



August 6, 2018

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Sent via Electronic Mail

Department of Consumer and Regulatory Affairs
Office of the Zoning Administrator
1100 4th Street, SW
Washington, DC 20024
matthew.legrant@dc.gov

RE: Additional Information Regarding the Request for Zoning Administrator Modifications to Plans Approved by the Board of Zoning Adjustment in BZA Case No. 19450 – 3320 Idaho Avenue NW (the “Property”)

Dear Mr. LeGrant:

As you are aware, this firm represents the Department of General Services (“DGS”), the applicant in BZA in Case No. 19450. On July 23, 2018, this firm filed a Request for Zoning Administrator Modification of Plans approved by the BZA and accompanying materials (the “Modification Request”) pursuant to Subtitle A § 304.10 of the Zoning Regulations.¹ The Modification Request package was served on the ANC and counsel for Neighbors for Responsive Government, the party in opposition to the BZA case, pursuant to Subtitle A § 304.11. As explained in the Modification Request, the Zoning Administrator is authorized to grant the request pursuant to Subtitle A § 304.10(a-h) because the proposed changes to the BZA-approved plans (the “Revised Plans”) are minor in nature and reduce the building’s overall height and massing, are compliant with the BZA’s Order, and do not trigger the need for additional reviewer zoning relief.

On July 30, 2018, our firm participated in a phone call with you, DGS and DGS’ project architect. During the call, you indicated that ANC commissioner, Angela Bradbery, had raised questions regarding the Southern Side Yard/ Deck and Trash/Deliver Area shown in the Revised Plans. You asked DGS to provide you further clarification on these two matters. Thank you for bringing this information to DGS’ attention, and we appreciate the opportunity to provide the clarification as follows:

¹ On July 26, 2018 refiled and revised the Modification Request package with clearer images of certain pages. A copy of the Modification Package as filed is attached here at [Exhibit 1](#).

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1. Additional information on the Proposed Deck Area

The Revised Plans identify approximately 1,000 s.f. of the approved 3,600 s.f. “Playground” as a deck (the “Deck”). See the area identified in Number 4 of the “Site Plan Comparison” attached here as Exhibit 2. The Deck will provide space for residents to access the dining room and for residents to monitor children on the Playground. The Deck will be located to the south of the Playground within the 63’-wide southern side yard area between the shelter building and the southern property line (the “Southern Side Yard”).

We understand that questions have come up relating to whether the Deck would be consistent with the Board’s rationale for approving the emergency shelter use.² As discussed below, the Deck would be consistent with the Board’s order approving the shelter project and, accordingly, it can be approved by the Zoning Administrator.

A. BZA’s Conclusions Regarding the Southern Side Yard/ Playground

As an initial matter, it is important to identify the Board’s conclusions of law relating to the Playground and the Southern Side Yard:

In accordance with Subtitle U § 420.1(f)(4), the Board finds that the proposed emergency shelter will not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area....

The emergency shelter use is not likely to generate any adverse impacts relating to noise or operations. Operation of the emergency shelter will be supervised by staff who will be on-site 24 hours each day. All operations will be contained within the building with the exception of the small play area, which will be located on the western edge of the property adjacent to an area of community gardens....

Operation of the emergency shelter use will be guided by a “good neighbor agreement” devised by a community advisory team that will conduct ongoing discussions to address any concerns about the emergency shelter that may arise in the future.

(BZA Order at 22).

Accordingly, the Board found compliance with Subtitle U § 420.1(f)(4) because of the evidence in the record regarding the 24-hour staff, containment of shelter operations to the building and the rear play area (which is identified as the 3,600 s.f. “Playground”) and the ability to negotiate and discuss a “Good Neighbor Agreement.” None of the factors are altered through the inclusion of the Deck.

² The specific legal test is established at Subtitle U § 420.1(f)(4), which states: “the proposed emergency shelter must not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area.” As to noise, the testimony at the BZA Hearing explained that the Property already generates a certain amount of noise due to sirens associated with the MPD operations and the existing trash dumpster along the southern property line. (Gillis Test. 3/1/17 BZA Hearing Tr: 256 Lines 7-25).

B. 24-Hour Staff

As explained during the BZA Hearing, the shelter will be staffed 24-hours a day. The staff will be located at the front entrance as well as on each floor to monitor activities and common areas in the hallway. (Zeilinger Test. 3/1/17 BZA Hearing Tr: 44 Lines 14-16). This staff will be able to monitor the residents' comings and goings, (Zeilinger Test. 3/1/17 BZA Hearing Tr: 255 Lines 9-11), including the use of the Deck, allowing staff to ensure that shelter guidelines are being followed, thus noise generated by the Playground/ Deck will be limited.

C. Playground Location

Allowing the Deck as proposed would be consistent with the BZA Order because, as shown on the Site Plan Comparison, the BZA-Approved plans identify a generic "Playground" area approximately 3,600 s.f. in size adjacent to the rear of the building. The BZA Approved Plans do not identify what portions of the "Playground" would contain play equipment or be limited to use only by children. Indeed, the testimony at the BZA Hearing was that DGS "plan[s] to engage specialists that design playground equipment once we get to that stage to be able to appropriately design that playground **for the different groups.**" (McNamara Test. 3/1/17 BZA Hearing Tr: 101 Lines 3-6 (emphasis added)).

Now that the anticipated playground design is closer to completion, the Revised Plans propose to allocate approximately 2,485 s.f. (of the total 3,600 s.f. play area) to play equipment and the rest for the Deck (1,000 s.f.) that can be used by residents to monitor children on the Playground. As such, the "small play area" identified in the BZA Order remains approximately the same square footage in size.³ However, DGS has refined the programming, as it told the BZA it would do, to allow for a portion of the space identified as the "Playground" to be used for the Deck.

While the Playground was shifted to the south to accommodate the revised parking garage footprint, there still remains an approximately 15'-4" separation between the Deck and the seven-foot wall (discussed below), as well as a 40'-separation between the Deck and the southern property line.

The Deck is in compliance with the Board Order because the shelter's operations will remain contained in the building, and the only exterior area used by shelter residents will be in generally same location and the same size as the "Playground." Further, it is important to note that the Board's order does not limit the use of the Playground to children, and it does not restrict the Playground programming to children's-only equipment, but rather to an age range of children. (McNamara Test. 3/1/17 BZA Hearing Tr: 101 Lines 1-3).

Finally, an important aspect of the shelter design is to improve the shelter residents' ability to supervise children. Indeed, Director Zeilinger explained that the floor design is necessary for "families to provide the proper amount of attention to young children..." (Zeilinger Test. 3/1/17 BZA Hearing Tr: 43 Lines 3-5).

³ Specifically, the Revised Plans Play Area = 3,485 s.f. (2,485 s.f. Playground + 1,000 s.f. Deck) ≤ 3,600 s.f. Playground in the BZA Approved Plans.

This tenet also applied to residents' supervision of children on the Playground. The ground floor plan approved by the BZA attached at Exhibit A to the Modification Request proposed a mechanical warming kitchen and staircase in the rear, which would have made direct lines of sight from inside to the Playground nearly impossible. Indeed, the communal areas where the residents could sit were then limited to the dining/play room/multipurpose rooms (the "Dining Room") that face the Southern Side Yard. The design response to facilitate supervision of children on the Playground was to locate doors and windows from the Dining Room to allow facilitate resident's walking through the Southern Side Yard to access the Playground.⁴

The image of the South Elevation (the portion of the building facing the Southern Side Yard) in the record and reviewed by the BZA and the public during the BZA Hearing illustrated those Dining Room doors and windows.⁵ Those access points are clearly shown on the approved image of the South Elevation, a snip of which is included below for your convenience. (BZA Exhibit No. 237).



D. Good Neighbor Agreement

The Board found persuasive the evidence in the record regarding DGS' ability to establish operational guidelines collaboratively with the neighbors through a Good Neighbor Agreement that would be negotiated with the Ward 3 Advisory Team. (Zeilinger Test. 3/1/17 BZA Hearing Tr: 258 Lines 13-21). The Good Neighbor Agreement could address any and all aspects of how to limit the impacts of the shelter's operations. Consequently, limits on the hours and uses of the Deck could be determined jointly at a later time with the neighborhood through the Good Neighbor Agreement.

⁴ Although not addressed here, we note that as part of the Revised Plans, DGS is now proposing to swap the location of the warming kitchen and the Dining Room to allow more direct lines of sight from the into the play area. See FP-1 of Exhibit "C" Nos. 3 and 4.

⁵ The approved ground floor plan also illustrated doors from the Dining Room opening out to the Southern Side Yard. During the BZA Hearing, DGS indicated that resident access would be limited between floors (Zeilinger Test. 3/1/17 BZA Hearing Tr: 43 Lines 17-19) and on the roof (McNamara Test. 3/1/17 BZA Hearing Tr: 58 Lines 14-17). DGS never stated that residents would be prohibited from traversing the Southern Side Yard area.

E. Southern Wall/ Landscaping

Although not referenced in the Board's order, the BZA record explains that the existing, seven-foot-tall site wall to the south will be retained as existing. (McNamara Test. 3/1/17 BZA Hearing Tr: 56 Lines 2-3). The wall runs parallel to the southern boundary line, and its location is identified on the "Existing Site/ Proposed Site" sheet of the BZA-approved plans attached at Exhibit A to the Modification Request. The area to the west of the wall will be landscaped with trees and other greenery. The wall and the landscaping will further limit any potential noise impact from the residents' use of the Deck.

Based on the above, it is clear that the proposed Deck would be consistent with the Board's rationale for approving the emergency shelter use. Further, the retention of the wall, the landscaping and the 40'-foot separation between the Deck and the southern property line will act as a sufficient buffer between the Deck and the residential uses to the south. Accordingly, as the changes are minor in nature, the Deck (which is part of the Playground square footage) will not cause any change because of noise or operations over the Southern Side Yard/ Playground uses approved by the Board.

2. Additional information on the Trash/ Delivery Area shown in the Revised Plans

We also understand that questions were raised about the Trash/ Delivery Area shown in the Revised Plans (the "Revised Trash/Delivery Area") and whether those revisions are consistent with the Board's Order.

By way of background, the BZA granted both special exception relief relating to the loading and variance relief from the requirement for a 30'-loading berth, 20'-service space and associated loading platform. Both OP and DDOT supported the relief. (BZA Exhibit Nos 124 & 125). Also, the ANC supported the loading relief. (BZA Exhibit No. 170)

A. Board's Conclusions Regarding Loading

The Board found that the proposed loading plan satisfied both the special exception requirements of Subtitle U § 420.1(f)(4) and the variance standards.

As to the Special Exception, the Board concluded:

In accordance with Subtitle U § 420.1(f)(4), the Board finds that the proposed emergency shelter will not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area... [T]he residents will move in without bringing furniture or other large items typically delivered by trucks, and the internal circulation of the site, including a designated loading area and trash storage area on the north side of the building, will be adequate to accommodate twice-daily food deliveries by van and trash collection. DDOT also concurred that the Applicant's "proposed loading area is sufficient to accommodate the project," noting the relatively limited use of the facilities for meal deliveries and trash pick-up, and that all loading activity will occur via a delivery space. (Exhibit 125.) [Also] [t]rash

storage and pickup will occur on the northern side of the building, at a considerable distance from the nearest neighboring residences.

(BZA Order at p. 22)

As to the variance:

The Board found “exceptional condition”: “The existing development on the subject property restricts the area where the new shelter building can be sited and how vehicular circulation can be routed internally on the lot.”

The Board found “practical difficulties”: “The provision of loading facilities would also create practical difficulty for the Applicant in light of the building constraints on the site and the Applicant’s showing that the emergency shelter operation will not create the need for the loading facilities required by the strict application of the Zoning Regulations.”

The Board found “no substantial detriment”: “With respect to the loading variance, OP found that no substantial detriment to the public good was likely to result because the Applicant will provide an area on-site to accommodate deliveries in a location that will not be visible from adjacent streets or residences.”

(BZA Order at 31 & 33)

B. Board’s decision is supported by evidence in the record that is not altered by the Revised Trash/Delivery Area.

DGS’s traffic consultant, the only traffic expert who testified at the BZA Hearing, explained that no large trucks will be accessing the Property because the residents will not require moving trucks. (White Test. 3/1/17 BZA Hearing Tr: 64 Lines 3-5). Further, the testimony explained that the only truck/deliveries would be a trash truck (anticipated three times per week) and a food delivery van that would drop off food twice a day because the Project would not have a commercial kitchen. (White Test. 3/1/17 BZA Hearing Tr: 64). These facts remain unchanged with the Revised Trash/Delivery Area.

Although it was not necessary to satisfy the zoning requirements (in light of the loading variance), DGS did propose, and the BZA approved, a Trash/Delivery Area on the north side of the shelter building (the “Approved Trash/Delivery Area.”) The Approved Trash/Delivery Area is shown on the “BZA Submission” image of the “Site Plan Comparison” attached here as Exhibit 2.⁶

⁶ It is worth noting that the Approved Trash/Delivery Area plans reflects a compromise between DGS and the neighbors. Originally, the Trash/Delivery Area was to be located to the rear of the building. However, in response to neighbor/ANC comments regarding potential noise and other impacts, DGS moved the Trash/Delivery Area to the north side of the building, away from residences to the south. (McNamara Test. 3/1/17 BZA Hearing Tr: 67-68).

C. Revised Trash/Delivery Area

As a result of the construction of the new MPD parking garage, the Revised Plans require some minor changes to the Approved Trash/Delivery Area. Those changes are identified with the numbers 5 and 6 on the Site Plan Comparison.

In sum, those changes are:

- Driveway has been widened from 16' to 20' – this was done at the request of DDOT (see No. 6);
- The trash container area has been moved approximately 30' toward Idaho Avenue, but otherwise the Trash/ Delivery Area remains in the same general location shown in the BZA Plans (see No. 5); and
- The small delivery “pull off area” identified in the BZA Plans has been removed because DHS indicated it was not necessary.

During our July 30, 2018 phone call, you indicated that questions have come up about the feasibility of the use and access to the Revised Trash/Delivery Area and whether it would operate in a safe and efficient manner similar in nature to the Approved Trash/Delivery Area.

During the call, we discussed the “truck-turn” movement template DGS had prepared showing that a 35'-foot trash truck could successfully “front-in” and “front-out” movements of the revised Trash/Delivery Area.

D. DDOT's Confirmation of no additional impact created by the Revised Trash/Delivery Area

It was also requested for DGS to confirm that DDOT would not have concerns about the truck movements associated with the Revised Trash/Delivery Area and for DDOT to opine on whether the Revised Trash/Delivery Area would operate in a similar manner to the Approved Trash/Delivery Area. This information could assist in a determination that the Revised Trash/Delivery Area would not have additional impacts over the design approved by the BZA.

DGS commenced communications with DDOT and reviewed images of the Revised Trash/Delivery Area and the “front-in” truck turning templates. DDOT indicated that those movements would be acceptable to DDOT, but also asked for additional “back-in” truck turning templates and other information from DGS.

The additional information was provided, and DDOT responded via email that “DDOT accepts the revision to the previously approved plan. No further information or documentation is required” of DGS. A copy of this email correspondence and all attachments to that email are attached here at Exhibit 3.

As a follow up to that correspondence, DGS also asked DDOT to review the Approved and Revised Trash/Delivery Areas and opine on whether the Revised Trash/Delivery Area would

operate as safely and efficiently as the Approved Trash/Delivery Area and to evaluate that the minor changes do not alter DDOT's previous support for the Project.

DDOT responded to that request stating that DDOT had compared the Approved and Revised Trash/Delivery Area designs, and it:

Does "not foresee any issues resulting from the design revisions." DDOT also notes that "vehicle maneuver[ing] during collection periods... is typical across many sites and is consistent with operations from the initial site plan ... [and] it is unlikely garbage collection operations will result in external queuing on Idaho Avenue NW."

DDOT concludes that "After comparing the original and revised proposal, we continue to support the revisions and have no new operational concerns. The site's design is sufficient to safely accommodate garbage collection and deliveries."

A copy of that email is attached here at Exhibit 4.

Accordingly, DGS has confirmed that DDOT finds the Revised Trash/Delivery Area to be acceptable and that DDOT supports it.

The evidence clearly establishes that the Revised Trash/ Delivery Area does not create any additional impacts over and above those reviewed and determined to be sufficient by the BZA.

3. The Zoning Administrator can approve the Proposed Deck and the Revised Trash/Delivery Area pursuant to Subtitle A § 304.10.

Although it was generally addressed in the Modification Request, at the Zoning Administrator's direction, DGS further explains that the proposed Deck and Revised Trash/Delivery Area comply with the requirements of Subtitle A § 304.10 and can be approved by the Zoning Administrator for the following reasons:

(a) The modifications do not violate any condition of approval included in the Order;

Neither the Deck, nor the Revised Trash/Delivery Area violate any condition of the Order.

(b) The modification will not increase, expand, or extend any area of relief granted by the Order;

The proposed Deck and Revised Trash/Delivery Area will not increase, expand, or extend any other areas of relief. As stated above, there was no relief necessary for the Southern Side Yard/ Playground, and it will remain as designed. The BZA granted variance relief from the shelter's trash/delivery requirements. Accordingly, the Approved Trash/Delivery Area did not mandate zoning compliance.

(c) The modification will not create any need for new relief;

Neither the Deck nor the Revised Trash/Delivery Area will require new relief from the BZA.

(d) The modification will not change a principal use from that approved in the Order;

The Deck and the Revised Trash/Delivery Area will not change the Property's approved use as a 50-unit emergency shelter.

(e) The modification will not increase the number of stories;

The Deck and the Revised Trash/Delivery Area will not add a story to the Project.

(f) The modification will not increase by more than two percent (2%) the building gross floor area, the percentage of lot occupancy, building height or penthouse height; provided that the permitted increase of two percent (2%) or less must be the direct result of structural or building code requirements;

Not Applicable.

(g) The modification will not increase by more than two percent (2%) the number of dwelling units, hotel rooms, or institutional rooms within the approved square footage;

Not Applicable.

(h) The modification will not increase or decrease by more than two percent (2%) the number of parking or loading spaces depicted on the approved plans.

Not applicable.

Accordingly, it is clear that the proposed Deck and the Revised Trash/Delivery Area satisfy the requirements of Subtitle A § 304.10, and those changes, in conjunction with all the Revised Plans, can be approved administratively.

The Zoning Administrator's analysis can end here. No further review is required as outlined above. However, out of an abundance of caution and in light of the additional scrutiny placed on review of the Ward 3 homeless shelter, DGS reiterates that both the Deck and the Revised Trash/Delivery Area would be consistent with the Board's conclusions set out in its Order, as discussed above. Further, any "impacts" from either the Deck or the Revised Trash/Delivery Area will not be over and above the "impacts" considered by the Board when it approved the shelter project.

As to the Deck, as explained, the Deck is consistent with the rationale on which the Board approved the special exception. The evidence presented to the Board demonstrated that residents *could* use the Southern Side Yard in order to access the Playground, and there was no prohibition against such use in the record. Further, the evidence establishes that the approved Playground was approximately 3,600 s.f. in size, adjacent to the rear of the building, and that the

final programming of the Playground would need to be determined. Also, there is evidence that supervision of children was important to the design of the shelter and that shelter guidelines relating to the hours and uses of the Playground would be discussed with the community through the negotiation of a Good Neighbor Agreement. Finally, the BZA record establishes that the shelter will be staffed 24-hours a day and that the seven-foot-tall southern wall will remain in its current location. DGS has also committed to additional tree planting inside the wall to better limit views into the site.

Based on this information, the Deck is consistent with the Board's findings and it should not cause any additional impact over and above what was originally approved. Indeed, the width of the Southern Side Yard, the rear location of the play area and Deck, the wall, staffing and Good Neighbor Agreement – all of which were reviewed by the Board – will continue to act as an appropriate buffer between the shelter and the residents to the south, as approved by the Board.

Next, DDOT has reviewed the Revised Trash/Delivery Area and confirmed that it is “consistent with operations from the initial site plan” and that it is “unlikely garbage collection operations will result in external queuing on Idaho Avenue NW.” Accordingly, DDOT continues to “support the revisions and have no new operational concerns.” Based on the evaluation by the District's technical transportation planners, it is clear that DDOT does not anticipate the Revised Trash/Delivery Area will cause additional impacts over what was approved. Accordingly, it would follow that the Zoning Administrator could make the same finding.

4. Conclusion

DGS believes that it has fully addressed the concerns you raised during the July 30, 2018 phone call. Accordingly, DGS respectfully requests that the Zoning Administrator approve the Modification Request pursuant to the authority established in Subtitle A § 304.10.

Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR



By: Meredith H. Moldenhauer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that pursuant to the notice requirements of Subtitle A § 304.11, on this 6th day of August, 2018, a copy of the foregoing Additional Information letter was sent, via electronic mail, to the following:

Advisory Neighborhood Commission 3C
c/o Angela Bradbery SMD06
3C06@anc.dc.gov

Advisory Neighborhood Commission 3C
c/o Chair Nancy MacWood
nmacwood@gmail.com

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Meridith H. Moldenhauer