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STATEMENT OF THE BURDEN OF PROOF

This is an application of the Good Samaritan Foundation ("**Applicant**") for variance relief required in connection with the proposed renovation and conversion of an existing building located at 2405 Martin Luther King Jr., Avenue, SE (Square 5789, Lot 808) (the "**Building**"). The Applicant wishes to convert the existing building into a community service center, which. requires the infill of a two-story-high room to create additional usable space in the Building. This renovation will result in a nonconforming floor area ratio ("**FAR**"). All proposed renovation is internal, thereby only increasing the FAR by internal renovations.

I.

Nature of Relief Sought

The building is located in Lot 808, Square 5789, in the C-2-A Zone District (the "**Subject Property**"). The Applicant requests variance relief from the Board of Zoning Adjustment (the "**BZA**" or "**Board**") from the maximum FAR (§ 771.2) in order to create additional usable space in the Building and from the parking requirements (§ 2100). The Applicant's satisfaction of the standard for granting variance relief is discussed in detail in Section IV of this statement.

II.

Jurisdiction of the Board

The Board has jurisdiction to grant the variance relief requested herein pursuant to § 8 of the Zoning Act, D.C. Code, 2001 Ed. § 6-641.07(g)(2).

ZONING COMMISSION
District of Columbia
CASE NO. 17295
EXHIBIT NO. 8

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III.

Background

A. Site Location

The Project will be located in an underserved urban neighborhood where there is a shortage of community-based programs and uses. The Property consists of approximately 6,500 square feet of land area, 6,851 square feet of gross floor area and is located on Martin Luther King, Jr. Avenue, S.E., a few buildings in from Talbert Street, S.E. The Property is situated directly between a PEPCO plant and an Asian restaurant. The Savoy Elementary School is located directly behind the Property at 2400 Shannon Place, S.E. The Property is also located a block from the Thurgood Marshall Charter School, a high school which is currently under construction. The portion of Martin Luther King, Jr. Avenue adjoining the Property is a commercial strip in need of renovation and upgrading. The Property also abuts stable residential neighborhoods. Single family detached housing is the predominant land use in the area. There are also several walk-up and garden apartments. The Property is characterized by high pedestrian and automobile traffic and other urban activities.

Several other developments are currently planned for the neighborhood. The Salvation Army has plans to build a 4,100 square foot community center at 2302-2310 Martin Luther King, Jr. Avenue, S.E., which will provide retail space, a childcare and family development center, worship space, job training, space for community programs and a health and wellness center. The District of Columbia Department of Transportation has allocated $400,000 for streetscape improvements to Martin Luther King, Jr. Avenue and the construction of a 95,000 square foot office center for DDOT is planned the intersection of Martin Luther King, Jr. Avenue and Good Hope Road. Also, the Anacostia Economic Development Center, a 26,000 square foot office

development, is planned to be constructed at the intersection of Martin Luther King, Jr. Avenue and Good Hope Road.

B. Description of the Program

The mission of the Good Samaritan Foundation ("GSF") is based on the strong commitment of its founders, former Washington Redskins Art Monk, Charles Mann, Tim Johnson and Earnest Byner, to prepare middle and high school students for leadership in the community and the workplace. This mission is achieved through the Student Training Opportunity Program (STOP), which provides youth with the skills, training and resources necessary to compete successfully in society.

The Good Samaritan Foundation ("GSF") was launched in 1993 as a program designed to provide inner-city youth with summer internships and to prepare youth for leadership in the community and the workplace. Initially, GSF recruited a small number of students and provided them with job-related skill workshops during the year in preparation of their eight-week summer jobs. The following year, to ensure that the students excelled during the school year, GSF added after-school tutoring and mentoring to its program.

Today, the GSF is a year-around program located at 555 11th Street, N.W., serving over fifty high school students, four days a week during the school year and five days a week during the summer. GSF is seeking to open several new community centers in the District of Columbia, with the first one on Martin Luther King Jr. Avenue, S.E. This new center will be a full-service student center, where young adults can attend study hall, use the modern and well-equipped computer lab, or have a healthy after school snack. The goals for the center are to provide middle and high school students with: (1) ongoing relationships with caring adults, (2) safe

places with structured activities during non-school hours; (3) a healthy start and future; (4) marketable skills through effective education; and (5) opportunities to give back through community service.

The GSF will also serve as a community development center during the hours that the Building is not being used by the students. The GSF, through partnerships with the Urban League, the Anacostia Economic Development Corporation, and other non-profit organizations, will provide adult career training and other services for people living in the community.

C. History of the Building

The Building was originally constructed in 1947 as the Carver Theater. In later years, it was acquired by the Smithsonian Institution and used as the African American Museum. The building has been vacant since 1984.

IV.

Description of the Proposed Upgrades to the Existing Building

The proposed renovations will allow for a substantial renovation of the interior of the Building and a conversion into a community service center, a use which will have a positive impact on the community. At this time, the Applicant, in coordination with the District Government, has already removed hazardous materials from the site, structurally stabilized dangerous portions of the Building that were collapsing, as well as cleaned and secured the Building. The improvement plans include repairing and reconfiguring the existing roof structure, complying with all setback requirements. The proposed interior work includes the extension of the mezzanine to convert a two story high room into two separate floors, as well as new HVAC, electrical, plumbing systems, and appliances. Spaces for instruction, studying, and program

management will be provided with state-of-the-art computer systems available for all student users. Also, the lobby and common spaces will be restored, and exterior doors and windows will be restored or replicated, and a new stairwell for emergency egress will be constructed. Additionally, the Applicant plans to strip off old paint and repair the exterior masonry.

The proposed renovations will have no impact on the existing footprint of the Building. However, the renovations will increase the Building's FAR to 1.67. It should be noted that the C-2-A Zone District allows an FAR of 2.5 for residential uses; thus, the requested variance is well within the maximum FAR that has been deemed appropriate for height and bulk in the C-2-A Zone District. The variance is required only because the non-residential density is limited to 1.5.

A. Areas of Necessary Relief

As stated above, the proposed renovation and conversion of the Building into a community center will result in a nonconforming FAR of 1.67. Further, although there is a parking credit associated with the previous museum use, it may not be large enough to offset the parking requirement associated with the community center use. Therefore, in order to undertake the modification of the interior of the Building, variance relief from 11 DCMR §771.2 and 11 DCMR § 2100 is necessary.

V.

The Application Meets the Requirements for
Variance Relief Under Section 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 Subject 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 Building is subject to an extraordinary and exceptional situation because there is a highly unusual double height space. As such, there is a great deal of space in the Building that is not suitable for the Applicant's programmatic use. The existing ceiling height is very generous, at approximately 31 feet. Any infill of the double height space affects the FAR of the Building and requires special relief. As such, the double height space certainly makes the Subject Property subject to an extraordinary and exceptional situation. Further, the Building is also subject to an extraordinary and exceptional situation because occupies almost 100% of the lot (the Building was constructed prior to the 1958 zoning regulations). As such, there is absolutely no space to provide any on-site parking.

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

First, we need to make clear what is required to demonstrate a "practical difficulty." The requested relief is for area variances. 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 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, as demonstrated below, meets this standard.

As previously discussed, the proposed project will result in a nonconforming FAR. Compliance with the FAR limitation will result in several practical difficulties when restoring and renovating the Building for use as a community service center. It will be difficult to fully utilize the double height space without relief. In order to construct training and study space

within the Building and provide amenities to the students, it is necessary to convert this space into two separate floors. The two-story high ceiling is simply unnecessary for a community service center, and the creation of an additional story will provide the added space necessary to serve the middle and high school students at the center. Only a more efficient layout of the Building, which includes renovation of the two-story-high room, will allow sufficient interior space for the creation of usable space. Further, it will be costly and difficult to heat the Building. However, any reconfiguration of the floors affects the FAR of the Building and requires a variance. The other practical difficulty is that the Building occupies almost 90% of the lot and therefore, there is insufficient space to comply with the parking requirement set forth in the Zoning Regulations.

For these reasons, the Applicant believes that a practical difficulty exists in satisfying the requirements of the Zoning Regulations that the maximum FAR is 1.5 and that Applicant provide additional on-site parking.

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 can be granted without substantial detriment to the public and without substantially impairing the intent, purpose and integrity of the zone plan. Indeed, granting the requested variance relief advances numerous goals and policies of the District of Columbia Comprehensive Plan:

a. The Generalized Land Use Map

The Generalized Land Use Map adopted as part of the Comprehensive Plan shows the intersection of Martin Luther King, Jr. Avenue and Talbert Street, S.E. within the boundaries of the Central Employment Area, that area defined as the "core area of the District of Columbia,

where the greatest concentration of employment in the city and region is encouraged (10 DECOR § 199.1) and where the economic development objectives are to stimulate renewed economic vitality and job generation in portions of the Central Employment Area outside of Downtown." (10 DCMR § 205.1). The proposed project is consistent with the Generalized Land Use Maps in that the community center will not only provide job training for middle and high school students, but will also create additional jobs in the near southeast community.

b. **Human Services Element.**

It is the policy of the District to "provide permanent . . . day-care services, and after-school programs and provide family and health counseling . . . and employment training . . ." (10 DCMR § 1005.2 (e)). The Project is consistent with this objective of the Comprehensive Plan. The Good Samaritan Foundation will have a quality community service center. The after-school program will provide a model leadership/employment training program that will offer life skills and leadership training that prepares participants for jobs that pay a living wage. This program will serve high-school age students and will include links to specific employment opportunities.

c. **Ward 8 Goals and Policies**

The Project complements many goals listed in the Ward 8 Element of the Comprehensive Plan. For example, one of the Ward 8 objectives for economic development is to seek to identify ways to "increase labor force job skills levels and expand job opportunities for ward residents, particularly the unemployed, the underemployed and youth preparing to enter the labor force." 10 DCMR 1905.1(b). As explained in detail above, the proposed project is consistent with these provisions of the Ward 8 Elements of the Comprehensive Plan.

The creation of the community center on the Property will hopefully serve as a catalyst for additional commercial development along Martin Luther King, Jr. Avenue, S.E. Further, the underutilized site will be turned into a productive use that will benefit the residents and the community.

The granting of this variance request is entirely consistent with the objectives of the Comprehensive Plan. The conversion from a vacant museum building to a community service center will help restore the economic vitality of the Building and will provide important social and job training services for youth in the near southeast. Further, no adverse impact will occur to neighboring properties as there will be virtually no changes to the exterior of the building.

VI.

Community Outreach

The Applicant will work with representatives of ANC 8A, as well as the surrounding neighborhood, to create a new community center that is a benefit to the neighborhood and the District of Columbia.

VII.

List of Witnesses Expected to Testify

The following witnesses are expected to testify at the public hearing on behalf of the Applicant:

1) Eugenia Mercer, representative of the Applicant; and

2) William Kirwan, AIA, Project Architect.