

**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

**Application of National Community Church
2826 Q Street, S.E.
Square 5583, Lot 804**

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PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted on behalf of the National Community Church (the "Applicant"), the owner of the property located at 2826 Q Street, S.E. (Square 5583, Lot 804) (the "Property"), in support of its application pursuant to 11 DCMR Sections 3103.2 and 3104.1. The Applicant seeks special exception approval to permit a community service center in the R-5-A District under Sections 334.3 and 352.1 of the Zoning Regulations, and special exception approval from the roof structure requirements pursuant to Section 411.11. Additionally, the Applicant seeks a variance from the structural alteration limitations of Section 334.3; a variance from the floor area ratio requirements of Section 402.4; a variance from the lot occupancy requirements in Section 403.2; a variance from the rear yard requirements in Section 404.1; and a variance from the nonconforming structure requirements of Section 2001.3. The foregoing zoning requests are necessary to permit certain renovations to the existing building on the Property and facilitate the reuse of the Property for a community service center.

Pursuant to Section 3113.8 of the Zoning Regulations, the Applicant will file its prehearing statement with the Board no fewer than 14 days prior to the public hearing date. In that statement, and at the public hearing, the Applicant will provide testimony and evidence to meet its burden of proof to obtain the Board's approval of the requested modifications.

**BOARD OF ZONING ADJUSTMENT
District of Columbia**

CASE NO. 18633

EXHIBIT NO. 5

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I. Background Information Regarding the Property

The Property is located at 2826 Q Street, S.E., which is more particularly described as Lot 804 in Square 5583. Square 5583 is located in the southeast quadrant of the District and is bounded on the north by Pennsylvania Avenue, on the south by Q Street, on the west by 28th Place, and on the east by 30th Street. The Property is rectangular in shape, with approximately 5,166 square feet of land area. The Property is located within the R-5-A District and is currently improved with a 3-story, brick apartment building. The building was constructed in 1942 and has been vacant for the past 22 years; it is in serious disrepair.

II. Description of Proposal and Zoning Relief

As shown on the enclosed plans, the Applicant proposes to renovate the existing building for use as a community service center that will have dormitory space in the cellar, conference and classroom space on the first floor, multi-purpose space on the second floor, and an indoor basketball court/multi-purpose recreation space on the third floor. The floor area for the community service center will be approximately 9,945 square feet. The existing building envelope will remain with the exception of an addition on the east side of the building to accommodate a second stairwell required under the Building Code and an increase in the building height from 30 feet to 40 feet in order to accommodate an indoor basketball court/multi-purpose recreation space proposed for the third floor of the building.

In order to be achieved, the proposed project requires the following zoning relief:

1. **Special exception from Sections 334.3 and 352.1 of the Zoning Regulations.** Section 352.1 permits any use or structure permitted as a special exception in the R-4 District. A community service center is permitted as a special exception in an R-4 District where the center is located so that it is not likely to become objectionable to neighboring properties because of noise or other objectionable conditions (Section 334.2); there are no structural changes except

those required by municipal laws or regulations (Section 334.3); and the use is reasonably necessary or convenient to the neighborhood in which it is proposed to be located (Section 334.4). The Property is zoned R-5-A. Under Section 352.1, any use or structure permitted as a special exception in R-4 Districts shall be permitted as a special exception in an R-5 District if approved by the BZA under Section 3104.

2. Special exception from roof structures requirements pursuant to Section 411.11.

Section 411.11 permits the Board to approve as a special exception the location, design, number and all other aspects of the roof structures provided that the intent and purpose of Chapter 411 is not materially impaired by the structure and the light and air of adjacent buildings shall not be affected adversely. The plans for the project include three separate roof enclosures -- two stair towers and an elevator penthouse -- where Section 411.3 requires a single enclosure for all roof structures. Also, the elevator penthouse and the stair tower on the east side of the building do not meet the 1:1 setback required in Section 400.7(b).

3. Variance from the structural alteration limitations of Section 334.3. Section 334.3 prohibits structural changes to a community service center except those required by other municipal laws or regulations. In this case, the plans propose an addition on the east side of the building, primarily to accommodate a second stair well in the building. Also, the building height is being increased from 30 feet to 40 feet in order to accommodate an indoor basketball court/multi-purpose recreation space on the third floor of the building. The Applicant will also make changes to the structural system in order to make the building layout more efficient for the proposed use.

4. Variance from Section 402.4 for FAR. Section 402.4 of the Zoning Regulations permits a maximum FAR of .9 in the R-5-A District. In this case, the existing FAR on the Property is 1.65, exceeding the maximum permitted under the Regulations. Under this application, as a result of the addition on the east side of the building, the FAR will increase to 1.9.

5. Variance from Section 403.2 for Lot Occupancy. Section 403.2 of the Zoning Regulations permits a maximum lot occupancy of 40% in the R-5-A District. In this case, the existing lot occupancy is 53%, exceeding the maximum permitted under the Regulations. Under this application, as a result of the addition on the east side of the building, the lot occupancy would increase to 56.5%.

6. Variance from Section 404.1 for rear yard. Section 404.1 of the Zoning Regulations require a minimum rear yard of 20 feet in the R-5-A District. In this case, the existing rear yard on the Property is 12.45' and will remain as such under this application.

7. Variance from Section 2001.3 relating to non-conforming structures devoted to conforming uses. For a non-conforming structure devoted to a conforming use, Section 2001.3 of the Zoning Regulations permits enlargements or additions to the existing non-conforming structure where: (a) the structure conforms to the percentage of the lot occupancy requirements and (b) the addition or enlargement conforms to the use and structure requirements and neither increases or extends any existing, non-conforming aspect of the structure nor create any new non-conformity of structure and addition combined.

As noted above, the existing building does not comply with the lot occupancy or FAR requirements, and the Applicant proposes to increase these non-conforming aspects of the

building. Specifically, the Property currently has a not occupancy of 53% where 40% is permitted. Under this application, the lot occupancy will increase to 56.5%. Also, the current FAR for the Property is 1.65 where a FAR of .9 is permitted. Under this application, the FAR will increase to 1.9. The increase in the lot occupancy and FAR result from the addition the east side of the building.

III. Standard for Approving Special Exception Relief

Relief granted through a special exception is presumed appropriate, reasonable and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested relief are met. In reviewing an application for special exception relief, "[t]he Board's discretion ... is limited to a determination of whether the exception sought meets the requirements of the regulations." *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

A. Section 334 – Community Service Centers in R-4 Districts

Section 334.1 of the Zoning Regulations permits the Board to approve, as a special exception, the establishment of community services centers in R-4 Districts that are created for the purpose of improving the social or economic well-being of the residents of the neighborhood in which the center is located, including job training, family counseling, consumer cooperatives, and such other facilities as are similar in nature and purpose, shall be permitted as a special exception in an R-4 District if approved by the Board of Zoning Adjustment under Section 3104, subject to the following provisions:

1. Section 334.2 - The community service center shall be located so that it is not likely to become objectionable to neighboring properties because of noise or other objectionable conditions;
2. Section 334.3 - No structural changes shall be made except those required by other municipal laws or regulations;
3. Section 334.4 - The use shall be reasonably necessary or convenient to the neighborhood in which it is proposed to be located; and
4. Section 334.5 - A community service center shall not be organized for profit, and no part of its net income shall inure to the benefit of any private shareholder or individual.

The proposed community service center is located at the northeast corner of the intersection of Q and 28th Streets, SE, and is intended to improve the social well being of residents in the surrounding neighborhood. The existing building orientation and configuration will remain, fronting on Q Street. Nothing in the community service center design and programming is expected to generate any noise or other objectionable impacts to the surrounding residences. The reuse of the building as a community service center will improve this section of the neighborhood by redeveloping a blighted property and activating the street. The Applicant is seeking a variance from Section 334.3 of the Zoning Regulations (limiting structural changes to the building) in order to construct the addition proposed on the east side of the building, increase in the building height from 30 to 40 feet, and to make change to the structural system of the building. The Applicant is not organized for profit, and no part of its net income inures to the benefit of a private shareholder or individual.

IV. Standard of Review for Roof Structure Special Exception

Under Section 411.11, the Board may grant special exception relief from the strict requirements for a roof structure where full compliance is "impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area" and would be "unduly restrictive, prohibitively costly, or unreasonable." 11 DCMR §411.11. The Board may approve deviations from the roof structure requirements provided the intent and purpose of Chapter 400 and the Zoning Regulations are not "materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely." *Id.*

The plans for the community service center depict three roof structures in separate enclosures -- an elevator penthouse and two stair enclosures -- which requires relief from Section 411.3 of the Zoning Regulations. Also, the elevator penthouse at the northwest corner of the building and the stair tower on the east side of the building do not meet the 1:1 setback required under Sec. 400.7(b) of the Zoning Regulations.

Although special exception relief is required, the proposed roof structures comply with the spirit and intent of the roof structure provisions and the Zoning Regulations by helping to ensure adequate light and air to adjacent property and abutting streets. The elevator penthouse and east stair tower are necessary to comply with the ADA and Building Code requirements. Further, the location of the roof structures are based upon the configuration of the existing building, design requirements, and the location of the building core features. The enclosures are designed to be as small as possible, and the location of the enclosures will help to reduce the visibility of the roof structure from Q Street. Accordingly, the proposed penthouse is in harmony with the purpose and intent of the Zoning Regulations and meets the test for special exception relief under Section 411.

V. Burden of Proof for Area Variances

Under D.C. Code §6-641.07(g)(3) and 11 DCMR §3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

- (1) the property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;
- (2) the owner would encounter practical difficulties if the zoning regulations were strictly applied; and
- (3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

See French v. District of Columbia Board of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting Roumel v. District of Columbia Board of Zoning Adjustment, 417 A.2d 405, 408 (D.C. 1980)); see also, Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment, 534 A.2d 939 (D.C. 1987). As discussed below, and as will be further explained at the public hearing, all three prongs of the area variance test are met in this Application.

A. The Property Is Unusual Because of its Size, Shape or Topography and is Affected by an Exceptional Situation or Condition.

In this case, the Property is improved with a 3-story apartment building that was constructed in 1942 and has been vacant for the past 22 years. The building does not comply with current ADA or Building Code standards and is in severe disrepair.

B. Strict Application Would Result in a Practical Difficulty to the Owner

The Applicant would encounter practical difficulties from the strict application of Section 334.3 (limitations on structural alterations to the Building); Section 402.4 (FAR); Section 403.2 (Lot Occupancy); Section 404.1 (Rear Yard); and Section 2001.3 (Existing Non-Conforming Structures). The variance requested under Sections 334.3 relates to the addition proposed on the

east side of the building, the increase in the building height from 30 to 40 feet, and changes to the structural components of the building. The building addition is necessary to accommodate a second stair for the building, which is required under the Building Code. The additional building height is necessary to accommodate an indoor basketball court and recreation space. Changes to the structural components will be made in order to make the building more efficient in terms of layout and spacing for the community service center use. The required FAR, lot occupancy and rear yard variances relate to existing non-conformities on the Property. The Property currently has an FAR of 1.65 where .9 is permitted; a lot occupancy of 53% where 40% is permitted, and a rear yard of 12.46' where 20' is required. As previously mentioned, the FAR and lot occupancy will be slightly increased under this application, which is why the applicant seeks additional relief from Section 2001.3 of the Zoning Regulations. Specifically, the addition on the east side of the building will increase the floor area of the building from 9,378 square feet to 9,945 square feet; and an increase in FAR from 1.65 to 1.9 ; and increase the lot occupancy from 53% to 56.5%.

C. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan

The proposed reuse of the vacant building as a community service center will be a neighborhood amenity, and will significantly improve a currently blighted property. The building renovations and resulting variances are modest in nature, particularly when compared to the benefit derived from the proposed reuse of the Property.