BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

STATEMENT OF THE BURDEN OF PROOF

This is an application of the E.E. Just Collegiate Academy (the "**Applicant**" or the "**School**") for a (1) special exception to allow for the operation of a private school located at 1544 Fifth Street, N.W. (Lot 811 in Square 478) (the "**Property**"), as shown on Exhibit A, in the R-4 Zone District and (2) a variance from the off-street parking requirements of 11 DCMR § 2101. Special exception relief is necessary for the operation of the School.

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I.
Nature of Relief Sought

This statement is submitted on behalf of the School in support of the application to the Board of Zoning Adjustment (the "**BZA**" or "**Board**") for the following relief from the requirements of the Zoning Regulations pursuant to 11 DCMR §§ 3401.1: (1) a special exception from the requirements of Section 206 to establish a private school on the Property in the R-4 Zone District; and (2) a variance from §2101 of the Zoning Regulations in order that the School may operate without providing any parking space on-site. The Applicant's satisfaction of the standards for granting special exception and variance relief are discussed in detail in Sections IV and V of this statement.

II.
Jurisdiction of the Board

The Board of Zoning Adjustment ("BZA" or "Board") has jurisdiction to grant the variance and special exception relief requested herein pursuant to § 8 of the Zoning Act, D.C. Code, 2001 Ed. § 6-641.07(g)(2) and § 6-641.07(g)(3).

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III.
Background

A. Description of the Property and Surrounding Area

The School is located at 1544 5th Street, N.W. (Lot 811 in Square 478) and is situated in the Miles Educational Annex, which is part of the Third Baptist Church ("**Church**"). The School is located in the Greater Shaw Neighborhood, which is a residential neighborhood comprised primarily of single family row-houses. The Property is currently improved with a 3 story church building and annex. The Site is zoned R-4 (as shown on Exhibit B) and the predominant zone classification in the area is R-4. There are small pockets of R-5-B, R-5-D, C-2-A and C-2-B Zone Districts surrounding the Property. The Church is located one block west of New Jersey Avenue and two blocks south of Rhode Island Avenue. There are several churches and public schools in the immediate neighborhood, including the Scott Montgomery Elementary School located directly across the street from the Applicant on 5th Street and Shaw Junior High School on Rhode Island Avenue.

B. History of the Building

The Third Baptist Church was founded in 1857 and has been located at 1546 Fifth Street, N.W. since 1885. The original building still remains on the lot. In addition to worship services, the Church provides a Sunday School for children and several community outreach programs.

At some point prior to 1958, the Church acquired an apartment and two adjoining properties to use as a future site for an educational building to encourage youth to follow the Christian way of life. This annex, known as the Miles Educational Annex is the current home of the School.

IV.

Compliance with Section 206 of the Zoning Regulations

Private schools are permitted to operate in residential zones with special exception approval. In obtaining approval of a special exception pursuant to Section 206, the Applicant has the burden of showing that the private school will not become objectionable to adjoining and nearby property because of noise, objectionable traffic conditions, number of students, or other objectionable conditions related to the location and operation of the private school. The Applicant also has the burden of showing that there is ample parking space. This application fully satisfies the standards for special exception relief for private schools in the R-4 District, pursuant to 11 DCMR §206.

Section 206.2: The School Shall be Located Such That it is Not Likely to Become Objectionable to Neighbors Because of Noise, Traffic, Number of Students or Otherwise Objectionable Conditions.

There will be no objectionable impacts on adjacent or nearby properties. Only eleven students between the ages of nine and eleven attend the School. The proposed play area of 500 square feet is appropriately buffered from nearby properties. The play area is in a courtyard, which is surrounded on all four sides - by the church on the north side, the School on the east side, an approximately 20 foot high brick fence on the west side and a wire fence to the south. On the other side of the wire fence is a wooden fence and a vacant row-house. Given the brick enclosures on three of the four sides of the play area and a vacant row-house on the forth side, the play area is adequately buffered and will not create objectionable noise or any other objectionable condition. Further, since the opening of the School on September 7, 2004, there have been no complaints from neighbors regarding noise from the play area.

The eleven children are dropped off in the mornings and picked up in the afternoons in private vehicles. School buses do not service the School. Drop-off and pick-up times are staggered such that students are dropped off at the School between 7:30 and 8:00 am, and students are picked up between the hours of 3:30 and 6:00 pm. Further, since the opening of the school, there have been no objectionable traffic conditions or complaints from neighbors regarding the pick-up or drop-off of students. Given the extremely small student body, the increase in traffic as a result of the School is minimal and the presence of the School does not create any objectionable traffic conditions.

Section 206.3: The School Shall Provide Sufficient Off-Street Parking Spaces to Meet the Reasonable Needs of Teachers, Other Employees and Visitors.

Due to the configuration of the lot, there is no off-street parking provided on site. However, there is only one teacher/staff member working at the School. The teacher parks on Fifth Street, where there is adequate off-site parking. While visitors must also park on street, there are a significant number of available on-street parking spaces within a one block radius of the Property.

Pursuant to Chapter 21 of the Zoning Regulations, Applicant is required to provide one off-street parking space. However, as mentioned above, the Church and the Education Annex occupy so much of the lot that there is inadequate space to provide even one parking space on-site. This issue is addressed further in Section V below.

V.

THE APPLICATION MEETS THE REQUIREMENTS FOR VARIANCE RELIEF FROM SECTION 2101 PURSUANT TO 3103.2 OF THE ZONING REGULATIONS

The Application meets the requirements for variance relief under Section 3103.2 of the Zoning Regulations. The burden of proof for area variance relief is well established. The applicant must demonstrate that the Property is affected by an exceptional or extraordinary situation or condition, that the strict application of the Zoning Regulations will result in a practical difficulty to the applicant, and that 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. BZA*, 287 A. 2d 535, 541 (D.C. 1972). As set forth below, the application meets the three-part test for area variance relief.

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

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 [footnote omitted]." *Id.* at 293-294. The Court held that the exceptional situation standard of the variance test may be met where the required hardship inheres in the land, or the property (i.e., the building on the land).

The Property is subject to an extraordinary and exceptional situation because it is improved with a building that occupies the majority of the lot. There is simply not enough land area to provide even one off-street parking space on the Property. As such, the existing lot configuration certainly makes the Property subject to an extraordinary and exceptional situation.

B. Area Variance: Strict Application of the Zoning Regulations Would Result in Practical Difficulty

First, we need to make clear what is required to demonstrate a "practical difficulty." The requested relief is for an area variance. The test of a use variance is "undue hardship," which is a more stringent standard than required for area variances. In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. 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 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 at 1367. Thus, to demonstrate practical difficulty, the applicant must show that strict compliance with the regulations is burdensome, not impossible. The Applicant, as demonstrated below, meets this standard.

The practical difficulty is that there is no room for on-site parking spaces. Because Applicant only has one teacher/staff person, the required amount of parking is .66 of a parking space. "Whenever calculations based on the schedule set forth in § 2101 result in a fractional space, any fraction of one-half or over shall require one (1) parking space." 11 DCMR § 2118.6. Therefore, the Applicant is required to provide one off-street parking space. As mentioned

above, due to the lot configuration, there is simply no space on the Property to provide a parking space.

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

Granting the requested variance relief will not cause harm to the public good or to the zoning plan. Schools by their nature enhance the public good. This school, specifically is affiliated with the Church and provides Christian education. Also, Applicant will have no adverse impacts on the neighboring properties. There are a number of schools and families in the neighborhood; one additional school that serves eleven children will have minimal impact on surrounding properties and will have no effect on the Zone Plan.

VI.
Community Outreach

The Applicant briefly presented this project to Advisory Neighborhood Commission 2C on November 3, 2004. The ANC commissioners had no objections to the use. The Applicant will continue to meet with area residents regarding the School and will formally present its application to Advisory Neighborhood Commission 2C at one of its regularly scheduled meetings in the near future.

VII.
List of Witnesses Expected to Testify

The following witness is expected to testify at the public hearing on behalf of the Applicant:

1) David Sprewell, Executive Head Master, E.E. Just Collegiate Academy

2) Reverend Stanley Byrd, Pastor, Third Baptist Church

VIII.
Exhibits in Support of the Application

Exhibit A: Application Form 120

Exhibit B: Application Form 135

Exhibit C: Statement of Existing and Intended Uses

Exhibit D: Statement of the Burden of Proof

Exhibit E: Portion of the Sanborn plat showing the Subject Property outlined in red

Exhibit F: Portion of the Zoning Map showing the Subject Property outlined in red

Exhibit G: Building Plat

Exhibit H: Photographs of the Existing Building

Exhibit I: Property Owner List

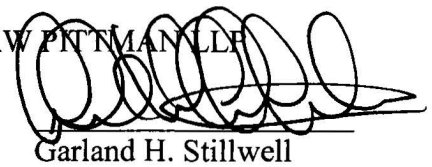
Exhibit J: Authorization Letter

IX.
Conclusion

For all of the above reasons, the Applicant is entitled to the requested special exception and variance relief in this case. Accordingly, the Applicant respectfully requests the Board to grant the application.

Respectfully submitted,

SHAW PITTMAN LLP

By: 
Garland H. Stillwell

By: 
Heidi N. Sachs

December 23 2004