. The Applicant anticipates an average of 138 residents of the emergency shelter at any given time, of whom approximately 60 percent will be children.
45. The second and third floors of the new emergency shelter will each contain 11 residential units, utilizing space in both the existing building and the new addition. The upper floors (four through six) will each contain eight residential units located entirely in the new addition. (Exhibits 5, 36A1.)
46. Each residential floor will provide common areas accessible to residents, with laundry facilities, microwave ovens, storage space, and study rooms. Staff monitors will be stationed near the common areas on each residential floor in locations that will provide a line of sight encompassing the elevators and the entire lengths of the corridors.
47. The residential units will be arranged so that two or three units on each floor will have private bathrooms; other bathrooms will be shared by two units. Some residential units will have adjoining doors to accommodate larger families when needed.

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48. The residential units will be fully furnished. Residents found eligible for emergency shelter will be permitted to bring personal belongings but not large furniture. (Exhibits 94A, 186.)
49. The existing building has a full basement, and a small basement will be constructed under the new addition to house some mechanical equipment associated with the antenna tower. The basement level of the building will be devoted primarily to storage, mechanical functions, and areas for employees of the emergency shelter. (Exhibits 7, 36A1; McGhee, Tr. at 43-44.)
50. In conjunction with construction of the new addition, the tower array of the monopole will be raised 15 feet to a location above the new addition, and a generator and other equipment associated with operation of the antennas will be relocated from the top of the utility building to the basement of the new addition. The utility building will be incorporated into the new construction. (McGhee, Tr. at 37.)
51. The Applicant asserted that operation of the antenna tower will not create any safety issues for the emergency shelter or surrounding properties, citing a study of radio frequency ("RF") electromagnetic fields performed at the site by an engineering firm. The study indicated that the location of the antenna tower adjacent to the new emergency shelter will comply with rules and regulations of the Federal Communications Commission ("FCC") for RF emissions upon implementation of certain corrective actions. (Exhibit 94A; McGhee, Tr. at 37.)
52. Two areas for outdoor recreation will be made available to residents of the emergency shelter, both with seating and with play areas designed for children of various ages. One outdoor area will be provided along the northern edge of the subject property, approximately 10 feet wide. The other, located in the southeastern portion of the property, will include a low seat wall with screening, including plantings. (Exhibit 36A1.)
53. The Applicant will install and maintain landscaping in public and private space around the emergency shelter building. Several large oak and spruce trees now on the subject property will be retained. Plantings will include a perennial garden near the entrance, grassy areas in the vicinity of the existing building, and shrubbery to screen the southeastern outdoor recreation area. A wooden privacy fence will be installed along the northern and western perimeters of the property.
54. Along Rhode Island Avenue, a chain link fence and existing overgrown shrubs will be removed so as to provide open views of the existing building and pedestrian-friendly gardens along the public sidewalk. New fencing – as planned, a short brick retaining wall topped with a screen – will be installed along the southern property line, located approximately 20 feet from the sidewalk to maintain the privacy of the open recreation area for use by shelter residents. Along 17th Street, landscaping will include a new lawn to

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- define the area near the entrance to the emergency shelter and emphasize the façade of the existing building.
55. Meals will be prepared off-site and delivered to the emergency shelter twice daily in vans. (Exhibit 186.)
 56. Trash will be stored for collection in bins on the east side of the building, accessible via a service entrance situated between the telecommunications tower and the parking area. Trash collection is anticipated to occur three times per week.
 57. The emergency shelter will be operated by a staff typically ranging from 10 to 22 employees. At least 10 employees will be on-site at all times, and as many as 26 could be at the facility during shift changes. Because of the timing of the shift changes, at 7:00 a.m., 3:00 p.m., and 11:00 p.m., the arrival times of most employees will not coincide with the times of peak traffic on streets in the vicinity of the subject property.
 58. The Applicant will implement a transportation demand management (“TDM”) program designed to minimize the traffic impacts of the emergency shelter use by reducing travel demand by single-occupant vehicles during peak travel times. Elements of the TDM plan will include designation of a TDM coordinator, who will develop and distribute information about transportation facilities and services, and the provision of transit subsidies and bicycle amenities. All residents of the emergency shelter will receive SmarTrip vouchers to encourage public transit use. Children who are enrolled in a D.C. public school or charter school are eligible to receive a DC One Card, which permits free travel on Metrorail and Metrobus. (Exhibit 29.)
 59. Residents of the shelter will not be permitted to park vehicles on site. Based on its experience at other emergency shelters, the Applicant projects that less than one percent of shelter residents will own a vehicle, and that most residents will likely utilize non-automobile transportation options such as public transit, bicycles, or walking to travel to and from the emergency shelter. (Exhibit 29.)
 60. The Applicant proposed to designate 30 feet of curb space along 17th Street as a pick-up and drop-off zone for residents of the emergency shelter. Parking would not be permitted within the zone. An existing curb cut on 17th Street, also 30 feet wide and currently used to provide vehicular access to the northern portion of the subject property, will be removed.
 61. The block of 17th Street adjoining the subject property is currently subject to the Residential Permit Parking (“RPP”) program. Parking on Rhode Island Avenue in the vicinity of the subject property is time-restricted.
 62. The emergency shelter use will meet zoning requirements for short-term and long-term bicycle parking, in accordance with Subtitle C § 802.1, by providing at least four short-

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term bicycle parking spaces and four long-term bicycle parking spaces. Bicycle racks for short-term parking will be installed in public space, subject to DDOT approval, at the western entrance of the facility along 17th Street. Long-term bicycle parking spaces will be provided inside the building. (Exhibits 29, 43.)

63. The Applicant will provide four vehicle parking spaces in a surface lot located under an overhang of the new addition on the eastern portion of the site, accessible from the alley. Three of the parking spaces will be reserved for use by employees of the emergency shelter.
64. The fourth parking space will be designated as a service/delivery space for use by vehicles making deliveries to the property via the public alley. The Applicant anticipates that the designated loading area will be used primarily by vehicles no larger than a 19-foot delivery van for deliveries of food and supplies.
65. Approximately six deliveries are expected per day at the emergency shelter, including trash collection. Of those six deliveries, three are anticipated to involve passenger pick-ups and drop-offs that are likely to occur at the main entrance on 17th Street. Two of the daily deliveries will be made by vans bringing meals to the shelter at known arrival times. (Exhibits 29, 36, 43, 47.)
66. The Applicant will implement a loading management plan to coordinate deliveries to the subject property. Pursuant to the loading management plan: (a) The building management will designate a loading manager who will coordinate and schedule deliveries where possible, and will be on duty during delivery hours. (b) Loading operations will be limited to daytime hours of operation, with signage indicating these hours posted prominently at the loading zone. (c) Trucks using the loading zone will not be allowed to idle and will be required to follow all District of Columbia guidelines for heavy vehicle operation, including those with respect to engine idling and primary access routes. (Exhibit 29.)
67. A “community advisory team” was formed as part of the Mayor’s community engagement process related to the emergency shelter initiative in Ward 5 to coordinate community feedback and input, share information on issues and concerns, and comment on building designs to help ensure that the new shelter building would reflect the character the surrounding neighborhood. The Ward 5 community advisory team will conduct “ongoing discussions about specific concerns” with respect to the emergency shelter and will “provide feedback on concerns related to resident quality of life during construction and help develop” a “good neighbor agreement” for the program. The good-neighbor agreement, between the service provider of the emergency shelter and the advisory team on behalf of the community, will address expectations and commitments regarding exterior facility and landscape maintenance, community safety, neighborhood codes of conduct, and communication, problem-solving, and mutual respect. (Exhibits 185, 186.)

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68. The emergency shelter building will be certified as LEED Gold, thereby minimizing its impact on surrounding properties with respect to light, fumes, noise, and storm water management. Compliance with requirements for LEED Gold certification will require the Applicant to install noise-dampening mechanical equipment at the emergency shelter building. (Exhibit 210; McGhee, Tr. at 40-41.)
69. Construction of the new addition to the existing building for use as an emergency shelter will increase lot occupancy at the subject property from the existing 28 percent to 73 percent.
70. The subject property is a corner lot, and the Applicant has selected the 17th Street frontage as the front; therefore, the rear lot line abuts the public alley along the east side of the lot.
71. The Applicant proposes to build the new addition to the rear lot line along much of the eastern edge except for an area, 12 feet wide, along the northern edge and an area in the southeastern portion of the property that will be devoted to open recreation space for residents of the emergency shelter. Where the building is constructed to the eastern (rear) lot line, the rear yard setback will be 7.5 feet, as measured from the center line of the abutting alley for that portion of the building below a 25-foot plane. No rear yard setback will be provided for portions of the building above the 25-foot plane.⁷
72. The rear-facing windows in the new addition will abut the public alley and will not be directly in front of another building. The rear-facing windows will be located more than 40 feet from any other building. No habitable rooms will be located at the rear of the new addition such that sight lines will penetrate into the habitable rooms.
73. The planned emergency shelter building will have a non-rectangular open court on the southern portion of the subject property between the existing building and the new construction. The open court will be 19.25 feet at the widest, and the largest circle that could be inscribed in the court would have a diameter of 17 feet.⁸
74. The Applicant proposes to construct the new addition to a height of 69.8 feet to house the emergency shelter use.

⁷ Pursuant to Subtitle G § 405.4, on a lot in the MU-4 zone a horizontal plane may be established at 20 feet above the mean finished grade at the middle of the rear of the structure for the purpose of measuring rear yard. Subtitle G § 405.5(a) prescribes a method to measure rear yard when a lot in MU-4 abuts an alley: (1) for that portion of the structure below a horizontal plane described in Subtitle G § 405.4 from the center line of the alley to the rear wall of the portion; and (2) for that portion of the structure above the horizontal plane described in Subtitle G § 405.4, from the rear lot line to the rear wall of that portion immediately above the plane.

⁸ See Subtitle B § 100.2, "Court, Width of" definition: The minimum horizontal dimension substantially parallel with the open end of an open court or the lesser horizontal dimension of a closed court; or, in the case of a non-rectangular court, the diameter of the largest circle that may be inscribed in a horizontal plane within the court.

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75. The existing building is not a designated historic landmark and is not located in a historic district, but is considered eligible as a historic resource due to its age and status as a building of the District of Columbia Government. The Applicant therefore opted to treat the existing building with the same level of protection as would be accorded a designated historic landmark. (Exhibits 7, 36, 49; McGhee, Tr. at 83-84.)
76. The new addition to the existing building was designed, after consultation with the Historic Preservation Office in the Office of Planning, to retain the most significant portion of the existing building and to retain views of the existing building from Rhode Island Avenue and from 17th Street. The new addition will be constructed predominately on the north and east sides, rather than over the existing building. (Exhibits 7, 36, 49.)
77. The adaptive reuse of the existing building will contribute as much as eight feet to the height of the new addition because the existing building was constructed three feet above grade, and because its three floors have atypically high floor-to-ceiling heights. The first floor has a height of 13 feet, the second floor is at 12 feet, and the third floor is at 11 feet. Floor-to-ceiling heights on the first three floors of the new addition will match those in the existing building, since the new addition will not be large enough to accommodate transitional ramps inside. By maintaining the existing floorplates and matching those heights in the new addition, the Applicant will avoid major demolition on the site, in keeping with historic preservation guidelines. (Exhibit 36; McGhee, Tr. at 46.)
78. The Applicant submitted shadow studies to illustrate the shading impacts of the new construction on the surrounding area. The studies depicted shadow impacts of both the planned new addition and a building of a size permitted on the site as a matter of right consistent with Inclusionary Zoning provisions. (Exhibits 94A, 94B2, 204D.)

MU Zoning classification

79. The subject property is located in a Mixed-Use (MU) zone, MU-4.
80. The Mixed-Use zones provide for mixed-use developments that permit a broad range of commercial, institutional, and multiple dwelling unit residential development at varying densities. (11 DCMR Subtitle G § 100.1.) The MU zones are designed to provide facilities for housing, shopping, and business needs, including residential, office, service, and employment centers. (Subtitle G § 100.2.) In the MU zones, buildings may be entirely residential, or may be a mixture of non-residential and residential uses. (Subtitle G § 100.4.)
81. The purposes of the MU zones include to: (a) provide for the orderly development and use of land and structures in the MU zones, characterized by a mixture of land uses; (b) provide for a varied mix of residential, employment, retail, service, and other related uses at appropriate densities and scale throughout the city; (c) reflect a variety of building types,

including shop-front buildings which may include a vertical mixture of residential and non-residential uses, buildings made up entirely of residential uses, and buildings made up entirely of non-residential uses; (d) encourage safe and efficient conditions for pedestrian and motor vehicle movement; (e) ensure that infill development is compatible with the prevailing development pattern within the zone and surrounding areas; (f) preserve and enhance existing commercial nodes and surroundings by providing an appropriate scale of development and range of shopping and service opportunities; and (g) ensure that buildings and developments around fixed rail stations, transit hubs, and streetcar lines are oriented to support active use of public transportation and safety of public spaces. (Subtitle G § 100.3.)

82. The MU-4 zone is intended to: (a) permit moderate-density mixed-use development; (b) provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core; and (c) be located in low- and moderate-density residential areas with access to main roadways or rapid transit stops, and include office employment centers, shopping centers, and moderate bulk mixed-use centers. (Subtitle G § 400.3.)

Nearby properties

83. The subject property is located in a Mixed-Use zone that encompasses areas on both sides of Rhode Island Avenue from 13th Street, N.E. to 24th Street, N.E. Nearby properties in the same MU-4 zone to the north and east of the subject property are devoted to commercial uses, especially automobile-related retail uses such as tire sales and used-car sales. A public library is located one block to the east, next to a large park complex extending from 18th Street to 24th Street between Franklin and Hamlin Streets.
84. A four-story apartment house is under construction on the lot, also zoned MU-4, that abuts the subject property to the north. The building is 46 feet in height and contains six dwelling units configured around an open court. The exterior wall facing the subject property is built on the property line and does not contain any windows. (Exhibits 7, 36, 197.)
85. Three other apartment buildings are located in the vicinity to the west of the subject property. Two of those buildings, located on Rhode Island Avenue near its intersection with Franklin Street, have five-and-a-half stories. The other, on Franklin Street south of the subject property, has four stories. (Exhibits 36, 36A.)
86. Properties to the north of the MU-4 district are zoned R-1-B and are improved primarily with two-story detached dwellings. Several detached dwellings are located to the immediate west of the subject property. A church is located in the same square, just west of the dwellings fronting on 17th Street.
87. The Rhode Island Avenue right of way is 130 feet wide in the vicinity of the subject property. The 17th Street right of way is 90 feet wide.

88. The detached dwellings closest to the subject property are located at least 110 feet from the western façade of the existing building. The existing building is built to the property line, while the dwellings on the west side of 17th Street have front yard setbacks of approximately 20 feet that supplement the distance provided by the 90-foot right of way. (Exhibit 94B2, p. 76; McGhee, Tr. at 33.)
89. No other property in Square 4134⁹ or within 500 feet of the subject property is presently used as an emergency shelter. (Exhibits 7, 36.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception under Subtitle U § 513.1(b) as well as certain other special exception and area variance relief to allow an emergency shelter for more than 25 persons in the MU-4 zone at 1700 Rhode Island Avenue, N.E. (Square 4134, Lot 800). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11 DCMR Subtitle X § 901.2.)

Emergency shelter use. Pursuant to Subtitle U § 513.1, certain uses, including an emergency shelter use, may be permitted in the MU-4 zone if approved by the Board as a special exception under Subtitle X, Chapter 9, subject to the provisions applicable to each use. In the case of an emergency shelter use considered under Subtitle U § 513.1(b), the provisions specify that no other property containing an emergency shelter for seven or more persons may be located either in the same square or within a radius of 500 feet from any portion of the site of the proposed emergency shelter (Subtitle U § 513.1(b)(1)); the proposed emergency shelter must provide adequate, appropriately located, and screened off-street parking to provide for the needs of occupants, employees, and visitors to the facility (Subtitle U § 513.1(b)(2)); the proposed emergency shelter must meet all applicable code and licensing requirements (Subtitle U § 513.1(b)(3)); the proposed emergency shelter must not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area (Subtitle U § 513.1(b)(4)); and a facility for more than 25 persons, not including any resident supervisors or staff and their families, can be approved only if the Board finds that the program goals and objectives of the District of Columbia cannot be achieved by a facility of a smaller size at the location and if there is no other reasonable alternative to meet the program needs of that area of the District (Subtitle U § 513.1(b)(6)).¹⁰

⁹ The Applicant's Exhibit 36 (p. 8) inadvertently referred to the Square of the property as "4124," not 4134.

¹⁰ Another provision – that the Board may approve more than one emergency shelter in a square or within 500 feet only when the cumulative effect of the facilities will not have an adverse impact on the neighborhood because of

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Based on the findings of fact, the Board concludes that the new building will be devoted to use as an emergency shelter, as that term is defined in the Zoning Regulations, and that the application satisfies the requirements for special exception relief in accordance with Subtitle U § 513.1(b). The Zoning Regulations define an “emergency shelter” as “[a] facility providing temporary housing for one (1) or more individuals who are otherwise homeless as that arrangement is defined in the Homeless Services Reform Act of 2005 ...; an emergency shelter use may also provide ancillary services such as counseling, vocational training, or similar social and career assistance.” (11 DCMR Subtitle B § 100.2.) The Department of Human Services has publicly referred to the facility as “short-term family housing” to avoid use of the term “shelter” and to convey that the facility is intended to provide “a supportive program for residents that is respectful and harmonious with the variety of housing types in the surrounding community.” (*See* Exhibit 186 at 5.) The Short-Term Family Housing programs implemented by DHS are subject to requirements in the Homeless Services Reform Act related to “temporary shelter” for families. The Board concurs with the Applicant that the planned use of the subject property is as a facility providing temporary housing under the Homeless Services Reform Act “and fits wholly into the zoning definition despite the publicized name of ‘Short Term Housing Facility.’” (Exhibit 186 at p. 6.)

The party in opposition argued that the Applicant’s proposed emergency shelter “stretches the contemplated scope of the special exception in [Subtitle] U § 513.1(b) beyond the breaking point” and therefore requires use variance relief. CFRO acknowledged that the Applicant “may seek to exceed the 25-resident maximum” specified in Subtitle U § 513.1(b)(6) but contends that “nothing in the regulations suggests that such authority would be unlimited.” According to CFRO, a facility of the size proposed in this proceeding – potentially serving 150 residents – is not “intended for the MU-4 zone” since the “magnitude of the deviation itself is compelling evidence of the inappropriateness of the development.” (Exhibit 55.) The party in opposition did not identify an alternative use category, but argued only that the Applicant’s planned use would not be an emergency shelter due to its size. The Board does not agree. The relevant zoning provision, Subtitle U § 513.1(b)(6), plainly allows a facility for more than 25 persons so long as the applicable requirements are met. In creating the provision that allows for special exception approval of an emergency shelter, the Zoning Commission could have imposed a limit on the size of the facility, but the Commission did not do so. In fact, the loading requirements applicable to emergency shelters contemplate facilities larger than 100,000 square feet -- more than twice the size of what is proposed here. (11 DCMR Subtitle C § 901.1.) The notion that a facility larger than 100,000 square feet would be subject to an unstated occupancy limit of less than 150 residents is preposterous. The Board therefore finds no reason to conclude that the number of residents alone would transform an emergency shelter use into some other use.

Certain requirements of Subtitle U § 513.1(b) are satisfied or do not apply to this application since the proposed emergency shelter will be the only such use in the vicinity of the subject property. They are Subtitle U § 513.1(b)(1), concerning other emergency shelters in the same square or within 500 feet, and Subtitle U § 513.1(b)(5), concerning the cumulative effect of multiple

traffic, noise, or operations (Subtitle U § 513.1(b)(5)) – is not applicable in this instance because no other facility is now located in the same square as or within 500 feet of the subject property.

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facilities. With respect to Subtitle U § 513.1(b)(3), the Board credits the Applicant's testimony, confirmed by the Office of Planning and not disputed by any testimony or evidence, that the proposed emergency shelter will meet all applicable code and licensing requirements.

Pursuant to Subtitle U § 513.1(b)(2), the proposed emergency shelter must provide adequate, appropriately located, and screened off-street parking to provide for the needs of occupants, employees, and visitors to the facility. The proposed emergency shelter at the subject property will have three on-site parking spaces reserved for use by employees of the facility.¹¹ The parking spaces will be appropriately located on the ground level, under a portion of the new addition, accessible from an existing public alley. The spaces will be located at a considerable distance from any neighboring dwelling. Views of the parking spaces will be minimal, given their location and the landscaping that the Applicant plans to install and maintain especially around the perimeter of the subject property.

The number of parking spaces provided on-site at the new emergency shelter will be adequate for the needs of occupants, employees, and visitors to the facility.¹² Both DDOT and the Applicant's traffic expert concluded that the emergency shelter will not generate a significant demand for parking. Based on the Applicant's experience at other emergency shelters, very few residents will have personal vehicles, and in fact approximately 60 percent of the residents will likely be young children. Residents of the emergency shelter will not be permitted to park on-site, and will receive transit subsidies to encourage use of public transportation. The number of employees will be relatively small, generally 10 to 22 employees, with a maximum of 26 during shift changes. The use of personal vehicles is not necessary for convenient access to the site, since the location is well-served by public transportation and conveniently located near car- and bicycle-sharing facilities, and the shelter building will provide both short-term and long-term bicycle storage.

In accordance with Subtitle U § 513.1(b)(4), the Board finds that the proposed emergency shelter will not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area. The emergency shelter at the subject property will be the only such facility in the vicinity. DDOT concurred with the Applicant's method of calculating trip generation estimates for the project, and concluded that "impacts to the surrounding vehicle network [associated with shelter operation] are expected to be minimal." (Exhibit 47.) The emergency shelter is not expected to generate significant increases in traffic, at a level that would have an adverse impact on the neighborhood, because most shelter residents likely will not travel to the site by personal vehicle, the shelter will be staffed by a relatively small number of employees who will work in shifts on a schedule that will not coincide with peak traffic periods on nearby streets, the residents will move in without bringing furniture or other large items typically delivered by trucks, and the internal circulation of the site, including a designated loading area and trash

¹¹ A fourth parking space will be reserved for use by vehicles making deliveries to the emergency shelter.

¹² Pursuant to Subtitle C § 701.5, the minimum requirement for zoning purposes for an emergency shelter of the size proposed by the Applicant is 22 parking spaces. The Applicant has requested a reduction in the number of required spaces in accordance with Subtitle C § 703.2, and as discussed in this order, the Board concludes that special exception approval of that reduction is warranted.

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storage area on the east side of the building, will be adequate to accommodate food deliveries by van and trash collection via the public alley. DDOT concluded that the Applicant's proposal for access to the loading facilities and off-street parking spaces was consistent with DDOT standards. DDOT also concurred that the Applicant's "proposed loading area is sufficient to accommodate the project and is consistent with DDOT standards," noting the relatively limited use of the facilities for meal deliveries and trash pick-up, and that all food and supply delivery will occur from vehicles no longer than 19 feet. (Exhibit 47.)

The emergency shelter use is not likely to generate any adverse impacts relating to noise or operations. Operation of the emergency shelter will be supervised by staff who will be on-site 24 hours each day. All operations will be contained within the building with the exception of the outdoor recreation areas, which will be screened from adjoining properties by landscaping and fences. Trash collection and deliveries will occur via the public alley on the eastern side of the building, at a considerable distance from the nearest neighboring residences. Operation of the emergency shelter use will be guided by a "good neighbor agreement" devised by a community advisory team that will conduct ongoing discussions to address any concerns about the emergency shelter that may arise in the future.

CFRO contends that the Applicant "has failed to meet its burden of proof for the relief it seeks" and that instead "the record before the Board ... will demonstrate the myriad ways in which [the Applicant's] optimistic vision is unfounded." The Board does not agree. The Applicant presented testimony in support of the application from numerous expert witnesses; its traffic analysis was corroborated by DDOT; and the Office of Planning concluded that the application met the requirements for approval of the requested zoning relief. The Board received letters in support of the application from the D.C. Fire and Emergency Medical Services Department (Exhibit 40) and the District of Columbia Public Schools (Exhibit 62) in addition to the recommendation of approval from the Office of Planning and the statement of no objection to approval of the requested zoning relief from the District Department of Transportation. The party in opposition presented testimony from residents living in the vicinity of the subject property that was principally anecdotal in nature, with unsubstantiated claims about traffic, parking, and impacts on light and air. In the determination of the Board, that testimony did not provide a persuasive basis to disregard the expert testimony and evidence presented by the Applicant.

The party in opposition also argued that the proposed emergency shelter would have an adverse impact on the neighborhood because of "the number of similar facilities in the area." The Board agrees with CFRO that "similar is not identical." (Kirlin, Tr. at 129.) However, the entities cited by CFRO are not "similar" for purposes of Subtitle U § 513.1(b)(4) because they are not facilities that provide temporary emergency shelter to families experiencing homelessness or closely related services. Rather, CFRO lists multi-family residential buildings that contain some affordable units, including a building providing permanent housing for seniors, and organizations that "provide housing support, medical support, educational support for disadvantaged individuals while they are homeless or they are seeking income assistance for housing or other assistance" (Kirlin, Tr. at

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129-130.)¹³ These properties include apartment houses and organizations providing social services, but are not “similar” to the Applicant’s proposal in that they offer permanent, rather than emergency, housing, or they are non-residential and offer a variety of social services, not necessarily related to the types of “wrap-around” services that the Applicant proposes to provide to residents of the new emergency shelter.

Pursuant to Subtitle U § 513.1(b)(6), an emergency shelter for more than 25 persons can be approved only if the Board finds that the program goals and objectives of the District of Columbia cannot be achieved by a facility of a smaller size at the location and if there is no other reasonable alternative to meet the program needs of that area of the District.¹⁴ The Board concludes that the District’s program goals and objectives cannot be achieved by a facility of a smaller size at the subject property because the size of the planned emergency shelter, in terms of the number of units, is required by the District policy to close the D.C. General family shelter and to provide a like number of emergency shelter units in smaller facilities on sites in locations around the District. By statute, the District of Columbia is required to maintain an inventory of 280 Replacement Units, once constructed. Provision of a total of 280 residential units is also a key component of the Homeward DC initiative devised by the Interagency Council on Homelessness. To achieve a total of 280 Replacement Units District-wide, each individual emergency shelter for families must contain between 46 and 50 sleeping units.

The Applicant indicated that the optimal number of units in an emergency shelter for families experiencing homelessness is 50, with a maximum of 10 units per floor. However, in this case, due to site constraints – especially the size of the subject property and the configuration of the existing building – the Applicant determined that the maximum number of units that could be provided was 46. The Ward 5 emergency shelter was designed to provide 11 units on the first two

¹³ The purportedly “similar” facilities cited by CFRO included the Violet Project at 1515 Rhode Island Avenue, N.E. “a 23 unit residence now under construction, which will include at least 3 low-income units”; a multi-family residential building at 1545 Girard Street, N.E. “advertised as 25 ‘affordable luxury apartments for seniors,’ but which houses ‘10 formerly chronically homeless individuals’”; three multi-family residential buildings that “all participate in DC’s Section 8 and housing voucher programs,” the Franklin, at 1511 Franklin Street, N.E., “54 units (unknown number of affordable units),” the Edwards Apartments at 1530 Rhode Island Avenue, N.E., “44 units (unknown number of affordable units),” and the Carrolton, 1515-1525 Franklin Street, N.E., “75 units (unknown number [of affordable units])”; the Veterans Administration Community Resources and Referral Center at 1500 Franklin Street, N.E.; the National Center for Children and Families at 1438 Rhode Island Avenue, N.E., “a referral facility which serves ‘homeless families, victims of domestic violence, and children and adolescents’”; Brookland Manor at 1331 Rhode Island Avenue, N.E., “a 20 acre, 19-building site with 535 low-income housing units, soon to be replaced by 1,760 residential units, including 200 senior plus 265 low-income housing units as developers set aside not 10%, but 20%, ‘affordable units’”; and the Department of Aging at 18th and Evarts Street, N.E. (Exhibits 119, 202; Kirlin, Tr. at 130-131.) According to information provided by the Applicant, the building at 1545 Girard Street, N.E. is a “25-unit senior community” for persons aged at least 55 years who earn less than 30 percent of the area median income, some of whom may be formerly homeless, and the Community Resource and Referral Center, at 1500 Franklin Street, N.E., is an element of the Washington DC Veterans Affairs Medical Center that provides services, such as employment assistance and counseling, to “homeless and at-risk” veterans but is “not a shelter.” (See Exhibit 204B.)

¹⁴ The emergency shelter proposed in this application will not include any resident supervisors or staff and their families.

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floors to maximize the use of space in the existing building while still meeting the statutory requirements and guidelines mandated by DHS and ICH, as described in Finding of Fact 38.

The decision to provide 46 residential units in the Ward 5 emergency shelter was also driven by program needs related to the provision of wrap-around services. The Applicant determined that a larger number of units in a single facility would help achieve program efficiencies and manage the costs of the services by allowing the provision of services to a larger number of people at one location, rather than building and operating multiple smaller facilities. The desire for efficiency and cost-management was balanced by the need to provide a smaller, family-scale environment on each floor and in the emergency shelter as a whole. The maximum number of sleeping units was set at 50 as the optimal balance between legal requirements and the program needs and costs.

The Board notes the concern of the Commission of Fine Arts that “there may be a mismatch between the size of the program and the constraints of this small site, which already holds a historic police station building and a cellular telecommunications tower and support shed.” However, the Board concludes that, despite the constraints of the subject property, the Applicant has designed “a new building that can reasonably meet the specified program ...” and does not agree that “there may need to be a reduction of units for this site” beyond the small decrease in the preferred number of units, from 50 to 46, necessitated by the adaptive reuse of the existing building. The Board finds no basis to conclude that relocation of the telecommunications facility “to another site,” as suggested by CFA, is feasible or desirable.

The Board was persuaded that construction of multiple smaller facilities on various sites in Ward 5 was not a feasible option. The Applicant’s witnesses described the importance of the six-story, 46-unit shelter considering the relevant legal requirements, the costs of providing the services, and the program needs of an emergency shelter facility for families with small children.¹⁵ The Applicant decided against building smaller shelters because the operation of multiple structures would require the operation of multiple programs, with significantly higher annual operating costs than a single 46-unit shelter. (Zeilinger, Tr. at 88-89, 260-261; Gillis, Tr. at 53.)

Construction of multiple smaller facilities would also “extend the timeline” by years until sufficient Replacement Units would become available to allow the closure of the D.C. General family shelter. Homeward DC calls for the development of “service-enriched, community-based shelters” on a schedule such that the D.C. General family shelter can be closed by the 2019-2020 hypothermia season. According to DHS, the temporal aspect of the Homeward DC goal is critically important from a cost perspective and to provide suitable shelter for families who are experiencing homelessness. (Exhibit 186; Zeilinger, Tr. at 222.)

¹⁵ The director of DHS testified that “the scale ... between 46 to 50 families, offers the right balance between effective and efficient service delivery and creating a quiet, familial setting where families can thrive.” The proposed size is also “necessary to achieve the legislative goal of replacing D.C. General with facilities for 280 families.” (Exhibit 186.)

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The size of the planned emergency shelter in terms of the dimensions of the building similarly reflects requirements of District laws and policies. The Homeless Services Reform Act, as amended by the Interim Eligibility Act, establishes standards for the provision of services for families by specifying the minimum requirements for a private room, for bathrooms, and for access to related services. Specific design elements of the emergency shelter proposed in this application were derived from the legal requirements as well as from research and experience, concerning especially the general maximum of 10 sleeping units per floor and the provision of a single hallway on each floor, so that the entire length is visible to staff, to enhance the residents' security.

ANC 5B and the party in opposition both objected to the proposed height, which CFRO described as "just too much." The ANC stated that "a shorter building would be more appropriate given the nearby single-family homes and the site's zoning" and that "permitting an increase in height from 40 feet to 70 would substantially impair the intent, purpose, and integrity of the zoning plan, because the height is not within the range of a low- to moderate-density zone." ANC 5B recommended that the Applicant should consider "making design revisions to the proposed building to reduce ... the height to be no taller than five floors while not reducing the private living space of incoming families." (Exhibit 208.) The Board does not agree, in part because ANC 5B understated the maximum height permitted as a matter of right in the MU-4 zone, which is 50 feet, and described the existing zoning as "a low- to moderate-density zone" while the MU-4 zone permits moderate-density mixed-use development. The Applicant's architect indicated that the 50 feet in building height allowed in MU-4 zone "is roughly a 5-story structure." (Exhibit 204A, p. 19.) The Applicant proposed a six-story building, and described the need for the additional story as essential to achieving a public purpose. The Applicant also indicated that use of basement space would not be appropriate for any of the shelter operations involving residents, given the need to offer inviting areas on the ground floor for the provision of support services. The Applicant emphasized that an emergency shelter with adequate space for 46 residential units, and a preferred maximum of 10 units per floor, required a six-story building. The ANC did not indicate what design revisions to the proposed building could achieve a reduction in height to be no taller than five floors "while not reducing the private living space of incoming families."

The Board does not agree with the members of the Commission of Fine Arts that the proposed massing of the new Ward 5 emergency shelter would be "too tall for its context," considering also the larger buildings located in the vicinity of the subject property, or that the new construction would overwhelm the former police station. The new construction will be built next to, rather than over, the existing building, and the design of the new addition incorporated suggestions from the Historic Preservation Office so that views of the existing building will be preserved.

The Board also disagrees with CFA's comment that "the typical floor plan contains unnecessary and redundant circulation space and could be rationalized to make floors more compact and efficient." The Applicant has demonstrated that other configurations suggested by the CFA are not feasible because they would not achieve all of the program needs faced by the Applicant, including the need to provide an adequate number of Replacement Units while achieving a suitable

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environment, including adequate outdoor recreation space, in a secure location for residents, also considering the costs of providing the necessary services.

The Board finds that the planned height of the emergency shelter will not cause any objectionable conditions relating to light, air, or privacy, given the distance of the building from nearby properties, including the detached dwellings across 17th Street to the west. The subject property is a corner lot with frontage on two streets with relatively wide rights of way, and the abutting public space is wide enough to provide a significant buffer between the emergency shelter and adjoining properties to the south and west. The new addition will provide a side yard on the northern property line, where none is required, and the windows in the emergency shelter will not align with windows in any nearby building, including the new apartment house on the abutting property to the north.

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

The Board concludes that the Applicant has satisfied the requirement of Subtitle U § 513.1(b)(6) in showing that there is no other reasonable alternative to the proposed Ward 5 emergency shelter to meet the program needs of that area of the District. This application grew out of a process, undertaken over a period of years, to devise and implement policies addressing homelessness in the District of Columbia. As part of the process, the responsible District agencies identified certain criteria to assess whether a given property would be a suitable location for an emergency shelter designed to serve families in D.C. General Replacement Units. The Mayor identified sites in each ward. The Council considered the Mayor's proposal, as well as other possible sites, before making a determination that the subject property best fit the selection criteria. The Council endorsed 1700 Rhode Island Avenue and found no reasonable alternative site in Ward 5 to meet the Applicant's programmatic needs. (Mendelson, Tr. at 17.) The City Administrator stated that the Applicant's "proposal to construct a six-story emergency shelter at this site is a critical element of the District's eight-ward initiative to developing a more effective crisis response system. (Exhibit 185.) The director of the Department of General Services testified that no other reasonable alternative was practical to meet the needs of the District. (Exhibit 187; Gillis, Tr. at 30.) The Office of Planning recommended approval of the emergency shelter proposed at the subject property, and other agencies – the Department of Transportation, the D.C. Fire and Emergency Medical Services Department, and the District of Columbia Public Schools – also indicated their support for the application.

The Board does not agree that any additional proof of a "meaningful" or "diligent" search is necessary, and concludes instead that the Applicant provided substantial evidence of the site selection process that ultimately led to the Council's endorsement of the subject property. The

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

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

Approval of the requested special exception will be in harmony with the purposes of the MU zone to provide for the orderly development and use of land and structures, characterized by a mixture of land uses; to provide for a varied mix of residential, service, and related uses at an appropriate density and scale; to reflect a variety of building types; encourage safe and efficient conditions for pedestrian and motor vehicle movement; and to ensure that infill development is compatible with the prevailing development pattern within the zone and surrounding areas. (*See* Subtitle G § 100.3.) Approval of the special exception will also be in harmony with the purposes of the MU-4 zone to permit moderate-density mixed-use development and to provide facilities for housing and mixed uses outside of the central core, in a location of a low- to moderate-density residential area with access to main roadways or rapid transit stops. (*See* Subtitle G § 400.3.)

Parking. The Applicant seeks special exception approval, pursuant to Subtitle C § 703.2, of a reduction in the parking requirement for an emergency shelter use under Subtitle C § 701.5. The zoning requirement for an emergency shelter of the size proposed by the Applicant is a minimum of 22 parking spaces, and the Applicant proposes to provide three on-site parking spaces. The Zoning Regulations, in accordance with Subtitle C § 703.1, provide flexibility from the minimum required number of parking spaces, *inter alia*, when the provision of the required number of spaces would be impractical or unnecessary due to a lack of demand for parking or proximity to transit. Pursuant to Subtitle C § 703.2, the Board may grant a reduction in the number of required parking spaces subject to the general special exception requirements and to the applicant’s demonstration of at least one of the eight enumerated conditions. A reduction in the required number of parking spaces must be only for the amount that the applicant is physically unable to provide, and must be

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proportionate to the reduction in parking demand demonstrated by the applicant. (Subtitle C § 703.3.)

In this case, the Applicant has demonstrated several of the conditions listed in Subtitle C § 703.2. Due to the physical constraints of the property, the required parking spaces cannot be provided on the lot or within 600 feet of the lot. (Subtitle C § 703.2(a).) More than 70 percent of the subject property will be occupied by the emergency shelter use, in the existing building and in a new addition, and by the existing telecommunication tower, or dedicated to outdoor recreation space for the residents of the emergency shelter. The Applicant will provide parking in the only feasible location on the subject property, where no more than three parking spaces can be created, along with a space devoted to loading activities. The required parking spaces cannot be provided on other lots within 600 feet of the subject property because none of the nearby lots is owned by the Applicant or available to provide parking spaces for the emergency shelter.

The emergency shelter use will be particularly well served by mass transit, shared vehicle, and bicycle facilities (Subtitle C § 703.2(b)), since the location offers convenient accessibility to mass transit service, especially Metrobus and Metrorail, as well as to shared vehicle and shared bicycle facilities. The subject property is located approximately one mile from a Metrorail station, and within convenient walking distance of numerous Metrobus stops, shared vehicle facilities, and bicycle facilities, including shared bicycles. Residents of the emergency shelter will receive transit subsidies to encourage use of public transportation.

The land use and transportation characteristics of the neighborhood minimize the need for required parking spaces. (Subtitle C § 703.2(c).) The subject property is located within walking distance of retail as well as institutional and recreational uses, including a public library and a large park. Use of the subject property as an emergency shelter will minimize the need for required parking spaces because shelter residents are unlikely to own personal vehicles and will not be permitted to park on-site.

The Applicant demonstrated that the amount of traffic congestion existing or which the parking for the building would reasonably be expected to create in the neighborhood supports the request for a reduction in the number of parking spaces. (Subtitle C § 703.2(d).) Both DDOT and the Applicant's transportation expert concluded that operation of the emergency shelter use would not generate adverse impacts with respect to traffic or parking, considering existing conditions in the neighborhood, the relatively small staff expected to be employed at the emergency shelter, and the absence of vehicles operated by shelter residents.

The nature of the emergency shelter use, and the number of residents, employees, and guests who would reasonably be expected to use the proposed building at one time will generate demand for less parking than the minimum parking standards. (Subtitle C § 703.2(e).) The emergency shelter will contain 46 residential units, housing a maximum of approximately 150 persons, but will generate a relatively low demand for parking. The Applicant's experience at other facilities has shown that very few residents of the emergency shelter are likely to own personal vehicles; in fact,

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more than half of the residents will likely be children. The emergency shelter will employ a relatively small number of employees, who will work in shifts so that the parking demand generated by the staff of the emergency shelter use will not be concentrated at any one time. The emergency shelter use is not likely to generate a significant number of guests or other visitors to the site.

The Board concludes, consistent with Subtitle C § 703.3, that the requested reduction in the required number of parking spaces, from 22 to three, will be only for the amount that the Applicant is physically unable to provide. As demonstrated by the Applicant's drawings in the record, the subject property will be unable to accommodate more than three parking spaces (plus a fourth space reserved for deliveries and trash collection) in light of the existing and planned improvements to the site to operate the planned emergency shelter use. The requested reduction is also proportionate to the reduction in parking demand demonstrated by the Applicant, as reflected in the satisfaction of several of the elements listed in Subtitle C § 703.2 as suitable grounds for approval of a reduction in the otherwise applicable parking requirement. Consistent with Subtitle C § 703.4, the Applicant will implement a transportation demand management plan, which DDOT reviewed and approved.

In accordance with Subtitle X § 901.2, the Board concludes that approval of the requested special exception to allow a reduction in the number of parking spaces 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. The grant of flexibility from the minimum required number of parking spaces is warranted, as demonstrated by the Applicant, since the provision of the required number of spaces would be impractical and unnecessary, and the requested reduction reflects the amount of parking that the Applicant is physically unable to provide and is proportionate to a reduction in parking demand associated with the planned emergency shelter use at the subject property. For the reasons discussed above, the Board finds that the proposed reduction in the number of on-site parking spaces will not create any adverse impacts on the use of neighboring property.

ANC 5B opposed the Applicant's request for parking relief on the ground that "construction at the site and parking thereafter will negatively impact elderly residents" in the immediate neighborhood. (Exhibit 208.) For the reasons discussed above, the Board does not agree. The emergency shelter use will generate relatively little demand for parking since residents will not drive their own vehicles, and the number of employees at the facility will also be relatively low. The streets in the immediate vicinity of the proposed shelter are currently subject to restrictions that help maintain the availability of street parking for nearby residents.

The Applicant also requests relief from requirements applicable in the MU-4 zone for lot occupancy, rear yard, and width of open court. Pursuant to Subtitle G § 409.1, the Board may approve exceptions to the development standards of the Mixed Use zones as a special exception consistent with Subtitle X, Chapter 9, subject to the provisions and limitations of Subtitle G, Chapter 12. Pursuant to Subtitle G § 1200.4, relief from the development standards may be granted

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when the Board finds that the special exception will be in harmony with the general purpose and intent of the MU zone, 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 Maps.

Lot occupancy. The maximum lot occupancy permitted as a matter of right in the MU-4 zone is 60 percent. (*See* Subtitle G § 404.1.) The new construction proposed in this application would increase lot occupancy to 73 percent.

The Board concurs with the conclusion of the Office of Planning that the increased lot coverage of the proposed addition will be consistent with the intent of the lot occupancy requirement to allow adequate light, air, and privacy to the proposed structure and to adjacent properties. In light of the widths of the rights of way of the two streets abutting the subject property, the emergency shelter facility will be located at a significant distance from uses on nearby properties. The building will be well separated from the residential uses along the west side of 17th Street, and will provide a side yard setback along the northern property line where none is required by the Zoning Regulations. The commercial uses to the east of the site will be separated by the public alley, thereby limiting any potential impact on light, air, and privacy and meeting the general intent and purpose of the regulations.

In accordance with Subtitle X § 901.2, the Board concludes that approval of the requested special exception to allow an increase in lot occupancy to 73 percent 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. The Zoning Regulations permit a lot occupancy as high as 75 percent in the MU-4 zone as a matter of right for projects utilizing the bonus density allowed by the provisions governing Inclusionary Zoning. (*See* Subtitle C Chapter 10.) As discussed above, the Board does not find that the proposed lot occupancy will create any adverse impacts on the use of neighboring property.

ANC 5B opposes the Applicant's request for lot occupancy relief on the ground that it drives the need to build a taller building. The Board does not agree. The proposed increase in lot occupancy reflects the relatively small size of the lot and the presence of existing improvements that will be retained. Similarly, the Board does not agree with CFRO's contention that the requested relief would result in "severe crowding of the site," especially considering that a higher percentage of lot occupancy is permitted as a matter of right under the Inclusionary Zoning provisions.

Rear yard. Pursuant to Subtitle G § 405.2, a minimum rear yard of 15 feet is required in the MU-4 zone. The Applicant proposes to build the new addition to the rear lot line along a portion of the eastern edge of the subject property, resulting in a rear yard setback of 7.5 feet as measured from the center line of the abutting alley, for the portion of the building below a 25-foot plane and no rear yard setback for portions of the building above the 25-foot plane. In addition, the existing antenna is located in the rear yard in the northeast corner of the property.

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The Board concurs with the conclusion of the Office of Planning that the proposed reduction in rear yard setback will be consistent with the intent of the zoning requirement to allow adequate light, air, and privacy to the proposed structure and to adjacent properties. The decreased rear yard will not affect any neighboring residential properties, and will have only a minimal impact on the abutting property to the east, given that the properties will remain separated by the public alley.

ANC 5B opposed the request for rear yard relief, expressing “concerns that the facility is being constructed near the antenna equipment building...” The ANC did not specify its concerns but the Board does not find that the presence of the antenna tower and related facilities will pose any danger to the emergency shelter or nearby properties. As OP notes, the antenna tower will be secured by a fence six feet high, while the existing utility building will be incorporated into the new addition. The Applicant submitted a study of radio frequency electromagnetic fields performed at the site to demonstrate in support of its contention that the antenna tower will comply with FCC requirements and will not create any safety issues for the emergency shelter or for surrounding properties.

CFRO argued that the request for rear yard relief was not adequately justified. The Board does not agree, particularly since CFRO’s objection is largely based on the Applicant’s decision to use the eastern property line as the rear of the lot and with its characterization of the relief as the result of a “mismatch between program size and lot size.” The Board was not persuaded by CFRO’s claim that the apartment house on the abutting lot to the north would suffer “significant adverse effects,” since the Applicant will provide a side yard setback between the two buildings, although none is required.¹⁶

In accordance with Subtitle X § 901.2, the Board concludes that approval of the requested special exception to allow a decrease in rear yard setback 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. The rear yard proposed by the Applicant will not create any adverse impacts on the use of neighboring property. The reduction in rear yard setback will comply with the requirements of Subtitle G § 1201 for special exception approval of rear yard relief, which mandate certain distances from neighboring windows and consideration of the angle of sight lines and the distance of penetration of sightlines into habitable rooms when determining distances between windows and appropriate yards. Approval of the requested rear yard relief will not hinder the provision of an area adequate for service functions, including parking and loading. The Applicant will provide three parking spaces on-site, the most that can be provided under the circumstances. The emergency shelter use will generate a relatively low demand for loading, which can be accommodated by means of the dedicated loading area on the east side of the new building, accessible from the abutting public alley. Use of the loading area will be subject to a loading management plan that was found appropriate by DDOT.

¹⁶ The members of the Commission of Fine Arts “noted that the building to the north has a party wall condition which provides the opportunity to extend this new building [i.e. the new addition proposed by the Applicant] toward the blank wall of this adjacent building rather than setting [it] so far back....” (Exhibit 106.)

Open court. Pursuant to Subtitle G § 202.1, a court is not required in an MU zone, but where an open court is provided, its minimum dimensions, in the case of a residential structure with more than three units, is four inches per foot of height of the court, with a minimum of 10 feet. Given the planned building height of 69.8 feet, the minimum width of the proposed open court is 23.33 feet. As proposed, the emergency shelter will have an open court on the southern portion of the subject property with an irregular width measured for zoning purposes at 17 feet. The dimensions of the open court were determined in part by the Applicant's design of the new addition so as to maintain views of the existing building from Rhode Island Avenue.

In accordance with Subtitle X § 901.2, the Board concludes that approval of the requested special exception to allow a decrease in court width 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. The court will be located on the southern portion of the property, where it will abut an area of public space 20 feet wide along Rhode Island Avenue to the south and a portion of the public alley to the east. The dimensions of the planned court will be sufficient to provide light and air in and around the southern portion of the new addition.

The Office of Planning concluded that the proposed open court would not adversely affect the use of neighboring property, and ANC 5B supported the application for relief from the court width requirement without stating any issues or concerns, noting that the requested special exception would require "a small reduction in area." (Exhibit 208.) CFRO opposed the requested relief, but did not specifically allege that the reduction in court width would adversely affect neighboring properties. The Board disagrees with CFRO's assertion that approval of the requested relief would not be in harmony with the zone plan because a narrower court would allow the Applicant to avoid reducing the number of residential units in the emergency shelter.

Area variances

The Applicant seeks area variances from requirements relating to floor area ratio under Subtitle G § 402.1, building height under Subtitle G § 403.1, and loading under Subtitle C § 901.1. The Board is authorized under § 8 of the Zoning Act to grant variance relief where, "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property," the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. (See 11 DCMR Subtitle X § 1000.1.)

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Extraordinary or exceptional situation. For purposes of variance relief, the “extraordinary or exceptional situation” need not inhere in the land itself. *Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Rather, the extraordinary or exceptional conditions that justify a finding of uniqueness can be caused by subsequent events extraneous to the land at issue, provided that the condition uniquely affects a single property. *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939, 942 (D.C. 1987); *DeAzcarate v. District of Columbia Bd. of Zoning Adjustment*, 388 A.2d 1233, 1237 (D.C. 1978) (the extraordinary or exceptional condition that is the basis for a use variance need not be inherent in the land but can be caused by subsequent events extraneous to the land itself.... [The] term was designed to serve as an additional source of authority enabling the Board to temper the strict application of the zoning regulations in appropriate cases....); *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979) (for purposes of approval of variance relief, “extraordinary circumstances” need not be limited to physical aspects of the land). The extraordinary or exceptional conditions affecting a property can arise from a confluence of factors; the critical requirement is that the extraordinary condition must affect a single property. *Metropole Condominium Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1082-1083 (D.C. 2016), citing *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

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

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children and families within the District,” when, absent variance relief, “the great expense of operating offices at another site would cause serious detriment” to the nonprofit.)

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

In this proceeding, the Applicant asserted that the subject property has an exceptional situation or condition due to several factors, including the existence of improvements – the existing building and the antenna tower – that will be retained; the shape of the site, which interacts with the retention of the existing improvements to force the bulk of any new construction further to the rear of the subject property than if the subject property were unimproved; a unique corner lot location; the widths of the areas of public space along both Rhode Island Avenue and 17th Street; the configuration of floors in the existing building; and the programmatic needs of the emergency shelter use. “These cumulative factors have converged to compel the particular architectural solution arrived at by the Applicant which necessitates the variances requested.” (Exhibits 7, 94B.)

CFRO argued that the factors claimed by the Applicant “are not in any way exceptional,” including the presence of the existing improvements, which are the “pre-existing condition of the property voluntarily chosen for the shelter.” Because the proposed use of a property is not a sufficient basis for determining the presence of exceptional conditions, *Metropole Condominium Ass’n*, 141 A.3d at 1083, the Board concurs with CFRO that the Applicant’s program needs are not unique but “are the same wherever the shelter may be located.” (Exhibit 212.)

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

CFRO disputed the Applicant’s argument that “the District is statutorily mandated to build its proposed shelter on the selected Site” as “flatly contradicted by the express language of D.C. Law 21-141....” (Exhibit 55.) According to CFRO, “there is no compulsion to use this Site, just as there is no evidentiary record in this case that the District’s programmatic needs cannot be met using some other site. This site is simply the one the District chose, and it did so knowing full

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well that it could not meet the asserted programmatic needs on the Site without relief from the development standards applicable to this MU-4 zoned property. Thus, the problems DGS encountered, and for which relief is sought, are ones of self-creation.” (Exhibit 55.)

First, although the Council technically did not (and could not) mandate the use of the subject property, as a practical matter that is the only site within Ward 5 that could be used. Council approval would have been required to acquire any other site and to enter into a construction contract at the price needed. In fact, the Council rejected the Mayor’s original site choice. For the District to have not gone forward with the site approved, but instead have analyzed the feasibility of other sites in Ward 5, would have been an exercise in futility. The Board recognizes that the legislation did not guarantee that the proposed shelter would be built. The Council could have, but did not, exempt this shelter from zoning. This meant that special exception relief would be needed and getting that relief is never guaranteed. However, even though the Council’s approval was not the final action needed for this particular shelter to be built, its approval was an essential prerequisite for there to be any Ward 5 shelter at all. The Council essentially told DGS to take it or leave it, and DGS had no programmatic choice but to take what the Council gave.

The Board also finds that CFRO’s suggestion of self-created hardship is not germane to the Applicant’s requests for area variance relief. *See, e.g., Ass’n for the Preservation of 1700 Block of N Street v. District of Columbia Bd. of Zoning Adjustment*, 384 A.2d 674 (D.C. 1978) (grant of a parking variance was upheld even though the property owner, a YMCA, had “full knowledge” of all problems with the shape of the land, zoning, and costs of putting in parking before buying the property; the YMCA had no feasible alternative method to provide both a pool and all required parking spaces, and its self-created hardship was not a factor to be considered in an application for an area variance, as that factor applies only to a use variance.); *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1169 (D.C. 1990) (Prior knowledge or constructive knowledge or that the difficulty is self-imposed is not a bar to an area variance.); *A.L.W. v. District of Columbia Bd. of Zoning Adjustment*, 338 A.2d 428, 431 (D.C. 1975) (prior knowledge of area restrictions or self-imposition of a practical difficulty did not bar the grant of an area variance).

The Board was not persuaded that the other factors cited by the Applicant, such as the corner lot location and the widths of the abutting public space, create an exceptional situation to warrant variance relief. The Applicant did not indicate how those circumstances gave rise to practical difficulty through the strict application of the Zoning Regulations, except to state that those features imposed “limits on building footprint” and to assert that the public space reduced the size of the lot. (Exhibits 94B2, 211.) The Applicant did not describe how the building options were limited by the condition of the subject property as a corner lot, or how the presence of abutting public space affected the size of the lot.

For purposes of the Applicant’s request for area variances from the zoning requirements pertaining to floor area ratio, building height, and loading, the Board finds that the subject property is faced with an exceptional situation and condition as the result of the designation of the lot as the site for the Ward 5 emergency shelter, and due to the presence of existing improvements that will be

retained. The Applicant has shown that the District has a need to use the subject property in furtherance of providing a public service, the provision of shelter and services to homeless families. The site is “uniquely valuable” to the Applicant in light of the goals and policies set forth in the Homeward DC initiative, and is “uniquely suitable” as the location for the proposed emergency shelter in light of the site selection process undertaken by District agencies and finally voted on by the Council. The Applicant demonstrated a need for the proposed building height, as a lower building with fewer residential units or the operation of several smaller facilities at multiple locations would complicate the provision of services while greatly increasing the costs, and would not comport with the District’s policy decisions with respect to the optimal size and layout of emergency shelter facilities. The Board finds that the six-story height is an institutional necessity with respect to the construction of an emergency shelter for families that will meet statutory requirements with respect to the provision of private rooms, adequate bathroom facilities, and suitable space to offer wrap-around services while also meeting security requirements and achieving cost efficiencies in the operation of the shelter.

In addition to the designation of the subject property as the site for the Ward 5 emergency shelter, the locations of the existing improvements on the site are germane to a finding of an exceptional situation and condition with respect to the requests for variance relief. The existing development on the subject property restricts the area where the new shelter building can be sited and how vehicular circulation can be routed internally on the lot, and decreases the space available for loading facilities.

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

The Applicant asserted that, absent variance relief, the District would be unable to meet its programmatic needs, since the requested variances are needed to carry out the public purpose of providing the necessary emergency shelter facility at the site designated for Ward 5. The strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the Applicant by precluding the construction of an emergency shelter building on the site consistent with legal and public policy requirements. A building limited to the height and FAR permitted as a matter of right would be unnecessarily burdensome to the Applicant by preventing its implementation of a design derived from extensive research and consideration of operational

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efficiencies and the costs of providing the necessary services. The provision of the required loading facilities would also create practical difficulty for the Applicant in light of the building constraints on the site and the Applicant's showing that the emergency shelter operation will not create the need for the loading facilities required by the strict application of the Zoning Regulations.

Pursuant to Subtitle G § 403.1, the maximum building height permitted as a matter of right in the MU-4 zone is 50 feet, not including a penthouse.¹⁷ The Applicant proposes to build the new addition to a height of 69.8 feet to provide six stories to contain the emergency shelter use while matching the floor-to-ceiling heights of the three floors in the existing building. The floor area ratio in the MU-4 zone is limited to 2.5 for residential uses; the Applicant has requested 3.51 FAR.

The new addition was designed to incorporate but not overwhelm the existing building formerly used as a police station. The new addition will be constructed next to, but not over, the existing building, and will maintain views of the existing building from Rhode Island Avenue. The existing building is three stories in height, and the Applicant designed the new addition to rise to six stories so as to provide sufficient space for as many residential units as possible, up to a maximum of 50 units and consistent with the preferred layout of a maximum of 10 units per floor. The atypically high floor-to-ceiling heights of the existing building contributed as much as eight feet to the height of the new addition, which was designed to match the existing floorplates since the new addition will lack sufficient interior space for ramps; the matching floorplates will also avoid the need for interior demolition of the existing building. The retention of the telecommunications antenna tower contributes to the need for FAR relief, since a portion of the existing FAR is attributable to the existing antenna tower and related utility building.

The Applicant seeks variance relief from the height and FAR limits so as to allow a six-story building of a size suitable to satisfy the public need for an emergency shelter consistent with applicable legal and public policy requirements. The size of the planned addition is necessary to provide sufficient room for the necessary number of residential units and space for related functions, such as a dining room, areas devoted to the provision of wrap-around services, and staff offices. The Applicant plans to use the basement space in support of the emergency shelter use (such as for storage and to house mechanical equipment) but testified that basement space is not suitable for other aspects of the emergency shelter operation, including for the provision of related services. The Board credits the Applicant's testimony that a smaller building would not be sufficient to meet its needs in providing a suitable emergency shelter for families experiencing homelessness. The Applicant estimated that the strict application of the zoning limit of 2.5 FAR would allow an emergency shelter with no more than 32 units, which is less than the number of units needed to achieve operational economies of scale, especially considering the provision of wrap-around services for residents, and inadequate for purposes of reaching a total of 280 DC General Family Shelter replacement units in smaller facilities District-wide.

¹⁷ The Zoning Regulations do not specify a maximum number of stories in the MU-4 zone.

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Pursuant to Subtitle C § 901.1, an emergency shelter use with a gross floor area between 30,000 and 100,000 square feet must provide one loading berth and one service/delivery space. The Applicant is proposing not to provide a loading berth or a service-delivery area, but instead to receive deliveries via the existing public alley along the east side of the subject property, where a parking space of a size consistent with the zoning requirements will be reserved for loading. Strict application of the loading requirement would cause practical difficulty to the Applicant because the constraints of the site preclude the provision of a larger loading area without decreasing the space available for parking or other aspects of the emergency shelter use.

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

The Board concurs with the conclusion of the Office of Planning that the proposed emergency shelter building will be compatible with the development pattern along Rhode Island Avenue, considering nearby developments and that the new addition will be substantially set back from Rhode Island Avenue. The widths of the 17th Street and Rhode Island Avenue rights of way ensure that the emergency shelter will not crowd adjoining properties or “loom over all of the nearby single-family homes,” as alleged by CFRO. Rather, the shadow studies submitted by the Applicant demonstrate that the new addition will not create substantially different light impacts for any nearby property than would result under matter-of-right development.

The Board also concurs with the conclusion of the Office of Planning that approval of the requested loading variance will not cause substantial detriment to the public good. The Applicant demonstrated that the emergency shelter use will not generate significant demand for loading, particularly since residents will move in and out without bringing large furniture with them. The most common use of the loading facilities – for the deliveries of meals and for trash collection – will occur on predictable schedules and will be subject to the requirements of the Applicant’s loading management plan to help mitigate and avoid any potential objectionable conditions.

The Board concludes that approval of the requested zoning relief will not cause substantial impairment to the intent, purpose, and integrity of the zone plan. The proposed use will be consistent with the intended quality of the Mixed-Use zones as locations for mixed-use developments at a broad range of commercial, institutional, and multiple dwelling unit residential development at varying densities. (Subtitle G § 100.1.) A mixture of residential and non-residential uses in a single building is consistent with the MU zones, which are designed to provide facilities for housing and services, among other uses. (Subtitle G §§ 100.2, 100.4.)

The adaptive reuse of the former police station, in new construction designed to protect views of the existing building while also accommodating an operational antenna tower, is consistent with the purposes of the MU zones to provide for the orderly development and use of land and structures

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in the MU zones, characterized by a mixture of land uses as well as a varied mix of residential and service uses at an appropriate density and scale. The MU zones call for a variety of building types, including buildings that include a vertical mixture of residential and non-residential uses. The Applicant's planned improvements, including new landscaping and removal of a curb cut on 17th Street, will encourage safe and efficient conditions for pedestrian and motor vehicle movement. The residential appearance of the emergency shelter use will help ensure that the new infill development will be compatible with the prevailing development pattern of higher density uses, including the commercial and multifamily residential uses in the MU-4 zone along Rhode Island Avenue, and the lower density residential uses in the R-1-B zone in nearby areas. (Subtitle G § 100.3.) The proposed Ward 5 emergency shelter will be consistent with the purposes of the MU-4 zone to permit moderate-density mixed-use development, to provide a facility for housing and mixed uses outside of the central core, and to be located in low- and moderate-density residential areas with access to main roadways or rapid transit stops. (Subtitle G § 400.3.)

The Board notes the Office of Planning's conclusion that approval of the requested variances would not cause substantial impairment to the intent, purpose, and integrity of the zone plan since the emergency shelter use "is permitted as a special exception and thus presumed appropriate in the zone," and the proposal is necessary to meet the goals of the District's short-term family housing initiative. (Exhibit 49.) The Board concurs with the Applicant that the proposed FAR of 3.51 will not cause substantial impairment of the zone plan, particularly since a floor area ratio of 3.0 would be permitted on the site pursuant to Inclusionary Zoning provisions.¹⁸

ANC 5B opposed the Applicant's request for a FAR variance, but did not state any specific issues or concerns. For reasons already discussed, the Board does not agree with the ANC's assertion that the emergency shelter building could have been designed as "a shorter building" and still have met all of the relevant program needs of the facility while achieving the same efficiencies. ANC 5B also opposed the request for a loading variance, but based its opposition on the lack of "a detailed loading management plan that will control and manage how and when loading will occur on the site." The Board notes that the Applicant has agreed to implement a loading management plan, which DDOT found will be suitable for the planned use.

Great weight

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

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.)) In this case ANC

¹⁸ Pursuant to Subtitle C § 1002.3, an inclusionary development at the subject property may construct up to 20 percent more gross floor area than permitted as a matter of right (bonus density), subject to all other zoning requirements (as may be modified by the zone) and the limitations established by the Height Act.

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5B adopted a resolution opposing the Applicant's request for a special exception to allow operation of the proposed emergency shelter at the subject property on the ground that "the process for site selection and design did not properly accommodate resident input..." For the reasons discussed in this order, the Board concludes that the application satisfied the requirements for approval of the requested special exception for the emergency shelter. The Board has addressed other issues and concerns raised by ANC 5B in this order, and was not persuaded that they warrant disapproval of any of the zoning relief requested in this application.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the requests for special exceptions to allow an emergency shelter for more than 25 persons, a reduction in parking, and relief from requirements relating to lot occupancy, rear yard, and court width, as well as area variances from requirements relating to building height, floor area ratio, and loading in the MU-4 zone at 1700 Rhode Island Avenue, N.E. (Square 4134, Lot 800). Accordingly, it is **ORDERED** that the application is **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBITS 36A1, 36A2, and 36A3 – PREHEARING STATEMENT: TAB A (REVISED PLANS – PART 1, PART 2, AND PART 3).**

VOTE: 4-0-1 (Frederick L. Hill, Robert E. Miller, Lesylleé M. White, and Carlton E. Hart voting 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 M. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: February 23, 2018

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

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PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.