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VIA IZIS

Marnique Heath, Chairperson
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

May 23, 2016

**Re: Application No. 19287 — 5004 D Street SE (Square 5322, Lot 32)
Statement of the Applicant**

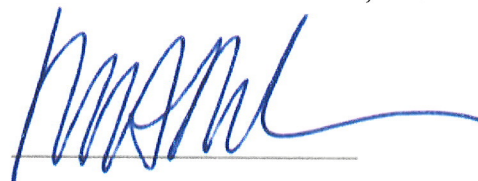
Chairperson Heath and Honorable Members of the Board:

On behalf of the District of Columbia Department of General Services, please find enclosed a Burden of Proof Statement for the above-referenced application. Please note, additional documentation, including the Pre-Hearing statement, will be filed in due course. The application is scheduled to be heard before the Board of Zoning Adjustment on June 28, 2016.

Thank you for your attention to this matter.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP



By: Meridith H. Moldenhauer

Board of Zoning Adjustment
District of Columbia
CASE NO. 19287

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

**APPLICATION NO. 19287 OF
DEPARTMENT OF GENERAL SERVICES**

**5004 D STREET SE
ANC 7E**

STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of the District of Columbia Department of General Services (the “Applicant”), the owner of the property located at 5004 D Street SE, (Square 5322, Lot 32) (the “Property”) in support of its application for variance relief, pursuant to 11 DCMR § 3103.2, from the requirements regarding height (§ 400.1), floor-area-ratio (“FAR”) (§ 402.4), lot occupancy (§ 403.2), rear yard (§ 404.1), side yard (§ 405.9), and parking (§ 2101.1), and a special exception pursuant to §§ 3104.1 and 360.1 to allow construction of an emergency shelter in the R-5-A Zone District.

II. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the “Board”) has jurisdiction to grant the special exception and variance relief requested pursuant to D.C. Code § 6-641.07(g)(2) and (3), respectively.

III. BACKGROUND

A. The Property

The Property has approximately 11,061 sq. ft. of land area. Square 5322 is bounded by Call Place SE to the north, 51st Street SE to the east, D Street SE to the south, and 50th Street SE to the west. See Zoning Map at Tab A. The Property is an interior lot that is currently unimproved and vacant and is owned by the District government.

B. The Surrounding Area

The Property is zoned R-5-A and abuts the R-3 Zone to the east. The Property is located in the Marshall Heights neighborhood. The surrounding area consists mostly of apartment buildings, as well as some single-family homes. There is another community-based residential facility for eight residents and two staff located in Square 5322.

C. Traffic Conditions and Mass Transit

The Property is well serviced by a number of public transportation modalities including Metrorail and Metrobus, as well as bikesharing and carsharing services. The Property is 0.8 miles from the Benning Road Metro Station, providing access to the Blue and Silver Lines. Additionally, Metrobus routes along 53rd Street SE (U5, U6) and Benning Road SE (E32, U8, W4) all serve the Property. There is a Capital Bikeshare station at the Benning Road Metro Station, as well as Zipcar vehicles at the Metro Station and on East Capitol Street NE, between 47th and 49th Streets SE.

D. The Project

The Applicant proposes to construct a four-story emergency shelter for families on the Property. See Architectural Plans at **Tab B**. The District's plan to end homelessness involves making significant improvements to the current homeless crisis response system for families. The initiative, Homeward D.C., includes closure and replacement of D.C. General, the city's largest family homeless shelter. 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 as quickly as possible. The ideal length of stay for families in short-term housing is fewer than 90 days. The Project will include 35 sleeping units for families, as well as spaces for wrap-around services for families, including

case workers, meals, computer facilities, and age appropriate indoor and outdoor recreation space, a computer lab for residents, and a dining room for families. The ground floor will contain much of space needed to provide on-site, wrap-around services. Meals, which are provided as part of the Short-term Family Housing program, will be prepared offsite and served to families in shifts. The Project will have a staff ranging from 10 to 20 personnel, depending on the time of day, and there will be staff on-site 24-7.

Sleeping units will be arranged to limit the number of units per floor to no more than 10 in order to create a small, family environment that promotes privacy and ensures security. Creating a family-scale environment is a major priority for the Project because approximately 60% of residents will be children. Thus, designing floors to serve smaller numbers of families is necessary to create a setting that fosters resident children's development through the myriad challenges families experiencing homelessness face as they, with the District's assistance, transition to permanent housing.

Of primary importance for the shelter will be maintaining safety and security throughout the building, and the Project's design has been driven by that priority. Each floor will have a security desk with a direct line of sight down the floor's single central hallway, which will enable staff to monitor activities in common areas at all times. The floors will be limited-access, and residents will be issued keys for their particular floor and will not have access to other floors. Each floor will have its own laundry facility, as well as a common room, enabling families to perform many of their daily tasks on their home floor.

Given the extensive level of services provided and the goal of achieving a smaller, family-scale environment on each floor and overall, the optimal number of sleeping units for such a short-term family housing facility (shelter) is approximately 50 units, which balances

efficiency needs with the family-scale concept. The Project will have 35 sleeping units, which is the lowest amount possible given the number of services provided on-site and staffing needs.

IV. NATURE OF VARIANCE RELIEF SOUGHT AND STANDARD OF REVIEW

Variance relief is required for the requirements regarding height (§ 400.1), FAR (§ 402.4), lot occupancy (§ 403.2), rear yard (§ 404.1), side yard (§ 405.9), and parking (§ 2101.1). 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 will encounter practical difficulties if the Zoning Regulations are strictly applied; and
- (3) The variance will not cause substantial detriment to the public good or 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)). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be “unnecessarily burdensome.”

Applicants for an area variance must demonstrate that they will encounter “practical difficulties” in the development of the property if the variance is not granted. *See Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540–41 (D.C. 1972) (“[A]rea variances have been allowed on proof of practical difficulties only while use variances require

proof of hardship, a somewhat greater burden.”). *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990).

Importantly, when the applicant is a public service, as in this case, the Board may apply a more flexible standard when applying the variance test. *See Nat’l Black Child Dev. Inst. v. District of Columbia Bd. of Zoning Adjustment*, 483 A.2d 687, 690 (D.C. 1984) (citing *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091, 1096 (D.C. 1979)).

V. APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

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

The phrase “exceptional situation or condition” in the above-quoted variance test 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. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation may arise from a confluence of factors which affect a single property. *Gilmartin*, 579 A.2d at 1168.

In this case, the exceptional situation and condition arises from (1) the small size of the lot relative to the Project’s needs; (2) the unusual shape of the rear lot line; and (3) the Project’s programmatic needs.

1. Small Lot Size

In this case, the District selected the Property as the short-term family housing location for Ward 7. 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, large properties in very close proximity to amenities and transit within Ward 7 are few and expensive. The District

selected the Property as the best option among the sites considered, however, given the Project's needs, the Property is relatively small.

2. *Unusual Rear Lot Line*

The Property has an unusual, jagged-shaped rear lot line. As shown in the Architectural Plans, *see* BZA Exhibit 23, the lot ranges in depth from 61 ft., 2 in. to 91 ft., due to the jagged shape of the rear lot line.

3. *Project's Programmatic Needs*

The District's initiative to end family homelessness, which includes closing D.C. General and opening smaller, more dignified emergency short-term family housing facilities 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 7. The D.C. Court of Appeals has held that there is no requirement that the uniqueness "inhere in the land at issue." *Gilmartin*, 579 A.2d at 1168 (citing *Capitol Hill Restoration Society v. District of Columbia 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*, 407 A.2d at 1097. 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." *Id.* at 1099. Further, "historical factors, a relationship to 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." *Id.* 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. District of Columbia Bd. of Zoning Adjustment*, 388 A.2d 1233, 1237 (D.C. 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 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.” *Nat’l Black Child Dev. Inst.*, 483 A.2d at 690. 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* at 12; *see also BZA Order No. 18272* at 8 (“[T]he 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 Board precedent referenced above is directly applicable to the present application. In collaboration with the Interagency Council on Homelessness, the District determined that D.C. General needs to be replaced by smaller, short-term family housing facilities 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 Council of the District of Columbia passed legislation that provided the framework for replacing D.C. General. The District’s goal is to have the new sites open and available to accommodate families in time to close DC General in 2018.

As discussed above, a key component of the Homeward D.C. initiative is to provide wrap-around services on-site, including case workers, meals, computer facilities, and additional area for outside program providers. The Project will also include private and family bathrooms and shower facilities, appropriate recreation spaces, common rooms, a dining room, and staff offices and meeting rooms. The lack of viable sites that could meet the District programmatic requirements creates an exceptional situation and condition for the Property that directly impacts the Applicant's ability to provide a zoning-compliant project.

B. Strict Application of Zoning Regulations Would Result in Practical Difficulty

Strict application of the Zoning Regulations with respect to height (§ 400.1), FAR (§ 402.4), lot occupancy (§ 403.2), rear yard (§ 404.1), side yard (§ 405.9), and parking (§ 2101.1) would result in a practical difficulty to the Applicant.

The Applicant is unable to meet the below requirements as no other locations for the proposed emergency shelter in Ward 7 were identified during the District site selection process. In order to close D.C. 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. After an exhaustive search, only one viable site could be identified in Ward 7 for the proposed short-term family housing facility. Moreover, the program is limited in the development process by the proposed legislation authorizing the program's budget. Thus, 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 D.C. General and addressing homelessness by establishing a new short-term family housing facility with wrap around services in each ward of the city.

1. *Height (§ 400.1)*

A height of 40 ft. and three stories is permitted in the R-5-A District under § 400.1. The Applicant requests relief to build to a height of 49.5 ft. and four stories. The need for this relief is directly related to the programmatic needs of the Project. Specifically, in order to achieve the optimal facility, the Applicant proposes to limit the number of sleeping units on each floor to 10 to ensure a small, family environment. However, in order to adequately replace D.C. General, the Project — the smallest facility proposed as part of the 8-Ward initiative — can provide no fewer than 35 sleeping units. To do so, while still limiting the number of units per floor, requires a fourth story and the additional height proposed. Thus, the Applicant faces a practical difficulty if relief for height is not granted.

2. *FAR (§ 402.4)*

A maximum FAR of 0.9 is permitted in the R-5-A District under § 402.4. The Applicant requests relief to build to an FAR of 2.38. The need for relief correlates with the need to provide an adequate facility in each Ward to replace D.C. General. The limited availability of appropriate sites for the Project limits the District's ability to develop a parcel with greater lot area in order to comply with FAR requirements. Likewise, because the Project must be large enough to cover the loss of D.C. General, the Applicant is unable to reduce the size of the Project. Moreover, reducing the size of the Project further is infeasible because a certain level of efficiency is necessary in order provide the extensive level of services that will be maintained on-site. Accordingly, FAR limitations pose a practical difficulty for the Applicant.

3. *Lot Occupancy (§ 403.2)*

A maximum lot occupancy of 40% is permitted in the R-5-A District under § 403.2. The Applicant requests relief to provide a lot occupancy of 64%. The need for this relief, like that

discussed above, arises from the limited availability of suitable sites for the Project and the programmatic needs associated with it. As stated above, the overall size and square footage of the Project cannot be reduced because of the need to create a facility adequate to cover the loss of D.C. General and the need to house a sufficient number of families in one location to justify the resources needed to provide the extent of on-site services proposed. Thus, the only way to reduce the building footprint and thereby reduce lot occupancy would be to shift space to additional floors, which would increase the level of relief needed for building height. This would essentially replace one area of relief with another. Thus, the Applicant faces a practical difficulty in complying with lot occupancy requirements.

4. *Rear Yard (§ 404.1)*

A minimum rear yard of 20 ft. is required in the R-5-A District under § 404.1. The Applicant requests relief to provide a rear yard of 14.08 ft.¹ The inability to provide a compliant rear yard is driven by the lot's size and the need to provide the proposed building footprint. Reducing the footprint to increase the rear yard would compromise the ability of the Project to achieve the programmatic goals of the Homeward D.C. initiative, which aims to provide comprehensive wrap-around services on-site. As with lot occupancy, discussed above, if the building footprint was reduced, that square footage would need to be shifted to an additional floor, thereby increasing the relief requested for building height. Because of the Project's programmatic needs, and the limited availability of other potential, larger development sites, there are practical difficulties associated with meeting rear yard requirements in this case.

¹ The rear yard varies across the lot. 14.08 ft. is the mean depth of the rear yard. See § 199 (defining rear yard depth as "the mean horizontal distance between rear line of a building and the rear lot line . . .").

5. *Side Yard (§ 405.9)*

A minimum side yard of 12.38 feet (three inches per foot of height) is required under § 405.9. The Applicant requests relief for the Project's west side yard, which would be five feet. As with the areas of relief discussed above, the need for side yard relief is directly related to the need to achieve a minimum building footprint to provide the wrap-around services that are proposed. As stated above, the Project will provide 35 sleeping units, the absolute minimum number that is feasible while still providing extensive on-site services. Thus, any reduction in building footprint would require the net loss in square footage to be shifted to an additional floor, requiring additional height relief and essentially replacing one form of relief with another. Thus, the Applicant faces a practical difficulty in complying with side yard requirements.

6. *Parking (§ 2101.1)*

Under § 2101, the parking requirement for a community-based residential facility (including emergency shelters)² with 16 or more persons housed is as determined by the Board. The Applicant requests a variance from § 2101 to provide no parking for the Project. As discussed above, the Applicant is extremely limited in the extent to which it can modify the building envelope and footprint. Given the limitations of the lot, this leaves little remaining area for parking. Moreover, the only area that could be available for parking is proposed for a children's play area and outdoor common area for residents. Because the facility is designed to serve families and approximately 60% of the residents will be children, it is vital for the Project to include an outdoor play area. While the Harris Recreation Center, a modest recreation facility with a pool located two block west of the Property can supplement the modest play space on-site, to achieve the comprehensive services and amenities intended by the Homeward D.C. concept, it

² Community-based residential facility is a general term defined to include several types of facilities, including emergency shelters. See 11 DCMR § 199.

is important to provide a play space on-site. Thus, the Applicant faces a practical difficulty in providing parking.

C. No Substantial Detriment to the Public Good or Impairment of the Zone Plan

There will be neither substantial detriment to the public good nor substantial impairment of the intent, purpose, and integrity of the zone plan by approving the requested relief. The construction of a new emergency shelter facility with safe and secure accommodations is consistent with the law and policies of the District, and will be a great benefit to the District's homeless population. The Project will offer temporary accommodations to families in private rooms, and will provide the wrap-around supportive services necessary to assist families transitioning to permanent housing.

For all these reasons, the Applicant meets the requirements for variance relief in this case.

VI. NATURE OF SPECIAL EXCEPTION RELIEF AND STANDARD OF REVIEW

Special exception relief is required to operate an emergency shelter (§ 360.1). Under D.C. Code § 6-641.07(g)(2) and 11 DCMR § 3104.1, the Board is authorized to grant a special exception where it 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 to the special conditions specified in each case. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific requirements for the 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 Wash. v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 701 (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.*

VII. APPLICANT MEETS THE BURDEN OF PROOF FOR A SPECIAL EXCEPTION

Pursuant to § 360.1, the Board may approve an emergency shelter in the R-5-A as a special exception under § 3104, subject to the standards and requirements of § 358. The Project meets these requirements as follows.

358.2 There shall be no other property containing a community-based residential facility for seven (7) or more persons in the same square.

There is a community-based residential facility for eight persons and two staff located in the square at 5032 D Street SE. As discussed below, the Applicant requests a waiver of this requirement under § 358.7.

358.3 There shall be no other property containing a community-based residential facility for seven (7) or more persons within a radius of five hundred feet (500 ft.) from any portion of the subject property.

There is a community-based residential facility for eight persons and two staff located within 500 ft. at 5032 D Street SE. As discussed below, the Applicant requests a waiver of this requirement under § 358.7.

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

As discussed above, the Applicant requests relief for parking requirements for the Project.

358.5 The proposed facility shall meet all applicable code and licensing requirements.

The Project will meet all code and licensing requirements.

358.6 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 Project will not have an adverse impact on the neighborhood. The facility will be self-contained, with all necessary services provided on-site.

358.7 The Board may approve more than one (1) community-based residential facility in a square or within five hundred feet (500 ft.) only when the Board finds that the cumulative effect of the facilities will not have an adverse impact on the neighborhood because of traffic, noise, or operations.

The Project is in the same square and within 500 ft. of a community-based residential facility for eight residents and two staff, located at 5032 D Street SE. The cumulative effect of the two facilities will not have an adverse impact on the neighborhood. The Project will be self-contained, with wrap-around services provided on-site.

358.8 The Board may approve a facility for more than twenty-five (25) 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 if there is no other reasonable alternative to meet the program needs of that area of the District.

As the detailed discussion above makes clear, the Project's goals and objectives cannot be achieved with a smaller facility serving 25 people or less. In order to justify, from an efficiency perspective, the extensive wrap-around services that will be provided on-site, the Project must serve a larger number of people. The concept proposed by the Homeward D.C. initiative aims to create smaller, family-scale environments on each floor of the Project, but comprehensive on-site services are not feasible for a facility with any fewer than the 35 sleeping units proposed.

358.9 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, Human Services, and Corrections, and, if a

historic district or historic landmark is involved, the State Historic Preservation Officer.

This requirement has been met.

VIII. CONCLUSION

For all of the reasons stated above, the Project meets the applicable standards for variance and special exception relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests that the Board grant the application.

Respectfully submitted,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP

A handwritten signature in blue ink, appearing to read 'M. Moldenhauer', is written over a horizontal line.

By: Meredith H. Moldenhauer