

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

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Application of Mundo Verde Public Charter School on behalf of the District of Columbia

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PRELIMINARY STATEMENT OF THE APPLICANT

This is the application of the Mundo Verde Public Charter School ("**Applicant**") on behalf of the District of Columbia ("**Owner**") for variance relief from the parking requirements to allow a public charter school to locate in and expand an existing public school building. The property that is the subject of this application is 44 P Street NW (Square 616, Lot 873) (the "**Property**") The Property is included in the R-4 Zone District.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment ("**BZA**" or "**Board**") approve the two following area variances:

1. Variance from Section 2100.6 (additional parking spaces for increase in intensity of use). The number of faculty/staff will increase beyond that of the prior public school, thereby requiring 50 total parking spaces. The School will provide 11 parking spaces.
2. Variance from Section 2100.10 (reduction in number of existing spaces). The existing property provides a total of 24 parking spaces. Some of these spaces will be eliminated to accommodate the school's program requirements, leaving a total of 11 parking spaces.

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18676
EXHIBIT NO. 3

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II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Section 3103.2 of the Zoning Regulations (11 DCMR § 3103.2).

III. THE APPLICANT

Mundo Verde Bilingual Public Charter School (“**Mundo Verde**” or “**School**”) is Washington’s first “green” public charter school. The School is dedicated to educating young people to become global stewards in an increasingly complex world. The School is currently located at 3220 16th Street NW and will be relocating to the Property in July 2014 to accommodate its growth and demand. The School opened in August 2011 and currently teaches students in PreK-3 through first grade. The School will continue to add an additional grade each year through 5th grade. The school is free to District of Columbia residents and admits students by lottery.

Mundo Verde strives to make learning fun and prepare students to be global citizens and stewards of our environment. The curriculum emphasizes interactive, hands-on, project-based learning that nurtures students’ engagement and motivation for life-long learning. To prepare our students to take on the challenges and opportunities of tomorrow’s world, the School uses a one-of-a-kind educational model focused on sustainability as well as biliteracy in English and Spanish.

A group of parents, motivated by the unmet demand for quality, tuition-free, experiential education, teamed up to develop this visionary school. By 2010, Mundo Verde had a full founding board of directors that included educators, environmentalists, and leaders from the Latino community. On April 19, 2010, the D.C. Public Charter School board granted its standard conditional approval for Mundo Verde Bilingual Public Charter School to open in August 2011. In February 2013, the Deputy Mayor for Education and the Department of General Services

announced that Mundo Verde had been awarded with the J F Cook School as a new permanent home.

IV. DESCRIPTION OF PROPERTY AND SURROUNDING AREA

The Property is located in the Truxton Circle neighborhood of Ward 5. The Property is bounded to the north by P Street, to the south by the former Margaret Murray Washington School, which is being redeveloped as affordable and mixed income senior housing; to the east by a 15-foot public alley, and to the west by a row dwelling. A 30-foot wide alley dead-ends at the southwest corner of the Property.

The Property contains the former J F Cook Public School, which is vacant. J F Cook School and the property to the south (the former M.M. Washington School) were previously located on the same single lot of record. In 2012, that lot was subdivided, which has resulted in an unusual shape and configuration for the resulting Lot 873. Although the existing J F. Cook School is set back from P Street and the Property is largely paved, it has no rear yard and provides very little open space on either side of the existing school building. The subdivision of the former record lot eliminated some of the school's existing parking as well as the former drive aisles that provided access to that parking. Approximately 24 parking spaces remain on the western and eastern sides of the site.

The surrounding neighborhood is primarily residential in character. The majority of the surrounding area is improved with flats and single-family row dwellings. Directly across P Street to the north are the former Slater and Langston Elementary Schools.

V. THE PROPOSED PROJECT

The Applicant proposes to renovate and occupy the existing School and to add a separate three-story building on the eastern side of the Property to provide additional program space (“Project”).¹ The School will also replace the remaining existing impervious surface with enhanced open and green spaces that serve the School’s educational and sustainable missions. Some of the existing parking will be removed to accommodate the new building and green spaces, and the remaining parking will be reconfigured to meet the expected parking demand for the School. Proposed plans for the Project are included as Exhibit H.

When Mundo Verde initially relocates to the Property, the School will locate approximately 380 students and 50 faculty/staff in grades Pre-K3 through 3rd grades. The Project will allow the School to expand its curriculum and student body to include students in Pre-K3 through fifth grades at full capacity. The School will continue to add one grade (approximately 72 students) each year until reaching 5th grade in 2016. It will also add approximately 8 faculty/staff each year. Upon full maturation, the School will contain approximately 520 total students and approximately 75 faculty/staff. The 1st through 5th grade students will be housed in the repurposed J F Cook School, and the pre-K and kindergarten students will be housed in the new “Kinderhaus” building that will be constructed on the northeast corner of the Property.

To accommodate the relocation to the Property and the development of the Project, Mundo Verde seeks variance approval from the parking requirements of the Zoning Regulations. With the increase in faculty/staff to 75, a total of 50 parking spaces must be provided pursuant to the Zoning Regulations (2 spaces for each 3 faculty/staff). The Property currently provides a total of 24 spaces on site, but some of those will be eliminated to accommodate the new building and recreation space.

¹ The Zoning Administrator has confirmed that multiple buildings are permitted as of right under the long-held interpretation that educational campuses are permitted to have multiple buildings on a single lot of record.

At completion, the School proposes a total of 11 conforming spaces. Three of the parking spaces will be along the eastern side of the Property immediately adjacent to the 15-foot alley. Eight of the parking spaces will be at the western side of the Property; access to these spaces will be accessible from the 30-foot alley that dead-ends at the southwest corner of the Property. Four additional spaces on the western side will be tandem spaces, meaning that the total number of parking spaces on the site will be 15: 11 conforming and 4 additional tandem spaces.

VI. THE APPLICATION MEETS THE REQUIREMENTS FOR VARIANCE RELIEF

The burden of proof for area variance relief is well established. The Applicant must demonstrate that (1) the property is affected by an exceptional or extraordinary situation or condition, that (2) the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant, and that (3) the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan. Palmer v. D.C. Bd. of Zoning Adj., 287 A.2d 535, 541 (D.C. 1972). As described below, this application meets the three-part test for area variance relief.

A. The Property is Affected by an Exceptional Condition

The Court of Appeals held in Clerics of St. Viator v. D.C. Bd. of Zoning Adj., 320 A.2d 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land. The Court in Monaco v. D.C. Bd. of Zoning Adj., 407 A.2d 1091 (D.C. 1979) went even further and noted that the exceptional situation or condition is not limited to the land or the physical improvements on the land, but applies also to the history of the property. Furthermore, the Court of Appeals held in Gilmartin v. D.C. Board of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990), that it is not necessary that the exceptional situation or condition arise from a single situation or condition on the property. Id. Finally, it is not necessary that the Property be unreservedly unique.

Rather, applicants 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

The Property's exceptional condition arises from its history and present configuration. The Property meets the "exceptional conditions" element of the variance test because of its unique shape and condition. As discussed above, the Property was subdivided out of a larger record lot that once provided parking spaces for both J.F. Cook and the M M Washington School. When the property was subdivided, virtually all of the open space between the two buildings was allocated to the M.M. Washington lot. As a result, the J F Cook lot was left with no rear yard and limited remaining portions of parking on either side of the School. Another aspect of the Property's exceptional condition is the location of the School. The School is located toward the rear of the lot, such that the majority of remaining open (impervious) space is located on the front of the lot, along the street and in the Property's "front yard."

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

The appropriate test is whether the strict application of the zoning regulations results in a "practical difficulty." In reviewing the standard for practical difficulty, the D C Court of Appeals stated in Palmer v. Board of Zoning Adjustment, 287 A.2d 535, 542 (D C. App 1972), that "[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome [Footnote omitted.] 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." In area variances, applicants are not required to show "undue hardship" but must satisfy only "the lower 'practical difficulty' standards." Tyler v D C Bd of Zoning Adj., 606 A 2d 1362, 1365 (D.C. 1992) (citing Gilmartin v Bd. of Zoning Adj., 579 A 2d 1164, 1167 (D C 1990)). Finally, it is well settled that the BZA may consider "a wide range of factors in determining whether there is an 'unnecessary

burden' or 'practical difficulty' . Increased expense and inconvenience to applicant for a variance are among the factors for BZA's consideration ” Gilmartin, 579 A.2d at 1171 (citing Barbour v D.C Bd of Zoning Adj., 358 A 2d 326, 327 (D C 1976)), see also Tyler v. D.C. Bd. of Zoning Adj., 606 A 2d 1362, 1367 (D C 1992) Other factors to be considered by the BZA include “the severity of the variance(s) requested”, “the weight of the burden of strict compliance”, and “the effect the proposed variance(s) would have on the overall zone plan ” Gilmartin, 579 A 2d at 1171. Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome, not impossible

In this case, complying with the Zoning Regulations with respect to providing additional parking would create a practical difficulty for the Applicant to accommodate its existing and planned future growth The Property provides the School with additional building space that will accommodate the continued educational needs of existing classes of students as they advance through their elementary years and new classes come in to take their place The additional space will also permit Mundo Verde to expand its coverage to a greater percentage of the District’s children (Mundo Verde currently receives many more applications than it has spaces available) The School must be able to accommodate a staff of 75 teachers and other staff members in order to fulfill its educational mission related to these existing and future students

The anticipated 75-person staff requirement drives the requirement for 50 parking spaces However, the exceptional conditions affecting the Property result in a lot configuration that retains few of the historic parking spaces associated with the School and leaves little room for additional parking to be provided Specifically

- The Property has no rear yard, so parking cannot be located behind the building
- The Property has a sizeable front yard, but Section 2116.4 of the Zoning Regulations specifically prohibits parking from being located between a building and the street lot line.

- Underground parking is also not an option due to the configuration of the existing property. The Property is improved with an existing structure, which limits the potential area for underground parking to the unimproved portions of the lot, but the size and configuration of those spaces make providing underground parking cost-prohibitive, particularly for a public charter school.

Therefore, any parking must be accommodated in the limited area on either side of the School, behind the building façade line.

The School's programmatic needs further constrain the ability to accommodate the required number of parking spaces and drive the elimination of some of the existing parking on the site.

- **Kinderhaus** To accommodate the proposed number of students, Mundo Verde will house 1st through 5th grade students in the repurposed J F Cook School, and house Pre-K and kindergarten classes in the proposed new "Kinderhaus" building on the northeast corner of the Property. The Kinderhaus, which is required to accommodate the programmatic needs for these young children, occupies and eliminates some of the existing parking spaces on the Property.
- **Open Space**: Similarly, the existing impervious surface will be replaced with a significantly landscaped green area on the entire Property that serves both the educational and sustainable missions of the School. These spaces, which range from vegetable gardens to play areas to stormwater gardens and even a dry stream garden, provide students with a combination of outdoor recreation space and green areas that contribute to the School's educational program.

Therefore, for the foregoing reasons, the School is left with a high parking requirement based on the number of teachers required to serve its educational mission, a very limited area available to accommodate parking for those teachers, and additional programmatic needs that further reduce the amount of area available for parking. If the School were forced to adhere to the strict parking requirements of the Zoning Regulations, it would have to either reduce the size or number of classes, eliminate the programmatically-required Kinderhaus and open space, construct expensive and inefficient underground parking, or some combination of the three. The class size and Project elements are critical to the School's mission and operation, and the School cannot

sustain the cost associated with underground parking. Therefore, the Property's exceptional condition creates a considerable burden in complying 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

The requested variance relief will not be detrimental to the public good or the Zone Plan. The requested relief for number of parking spaces will not adversely affect the availability of on-street parking in the neighborhood. The School has a very low rate of faculty/staff driving. At the School's existing location on 16th Street, only 4 of the 50 faculty/staff members drive to the School. The School's mission of sustainability creates an atmosphere where faculty/staff prefer not to drive and the School actively discourages driving through, among other measures, charging for parking. The vast majority of the existing faculty/staff bike or take transit to the School now, and the School's commitment to alternative transportation is reflected in the School's Green Urban School Award and Mayor's Sustainability Award.

The School expects that the new location will similarly promote alternatives to driving. The Property is a comfortable half-mile walk from the NoMA-Gallaudet University Metro station, similar to the distance between the School's existing location and the Columbia Heights Metrorail station. The Property is also convenient to a number of bicycle routes, and the School will provide ample bike parking. Based on current practice, with a maximum faculty/staff of 75, the School expects that 8-10 staff members will drive, and the School will continue to charge faculty/staff for parking on-site.

The proposed school will be appropriate for the location, and it will not have adverse impacts on neighboring property. The School's demonstrated commitment to alternative transportation and the additional programs to discourage driving will minimize the potential for any neighborhood traffic and parking impacts. Thus, the proposed project will not be detrimental to the public good or the Zone Plan.

VII. CONCLUSION

Because of the foregoing reasons, the Applicant satisfies the criteria for area variance relief and respectfully requests that the Board approve this application

Respectfully submitted,
GOULSTON & STORRS, PC


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