

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application Nos. 18852 & 18853 of SB-Urban, LLC, pursuant to 11 DCMR § 3103.2 for variances from the side yard requirements in § 775.1, the court width requirements in § 776.3, the parking requirements in § 2101.1, and the lot occupancy requirements in § 2604.2 of the Zoning Regulations, and pursuant to 11 DCMR § 3104.1, for special exceptions for parking for a historic resource under § 2120.6 and for roof structure standards under § 411.11 of the Zoning Regulations to allow the construction of two apartment buildings that will function as one building in the C-2-A District at premises 90 and 91 Blagden Alley, N.W. (Square 368, Lots 164 & 165).

HEARING DATES: November 5, 2014, December 2, 2014, and January 27, 2015
DECISION DATE: February 24, 2015

DECISION AND ORDER¹

PRELIMINARY MATTERS

Application. This application was initially filed by SB-Urban, LLC (“Applicant”) as two applications: one for each property described in the caption. The application for 90 Blagden Alley, N.W. (the “M Street Property”) (Case No. 18852) was filed pursuant to 11 DCMR §§ 3103.2 and 3104.1 for variances from the court width requirements in § 776.3 and the lot occupancy requirements in § 2604.2 and for special exceptions for parking for a historic resource under § 2120.6 and for roof structure standards under § 411.11 to permit the construction of a multifamily apartment building. (Exhibits (“Ex.”) 1-16 for Case No. 18852.) The application for 91 Blagden Alley, N.W. (the “9th Street Property”) (Case No. 18853) was filed pursuant to 11 DCMR §§ 3103.2 and 3104.1 for variances from the side yard requirements in § 775.1, the parking requirements in § 2101.1 and for a special exception for roof structure standards under § 411.11 to construct a multifamily apartment building with a small amount of ground floor retail. (Ex. 1-16 for Case No. 18853.) The zoning relief requested in this application was self-certified pursuant to 11 DCMR § 3113.2. (Ex. 5 for both cases.) The applications included photographs of the property and plans and elevations depicting the proposed buildings.

¹ Unless otherwise specified, all references to exhibits in the record refer to the record for Case No. 18852.

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The Applicant filed a letter requesting that applications be heard and decided together because the buildings will be connected and will function as one residential building (the “Project”). (Ex. 16.) The Board granted this request.

Notice of Application and Notice of Public Hearing. By memoranda dated August 19, 2014, the Office of Zoning sent notice of the applications to the Office of Planning (“OP”); Advisory Neighborhood Commission (“ANC”) 2F, the ANC for the area within which the subject properties are located; the single-member district representative for ANC 2F06; the Councilmember for Ward 2; and the District Department of Transportation (“DDOT”). (Ex. 18-22.)

A public hearing was scheduled for November 5, 2014. Pursuant to 11 DCMR § 3113.12, the Office of Zoning mailed notice of the public hearing to the Applicant, the owners of property within 200 feet of the subject property, and ANC 2F on August 21, 2014. (Ex. 25.) Notice of the public hearing was also published in the *D.C. Register* on August 22, 2014.

On October 1, 2014, the Applicant filed a motion for a continuance of the public hearing so that it could have additional time to work with the ANC. (Ex. 32.) The Board granted the motion and continued the public hearing to December 2, 2014.

Finally, the Applicant confirmed by affidavit that it had posted notice of the public hearing on the subject properties on November 13, 2014. (Ex. 34.)

Public Hearing. The Board of Zoning Adjustment (“Board”) held a public hearing on the applications on December 2, 2014. At the end of the hearing, the Board closed the record except for two filings that it requested: transportation demand management studies from the Applicant and a revised letter from the ANC. The Board scheduled a continuation of the hearing limited to the information it requested. The continuation hearing was scheduled for January 27, 2015, when it was held.

Requests for Party Status. In addition to the Applicant, ANC 2F was automatically a party in this proceeding. Barbara Shauer filed a party status request on January 5, 2015. (Ex. 50.) Ahmed Ait-Ghezala filed a party status request on January 11, 2015. (Ex. 51.) The Board denied these requests for being untimely. (Hearing Transcript of January 27, 2015 (“1/27 Tr.”) at 41-42.)

Applicant’s Case. The Applicant provided testimony and evidence from Devon Perkins, the Project’s architect, Jami Milanovich, the Project’s traffic engineer, and Michael Balaban, a representative of SB-Urban, LLC. The Applicant and its witnesses described the project, explained the need for the various forms of zoning relief requested, and addressed issues regarding potential adverse impact. (Ex. 15, 36, & 37.) At the December 2, 2014 public hearing, at the Board’s request, the Applicant’s team presented testimony on the issues related to only the parking variance and parking special exception. (Hearing Transcript of December 2, 2014 (“12/2 Tr.”) at 110-28.) Following the December 2, 2014 public hearing, at the Board’s request, the Applicant filed additional information relating to transportation demand management (“TDM”)

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studies. The Applicant filed this information about the TDM studies on January 20, 2015. (Ex. 53.) The Applicant's transportation engineer testified about the applicability of these studies to the Project at the January 27, 2015 public hearing. (1/27 Tr. at 43-44.)

Government Reports. By report dated November 21, 2014 and through testimony at the public hearing, OP recommended approval of the applications. (Exhibit 39; 12/2 Tr. at 128-30.) OP found that the application satisfied all the criteria for the requested relief, including that the properties are affected by an exceptional condition resulting in a practical difficulty and that there would be no impact from the parking relief.

DDOT filed a report, dated November 25, 2014, stating that it had no objection to the requested parking relief and found the following:

- A robust public transit network exists near the Properties;
- The Properties are not within the District's Residential Permit Parking ("RPP") system and are not eligible to be;
- On street parking is either limited to RPP holders or is metered, and is therefore unsuitable for long-term parking by the Project's residents;
- The Project will generate minimal new vehicle trips; and
- Residents are likely to heavily use non-automobile modes of travel. (Exhibit 26.)

DDOT's report also included four conditions of approval to which the Applicant agreed.

ANC Report. At a regularly scheduled and duly noticed public meeting held October 1, 2014 with a quorum present, ANC 2F voted 6-0-1 to support the side yard variance, open court variance, lot occupancy variance, and roof structure special exception. At a regularly scheduled and duly noticed public meeting held on November 5, 2014 with a quorum present, ANC 2F voted 4-3-0 to support the parking variance and parking special exception. At the Board's request, the ANC filed a revised report. (Ex. 49.) The ANC concluded that the Applicant was responsive to ANC and community concerns and agreed to numerous conditions of approval. The ANC also concluded that the characteristics of the Project and its likely residents means that the residents will be unlikely to own cars, that the proffered TDM program will increase non-automobile travel, and, ultimately, that the Project will not have a substantial detriment to the public good or to the zone plan. (Ex. 49.)

Two representatives from ANC 2F also testified at the hearing: one of which was the Chair of the ANC's Community Development Committee, and the other was the Single Member District representative for the Properties. They reiterated the conclusions in their report and testified that the Project will be a benefit to the community because it will not add traffic in the alley and because it was created in collaboration with the community. (12/2 Tr. at 136-42.)

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Persons in support. The Board heard testimony and received evidence from persons in support of the application. Cheryl Cort from the Coalition for Smarter Growth and Alexis Lefebvre testified in support of the application. (12/2 Tr. at 143-49; 1/27 Tr. at 53.) The Board also received two letters in support of the application. (Ex. 38, 40.)

Persons in opposition. At the December 2, 2014 public hearing, the Board heard testimony in opposition from eight people. The Board also received written submissions in opposition. (Ex. 33, 43, 44). At the January 27, 2015 public hearing, the Board heard testimony from three people, two of whom testified at the December 2, 2014 public hearing. (1/27 Tr. at 56-68.) At the January 27, 2015 public hearing, the Board granted a request to accept into the record additional materials in opposition.

Post-hearing submissions. At the conclusion of the January 27, 2015 public hearing, the Board closed the record except for the Applicant's rebuttal to the opponents' additional submissions and the Applicant's draft findings of fact and conclusions of law. (1/27 Tr. at 85-86.) On February 13, 2015, the Applicant submitted its rebuttal responding to the contested issues raised by the opponents and its proposed findings of fact and conclusions of law. (Ex. 64.)

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property includes two parcels of land. The M Street Property, 90 Blagden Alley, is located midblock along M Street NW (Square 368, Lot 165). The 9th Street Property, 91 Blagden Alley, is located midblock along 9th Street, N.W. (Square 368, Lot 164) (together with the M Street Property, the "Properties"). (Ex. 36, 37; 12/2 Tr. 110-17.)
2. The M Street Property is rectangular in shape and contains approximately 15,976 square feet of land area. It is bounded by the Blagden Alley system to the west, north, and east. The 9th Street Property is irregularly shaped and contains approximately 8,303 square feet of land area. It is bounded by the Blagden Alley system to the west and south. The Properties are oriented perpendicular to each other but separated by Blagden Alley. (Ex. 36, 37; 12/2 Tr. 110-16.)
3. Blagden Alley is active and is improved with a mix of building types that are used as small offices, retail shops, and residential dwellings, as well as rear access points to commercial and residential buildings that front on the surrounding streets. Blagden Alley connects to M Street as well as 9th Street adjacent to the Properties. Portions of Blagden Alley adjacent to the M Street Property, including the portion of Blagden Alley between the Properties, are 30 feet wide. The portion of Blagden Alley to the west of the M Street Property is only 15 feet wide. The portion of Blagden Alley to the south of the 9th Street Property is only 10 feet wide. (Ex. 36, 37; 12/2 Tr. 110-18.)

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4. The Properties are located in the Blagden Alley/Naylor Court Historic District. The Project received concept approval from the District of Columbia Historic Preservation Review Board. (Ex. 36.)
5. The M Street Property is improved with a one-story former garage located at the rear of the parcel and surface parking. This structure is a contributing building in the Blagden Alley/Naylor Court Historic District. The 9th Street Property is unimproved and used as a surface parking lot. (Ex. 36.)
6. To the south of the M Street Property, across M Street, is a 10-story condominium building. To the east of the 9th Street Property, across 9th Street, is the Washington Convention Center. Parcels along M Street to the east of the M Street Property and the south of the 9th Street Property are improved with rowhouse dwellings and flats. To the north are primarily retail and office establishments and new apartment buildings. (Ex. 36, 37.)
7. The Properties are zoned C-2-A. The C-2-A Zone District permits multifamily residential dwellings as well as retail uses as a matter of right. Surrounding properties to the west and north are also located in the C-2-A Zone District. Other properties in Square 368 to the west, south, and east are located in the R-4 Zone District. (Ex. 13.)

The Applicant's Project

8. On the M Street Property, the Applicant will construct an addition to the existing historic garage building ("M Street Building"). On the 9th Street Property, the Applicant will construct a new building ("9th Street Building") that connects to the M Street Building through a pedestrian walkway over Blagden Alley. Although separate structures for zoning purposes, the Applicant will operate the structures as one apartment building with shared amenities, lobby, common spaces, and building services. The Project includes approximately 123 dwelling units, including approximately 79 units in the M Street Building and approximately 44 units in the 9th Street Building. The 9th Street Building also contains a small retail space. (Ex. 36; 12/2 Tr. at 110-18.)
9. The residential units will consist entirely of small, furnished studio apartments (each approximately 395 square feet) that are targeted at single professionals seeking living accommodations in walkable, transit-oriented neighborhoods proximate to the central business district as well as urban amenities. (Ex. 36; 12/2 Tr. at 123-28.)
10. The apartments will be fully furnished not only with furniture but also with linens, kitchen supplies, and televisions, thereby allowing residents to move-in with little more than clothes and small personal items. (Ex. 36; 12/2 Tr. at 126.)
11. Although the individual living units will be small, the Project will include significant shared common amenity areas and living spaces that will be located primarily in the converted historic garage. (Ex. 36.)

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12. The Properties are located within three blocks (approximately 800 feet) of the entrance to the Mount Vernon Square-Convention Center Metrorail Station, along a Metrobus corridor, within a quarter-mile of two Capital Bikeshare stations, and within walking distance of many restaurants, drug stores, grocery stores, gyms, and other retail and service establishments. (Ex. 15, 36; 12/2 Tr. 118-19.)
13. The Project will not include any vehicular parking spaces. The Project will include approximately 42 bicycle parking spaces within a large, secure bicycle storage room that will be equipped with bicycle maintenance facilities. (Ex. 36, 37.)
14. The Project will include affordable housing units consistent with the requirements of the Zoning Regulations. (Ex. 36.)
15. Each building will have a height of 50 feet and a FAR of 3.0, which are within the permitted height and FAR in the C-2-A Zone District for a residential multi-family building subject to Chapter 26 of the Zoning Regulations. The multifamily residential and retail uses are permitted in the C-2-A Zone District. The Applicant requested relief from certain other provisions of the Zoning Regulations as set forth below. (Ex. 37.)

Zoning Relief

9th Street Building—Variance Relief

16. Variance relief from the side yard and parking requirements of the Zoning Regulations is required for the 9th Street building for the reasons stated in finding of facts 17 and 18.
17. No side yard is required in the C-2-A Zone District, but if one is provided, the side yard must have a minimum width based on the height of the building. The 9th Street Building will include a side yard in order to effectively widen the 10-foot wide alley and to create an area for pedestrians to walk out of the vehicular right-of-way. The side yard width will be six feet, which is less than the eight foot-four inch side yard required under § 775.5 of the Zoning Regulations.
18. Subsection 2101.1 of the Zoning Regulations requires one space per two dwelling units, or 22 parking spaces, for the 9th Street Building. The 9th Street Building will not include any vehicular parking.

9th Street Building—Special Exception Relief

19. The Zoning Regulations generally require that each building enclose all penthouses and mechanical equipment within a single enclosure of uniform height that is set back one-to-one from all exterior walls. The 9th Street Building will have two separate roof structures of unequal height. The front roof structure will measure 13 feet-six inches and will enclose mechanical equipment and a stairway penthouse. The rear roof structure will vary in height

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from 13 feet–six inches to five feet, with mechanical equipment and a stairway penthouse in the taller portion and the elevator penthouse in the shorter portion. Both roof structures will be generally set back as required by the Regulations, except that the second roof structure will be only set back nine feet-seven inches from the central open court. The Applicant requested special exception approval pursuant to § 411.11 for multiple structures of unequal height and for not meeting the setback requirements.

M Street Building—Variance Relief

20. Variance relief from the lot occupancy and court requirements of the Zoning Regulations is required for the 9th Street building for the reasons stated in finding of facts 21 and 22.
21. Subsection 2604.2 of the Inclusionary Zoning Regulation permits portions of the building devoted to residential use in the C-2-A Zone District to have a maximum lot occupancy of 75% in order to achieve the bonus density permitted in § 2604.2. The M Street Building will occupy 89% of the lot at the ground floor level.
22. No courts are required in the C-2-A Zone District, but if courts are provided, § 776.3 provides that courts must have a minimum width of four inches per foot of height of the court. The M Street Building will have two courts on the west and east sides of to provide additional light and air to the residential units. However, the western court will have a width of approximately five feet, and the eastern court will have a width ranging from approximately seven feet-two inches to 12 feet-seven inches, which is less than the required 16 foot-eight inch court width required.

M Street Building—Special Exception Relief

23. Parking is required for additions to historic buildings when the addition increases the gross floor area of the resource by 50% or more. (11 DCMR § 2120.3.) Accordingly, the Zoning Regulations require one space per two dwelling units, or 40 parking spaces, for the M Street Building. Since the M Street Building will not have any vehicular parking, the Applicant requested special exception relief from § 2120.4 pursuant to § 2120.6.
24. The Zoning Regulations generally require that each building enclose all penthouses and mechanical equipment within a single enclosure of uniform height that is set back one-to-one from all exterior walls. The M Street Building will have two separate roof structures of unequal height. The front roof structure will measure 13 feet-six inches and enclose mechanical equipment and stairway penthouses; the rear roof structure will measure five feet and enclose the elevator penthouse. Both roof structures will be adequately set back from all exterior walls. The Applicant requested special exception relief for multiple structures of unequal height pursuant to § 411.11 of the Zoning Regulations.

Factual Findings Pertaining to the Variance Relief Requested for the M Street Property

Exceptional Condition

25. The existing building contributes to the historic district.
26. The lot is exceptionally long and is considerably larger than many others in the square.
27. The lot is also very narrow (69 feet) compared to its length (233 feet).
28. The property is bordered by the historic Blagden Alley on three sides.
29. The historic garage is located at the property's rear. Since it contributes to the historic district it must be retained because, under the District's historic preservation laws, a contributing building cannot be demolished absent exceptional circumstances.
30. The garage is one story, but it is built to the north, west, and east lot lines and occupies a significant portion of the lot.

Practical Difficulties

Open Court Width

31. Because the property is long and narrow with an alley on the east and west sides, setbacks in the M Street Building are necessary to provide light and air through windows that are not on the property and alley line. In particular, the cellar units will need the setbacks (courts) to accommodate the light wells, and units with windows on the alleys will need setbacks to buffer these windows from the alleys, which do not otherwise provide a separation from automobile traffic like sidewalks do for streets.
32. In addition, the western court will help maintain a view of the historic garage by pulling back the new structure to reveal the old when viewed from M Street. These setbacks will not run the length of the building, so they will both be open courts. (Ex. 36, 37, 64.)
33. If the courts were conforming widths, then the units throughout and the corridor would be squeezed and unworkable for an apartment building. The core cannot be in another location because of the historic building, but it would hamper circulation in a narrow building. Also, the corridor must be a minimum width to function well for units on both sides, and widening the courts would force a constriction of the corridor to approximately five feet in width, which is functionally too narrow. Further, if the courts were widened, then the widths of the units decrease.
34. Since the Property is long and narrow, the most efficient layout is to have the double-loaded corridor in the center of the building running north-south. The long and narrow configuration of the property already limits the unit layout, and more constriction on such a

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layout would result in infeasibility. While the building program calls for small units, narrowing them any more to create conforming courts on both sides of the building would result in units so narrow that they could not accommodate all necessary functions (kitchens, bathrooms, closets) in an efficient or livable way.

The Public Good

35. The provided open courts will not restrict light or air because they open parallel onto the alley, and they provide more open space than if they were not provided at all. Courts are not required in this zone. (Ex. 36, 64.)

Lot Occupancy

Practical Difficulties

36. The historic garage consumes a large portion of the lot, particularly once the new structure is added. The garage occupies 29% of the lot, which would leave only 46% of the lot for a conforming first floor. (Ex. 36, 37, 64.)
37. The footprint of the first floor of the new structure cannot be reduced without shrinking the footprint of the rest of the new structure because of core and plumbing alignments. This would result in a building with considerably less FAR than permitted (0.88 FAR – nearly 1/3 of what is permitted – would be lost).
38. Shrinking the footprint of the upper floors would require narrowing of the corridors, and such shrinking would render the units so small that they would be non-functional.
39. Constructing such a small structure on such a large lot would not be economically viable based on the fixed land costs and fixed construction costs. (Ex. 36, 37, 64.)

The Public Good

40. The overall height and density (FAR) of the building will be within the permitted zone limit, and the upper stories of the building will remain well within the lot occupancy limit. (Ex. 36, 64.)

Factual Findings Pertaining to the Variance Relief Requested for the 9th Street Property

Exceptional condition

41. The 9th Street Property is part of a project that includes another lot (M Street Property).
42. Only three other lots in the entire square are larger than the 9th Street Property (one of which is the M Street Property), and no others in the square have all of the above identified characteristics. (Ex. 36, 37, 64.)

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43. The 9th Street Property is an irregular shape, has a narrow width, and is bounded on two sides by historic Blagden Alley.

Side Yard

Practical Difficulties

44. The Project lobby will be accessed from the alley into the M Street Building.
45. Residents of the Project and patrons of the retail establishments within the square will frequently bike or walk in the alley, which is 10 feet wide and used by motor vehicles.
46. The building design will incorporate the side yard along the alley to provide a pedestrian separation. The side yard will allow cyclists and pedestrians to safely move out of the automobile right-of-way, even in the absence of a traditional sidewalk.
47. Eliminating the side yard would produce a dangerous situation for pedestrians and cyclists.
48. Widening the side yard to a conforming width would compromise the viability of the Project by making the units excessively small. Such units would not allow for an efficient or livable layout and would render the Project infeasible. (Ex. 36, 37.)

The Public Good

49. The side yard will be entirely adjacent to the alley.
50. The building could lawfully be constructed without a side yard and thus the matter of right condition would allow for less light and air.
51. An easement to preserve the side yard will be made a condition of this order.

Parking

Practical Difficulties

52. The shape and narrowness of the lot cannot efficiently accommodate parking spaces, ramps, and drive aisles without digging deeply for many parking levels at great expense.
53. Providing underground parking results in a high rate of inefficiency - 78% would be dedicated to circulation - that would require multiple below-grade levels of parking. These additional levels will make the construction cost per parking space would be prohibitively high, resulting in higher rents that would ultimately render the Project non-viable.

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54. Because the lot is so long and narrow, locating excavators in or near the site in a way that they could dig the entire lot would be a logistical challenge that may not even be feasible. (Ex. 36, 37, 64.)
55. Providing a few surface parking spaces at the rear of the property would create automobile-pedestrian conflicts.
56. Providing such spaces would also harm the historic character of Blagden Alley by introducing unnecessary surface parking that is not typical of the historic period.
57. If underground parking were provided, the entrance would have to be off the alley, which would introduce automobile traffic in Blagden Alley and would be to the detriment of the historic alley character that historically accommodated many types of non-automobile forms of transportation. (Ex. 36, 37, 64.)

The Public Good

58. Because of the property's location near the central business district (downtown), it is likely to have low residential parking demand. Evidence demonstrating regional and national trends toward non-auto transportation options and reduced auto ownership support this conclusion.
59. A study in which the data suggest that sites within the District's core have the lowest parking utilization rates further supports this conclusion. (Ex. 15, 64.)
60. Four recent studies demonstrate trends toward reduced car ownership rates and reduced car usage, and trends in Washington, D.C. region are consistent with this data.
61. The Project's neighborhood has comparatively low automobile ownership rates, and these rates are likely to continue to decline with national trends. (Ex. 15, 64.)
62. The site is located approximately 800 feet from the Mount Vernon/7th Street – Convention Center Metro Station and is served by six Metrobus routes and a major DC Circulator route.
63. Other non-auto transportation options are available in the site vicinity, including 21 car-sharing vehicles located within a ¼ mile of the site and two Capital BikeShare stations, each with 19 docks located two blocks from the site.
64. Additionally, two dedicated bicycle lanes provide north-south travel within two blocks of the site.
65. Proximity to transit and amenities/services correlates with lower residential parking demand, and residents without cars tend to choose such locations. Accordingly, since the property has high transit access, it is likely to have low parking utilization. (Ex. 15, 64.)

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66. Significant public transportation options will have sufficient capacity for the Project residents. An adequate supply of car-share cars are within close proximity to the Project, the use of car-share services by Project residents will not sap the supply of on-street parking, and Capital Bikeshare will have adequate capacity once an Applicant-funded station is installed. (Ex. 15, 64.)
67. The estimated trip generation for the Project will be primarily by modes other than automobile, and the estimated number of automobile trips will not significantly impact the operation of the nearby intersections. (Ex. 15, 64.)
68. Condition No. 3 of this Order requires the implementation of a Transportation Demand Management Plan (“TDM” Plan).
69. Studies of other projects in the region demonstrate how TDM plans are effective in decreasing automobile use by residents. Further, that the studied projects provided parking demonstrates strong support for a conclusion that a TDM plan for a project without parking is likely to have an even greater impact on reducing automobile use. (Ex. 53, 64; 1/27 Tr. at 43-44.)
70. The Applicant changed the property’s addresses to Blagden Alley addresses. DDOT confirmed that those addresses are not in the RPP system and that the Blagden Alley location is not consistent with RPP eligibility criteria. In the event that this might later change, the Board added a condition to the TDM Plan requiring that all leases preclude residents from obtaining RPP stickers.
71. Parking demand decreases as a walk score increases. Therefore, because of the property’s high walk score, it is highly likely that there will be low demand for parking at the Project. (Ex. 15, 64.)
72. A greater supply of residential parking correlates with a higher demand for parking. Therefore, providing parking is more likely to encourage car ownership than the absence of parking for the Project. (Ex. 64.)
73. Because of the ample transit options and high walk score for the property, it is highly unlikely that residents in the Project would want or bring cars and that there would be very little – if any – demand for parking from Project residents. (Ex. 15, 64.)

Factual Findings Pertaining to Special Exception Relief for Parking (§2120.6) – M Street Property

74. Because of the alley widths and configurations along the sides of the M Street Property, entrances to parking on either side of the property would result in a greatly inefficient and impractical building, ramp, and garage configuration. (Ex. 36, 64.)

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75. The existing openings at the garage's rear are not wide enough to accommodate a parking entrance because at least 20 feet of width is required to provide a code-compliant entrance.
76. Adding or expanding openings in the garage to accommodate a parking entrance would severely damage the historic appearance of the garage, would remove a significant amount of historic fabric within the garage, and most likely would not be permitted by the Historic Preservation Review Board and/or the Historic Preservation Office.
77. Such an entrance through the garage would not change the inefficient layout of the parking level underground. (Ex. 36, 64.)
78. The maximum number of expected residents will be 79. It is unlikely the residents will have guests.
79. Because the residential units are small, most residents will choose to socialize on-site with other residents in the amenities spaces or elsewhere at any of the many amenities or other social venues located in close proximity to the Project. (Ex. 36.)
80. The amount of traffic congestion that the redevelopment of the historic resource can reasonably be expected to add to the neighborhood is likely to be nominal. (Ex. 15, 36, 64.)
81. Adequate off-site parking facilities in the neighborhood are expected to be available when the Project is complete. There are approximately 41 public parking facilities available to the public within ½ mile of the property, and these facilities have available capacity. However, it is very unlikely that residents of the Project will own cars and need parking. (Ex. 15, 36.)
82. The property is in close proximity to multiple public transportation options with high availability. The property is close to Metrorail, Metrobus, Circulator, and Capital Bikeshare, all of which can accommodate the residents of the Project. (Ex. 15, 64; 12/2 Tr. at 118).

Factual Findings Pertaining to Special Exception Relief for Noncompliant Roof Structures (§ 411.11) – M Street and 9th Street Properties

83. Two roof structures with walls of differing heights on each building are necessary to accommodate Building Code and building programming while avoiding the creation of one unnecessarily large roof structure on each building.
84. The location of the roof structure on the 9th Street Building is driven by the size of the lot and the necessity of locating the elevator overrun and electrical equipment in a particular location to accommodate building programming.
85. Providing a complying setback for the roof structure would result in an impractical building design. (Ex. 36.)

CONCLUSIONS OF LAW AND OPINION

Variance Relief

The Applicant seeks variances, pursuant to § 3103.2, from the open court width, lot occupancy, side yard width, and parking requirements to allow the construction of two buildings that will be one project operating as one building.

The Board is authorized under § 8 of the Zoning Act (D.C. Code § 6-641.07(g)(3)) to grant variances, as provided in the Zoning Regulations, “[w]here, 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 any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; provided, that the 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 § 3103.2.

The Board concludes that the Applicant has met the burden of proof under § 3103.2.

For the reasons stated in Findings of Fact No. 25 through 30 and 41 through 43, the Board finds that both M Street Property and the 9th Street Property are each affected by an exceptional condition arising from a confluence of factors on each property. An exceptional condition affecting a property can arise from many factors – including history, shape, and location – and a confluence of factors may combine to give rise to the exceptional condition. *Gilmartin v. D.C. Bd. of Zoning Adj.*, 579 A.2d 1164, 1168 (D.C. 1990). In addition, it is not necessary that the property be unreservedly unique to satisfy the “exceptional condition” standard. Rather, the applicant must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood. *Id.* In this case, the confluence of the identified features on each of the M Street Property and 9th Street Property satisfy this legal standard for the exceptional condition affecting it because they lead to a practical difficulty for the Applicant in complying with the Zoning Regulations.

For the reasons stated in Findings of Fact No. 31 through 34, 36 through 39, 44 through 48, and 52 through 57, the Board finds that strict application of the open court width, lot occupancy, side yard width, and parking regulations would result in a practical difficulty to the Applicant due to the exceptional condition affecting each of the M Street Property and the 9th Street Property. The Applicant demonstrated with sufficient evidence and testimony that strict application of the Zoning Regulations would result in an inefficient and uneconomical building design. Indeed, economic or efficiency burdens are among those that the Board may evaluate as legitimate practical difficulties imposed by Zoning Regulations on the owner of a property. *Palmer v. D.C.*

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Bd. of Zoning Adj., 287 A.2d 535, 542 (D.C. 1972). *See Wolf v. D.C. Bd. of Zoning Adj.*, 397 A.2d 936 (1979) (exceptional size and layout of dwelling precluded its marketing under matter of right conditions). Therefore, the demonstrated inefficient use of the Properties and inefficient design of the buildings that would result from the compliance with the parking, side yard width, open court width, and lot occupancy regulations would impose a practical difficulty upon the Applicant. As a matter of law, these demonstrated inefficiencies constitute a practical difficulty that justifies variance relief.

For the reasons stated above in Findings of Fact No. 31-34, the Board finds that the Applicant would face a significant design and functionality burden if the M Street Building were to comply with the minimum court width and lot occupancy requirements. (Ex. 36, 37, 64.). As noted by OP, a double-loaded corridor with compliant court widths would result in unusually narrow units, and a single-loading corridor would be an inefficient design rarely seen in residential buildings. OP also stated: “The volume of the garage structure must be preserved, which means that [a] new structure can generally not be placed on top [of] the garage”.

As to the 9th Street Building, the Board agrees with OP that “if a conforming side yard were proposed, the dimensional change would be small in absolute terms (6’ to 8’4”), but would have a significant impact on the relatively small units within the project.” (Exhibit 39.) The Board further concurs with OP that if strict application of the parking requirements were adhered to “there would need to be three levels of parking to meet the requirement and the levels would be extremely inefficient.” (Exhibit 39.)

The Board was not persuaded by the opposition’s arguments that a car elevator/automated parking system is a viable alternative for parking that would eliminate a practical difficulty for the Applicant. The Applicant explained that, while a car elevator/automated system may allow better access to an underground garage, it cannot change the high inefficiency of the layout of the garage in this case because parking spaces and drive aisles still must satisfy the minimum dimension requirements in §§ 2115.1 and 2117.5 of the Zoning Regulations. Also, variance relief would still be required to use a car elevator/automated parking system. Thus, the Applicant would still face a practical difficulty with a parking elevator/automated parking system. (Ex. 64.)

The Board finds no merit in the opposition’s arguments that that the Applicant would not face a practical difficulty through strict application of the side yard and parking requirements. Even if some of the property’s characteristics – considered individually – may be favorable for development, the combination of characteristics is not favorable for this development to comply with the side yard and parking requirements. It is not valid to compare this lot to residentially-zoned one-family dwelling and flat properties in the square because of the different development and use standards that affect this property due to its commercial zoning. The highest and best use of the lot (the apartment building proposed by the Applicant) results in a situation where parking and a conforming side yard cannot be provided without significant inefficiency in design. It is this resulting inefficiency in design and uneconomical use of land that results in a practical difficulty for the Applicant.

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The Board finds that that the variance 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 to the side yard variance for the 9th Street Building, the Board notes that no side yard is required in this zone. The need for the variance results from the Applicant's desire to add adjacent space to the existing narrow alley to provide a wider area for residents and guests to access the Project's lobby. Since the absence of a side yard is permitted as of right, it is incongruent to find that providing a six foot alley would impair the public good or would impair the zone plan. In fact, the public good would be impaired if the alley were not provided, and, as noted, the project would be faced with practical difficulties in providing a compliant eight foot wide side yard. Granting the requested relief would not impair the intent of the Zoning Regulations. As noted in the OP report, the relatively small difference between the required side yard and the proposed side yard would not impact the goal of providing light and air to uses within the building. Furthermore, the side yard abuts and alley so would not have a direct impact on any nearby uses.

For the reasons above in Findings of Fact No. 58 through 73, the Board finds that the parking variance for the 9th Street Building will not result in substantial detriment to the public good and will not impair the integrity of the zone plan.

Based on testimony and ample evidence provided by the Applicant's traffic engineer concerning parking demand, automobile use/ownership rates, transportation options, and the Applicant's proffered transportation demand management plan, the Board finds that granting the variance from the parking requirement will not adversely affect on-street parking availability in the neighborhood, will not create adverse traffic conditions in the neighborhood, and will not overburden the public transit modes in the neighborhood.

The Applicant sufficiently demonstrated with numerous studies that a need for parking at the Project is unlikely, that the conditions and enforcement mechanisms will prevent residents from parking on the street, and that ultimately, the District's transportation network is unlikely to be adversely affected by the granting of the variance. The opponents asserted that the studies regarding car ownership rates and usage cited by the Applicant are not valid or applicable to the Project, but offered no evidence to rebut or invalidate these studies. These studies were published by reputable organizations that study travel behavior and transportation characteristics.

Notwithstanding the opponents' assertion, the Board finds that the trip generation rates were appropriate for this site and applicable to the Applicant's traffic study. The trip generation estimates provided in the Applicant's traffic study are based on accepted industry methodology that DDOT vetted and accepted, and are based on sound principles that the Applicant explained. The assumptions used in the Applicant's traffic study are further substantiated by a study of a similar site in another city.

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OP concurred that there would be no substantial detriment to the public good. OP noted that it is unlikely that residents would own cars and that there are ample transit options nearby. (Ex. 39; 12/2 Tr. at 129-30.) DDOT concurred that there would be no significant negative impact to the transportation network from the requested variance relief from the parking requirement. DDOT noted that, because of the property's proximity to transit and pedestrian/bicycle infrastructure, the Applicant's commitment to a strong TDM program, the inability of residents to obtain RPP, and the provision of adequate bicycle parking, the Project will lead to low levels of auto ownership and use. (Ex. 41; 12/2 Tr. at 131.)

The Board finds that conditions will be effective and enforceable because of enforcement sanctions that the Applicant would face for violating the conditions and because of the high cost of not complying. The Project's leases will include terms that prohibit residents from obtaining any sort of on-street parking passes, and the Applicant will have a strong incentive to enforce these terms because of the assured vigilance of the neighborhood in monitoring Project resident parking. Also, the Applicant will record a covenant on the Properties that will prohibit residents from long-term parking on the street and from obtaining any sort of parking pass or permit. Finally, the Applicant will be vigilant in its own monitoring of the Project residents to assure compliance with the conditions. (Ex. 64.) The Board categorically rejects any claim that the Office of the Zoning Administrator enforcement mechanisms cannot enforce these conditions. In fact, the violation of any condition of this order would furnish a basis to revoke the building permit and certificate of occupancy for the Project. (12 DCMR A §§ 105.6.2 and 110.5.5.2.)

As to consistency with the zone plan, the intent of the Zoning Regulations is for adequate parking to be provided where needed. In this case, the Applicant has demonstrated that parking on-site would not be necessary.

The Board finds that the open court width and lot occupancy variances for the M Street Building will not result in substantial detriment to the public good and will not impair the integrity of the zone plan. OP noted, and the Board finds, that the design would provide significant courts that result in a definitive visual and structural break in the building mass and a setback from the adjacent alleys. As to lot occupancy, only the ground floor of the building would be noncompliant while the remaining floors are well within matter of right constraints. Thus, the Board shares OP's conclusion that the scale of the building is not out of character with the neighborhood. (Ex. 39.)

As to the side yard width, open court width, and lot occupancy variances, while the opponents offered alternative designs, the Applicant proved that the requested variances for the Applicant's design are not likely to have adverse impacts. As a matter of law, an applicant for a variance is not required to prove that its proposed design is the sole potential design for the property. *Washington Canoe Club v. D.C. Zoning Com'n*, 889 A.2d 995, 999 (2005). In general, the BZA does not consider alternative designs when determining whether the proposed design would have a substantial negative impact on the surrounding neighborhood. *Gilmartin*, 579 A.2d at 1170-71, 1172; *Wolf*, 397 A.2d at 945. The inquiry into potential impacts on the surrounding neighborhood from a proposed design occurs after the applicant has demonstrated

uniqueness and practical difficulties. *Id.* Thus, the proper role of the Board is to analyze only the potential effect of the proposed design, not other putative design alternatives. By proving that the side yard width, open court width, and lot occupancy variances for the Project are not likely to cause substantial detriment to the public good or zone plan, then the Applicant has satisfied its burden that warrants variance relief.

Special Exception Relief

The Applicant seeks a special exception pursuant to § 2120.6 to allow no parking at the M Street Building, which is improved with a historic building that will be part of the new building. The Applicant also seeks a special exception pursuant to § 411.11 to allow multiple roof structures of multiple heights and for an inadequate setback for one roof structure.

The Board is authorized under § 8 of the Zoning Act (D.C. Official Code § 6-641.07(g)(2)) 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 § 3104.1.

Subsection 2120.6 permits the Board to grant relief from all or part of the parking requirements for historic resources “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.” The subsection further requires that the Board address the following criteria:

- (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.

The Board finds that the Applicant met its burden of demonstrating 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. The existing openings at the garage’s rear are not wide enough to

accommodate a parking entrance because at least 20 feet of width is required to provide a code-compliant entrance. Adding or expanding openings in the garage to accommodate a parking entrance would severely damage the historic appearance of the garage, would remove a significant amount of historic fabric within the garage, and most likely would not be permitted by the Historic Preservation Review Board and/or the Historic Preservation Office.

The Applicant also has satisfied the specific criteria in §§ 2120.6(a) – 2120.6(d). The maximum number of expected residents will be 79. It is unlikely the residents will have guests. Rather, because the residential units are small, most residents will choose to socialize on-site with other residents in the amenities spaces or elsewhere at any of the many amenities or other social venues located in close proximity to the Project. The amount of traffic congestion that the redevelopment of the historic resource can reasonably be expected to add to the neighborhood is likely to be nominal. (Ex. 15, 36, 64.) Adequate off-site parking facilities in the neighborhood are expected to be available when the Project is complete. There are approximately 41 public parking facilities available to the public within ½ mile of the property, and these facilities have available capacity. However, it is very unlikely that residents of the Project will own cars and need parking. (Ex. 15, 36.) The property is close to Metrorail, Metrobus, Circulator, and Capital Bikeshare, all of which can accommodate the residents of the Project. (Ex. 15, 64; 12/2 Tr. at 118)

Pursuant to § 3104.1, the Board finds that the proposed special exception under § 2120.6 will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Zoning Regulations intend for the provision of adequate parking where required. In this case, the Board finds that parking is not necessary for the Project. As also required by that provision, the Board finds that the proposed special exception under § 2120.6 will not tend to affect adversely the use of neighboring property. The proposed Project will not substantially impair traffic or parking availability in the neighborhood, and it will not substantially impair the District's transportation network.

Subsection 411.11

Subsection 770.6 (a) provides that in Commercial Zones housing for mechanical equipment or a stairway or elevator penthouse on the roof of a building or structure must comply with § 411 and must be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located. Subsections 441.3 and 411.5 provide that each building must enclose all penthouses and mechanical equipment within a single enclosure of uniform height.

Both buildings will have two roof structures of unequal height. As to the 9th Street Building, the front roof structure will measure 13 feet-six inches and will enclose mechanical equipment and a stairway penthouse. The rear roof structure will vary in height from 13 feet–six inches to five feet, with mechanical equipment and a stairway penthouse in the taller portion and the elevator penthouse in the shorter portion. The front roof structure of the M Street building will measure 13 feet-six inches and enclose mechanical equipment and stairway penthouses; the rear roof

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structure will measure five feet and enclose the elevator penthouse. This second roof structure will only set back nine feet-seven inches from the central open court.

Subsection 411.11 permits the Board to grant special exception relief from roof structure requirements when compliance would be “restrictive, prohibitively costly, or unreasonable” because “of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area” provided, that the intent and purpose of Chapter 4 is not “materially impaired by the structure, and the light and air of adjacent buildings [is not] affected adversely.”

The Board concludes this standard has been met. The Board finds that the Applicant sufficiently demonstrated how creating one roof structure on each of the buildings would create an unreasonably large roof structure that would tend to cause more adverse visual impacts. As to the setback requirement, the location of the roof structure on the 9th Street Building is driven by the size of the lot and the necessity of locating the elevator overrun and electrical equipment in a particular location to accommodate building programming. Providing a complying setback for the roof structure would result in an impractical building design. (Ex. 36.)

Pursuant to §§ 411.11 and 3104.1, the Board finds that the proposed special exception under § 411.11 will not materially impair the intent of Chapter 4 and will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The intent of the roof structure requirements is to minimize the visual appearance of roof structures. The Applicant demonstrated that the proposed roof structures will minimize appearance greater than one conforming roof structure on each building would. Also, the inadequate setback for one roof structure on the 9th Street Building will not noticeably increase its appearance from the street. (Ex. 36.)

Pursuant to § 3104.1, the Board finds that the proposed special exception under § 411.11 will not tend to affect adversely the use of neighboring property and, as required by § 411.11, specifically finds that the light and air of adjacent buildings will not be affected adversely. (Ex. 36.)

Need for loading facilities

The opponents asserted that loading facilities are required for the M Street Building. By self-certifying, the Applicant assumes the risk that it may need additional or different zoning relief from that which it requested in order to obtain a building permit or certificate of occupancy. *Application No. 18263-B of Stephanie and John Lester*, 60 DCR 11350 (2011). Accordingly, the Board will not consider assertions of an erroneous certification to its review of an application and instead allows the Zoning Administrator to carry out the function of administratively interpreting the Zoning Regulations. *Id.*

Great Weight

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) (2012 Repl.)).) As noted, ANC 2F voted 6-0-1 to support the side yard variance, open court variance, lot occupancy variance, and roof structure special exception. At a regularly scheduled and duly noticed public meeting held on November 5, 2014, with a quorum present, ANC 2F voted 4-3-0 to support the parking variance and parking special exception. At the Board's request, the ANC filed a revised report. (Ex. 49.) The ANC concluded that the Applicant was highly responsive to ANC and community concerns and agreed to numerous conditions of approval. The ANC also concluded that the characteristics of the Project and its likely residents means that the residents will be unlikely to own cars, that the proffered TDM program will increase non-automobile travel, and, ultimately, that the Project will not have a substantial detriment to the public good or to the zone plan. (Ex. 49.) For the reasons stated above, the Board agrees with the ANC's conclusions. Having explained why it finds the ANC's advice to be persuasive, the Board has afforded ANC 2F the great weight it is entitled under the statute.

The Board is required by § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990, (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2012 Repl.) to give "great weight" to the recommendation of the Office of Planning. In this case, the Board concurs with OP's recommendation that the application should be approved. Further, notwithstanding the contention of the opposition, the Board finds the OP report to be thorough and accurate.

Based on the findings of fact, and having given great weight to the recommendations of OP and ANC 2F, the Board concludes that the requested zoning relief can be approved.

For the reasons stated above, the Board concludes that the Applicant has satisfied the requirements for variances from the open court width, lot occupancy, side yard width, and parking requirements, as well as the requirements for a special exception for parking for a historic resource under § 2120.6 and for a special exception for roof structures under § 411.11 (Square 368, Lots 164 & 165). Accordingly, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of the applications for variances and special exceptions, **SUBJECT TO THE APPROVED PLANS, AS SHOWN ON EXHIBIT NO. 37 OF THE RECORD, AND SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Prior to the issuance of a Certificate of Occupancy for the buildings**, the Applicant shall:
 - a. Record an easement with the Recorder of Deeds for 91 Blagden Alley, N.W. that will preserve the six-foot side yard along the alley for pedestrians and prevent future development in that area;
 - b. Pay the cost of installing a new Capital Bikeshare station (27 docks and 14 bikes), and one year of its operating expenses, within ¼ mile of the Project site at an exact location to be determined by DDOT; and

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- c. Record a covenant with the Recorder of Deeds for both properties that prohibits the Project and its residents from eligibility for Residential Permit Parking and for any other temporary parking passes or permits.
2. All marketing materials for the Project must provide a disclosure, in the same size print as for any other marketing documents, that residents cannot park on-site and cannot park on the street.
3. The Applicant shall implement a transportation demand management (TDM) plan that includes the following:
 - a. Designate a member of the property management team as the Transportation Management Coordinator (TMC), who will be responsible for disseminating information to tenants. This position may be part of other duties assigned to that person;
 - b. Notify residents that they are not eligible for a Residential Parking Permit (RPP). Include a provision in all leases that residents are not eligible for RPP and they are prohibited from applying for or obtaining any short term, temporary, or visitor parking passes. The Applicant will work with DDOT to ensure that these restrictions are enforced. If a resident applies for and obtains an RPP pass, then it will be a violation of the lease;
 - c. Provide information and/or links to the most current transportation services websites, which shall include or be similar to the following:
 - i. Capital Bikeshare,
 - ii. Car-sharing services (ZipCar, Enterprise Carshare, Car2Go, etc.),
 - iii. Uber,
 - iv. Ridescout,
 - v. DDOT's DC Bicycle Map,
 - vi. goDCgo.com,
 - vii. WMATA,
 - viii. Commuter Connections Rideshare Program,
 - ix. Commuter Connections Guaranteed Ride Home, and
 - x. Commuter Connections Pools Program;
 - d. Provide two electronic displays – one in each building – in a common, shared space to provide real time availability information for nearby trains, buses, and other transportation alternatives;
 - e. Offer covered, convenient, and secure bike parking facilities inside the Project for at least 42 bicycles;

- f. Provide a bicycle repair facility near the bike parking facilities;
 - g. For the life of the Project, provide all new residents Capital Bikeshare memberships for the terms of their initial leases;
 - h. Provide at least 10 shared bicycle helmets for use by the residents;
 - i. For the life of the Project, provide all new residents car-share memberships for the terms of their initial leases; and
 - j. Host an annual bicycle training event conducted by the Washington Area Bicycle Association or similar organization for residents.
4. **Two years after the Project is open**, the Applicant shall submit to DDOT, the Zoning Administrator, and the ANC, an independent transportation study on the effects of the Applicant's TDM measures on the community. If the study concludes that the TDM measures are not effective consistent with the goals presented to the Board, then the Applicant must take measures to come into compliance with the goals and conduct another study within two years. If the first study concludes that the TDM measures are effective, then no further action is necessary.
5. The Applicant shall implement a loading and delivery management plan that includes the following:
- a. A member of the property management team will be designated as the loading coordinator, who shall be responsible for coordinating the limited loading activities in the building and informing residential tenants of the guidelines and procedures for loading and delivery operations;
 - b. Include a provision in all leases that, for tenants who need temporary loading, tenants will be required to notify, at least three weeks in advance, the loading coordinator before moving in or out so that the loading coordinator can assist in the establishment of curbside loading consistent with DDOT policies and procedures; and
 - c. The project shall include a clearly marked package delivery room accessible to delivery vendors directly from 9th Street. The property management team shall direct all private courier services (UPS, FedEx, DHL, Peapod, etc.) to park in the provided loading spaces on 9th Street, and to observe signs which applicant shall post and maintain on and near the building entrance in the alley stating, "NO DELIVERY PARKING. DELIVERY PARKING ONLY IN LOADING SPACES PROVIDED ON 9TH STREET. DELIVERIES MAY BE LEFT AT

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PACKAGE DELIVERY ROOM ON 9TH STREET.” The final locations of and language on the signs shall be subject to DDOT approval.

6. All trash pickup will occur from M Street. No trash containers shall be kept outside of the building. Trash haulers shall bring the trash containers outside when they arrive for pickup, and the trash haulers shall return the trash containers to inside the building once they have collected the trash.
7. The Applicant shall have flexibility to modify the design of the buildings to address any comments from the D.C. Historic Preservation Review Board or Historic Preservation Office staff during final review of the Project, so long as such modifications do not require any additional areas of relief or have a substantial impact on the final plans approved by the BZA.

VOTE: **3-0-2** (Peter G. May, Marnique Y. Heath, and Lloyd J. Jordan to Approve; Jeffrey L. Hinkle not participating; 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: September 8, 2015

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

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