

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

**Application for 2266 25th Place, NE
Square 4258, Lot 35**

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted by Jemal's Tony LLC, on behalf of the District of Columbia Government, in support of an application pursuant to 11 DCMR §§ 3104.1 and 3103.2 for (i) special exception relief to locate an emergency shelter in the C-M-2 District pursuant to 11 DCMR 802.28, and (ii) a variance from the requirement of 11 DCMR 802.28(c) to allow an emergency shelter to be located within 1,000 feet of a solid waste handling facility, at 2266 25th Place, NE (Square 4258, Lots 35) (the "Site").

Pursuant to 11 DCMR § 3113.8, the Applicant will file its Prehearing Statement with the Board of Zoning Adjustment ("BZA" or "Board") no fewer than 14 days prior to the public hearing for this application. In this statement, and at the public hearing, the Applicant will provide testimony to meet its burden of proof to obtain the Board's approval of the requested special exception relief. The following is a preliminary statement indicating how the Applicant meets the burden of proof.

I. BACKGROUND

A. Description of the Site and Surrounding Area

The Site consists of Lot 35 in Square 4258 and has a total land area of approximately 55,067 square feet. The Site is zoned C-M-2 and is located within the boundaries of Advisory Neighborhood Commission ("ANC") 5C. Square 4258 is generally bound by CSX rail tracks and a small segment of 24th Street to the north, Bladensburg Road to the south, 25th Place to the east, and Queens Chapel Road to the east, all in the northeast quadrant of the District of Columbia. The Site is an irregularly shaped lot located in the northern portion of the square at the terminus of 25th Place, and has partial frontage along 25th Place and 24th Place. Currently, Lot 35 is improved with a vacant, two-story warehouse.

The areas to the east and west of the Site are zoned C-M-1 and C-M-2, and are primarily devoted to light-manufacturing and industrial uses. To the immediate east, across 25th Place, is a bus storage and maintenance facility owned and operated by the Washington Metropolitan Area Transit Authority (WMATA). There are residential neighborhoods further east that are zoned R-1-B and R-5-A. The Fort Lincoln New Town development, including the Shops at Dakota Crossing retail uses, is located approximately 0.8 miles to the east.

The area immediately north of the rail tracks is zoned C-M-1 and also subject to the Langdon Overlay (LO) District, which exists for purposes of protecting the residential neighborhood that exists further north, and to encourage retention of existing commercial and light manufacturing uses and businesses under special controls that protect quality of life and the

character of the adjacent residential neighborhood. The residential neighborhoods located further north are zoned R-1-B and R-5-A and consist predominately of single-family detached dwellings interspersed with semi-detached and attached dwellings. The areas to the south of the Site, across Bladensburg Road, are zoned C-M-1 and M, and consist primarily of commercial and light-industrial uses. The site of the proposed “NewCityDC” development, a large mixed-use development located at New York Avenue and Bladensburg Road, and the U.S. National Arboretum are located approximately 0.4 and 0.6 miles to the south, respectively.

B. Existing Zoning

As previously noted, the Site is zoned C-M-2. The C-M-2 District permits a maximum height of 60 feet, with no limit on number of stories, and a maximum floor area ratio (FAR) of 4.0. 11 DCMR §§ 840.1 and 841.1. Lot occupancy is not regulated within C-M and M industrial zones. The C-M-2 District permits emergency shelters for 5 to 150 persons, not including resident supervisors or staff and their families, as a special exception. 11 DCMR § 802.28. However, the Board can approve an emergency shelter for between 151 to 300 persons upon a showing that the program goals and objectives of the District of Columbia cannot be achieved with a smaller facility at a given site, and there is no other reasonable alternative to meet the program needs of the area within which the emergency shelter is proposed, and provided that the larger shelter would not result in the total number of emergency shelter residents housed within the same square to exceed four hundred and fifty (450) persons. 11 DCMR § 802.28(g). The Board is also authorized to determine the appropriate number of required on-site parking spaces for an emergency shelter within a C-M-2 zone. 11 DCMR § 802.28(d) and 2101.1.

C. Closing DC General: Short-Term Family Housing

The District’s plan to end homelessness involves making significant improvements to the current homeless crisis response system for families. This includes the closure and replacement of DC General, the city’s largest family homeless shelter. In order to do so, the Mayor has advanced an all “8 Ward Strategy” to create short-term family housing. The facilities will be small, safe, and dignified, with the services and support that help families get back on their feet. After a search, the Department of General Services (“DGS”) secured the Site as the emergency shelter location for Ward 5. As described below, the Site will be developed with a building that will be compatible with the surrounding context, provide short-term housing for 50 District families, and offer adequate on-site parking for the facility’s employees and visitors.

II. PROJECT DESCRIPTION

As shown on the architectural drawings attached hereto, the Applicant proposes to renovate and expand the existing vacant warehouse currently on the Site into a two-story emergency shelter and accessory clinic use which contains a landscaped interior courtyard, and has been sensitively designed to be compatible with the surrounding context. The proposed building will have two stories with a maximum height of approximately 44 feet, a maximum density of approximately 1.01 FAR, and will contain approximately 50 units, 5 of which will be two-bed units, 32 will be three-bed units, 21 will be four-bed units, and 2 will be five-bed units. As a result, the building will be capable of accommodating up to 200 people.

The building is specifically designed for the delivery of the services and support required to address the immediate short-term housing needs of families. To do this, the building includes a balance of residential units, and a variety of common and programmatic spaces for supportive services and activities for parents and children of a variety of ages. Services on site are designed to help families access permanent housing and achieve greater stability, assisting with housing searches, applications, document acquisition, and financial counseling. The on-site social work staff will assist families with a range of supportive services including appropriate linkages to workforce programs, health and behavioral-health services, and services related to parenting. The program will promote the positive development of children impacted by homelessness in a variety of ways, including ensuring early child development screenings, coordination with school liaisons, and age appropriate recreational activities. Meals will be provided for families in a common dining room, and families will have access to laundry facilities and other basic necessities.

The accessory clinic use is proposed in the southeast corner of the first-floor, adjacent to the check-in and security station, and will contain five examination rooms, a waiting room, a nurse's station, and storage. The roof level of the building will contain a small mechanical penthouse and a screened mechanical area that meet all of the applicable penthouse requirements, and an extensive green roof system that will cover almost the entirety of the building.

The proposed site plan includes an outdoor playground and recreation space on the west side of the Site at the rear of the building. Approximately 20 parking spaces will be provided along the north and east sides of the Site, and will be adequately screened with landscaping, trees, and fencing. Furthermore, additional landscaping, including bioretention areas, is proposed throughout the Site.

III. SPECIAL EXCEPTION RELIEF

A. Relief Requested

The Applicant seeks special exception approval pursuant to 11 DCMR §§ 802.28 and 3104.1 to locate an emergency shelter in the C-M-2 District.

B. Burden of Proof

Under D.C. Code § 6-641.07(g)(2) and 11 DCMR § 3104.1, the Board is authorized to grant special exception relief where it finds that the special exception will be in harmony with the general purpose and intent of the Zone Plan and will not tend to adversely affect the use of neighboring property, subject in each case to the special conditions specified. 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 regulation." *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 706 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. 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.*

C. The Applicant Meets the Test for a Special Exception Relief Under 11 DCMR § 802

Section 802.28(a) - There shall be no other property containing an emergency shelter for five (5) or more persons in the same square;

As confirmed by the Office of the Zoning Administrator, the Office of Planning, and the Office of the Deputy Mayor for Health and Human Services of the District of Columbia, there is no other property containing an emergency shelter for five or more persons within Square 4258, the square within which the Site is located.

Section 802.28(b) - There shall be no other property containing an emergency shelter for five (5) or more persons within a radius of one thousand (1,000) feet from any portion of the property.

As confirmed by the records of the Office of the Zoning Administrator, there is an existing emergency shelter located approximately 930 feet west of the Site, the Adam's Place Emergency Shelter. The Adam's Place Emergency Shelter is operated by Catholic Charities, through a contract with the District of Columbia Department of Human Services (DHS), and provides single night housing to men over the age of 18, and services to meet basic needs. Notwithstanding this 1,000 foot limitation, the Board is empowered to approve up to one additional emergency shelter pursuant to Section 802.28(f), provided the Board finds that the cumulative effect of the two facilities will not have an adverse impact on the neighborhood because of traffic, noise, or operations. As discussed below, approval of the proposed emergency shelter will not result in adverse cumulative impacts.

Section 802.28(c) - Emergency shelters shall not be located within one thousand (1,000) feet of a square containing a sewerage treatment plant, a wastewater treatment facility, or a solid waste handling facility.

According to information provided by the District of Columbia, there is an existing solid waste handling facility located at 2160 Queens Chapel Road, NE, approximately 600 feet from the Site. As discussed below, the Applicant is requesting a variance from this requirement.

Section 802.28(d) - There shall be adequate, appropriately located, and screened off-street parking to provide for the needs of occupants, employees, and visitors to the facility.

The Applicant will provide twenty off-street parking spaces located along the northern and eastern perimeter of the Site, and accessed directly from 25th Place. Pursuant to 11 DCMR §2101.1, the minimum parking requirement for an emergency shelter for 16 or more persons is as prescribed by the BZA. The District has determined, based upon experience with similar program facilities in the city where residents typically do not have cars, that the twenty proposed parking spaces will be adequate for the needs of building occupants, employees, and visitors, many of whom use public transportation. Families that will reside at the proposed emergency shelter are not expected to have a vehicle, and will likely arrive either by shuttle operated by the District, or by Metrobus which

operates along Bladensburg Road. Thus, the twenty parking spaces that will be provided will be primarily used by employees and visitors of the emergency shelter and accessory clinic use.

With respect to location, the proposed parking is appropriately located such that it is directly accessible from 25th Place, NE, and in proximity to the shelter entrance and accessory clinic. In addition, the proposed parking spaces will be appropriately screened through the use of landscaping and fencing. The parking spaces located along the northern lot line will be screened with groundcover landscaping and several trees. The spaces located along the eastern lot line will be screened from the neighboring bus maintenance facility through newly added landscaping and an existing fence. A proposed bioretention area at the north side of the building will also help to screen and reduce the visual impact of the proposed parking spaces.

Section 802.28(e) - The facility shall 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 will not have an adverse impact on the neighborhood. As stated above, there is adequate off-street parking for the emergency shelter that is accessible via 25th Place, NE. The number of overall trips generated by the proposed emergency shelter is also expected to be fairly minor as most residents will not have a vehicle, and thus will likely rely upon public transportation to access the site. The District intends to offer residents public transportation vouchers that can be used on the Metrobus lines that run along Bladensburg Road. The use will be a residential use, and inherently will not produce any adverse impacts due to it being a relatively low-intensity use that will not generate a lot of noise. Moreover, DHS will work with a community advisory group should any issues arise related to impact on the community. The District has been proactive at initiating the formation of such groups so that concerns can be flagged and addressed before they become problems. This will provide a venue for constructive input and problem solving. There will also be ‘program rules’ imposed by the service provider, as well as 24/7 security staff onsite, on each floor of the building.

Section 802.28(f) - Notwithstanding § 802.28 (b) the Board may approve up to one additional emergency shelter to be located in the same square as an existing emergency shelter for five (5) or more persons only if the Board finds that the cumulative effect of the two facilities will not have an adverse impact on the neighborhood because of traffic, noise, or operations.

As stated above, there is one other emergency shelter, the Adams Place Emergency Shelter, located at located at 2210 Adams Place, NE, approximately 930 feet to the west of the Site. The emergency shelter is operated by Catholic Charities, and provides single-night, 12-hour housing to men over the age of 18, and services to meet basic needs. The Adams Place Emergency Shelter also serves as a hypothermia shelter between November and March. The operation of the proposed emergency shelter at 2266 25th Place will be very different than the Adams Place Emergency Shelter program. The proposed shelter will provide short term housing to families experiencing homelessness for stays between 30 – 90 days, and will operate more like a multiple dwelling apartment building Rather than a low-barrier shelter that is only open for limited hours over a 24 hour period.

As a result of the distance between the two shelters, the operational differences described above, the low number vehicular trips expected to the proposed emergency shelter, and the residential character of the proposed shelter, the cumulative effects of having two emergency shelters within 1,000 feet of each other within this area of the District will not result in adverse impacts on traffic, noise, or operations. First, the proposed emergency shelter and the existing Adams Place Emergency Shelter are located approximately 930 feet apart, only 70 feet shy of the 1,000 foot threshold, and the area between the two shelters is predominately used for commercial and light-industrial uses.

With respect to operations, the two emergency shelter programs are different in several key ways. First, the Adams Place Emergency Shelter is a low-barrier, unaccompanied adult men's shelter that provides shelter on a nightly, first-come first-serve basis. The proposed shelter at 2266 25th Place will serve families with minor children who apply for and receive a shelter placement from DHS. There will be no walk-in services provided at the Site. Rather, families will be offered accommodations from a central intake center on Rhode Island Avenue, NE, and families will have 24-hour access to their private units until exiting homelessness to permanent housing. In addition, the proposed facility will have far less turnover than the daily turnover experienced at the Adams Place Emergency Shelter. For example, according to information provided by the District, families in short-term family housing programs have a current median length of stay of approximately 140 days. Finally, given the types of surrounding uses, the concurrent operation of two emergency shelters in this area will not have an adverse impact on neighboring and nearby properties. The closest residential areas to the north will be buffered by the CSX rail tracks.

Furthermore, as stated above, it is expected that most of the residents of the proposed shelter will not own a vehicle. Rather, resident families will likely be dropped off or rely upon the Metrobus routes that are in close proximity to the proposed shelter. To assist with travel costs, the District intends to offer residents public transportation vouchers. Thus, the majority of vehicle trips will be generated by staff and visitors to the accessory clinic which is expected to be a modest number that will not create adverse traffic conditions. Furthermore, given the distance between the two shelters the cumulative number of vehicle trips generated by both facilities will likely be imperceptible compared to existing traffic and circulation in the area. Finally, given the limited operation of the Adams Place Emergency Shelter, the residential character of the proposed emergency shelter, and the distance between the two shelters and other residential areas, there will be no adverse noise impacts that result from approval of a second emergency shelter in this area.

Section 802.28(g) - The Board may approve a facility for between one hundred and fifty-one (151) and three hundred (300) persons, not including resident supervisors or staff and their families, only if the Board finds that the program goals and objectives of the District of Columbia cannot be achieved by a facility of a smaller size at the subject location and there is no other reasonable alternative to meet the program needs of that area of the District, provided that no shelter shall be approved that would increase the total number of emergency shelter residents housed within the square to exceed four hundred and fifty (450) persons.

The emergency shelter will contain no more than 50 private family units, 5 of which will be two-bed units, 32 will be three-bed units, 21 will be four-bed units, and 2 will be five-bed units. As a result, the building will be capable of accommodating up to 200 people, not including resident supervisors or staff and their families. The Site achieves the program goals and objectives of the District of Columbia, as well as its legal obligation to provide shelter to families in private rooms. The program goals and objectives of the District of Columbia cannot be achieved by a facility of a smaller size at the Site, and there is no other reasonable alternative to meet the program needs of Ward 5. It is imperative that all 270 units currently at DC General be replaced before DC General is closed. The aggregate number of units across the eight short-term family housing sites proposed by the Mayor will meet that need, and thus a facility for more than 150 persons at the Site is a necessity. The District has undergone an aggressive search for sites throughout the District, and the Site is both a viable and desirable location for the proposed facility. No other site in Ward 5 was able to meet the program requirements. During the site selection process, the District was presented with three possible Ward 5 locations for providing short-term family housing; however, the Site was the only one that was deemed feasible as the other two sites were found to be too small to meet the District's programmatic goals. In addition, the District was able to negotiate a Letter of Intent for the proposed emergency shelter at the Site that is favorable to its needs.

Section 802.28(h) - The Board shall submit the application to the D.C. Office of Planning for coordination, review, report, and impact assessment, along with reports in writing of all relevant District departments and agencies, including but not limited to the Departments of Transportation and Human Services and, if a historic district or historic landmark is involved, the State Historic Preservation Officer.

The Board will refer the application to the D.C. Office of Planning (OP) upon submission by the Applicant, at which time OP will coordinate with all applicable District agencies.

D. The Applicant Meets the Test for Special Exception Relief Under 11 DCMR § 3104.1

In addition to satisfying the specific requirements set forth in 11 DCMR § 802, the Applicant must also demonstrate that the requested special exception meets the more general requirements of 11 DCMR § 3104.1. Before granting an application for a special exception, the Board must determine that the requested relief "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 Maps." 11 DCMR § 3104.1. The stated purposes of the Zoning Regulations are set forth in section 6-641.02 of the D.C. Code:

Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the national capital, and zoning regulations shall be designed to lessen congestion in the street, to secure safety from fire, panic, and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration of population and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and

cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein.

Those purposes are reproduced in the text of the Zoning Regulations as well. *See* 11 DCMR §§ 101.1-101.2.

The proposed use of the Site as an emergency shelter for up to 50 families is consistent with the purposes described above. The project will promote the appropriate distribution of population to create conditions that are favorable to health, safety, and prosperity, and will significantly further the efficiency in the supply of public services. The building's design and massing is consistent with the development of the surrounding area and will provide adequate light and air to the building's residents and to occupants of surrounding properties. In addition, the emergency shelter and small, accessory clinic use will not produce any adverse impact due to noise or general operations. As stated above, there is adequate off-street parking for the emergency shelter and accessory clinic use, as well as several Metrobus lines that are in close proximity to the Site.

Accordingly, the proposed emergency shelter and accessory clinic is in harmony with the purpose and intent of the Zoning Regulations and meets the test for special exception relief under 11 DCMR §§ 802 and 3104.1.

IV. VARIANCE RELIEF

A. Relief Requested

Pursuant to 11 DCMR § 3103.2, the Applicant requests an area variance from the requirement of 11 DCMR § 802.28(c), which states that an emergency shelters shall not be located within 1,000 feet of a square containing a sewerage treatment plant, a wastewater treatment facility, or a solid waste handling facility. As stated above, according to information provided by the District of Columbia, there is an existing solid waste handling facility located at 2160 Queens Chapel Road, NE, approximately 600 feet from the Site.

B. Burden of Proof

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 condition or situation;
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 Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)). See also, *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). As discussed below, and as will be further explained at the public hearing, the Applicant meets the three-prong test.

C. The Applicant Meets the Variance Test Pursuant to 11 DCMR § 3103.2

1. Exceptional Situation and Condition

The phrase “exceptional situation or condition” in the above-quoted variance test may arise from a confluence of factors which affect a single property. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). The exceptional situation or condition applies not only to the land, but also to the existence and configuration of a building on the land. See *Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment*, 320 A.2nd 291, 294 (D.C. 1974).

In this case, the exceptional situation and condition arises from the District’s initiative to end homelessness, which includes closing DC General and opening smaller, more dignified emergency shelters in each ward of the District, and from the lack of locations that are available, and/or capable of meeting the District’s programmatic goals and the demand for temporary family housing within Ward 5. The D.C. Court of Appeals has held that there is no requirement that the uniqueness “inheres in the land at issue.” *Gilmartin*, 579 A.2d at 1168, citing *Capitol Hill Restoration Society v. D.C. Bd. of Zoning Adjustment*, 534 A.2d 939, 942 (D.C. 1987). To the contrary, a “difficulty which sets a property apart from its neighbors need not be physical but can stem from the zoning history of the case.” *Monaco v. D.C. Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979). For example, private restrictive covenants “may be considered in their own right as an extraordinary condition of a particular piece of property, since they effectively restrict design, height, and use.” *Monaco v. D.C. Bd. of Zoning Adjustment*, 407 A.2d 1091, 1099 (D.C. 1979)), and “historical factors, a relationship with Congress, and past actions of the BZA and Zoning Commission create an extraordinary or exceptional situation or condition so as to fulfill the statutory variance requirement.” *Monaco*, 407 A.2d at 1095-96. Ultimately, the term “extraordinary or exceptional condition” was “designed to serve as an additional source of authority enabling the Board to temper the strict application of the zoning regulations in appropriate cases.” *DeAzcarate v. D.C. Bd. of Zoning Adjustment*, 388 A.2d 1233, 1237 (1978).

Furthermore, the “public need for the use is an important factor in granting or denying a variance and the apparently objective standards of the enabling acts are applied differently to the several kinds of uses.” *Monaco*, 407 A.2d at 1098. In *Monaco*, the D.C. Court of Appeals “permitted the BZA to apply a more flexible standard for determining hardship when a ‘public service’ or nonprofit entity is the applicant.” *National Black Child Dev. Inst. v. D.C. Bd. of Zoning Adjustment*, 483 A.2d 687, 690 (D.C. 1984). Similarly, in BZA Order No. 17316, the Board approved an application from Randle Highlands Manor LP and the Anacostia Economic

Development Corporation, stating that “the area variances are not sought to ensure any profit, but rather to enable the development of affordable housing at a site designated by the District of Columbia government for that purpose.” BZA Order No. 17316 p. 12; *see also* BZA Order No. 18272, p. 8 (“the burden of proof for variance relief as to the first two elements is lessened for non-profits or public service organizations”).

The case law and BZA precedent referenced above is directly applicable to the present BZA application. In collaboration with the Interagency Council on Homelessness, the District determined that DC General needs to be replaced by smaller, short-term family housing facilities with no more than 50 units each in order to provide the kind of services that help families exit shelter as quickly as possible. These types of facilities are more cost effective and will make the best possible use of taxpayer dollars by more quickly and effectively lifting families out of homelessness. In 2015, the District of Columbia Council passed legislation that provided the framework for replacing DC General. The Council also identified the specific sites in each ward to be developed with the short-term family housing facilities. The District’s goal is to have the new sites open and available to accommodate families in 2017. *Id.*

In this case, the District selected the Site as the short-term family housing location for Ward 5. The District’s goal to provide one facility in each ward, each containing no more than 50 family-sized units, greatly limits the available, affordable, and appropriately-sized land on which to build the facilities. Given the current market conditions, larger properties in very close proximity to amenities and transit within Ward 5 are few and expensive. The District selected the Site as the best option among the three sites considered, and imposed specific conditions on development of the emergency shelter use. For example, the shelter is required to have up to 50 units and other ancillary spaces such as, but not limited to, private and family bathrooms and shower facilities, appropriate recreation spaces, a computer lab and homework lounge, a dining room, and staff offices and meeting rooms. The new emergency shelter will also include an on-site accessory clinic use with approximately five exam rooms, and an outdoor playground and recreation space. These requirements, combined with the lack of viable sites that could meet the District programmatic requirements for the emergency shelter in Ward 5, create an exceptional situation and condition for the Site that directly impacts the Applicant’s ability to provide a zoning-compliant project that is not within 1,000 feet of the nearby solid waste handling facility.

2. Resulting Practical Difficulty

The Applicant will demonstrate that the strict interpretation of 11 DCMR § 802.28(c) will result in a practical difficulty.

To meet the standard for practical difficulty, “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. 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.” *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A. 2d 535, 542 (D.C. 1972). In area variances, such as those requested in this case, applicants are not required to show “undue hardship” but must satisfy only “the lower ‘practical difficulty’ standards.” *Tyler v. D.C. Bd. of Zoning Adjustment*, 606 A.2d 1362, 1365 (D.C. 1992), citing *Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (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'....” *Gilmartin*, 579 A.2d at 1171, citing *Barbour v. D.C. Bd. of Zoning Adjustment*, 358 A. 2d 326, 327 (D.C. 1976). See also, *Tyler v. D.C. Bd. of Zoning Adjustment*, 606 A.2d 1362, 1367 (D.C. 1992). Thus, to demonstrate practical difficulty, the Applicant must show that strict compliance with the regulations is burdensome, not impossible.

The Applicant is unable to meet the requirement of Section 802.28(c) as no other viable locations for the proposed emergency shelter in Ward 5 were identified during the District site selection process. In order to close DC General, the District undertook a year-long search for feasible sites that were capable of meeting the short-term family housing demand in each ward of the city. The search began with looking at publically-owned properties, both District and Federal. Of the six publically-owned properties considered, none were located in Ward 5. Following its consideration of public properties, the District released a Request for Proposals in late-2014 to obtain private sector offers. Of the 28 responses received, only three properties were located in Ward 5: (i) the Site, and (ii) properties located at 2385 Rhode Island Avenue, NE, and 1913 Gallaudet Street, NE, which were ultimately deemed too small to meet program requirements. Thus, after an exhaustive search only one viable site could be identified for the proposed emergency center, the strict application of the Zoning Regulations would give rise to a practical difficulty for the Applicant as it would not be able to fully carry out its objective of closing DC General and addressing homelessness by establishing a new emergency shelter in each ward of the city.

3. No Substantial Detriment to the Public Good or Substantial Impairment to the Intent, Purpose, or Integrity of the Zone Plan

The requested relief can be granted without substantial detriment to the public good and without substantial detriment to the intent, purpose, or integrity of the zone plan. The construction of a new emergency shelter facility with safe and secure accommodations to house up to 50 families is consistent with the law and policies of the District, and will be a great benefit to the District’s homeless population. The Site will offer temporary accommodations to families in private rooms, and will provide much-needed supportive services necessary to assist families transitioning to sustainable permanent housing.

Furthermore, there is sufficient distance (approximately 600 feet) between the proposed emergency shelter and the existing solid waste handling facility to prevent any unsafe conditions to the residents of the shelter. The separation of these two locations will also mitigate any potential impacts from noise, odors, dust, and any other objectionable conditions. It is worth noting, that pursuant to Section 802.4(a), a solid waste facility is located within 300 feet of a property in the residential district. With respect to traffic and the potential for vehicular conflicts, there is no direct roadway connection between the two sites; and therefore, truck traffic generated by the solid waste facility will not conflict with residents and visitors to the shelter and accessory clinic. Furthermore, as a result of its location at the terminus of 25th Place, there is no potential for trucks to use 25th Place to access the solid waste facility.