

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 18632 of Madison Investments, LLC,**<sup>1</sup> pursuant to 11 DCMR § 3103.2, for variance relief from the requirements regarding public space at the ground level (§ 633), lot occupancy on the first and second story (§ 634), and rear yard setback (§ 636.2); and, pursuant to 11 DCMR § 3104.1, for special exception relief from the parking requirement for historic structures (§ 2120.6) and the ARTS Overlay setback requirement (§ 1902.2) to allow the Applicant to renovate two historic structures and build a new residential building with ground floor retail in the CR/ARTS District at premises 1921-1923 14th Street, N.W. (Lot 180, Square 237), 1925 14th Street, N.W. (Lot 196, Square 237), and 1351 Wallach Place, N.W. (Lot 806, Square 237).

**HEARING DATE:** October 8, 2013  
**DECISION DATE:** October 29, 2013

**DECISION AND ORDER**

On July 11, 2013, Madison Investments, LLC (the "Applicant"), the contract purchaser of 1921-1923 14th Street N.W. (Lot 180, Square 237), 1925 14th Street N.W. (Lot 196, Square 237), and 1351 Wallach Place N.W. (Lot 806, Square 237) (the "Subject Property"), filed a self-certified application with the Board of Zoning Adjustment (the "Board") for zoning relief. After a public hearing, the Board voted to approve the application with conditions.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Public Hearing. By memoranda dated July 16, 2013, the Office of Zoning provided notice of the application to the Office of Planning ("OP"); the District Department of Transportation ("DDOT"); the Councilmember for Ward 1; Advisory Neighborhood Commission ("ANC") 1B, the ANC in which the Subject Property is located; Single Member District, ANC 1B12; and the State Historic Preservation Officer. Pursuant to 11 DCMR § 3113.13, notice of the hearing was sent to the Applicant, ANC 1B, and the owners of all property within 200 feet of the Subject Property. Notice of the hearing was published in the *D.C. Register* on August 2, 2013 at 60 DCR 11200. The Applicant posted placards at the subject

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<sup>1</sup> The Applicant was originally named as 14th & U Residential, LLC, and was amended to Madison Investments, LLC in a supplemental submission by the Applicant. (Exhibit 24.)

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property regarding the application and public hearing and timely submitted an affidavit to the Board to this effect.

Party Status. The Applicant and ANC 1B were automatically parties to this proceeding. Aileen Johnson, a resident of the property at 1343 Wallach Place, N.W., submitted a request for party status, (Exhibit 25) but withdrew her request at the hearing.

The Applicant's Case. The Applicant provided evidence and testimony describing the proposed development and asserted that the application satisfied the requirements for variance and special exception relief. The Applicant presented three witnesses in support of the application: Jeff Goins, Partner at PGN Architects; Emily Eig, President of EHT Traceries; and Erwin Andres, Principal at Gorove/Slade. The Board qualified Emily Eig as an expert in Historic Preservation and Erwin Andres as an expert in Traffic Engineering and Transportation Planning and Analysis.

OP Report. By memorandum dated October 1, 2013, OP indicated that it was not opposed to granting the requested relief. (Exhibit 28.)

ANC Report. By letter dated October 3, 2013, ANC 1B indicated that at its regularly scheduled, properly noticed meeting on October 3, 2013, with a quorum present, it voted 7-0-0, in support of the application. (Exhibit 32.)

DDOT Report. By memorandum dated October 3, 2013, DDOT indicated no objection to the application, emphasizing that "[t]he site's proximity to the U Street/African-American Civil War Memorial Cardozo Metro Station, 13 Metrobus lines and one Circulator route, Capital Bikeshare stations, quality of pedestrian and bicycle infrastructure in the subject area, commitment to a strong TDM program, and provision of adequate bicycle parking will lead to low levels of auto ownership and use." DDOT also concluded that the project, in conjunction with the Applicant's mitigation measures, limit the likelihood of residents owning vehicles and the demand for parking. (Exhibit 31.)

Persons in Opposition. Wallach Place residents, Melissa and Leif Hockstad, submitted a letter in opposition, citing concerns about existing parking issues in the area. (Exhibit 30.) Three other residents of Wallach Place – Michael Hochman, Dan Wittels and Guy Podgornik – testified in opposition at the hearing regarding their difficulty parking in the neighborhood. After the hearing, Michael Hochman rescinded his opposition and submitted a letter in support of the project and the requested zoning relief. (Exhibit 41.)

Persons in Support. The Applicant submitted 82 letters in support of the Application, 12 of which were from Wallach Place residents. (Exhibit 36.) Ward One Councilmember Jim Graham also submitted a letter of support. (Exhibit 33.)

**FINDINGS OF FACT**

**The Subject Property and Surrounding Area**

1. The Subject Property is located at 1921-1923 14th Street, N.W. (Lot 180, Square 237), 1925 14th Street, N.W. (Lot 196, Square 237), and 1351 Wallach Place, N.W., at the northeast corner of 14th Street and Wallach Place, N.W. (Lot 806, Square 237).
2. Square 237 is bounded on the north by U Street, on the east by 13th Street, on the south by T Street, and on the west by 14th Street. Wallach Place runs east-west and bisects the square.
3. The Subject Property contains approximately 9,540 square feet of land area and abuts several narrow rights-of-way.
4. The Subject Property has approximately 90 feet of street frontage along 14th Street, N.W. and approximately 106 feet of frontage along Wallach Place, N.W.
5. The Subject Property is mapped in the Mixed Use (Commercial Residential (CR)) District and within the Uptown Arts-Mixed Use (ARTS) Overlay District.
6. The CR District is a mixed-use commercial residential district. The purpose of the CR District is to encourage a diversity of compatible land uses that may include a mixture of residential, office, retail, recreational, light industrial, and other miscellaneous uses. (11 DCMR § 600.1.) The CR District is intended to "help create major new residential and mixed use areas" and "encourage the preservation and rehabilitation of structures of historic or architectural merit in the District of Columbia." (11 DCMR § 600.3.)
7. The purpose of the ARTS Overlay District is to "encourage pedestrian activity, especially in retail, entertainment, and residential uses," to "strengthen the design character and identity of the area by means of physical design standards," and to "encourage adaptive reuse of older buildings in the area and an attractive combination of old and new buildings." (11 DCMR § 1900.2.)
8. The Subject Property is partially improved with two vacant, historic structures and a parking lot. The first building is a three-story structure previously having the address of 1921-1923 14th Street (the "Historic 14th Street Building"). The Historic 14th Street Building was most recently used as a barber shop and dentist's office, continuing its long history of commercial use. The second building is a two-story apartment building previously having the address 1351 Wallach Place (the "Wallach Place Apartment Building"). The lot previously having the address 1925 14th Street was most recently used as a parking lot with a one-story framed structure.

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9. The Subject Property is located within the Greater U Street Historic District. Both the Historic 14th Street Building and the Wallach Place Apartment Building are listed on the D.C. Inventory of Historic Sites.
10. The Subject Property is served by Metrobus routes 52, 53 and 54 along 14th Street, and routes 90, 92, 93, 96, and X3 at the intersection of 14th Street & U Street, N.W. The D.C. Circulator (DC98) also stops at 14th Street and U Street, N.W.
11. The Subject Property is within close proximity to a number of the District's bikesharing and carsharing programs. Capital Bikeshare stations are located at 14th Street and V Street, N.W. (27 docks) and at 14th Street and R Street, N.W. (15 docks). Several Zipcar spaces are located near the Subject Property, including a 24-vehicle lot at 14th and Corcoran as well as spaces at 13th Street and T Street, N.W., 1929 12th Street, N.W. and 13th and U Street, N.W.
12. The Subject Property is located approximately 1.5 blocks (.2 miles) from the U Street / African-American Civil War Memorial / Cardozo Metrorail Station entrance at 13th and U Street, N.W.
13. The Subject Property has a Walk Score of 100, the highest possible rating, as calculated by WalkScore.com. The Subject Property also has a Bike Score of 95.
14. At least 38 of the 46 residential properties located on Wallach Place have a parking pad or an existing garage at the rear of the property.
15. The Subject Property is located in an area with a high water table, which creates poor soil conditions for excavation and underground construction.
16. The Subject Property is contaminated by oils, solvents and chemicals due to the extended use as an automotive repair shop. The Applicant will incur burdensome environmental remediation including excavation and removal of contaminated soil as well as hauling and dumping fees.

**The Applicant's Project**

17. The Applicant proposes to rehabilitate and renovate the existing historic structures on the Subject Property and to construct a residential building with ground floor retail and service uses. The space between the Historic Buildings will be filled in with a three-story structure (the "Infill Structure").
18. The Applicant's proposed Infill Structure between the two historic structures was designed based on recommendations from the architect for the project and a historic preservation consultant, as well as informal discussions with the Historic Preservation Office, in order to enhance the historic preservation effort.

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19. The Infill Structure will occupy 10% of the lot and increase the development's lot occupancy from 80% to 90%.
20. The existing parking lot and one-story framed structure will be razed.
21. The development will include a total of approximately 58,466 square feet of gross floor area, which will be comprised of 56 residential units and approximately 9,398 square feet of retail space. The residential units will primarily consist of studio and one-bedroom apartments.
22. The development will also provide 36 bicycle parking spaces, including covered and secure long term bicycle spaces in the building and additional short term spaces.
23. The proposed project provides no space for the public at ground level. Section 633 requires that 10% of the total lot area, 954 square feet in this case, be devoted to public use.
24. To accommodate the public space requirement with the available frontage along 14th Street, substantial design changes would be required, including the relocation and orientation of the stairway and elevator core, as well as the reconfiguration of the size, shape, and number of units.
25. The first story, which is devoted primarily to commercial use but preserves the residential use in the Wallach Place Apartment Building, occupies 100% of the lot. The second story, devoted primarily to residential use and a courtyard, occupies 90% of the lot.
26. The maximum lot occupancy permitted is 80% for residential uses and 100% for commercial uses in the CR/ARTS District pursuant to § 1909.1(d). Both stories contain residential uses and thus are not in compliance with the 80% lot occupancy requirement.
27. Replacing the residential use in the Historic Wallach Place Apartment Building with a commercial use would allow for 90% lot occupancy as a matter of right; however, introducing retail use in the building would create difficulties with respect to design, layout and configuration and such a use would not be consistent with the residential character of Wallach Place, N.W.
28. All other floors comply with the lot occupancy requirement.
29. The proposed project will not provide a rear yard. Because a rear yard must extend the full width of the lot, the location of the Wallach Place Apartment Building constitutes an existing nonconformity with respect to rear yard. Subsection 636.2 requires the proposed project to provide a rear yard setback of 25 feet.

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30. Providing a rear yard on the Subject Property would require razing three-quarters of the Wallach Place Apartment Building. Because this structure is listed on the D.C. Inventory of Historic Sites, razing the structure would require a raze permit that must be reviewed by the Mayor or the Mayor's agent ("hereinafter "Mayor's Agent") based on the requirements and criteria enumerated in D.C. Official Code § 6-1104 (2012 Repl.).
31. In order to authorize clearance of the permit, the Mayor's Agent must make a finding that the permit is "necessary in the public interest, or that the failure to issue a permit will result in unreasonable economic hardship to the owner." (D.C. Official Code § 6-1104(e).)
32. The Applicant did not believe that it could make either of the requisite showings in order to proceed with the substantial demolition required for a matter-of-right project and the Board finds that this was a reasonable conclusion.
33. Pursuant to § 2120.3, an addition to a historic resource is exempt from the requirement to provide additional parking as a result of a change of use under § 2100.4 and of an increase in intensity of use under § 2100.6; however, parking is required for any addition where the gross floor area of the historic resource is being increased by 50% or more, and the parking requirement attributable to the increase in gross floor area is at least four spaces.
34. Subsection 2101.1 requires that residential building in the CR District provide one parking space for each three dwelling units. Subsection 2102.2 also requires that, in the CR District, retail establishments in excess of 3,000 square feet must provide one parking space for each additional 750 square feet of gross floor area.
35. Accordingly, because the project provides 56 dwelling units in the addition and 6,472 square feet of new retail space in the addition, 22 parking spaces are required.
36. The proposal provides no parking spaces.
37. To construct a parking garage below the Historic Buildings, the Applicant would need to underpin, excavate below, and permanently support the structures. This process would jeopardize the structural integrity of the historic buildings, according to the testimony of a Historic Preservation specialist.
38. Providing a one-story underground parking garage in the narrow portion of the lot not encumbered by the Historic Buildings results in a parking garage with undesirable parking geometries, a highly inefficient use of space, and a significant cost of construction per parking space.
39. To provide additional levels of below-grade parking, the Applicant would encounter difficulties with groundwater and poor soil conditions of the Subject Property.

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40. Due to the slope of the Property, the only feasible place to locate the ramp for an underground parking garage is at the southern end of the Property adjacent to the historic Wallach Place Apartment Building.
41. The Applicant has committed to incorporating a number of transportation demand measures into operation of the building, as set forth in the Transportation Management Plan. (Exhibit 29, exhibit I.)
42. In the CR/ARTS Overlay, if a building is located on a lot that abuts a street, alley, or zone district boundary with a Residence District, no part of the building may project above a plane drawn at a 45 degree angle from a line located 65 feet directly above the property line on each such street, alley, or zone district boundary line. 11 DCMR § 1902.2.
43. The eastern property line of 1351 Wallach Place and 1925 14th Street are subject to this additional height restriction.
44. A small portion of the top floor projects above that plane, in violation of the setback requirement.
45. The Applicant has carefully designed the structure – including the "U" shape courtyard facing Wallach Place, with deference to the historic structures on the Property, and concentration of massing along the 14th Street – to ensure that proper light and air are available to neighboring properties.

**CONCLUSIONS OF LAW**

**Variance Relief**

The Board is authorized under § 8 of the Zoning Act of 1938, D.C. Official Code § 6-631.07 (g)(3) (2012 Repl.) to grant variance relief from the strict application of the Zoning Regulations. As noted by the District of Columbia Court of Appeals:

An applicant must show, first, that the property is unique because of some physical aspect or “other extraordinary or exceptional situation or condition” inherent in the property; second, that strict application of the zoning regulations will cause undue hardship or practical difficulty to the applicant; and third, that granting the variance will do no harm to the public good or to the zone plan.

*Capitol Hill Restoration Society v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939, 941 (D.C.1987). The Court of Appeals has also held that "an exceptional or extraordinary situation or condition" may encompass the buildings on a property, not merely the land itself, and may arise due to a "confluence of factors." See *Clerics of St. Viator v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974); *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

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The Applicant seeks a variance from the requirements regarding public space at the ground level under § 633, lot occupancy on the first and second story under § 634, and rear yard setback under § 636.2. The Board concludes that the Applicant has met its burden of proof for the requested area variances in this case.

*Exceptional Circumstance*

The Board, concurring with the Office of Planning, concludes that the presence of historic structures on the site create an exceptional circumstance in this case. The Subject Property includes two structures that are listed on the D.C. Inventory of Historic Sites, the Historic 14th Street Building and the Wallach Place Apartment Building. The Applicant proposes to rehabilitate, renovate, and incorporate these historic structures into the new development. Accordingly, the Board finds that there is an exceptional circumstance inherent in the Subject Property.

*Practical Difficulty*

The Board concludes that as a result of the exceptional condition of the Subject Property, the strict application of the open space, lot occupancy, and rear yard requirements will cause practical difficulties for the Applicant.

*Public space at ground level requirement (§ 633)*

The Board concludes that the landmark status of the existing Historic Buildings creates a practical difficulty in meeting the requirement that 10% of its lot area be devoted to public space. The existing Historic Buildings, comprise a large portion of the street frontage on Wallach Place. As explained in the findings of fact, the Applicant reasonably concluded that it could not meet any of the criteria that would permit the Mayor's Agent to clear the substantial demolition needed to satisfy the public space requirement. Further, consistent with the recommendations of the Historic Preservation Office, which advises the body that advises the Mayor's Agent, the Applicant agreed to fill in the space between the two Historic Buildings with the proposed Infill Structure. There is no remaining frontage along Wallach Place in which to provide the public space required. Similarly, the existing Historic 14th Street Building occupies 30 feet of frontage along 14th Street, and the available frontage along 14th Street is further reduced by the residential lobby. The remaining frontage along 14th Street cannot accommodate the minimum of 954 square feet needed without substantial design changes to the location and layout of key features, including the location and orientation of the stairway and elevator core. Therefore, strict application of the public space at ground level requirement would result in a practical difficulty.

*Lot occupancy on the first and second story (§ 631)*

The Board concludes that the exceptional conditions makes strict compliance with the lot occupancy requirements on the first and second story practically difficult. The first story has a lot

occupancy of 100%, which would be permitted as a matter of right if the entire first floor were devoted to retail use. The roughly 10% of this floor devoted to residential use is intended to maintain the historically residential nature of Wallach Place and the Wallach Place Apartment Building. The conversion of these historic residences to retail use would present significant challenges with respect to design, layout, and configuration.

The second story has a lot occupancy of 90%, which is a 10% deviation from the 80% lot occupancy requirement for residential use. The need for lot occupancy relief on the second story is largely due to development constraints as a result of the existing historic buildings being preserved and HPO's recommendation to infill the space between the two historic structures. Because the efforts to preserve and maintain the Historic Buildings on the Subject Property create notable challenges in terms of lot occupancy, the Board finds that compliance with this requirement would result in practical difficulties.

*Rear yard setback (§ 636.2)*

The Board concludes that the exceptional circumstances make strict application of the rear yard setback requirement a practical difficulty. Regardless of the manner in which the Subject Property is developed, compliance with the rear yard requirement would require demolition of a portion of the Wallach Place Apartment Building. As noted, the Applicant did not seek a permit to undertake the necessary demolition of the landmarked Wallach Place Apartment Building because of its reasonable belief that it would be unable to satisfy the statutory criteria. This conclusion was corroborated by the testimony of the Applicant's historic preservation specialist. Thus, the Board finds that strict application of the rear yard requirement would result in a practical difficulty to the Applicant.

*No Detriment to the Public Good or Zone Plan*

The Board concludes that there will be no substantial detriment to the public good and no substantial impairment to the intent, purpose, and integrity of the zone plan by granting the relief requested. The decrease in public space is offset by the preference for a pedestrian-friendly and active retail streetscape created by the proposed project. The massing and setback of the proposed structure allows for sufficient light and air to all residential units and neighboring properties. Although no rear yard is provided, the Property is a corner lot, surrounded on three sides by 14th Street, Wallach Place, and a public alley. The substantial space surrounding the lot serves the purpose of the rear yard with respect to light and air. Furthermore, the substantial setback of the upper floors allows for additional light and air to the units abutting the alley and neighboring properties. Further, variance relief from the rear yard requirement also allows the Applicant to preserve the historic Wallach Place Apartment Building. Therefore, the Board finds that the relief required for the proposed project will not have a detrimental impact on the public good, nor will the relief substantially impair the intent of the zoning regulations.

Accordingly, the Board concludes that the Applicant has met the burden of proof for area variances from the requirements for public space under § 633, lot occupancy under § 634, and rear yard under § 636.2.

### **Special Exception Relief**

The Applicant also seeks special exception relief from the parking requirement for historic structures (§ 2120.6) and the ARTS Overlay setback requirement (§ 1902.2). The Board is authorized under § 8 of the Zoning Act of 1938, D.C. Official Code § 6-631.07(g)(3) (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 properties, subject to specific conditions. (*See* 11 DCMR § 3104.1.) In addition to the general requirement for special exception relief under § 3104.1, the Applicant must satisfy any specific regulatory requirements for the requested special exception.

"The Board's discretion to grant special exceptions is limited to a determination whether the exception sought meets the requirements of the regulation.... In sum, the applicant must make the requisite showing, and once he has, the Board ordinarily must grant his application." *See Stewart v. District of Columbia Bd. of Zoning Adjustment, 305 A.2d 516, 518 (D.C. 1973)*. The Board concludes that the requested special exceptions from the parking requirement for historic structures and ARTS Overlay setback requirement are in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and do not tend to affect adversely the use of neighboring property. The specific regulatory requirements for special exception relief from the parking requirement for historic structures and from the ARTS Overlay setback requirement will be addressed in turn.

#### Parking Requirement for Historic Structures (§ 2120.6)

Pursuant to § 2120.6, the Board may grant special exception relief from all or part of the parking requirements of § 2120 if the owner of the property demonstrates that, as a result of the nature or location of the historic resource, providing the required parking would result in significant architectural or structural difficulty in maintaining the historic integrity and appearance of the historic resource. Under this provision, the Board may only grant the amount of relief needed to alleviate the difficulty proved. The Applicant must also show compliance with the general requirements for special exception relief, and accordingly, § 2120.6 provides four factors that the Board must consider in determining whether the requested relief can be granted without adversely affecting the use of neighboring property, as required by § 3104.1.

*Subsection 2120.6: The Board of Zoning Adjustment may grant relief from all or part of the parking requirements of this section if the owner of the property demonstrates that, as a result of the nature or location of the historic resource, providing the required parking will result in significant architectural or structural difficulty in maintaining the historic integrity and appearance of the historic resource.*

Maintaining two historic buildings on the Subject Property constrains the footprint of the proposed design and creates difficulties in providing the required parking at the ground level. Further, the Applicant cannot provide parking beneath the Historic Buildings due to the difficulty of underpinning, excavating, permanently supporting, and constructing parking beneath them. The Applicant also analyzed the feasibility of constructing a single below-grade level of parking on the remaining narrow lot unencumbered by the Historic Buildings. The Applicant argues and the Board agrees that it is not a viable option. Providing a one-story underground parking garage results in an architecturally and structurally challenging layout, which would result in a narrow entry, limited maneuverability, and an inefficient use of space. Additional problems include sight distance into the alley, the creation of a speed ramp, and safety concerns for vehicles, pedestrians, and bikers. Furthermore, if an underground parking garage were required, the speed ramp would create a substantial risk for the property across the alley. As described by the project architect, relocating or setting the parking garage ramp further back on the lot, or to the north, is not a viable option due to the topography of the lot and resulting increase to the slope of the ramp. Finally, additional levels of below-grade parking cannot be provided, under the Historic Buildings or otherwise, because the Property is located in an area with a high water table.

*Subsection 2120.6: The Board shall grant only the amount of relief needed to alleviate the difficulty proved.*

The Board concludes that the Applicant has shown that providing any amount of parking spaces on the Subject Property would result in significant difficulty due to the attempts to protect the historic structures on the lot. The difficulty proved necessitates granting complete relief from the requirement to provide 22 parking spaces.

*Subsection 2120.6: The applicant shall also demonstrate compliance with the general special exception standard set forth in § 3104 and shall address each of the following criteria as part of its presentation to the Board:*

- (a) Maximum number of students, employees, guests, customers, or clients who can reasonably be expected to use the proposed building or structure at one time;*
- (b) Amount of traffic congestion existing and/or that the redevelopment of the historic resource can reasonably be expected to add to the neighborhood;*
- (c) Quantity of existing public, commercial, or private parking, other than curb parking, on the property or in the neighborhood that can reasonably be expected to be available when the redevelopment is complete; and*
- (d) Proximity to public transportation, particularly Metrorail stations, and availability of either public transportation service in the area, or a ride sharing program approved by the District of Columbia Department of Transportation.*

As to the general requirement, the Board concludes that the proposed project 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 properties. The Board will discuss, in turn, how each of the four considerations listed in § 2120.1(a)-(d) support its determination.

Paragraph 2120.6 (a): Maximum number of students, employees, guests, customers, or clients who can reasonably be expected to use the proposed building or structure at one time;

As indicated by the Applicant, the project will consist of 56 residential units, primarily studio and one-bedroom units, as well as ground-floor retail space. The Applicant testified that, due to the location, unit mix, unit size, and anticipated tenants, the residents of this project will not be likely to own cars and will utilize public transportation. The retail component will be largely occupied by neighborhood-serving retail leased at a decreased rent to attract the type of establishment desired by the neighboring community. Neighborhood-serving retail will target nearby residents rather than attracting patrons from other parts of the city. Thus, patrons will likely arrive by foot or through non-automobile modes of transportation and will not need off-street parking. Aspects of the Applicant's Transportation Management Plan – including 36 covered bicycle parking spaces – will further facilitate non-automotive transportation and decrease demand for off street parking. As a result, the Board finds that the maximum number of residents, guests, and customers using the property at one time will not create an adverse impact the surrounding neighborhood by creating a need for additional parking.

Paragraph 2120.6(b): Amount of traffic congestion existing and/or that the redevelopment of the historic resource can reasonably be expected to add to the neighborhood;

The Board concludes that the amount of added traffic congestion, if any, created by the project will not adversely affect the neighboring properties. As supported by the technical memorandum prepared by the Applicant's traffic engineer, the need for parking at the Subject Property is lessened by the ample transit services in the vicinity. DDOT also concluded that the available transit options, in conjunction with the Applicant's mitigation measures, would limit the likelihood of residents owning vehicles and the demand for parking. The Board acknowledges that the current parking utilization is high, but finds that the Applicant has demonstrated that there will not be a detrimental impact to street parking conditions due to the close proximity to the U Street Metrorail Station and aggressive Transportation Management Plan.

Paragraph 2120.6(c): Quantity of existing public, commercial, or private parking, other than curb parking, on the property or in the neighborhood that can reasonably be expected to be available when the redevelopment is complete;

Though public and street parking are limited in the neighborhood, a majority of private Wallach Place residences have parking pads or existing garages at the rear of their properties. Further, the Board finds that the Applicant's Transportation Management Plan and the wealth of public transit options in the area serve to mitigate the potential impact from the limited amount of public or commercial parking. Therefore, the Board concludes that the parking expected to be

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available when the redevelopment is complete will be sufficient and will not cause an adverse impact on the neighborhood.

*Paragraph 2120.6(d): Proximity to public transportation, particularly Metrorail stations, and availability of either public transportation service in the area, or a ride sharing program approved by the District of Columbia Department of Transportation.*

The Subject Property is located in a transit rich area with a variety of mass transit and other transportation options available to residents and visitors. The Subject Property is located approximately 1.5 blocks (.2 miles) from the U Street Metro entrance and is serviced by several public transportation services, including Metrobus and the D.C. Circulator bus system, as well as biking and pedestrian networks. In addition, the Subject Property is within close proximity to a number of the District's bikesharing and carsharing programs. Capital Bikeshare stations are located at 14th Street and V Street, N.W. (27 docks) and 14th Street and R Street, N.W. (15 docks). A number of Zipcar spaces are located within walking distance including a 24 vehicle lot at 14th and Corcoran, as well as spaces at 13th Street and T Street, N.W., 1929 12th Street, N.W. and 13th and U Street, N.W. The Subject Property has a Walk Score of 100, the highest possible score, and a Bike Score of 95.

For these reasons, the Board concludes that the Applicant has demonstrated that providing the required parking would result in significant difficulty in maintaining the historic integrity of the Historic Buildings and that complete relief from the parking requirement is necessary. The Board also finds that the requested relief will be in harmony with the Zoning Regulations and Zoning Maps and that the relief can be granted without adversely affecting the use of the neighboring property. Accordingly, the Board concludes that the Applicant has satisfied the requirements for special exception relief under § 2120.6 and § 3104.1.

ARTS Overlay setback requirement (§ 1902.2)

As noted, § 1902.2 provides that in the CR/ARTS Overlay, if a building located on a lot that abuts a street, alley, or zone district boundary with a Residence District, no part of the building may project above a plane drawn at a 45 degree angle from a line located 65 feet directly above the property line on each such street, alley, or zone district boundary line. Because a small portion of the top floor projects above that plane, the Applicant seeks a special exception from the requirement.

Pursuant to § 1906.1 of the Zoning Regulations, the Board may grant relief from the requirements of the ARTS Overlay as a special exception, provided that the general special exception standard and the specific criteria of § 1906.1(a)-(d) are met. Also pursuant to § 1906.1, the Board need only apply criteria (c) and (d) when relevant to the relief sought. The Board finds that the Applicant has met the criteria provided in § 1906.1 and § 3104.1 of the Zoning Regulations, discussed as follows.

Paragraph 1906.1(a): The uses, buildings, or features at the size, intensity, and locations proposed, will substantially advance the purposes of the ARTS Overlay District and will not adversely affect neighboring property or be detrimental to the health, safety, convenience, or general welfare of persons living, working, or visiting in the area.

The purposes of the ARTS Overlay District, listed in § 1900.2, include to “strengthen the design character and identity of the area by means of physical design standards” and to “encourage adaptive reuse of older buildings in the area and an attractive combination of old and new buildings.” The Board finds that the proposed redevelopment advances both of these goals. The Applicant has given careful consideration to physical design standards and has designed the structure in a "U" shape, with a courtyard facing Wallach Place, to ensure that proper light and air are available to neighboring properties. Additionally, the Applicant has incorporated two Historic Buildings into the development and seeks to create an attractive combination of old and new structures. In deference to the Historic 14th Street Building and Wallach Place Apartment Building on the Subject Property, the massing of the new structure is concentrated on the north end of the lot and on 14th Street, N.W.

Paragraph 1906.1(b): Exceptional circumstances affecting the property make compliance with the requirements of this chapter difficult or impossible, or the development provides alternative public benefits in lieu of the excepted uses or features that are of comparable value to the public in achieving the purposes of this chapter and of the Comprehensive Plan.

The Subject Property is uniquely affected by the presence of two historic properties that will be incorporated into the new structure. The Board finds that the Applicant’s attempt to preserve these historic structures, especially the air space above them, makes compliance with the setback requirement difficult. Further, conforming to this ARTS Overlay requirement with respect to the top floor creates a practical difficulty for the Applicant because the roof structure, which houses the elevator shaft and mechanical equipment, must be sufficiently setback from 14th Street based on roof structure requirements in the CR District. Redesigning the structure to comply with the ARTS setback requirement would potentially create difficulties in complying with these CR District setback requirements.

In addition, the features of the proposed structure provide substantial benefits to the public and help achieve the intentions of the ARTS Overlay and Comprehensive Plan. The development encourages pedestrian activity, creates retail space, and expands the area’s housing supply, in furtherance of the purposes of the ARTS Overlay District found in § 1900.2.

Paragraph 1906.1(c): The architectural design concept of the project will enhance the urban design features of the immediate vicinity in which it is located; provided, if a historic district or historic landmark is involved, the Board shall refer the application to the State Historic Preservation Officer for review and report.

The design concept of this project was developed to advance the goals of the ARTS Overlay District by integrating the historic structures on the property and by providing sufficient light and air access for neighboring properties. Because historic landmarks are involved, the application was referred to the State Historic Preservation Office, and the Applicant's design concept has been developed in collaboration with the Historic Preservation Office Staff with a specific focus on the preservation and rehabilitation of the Historic Buildings. The proposed setback and massing of the project complies with its goal of preserving the Historic Buildings and provides an Infill Structure between the Historic Buildings, and respects the air space above the Historic Buildings.

*Paragraph 1906.1(d): Vehicular access and egress are located and designed so as to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions.*

The Board need only apply this requirement when it is relevant to the relief sought. The Board finds that a special exception from the setback requirement will have no impact on vehicular access and egress, therefore this factor is not relevant to the relief and need not be applied in this case.

### **OP and ANC Reports**

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.)) In this case for the reasons discussed the Board concurs with OP’s recommendation to approve the application.

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC in its written report. (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) (2012 Repl.))). Similarly, the Board concurs with ANC 1B’s recommendation to grant the requested relief.

### **CONCLUSION**

Based upon the findings of fact and conclusions of law, the Board concludes that the Applicant has met the burden of proof for variance relief pursuant to 11 DCMR § 3103.2 from the requirements regarding public space at the ground level (§ 633), lot occupancy on the first and second story (§ 634), and rear yard setback (§ 636.2); and for special exception relief, pursuant to 11 DCMR § 3104, from the parking requirement for historic structures (§ 2120.6) and the ARTS Overlay setback requirement (§ 1902.2) to allow the Applicant to renovate two historic structures and build a new residential building with ground floor retail in the CR/ARTS District at premises 1921-1923 14th Street, N.W. (Lot 180, Square 237), 1925 14th Street, N.W. (Lot 196, Square 237), and 1351 Wallach Place, N.W. (Lot 806, Square 237).

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Accordingly, it is therefore **ORDERED** that the application is hereby **GRANTED**, subject to revised plans (Exhibit 37) and **SUBJECT** to the following **CONDITIONS**:

1. The Applicant shall restrict those residential units, subject to the parking relief requested, from applying for residential parking permit (RPP) stickers from the District of Columbia. In accordance with the above stated restriction, the Applicant shall include language in the leases or sales documents and record a covenant that includes the restriction.
2. The Applicant shall provide the new occupant of each residential unit a \$100 car sharing membership, or a \$150 Capital Bikeshare membership, or a \$200 *SmartTrip* card.
3. The Applicant shall provide 36 covered and secure long term bicycle spaces in the building and additional short term spaces.
4. The Applicant shall install a digital display in the lobby showing real-time transit information.
5. The Applicant shall designate a member of the property management team as the Transportation Management Coordinator (TMC) to ensure that information identifying programs and incentives for using alternative modes of transportation is disseminated to tenants of the building. The TMC shall also be tasked with assisting residents in need of parking to find alternate parking facilities in the area.
6. The Applicant shall have the flexibility to modify the design and internal layout of the building to address any comments from the Historic Preservation Office and the Historic Preservation Review Board during review of the project so long as the modifications do not require any additional areas of zoning relief.

**VOTE:**           **3-0-2**           (Lloyd J. Jordan, S. Kathryn Allen, and Anthony J. Hood (by absentee vote) to Approve; Jeffrey L. Hinkle not participating, not voting; one Board seat vacant.)

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

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

**ATTESTED BY:** \_\_\_\_\_

  
**SARA A. BARDIN**  
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** July 7, 2014

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, 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.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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

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PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.