

**SUPPLEMENTAL SUBMISSION
BEFORE THE BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA** 2013 JUL 15 AM 9:47

Application of Broad Market LLC
BZA Application No 18551
Hearing Date July 30, 2013
ANC 3G05

**THE APPLICATION MEETS THE REQUIREMENTS FOR AREA
VARIANCES UNDER SECTION 3103.2 OF THE ZONING
REGULATIONS**

The burden of proof for an area variance is well established. The applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition, (ii) that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant, and (iii) that the granting of the variance will not cause substantial detriment to the public good or substantially impair the intent, purpose or integrity of the zone plan. *See, e.g., Gilmartin v D C Board of Zoning Adjustment*, 579 A 2d 1164, 1167 (D C 1990). In examining the first two elements, the BZA may apply a more flexible standard for determining difficulty when a public service entity is the applicant, such as Applicant. *See National Black Child Development Institute v D C Board of Zoning Adjustment*, 483 A 2d 687, 690 (D C 1984); *Monaco v D C Board of Zoning Adjustment*, 407 A 2d 1091, 1098 (D C 1979). The D C Court of Appeals has applied the more flexible standard to area variances as well as use variances. *See Draude v D C Board of Zoning Adjustment*, 582 A 2d 949, 956 (D.C. 1990). As set forth below, the Applicant meets the three-part test for the requested parking variance.

A. The Property is Affected by an Exceptional Situation or Condition

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The D.C. Court of Appeals held in *Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974) that the exceptional situation or condition standard goes to the "property", not just the "land", and that "property generally includes the permanent structures existing on the land." *Id.* at 293-294. Indeed, the Court repeatedly has rejected the idea that the exceptional situation and practical difficulty justifying a variance must arise from the physical aspects of the land. See *National Black Child Development*, 483 A.2d at 690, *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979). Instead, the BZA may "weigh more fully the equities in an individual case." *National Black Child Development*, 483 A.2d at 690. Further, the characterization of the use as a public service is significant to the determination of uniqueness. In *Monaco*, the D.C. Court of Appeals held

While a commercial user before the BZA might not be able to establish uniqueness in a particular site's exceptional profit-making potential, we consider that the BZA may be more flexible when it assesses a non-profit organization. As Professor Anderson has observed, public need for the use is an important factor in granting or denying a variance. "

Monaco, 407 A.2d at 1098

BBCH is affected by an exceptional situation because it is an existing structure that was constructed in 1919, well before the current Zoning Regulations became effective. The structure comprises the majority of the lot, leaving only a swath of land in the front of the property, along Broad Branch, and along the side of the property. Therefore, in order for the Applicant to comply with the parking requirements, it would need to eliminate the yard, where the children play, or it would need relief to provide parking in the front yard, which is contrary to Section 2116.2 of the Zoning Regulations.

In sum, the size of the existing building and its location on the lot, precludes the ability to provide the required parking spaces. Likewise, there is no potential for parking at the rear of the building because there is not sufficient space at the rear of the building for spaces, much less a drive aisle

Finally, the Applicant is also unique because it provides a significant public service to the Chevy Chase neighborhood and the District. Accordingly, under *Monaco*, the Board may apply a more flexible standard for the determination of uniqueness of the Property.

B. Strict Application of the Zoning Regulations Would Result in a Practical Difficulty

To satisfy the second element for an area variance standard, the Applicant must demonstrate "practical difficulty." The D.C. Court of Appeals has established a two-part test for determining whether an applicant has met its burden of proof. The applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome" and that the practical difficulty is "unique to the particular property." *Gilmartin*, 579 A.2d at 1170. The Court of Appeals has held that the "nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." *Id.* at 1171. "Increased expense and inconvenience to applicants for a variance are among the proper factors for [the] BZA's consideration." *Id.* Some other factors that the BZA may consider are "the weight of the burden of strict compliance," "the severity of the variance(s) requested," and "the effect the proposed variance(s) would have on the overall zone plan." *Id.* The BZA also may consider the needs of a public service organization that "has inadequate facilities

and applies for a variance to expand into an adjacent area in common ownership . "

Draude, 582 A 2d at 956

The BZA may grant a variance from the off-street parking requirements when providing the necessary parking would dramatically decrease the facilities that an applicant would be able to provide *Association for Preservation of 1700 Block of N Street, NW v D C Board of Zoning Adjustment*, 384 A2d 674, 678 (D C. 1978) (approving a variance from the off-street parking requirements for the YMCA) In the present application, it would be unnecessarily burdensome for Applicant to provide parking for the Building The Building is over 90 years old and the lot on which it is located simply does not provide sufficient area for the creation of parking spaces The only possible location for the parking spaces on the property would be in the side yard, which has been designated as the on-site play area for the children. The Building's footprint on the lot creates a practical difficulty in trying to comply with the off-street parking requirements

C. Relief Can Be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan

Finally, the Applicant must demonstrate that "granting the variance will do no harm to the public good or to the zone plan " *Gilmartin*, 579 A 2d at 1167 The requested parking variance can be granted without causing any adverse impact on the availability of parking in the neighborhood. The majority of the children enrolled in the program live within walking distance, as do 12 5% of the staff members The market does provide approximately two spaces on-site for customers, the spaces will also be available to

parents and visitors in the event they need to meet briefly with center staff. Otherwise, all drop-off and pick-up operations are facilitated by staff such that parking of the vehicles is not necessary. Staff transport the children to and from the vehicles, creating an efficient pick-up and drop-off system that eliminates the need for parental use of parking spaces.



To see all the details that are visible on the screen, use the "Print" link next to the map.







Address 5606 Broad Branch Road Northwest

Address is approximate





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