

LAW OFFICES
GRIFFIN, MURPHY, MOLDENHAUER & WIGGINS, LLP

MARK G. GRIFFIN (DC, MD)
BRIAN P. MURPHY (DC, MD)
ASHLEY E. WIGGINS (DC, MD)
MERIDITH H. MOLDENHAUER (DC, MD)
SAMANTHA MAZO (DC, MD)
Y. AJOKE AGBOOLA (MD, DC*)
MENELIK P. COATES (MD, DC*)
---W. LAWRENCE FERRIS (MD, DC*)

*PENDING

DIRECT DIAL: 202-530-1482

DIRECT EMAIL: mmoldenhauer@washlaw.com

June 14, 2016

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

Re: Application No. 19288 – 4200 6th Street SE (Square 6207, Lots 53-56)
Prehearing 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 the Prehearing Statement for the above referenced application. 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: Meredith H. Moldenhauer

Cc: Advisory Neighborhood Commission 8D
c/o Olivia Henderson, Chair (via email)
Maxine Brown Roberts, Office of Planning (via email)

Board of Zoning Adjustment
District of Columbia
CASE NO.19288

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

**APPLICATION OF
DEPARTMENT OF GENERAL SERVICES**

**BZA APPLICATION NO. 19288
HEARING DATE: JUNE 28, 2016**

PREHEARING 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 4200 6th Street SE, (Square 6207, Lots 53–56) (the “Property”) in support of its application for variance relief, pursuant to 11 DCMR § 3103.2, from the requirements regarding height (§ 400.1), parking (§§ 2101.1 and 2116.4), and loading (§ 2201.1), and a special exception pursuant to §§ 3104.1 and 360.1 to construct an emergency shelter in the R-5-A Zone District.

II. EXHIBITS IN SUPPORT OF THE APPLICATION

Exhibit A:	Updated Architectural Plans
Exhibit B:	Resume of Traffic Expert
Exhibit C:	Transportation Assessment
Exhibit D:	Letter from FEMS
Exhibit E:	Forms and Letter of Authorization
Exhibit F:	Plat Map

III. UPDATED ARCHITECTURAL PLANS

The Applicant, in response to comments received during community outreach, and input received during community stakeholder and agency meetings, has updated the architectural plans since the filing of the initial application. See, Updated Architectural Plans (“Plans”) at **Exhibit A**. The Plans include additional site context images highlighting Hendley Elementary School and the multifamily walk-up apartments on 4th Street SE. Pursuant to communication with DDOT and as shown on Sheet A1.1 of the

Plans, the Applicant added short-term and long-term bicycle parking spaces to the Project. Façade material examples were also added to the Plans. Notably, the landscape plan sheet has been substantially updated. The updated landscape plan sheet, sheet L1.0 of the Plans, clearly shows that the eastern portion of the alley will be widened to 20 feet by using four feet of the Property for alley purposes. The widened alley will help with access and maneuverability within the alley. Additionally, the landscape plan shows the perimeter fence that will surround the Property, increasing the safety of the Project. It also shows the location of two bio retention areas. Additional trees have been added to the Project, and the design for a sitting garden area has been fleshed out. The Plans also include a circulation plan, a line of sight diagram, and a rendering. Overall, the updates to the Plans contextualize the safe and welcoming environment the District seeks to establish at Ward 8's short-term family housing facility.

IV. DESCRIPTION OF PROPERTY AND THE PROJECT

The Property, also known as Lots 53-56¹ in Square 6207, is comprised of four irregularly shaped vacant lots owned by the District of Columbia. See Zoning Map at Tab A in **BZA Exhibit 28**. The Property fronts on 6th Street SE, directly south of Hendley Elementary School and east of several multifamily residential buildings. A 16-foot wide public alley located immediately south and east of the Property provides vehicular access to the site. The Property is zoned R-5-A, but is located in an area with a wide range of densities. Square 6207 abuts a C-1 zone to the northeast, a R-3 zone to the east, a R-5-A zone to the west, and a R-2 zone to the north.

The District has a progressive goal of making homelessness in the District a rare, brief, and non-recurring experience in the District by 2020. A key strategy in achieving this goal includes developing a more effective crisis response system and closing D.C. General, the District's largest family shelter. D.C. General is far removed from the services that families need to quickly exit a shelter and get back into permanent housing. Thus, the District proposes to replace D.C. General, which has 260 family units, with

¹ After filing the initial application, the Applicant subdivided lots 53-56 into Lot 61.

smaller, more dignified short-term family housing facilities with on-site services in all eight wards of the District. The Applicant's proposal to construct a six-story short-term family housing facility at the Property is a critical element of the District's eight-ward initiative to developing a more effective crisis response system. The proposed facility would include 50 residential family units, space for on-site services, administrative offices, and 11 off-street parking spaces (the, "Project").

IV. APPLICANT MEETS BURDEN OF PROOF FOR AREA VARIANCE

The Board is authorized to grant an area variance where it finds exceptional condition of the Property, practical difficulties to the applicant, and no substantial detriment to the public good or substantial impairment to the Zone Plan. *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). 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)).

As described in the Statement of the Applicant, this Prehearing Statement, and as will be further explained at the public hearing, all three prongs of the area variance test are satisfied.

A. The Property is Unusual Because of its Size, Shape or Topography and is Affected by an Exceptional Situation or Condition

The phrase "exceptional situation or condition" in the variance test applies not only to the land, but also to the property's history. *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 v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). As described in the initial submission, the

Property is unusual and affected by an exceptional situation and condition as a result of a confluence of the following factors: (1) irregular lot shape; (2) substantial grade change; (3) building restriction line; and (4) programmatic requirements for short-term family housing facilities.

1. Irregular Lot Shape

The Property is comprised of four irregularly shaped lots, which as shown in updated architectural plans at **Exhibit A**, results in a stubby “T” like shape.

2. Topography

The Property is affected by a significant grade change from the northwest portion of the lot towards the southeast portion of the lot. There is an approximately 25-foot difference between the high point of the Property on the northwest and the low point of the Property on the southeast.

3. Building Restriction Line

The Property has a building restriction line that runs parallel to 6th Street SE.

4. Programmatic Needs

The most unique factor affecting the Property is the proposed use and programmatic requirements associated with the District’s initiative to end family homelessness, which includes closing D.C. General and opening smaller, more dignified short-term family housing facilities in each ward of the District. As noted in previous filings, 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)). Thus, the programmatic needs that uniquely affect this site is an exceptional condition that impacts this Property.

The programmatic requirements for the Project are unique and distinguish the Property from other properties in the area. The Applicant proposes to develop the Property with a facility designed to accommodate 50 families, with wrap around services on-site that can assist families to make a successful transition to permanent housing as quickly as possible. Consequently, the building must include certain design features including but not limited to, space to accommodate on-site wrap around services;

recreational space for children of all ages groups; a computer lab and multipurpose room; as well as private and family bathing restrooms; and dining and laundry facilities.

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

Due to the Property's exceptional conditions, strict application of the Zoning Regulations with respect to height (§ 400.1), parking (§§ 2101.1 and 2116.4), and loading (§ 2201.1) would result in practical difficulties for the Applicant.

1. Height

Pursuant to § 400.1, the maximum permitted height for structures in the R-5-A is 40 feet with a maximum of three stories. The proposed short-term family housing facility has a building height of 67 feet and is six stories. Strict application of the height requirement results in a practical difficulty to the Applicant. The Property is oddly shaped. The shape of the Property reduces the lot area that can be efficiently used to accommodate the programmatic needs of a short-term family housing facility with 50 family units (approximately 178 beds) and wrap around services. In addition, unlike most residential buildings in R-5-A zones, this particular building will have design features and requirements intended to provide a safe, respectable, short-term family housing facility.

The District of Columbia has a strategic plan to end homelessness developed in partnership with the Interagency Council on Homelessness called Homeward DC. As part of that plan, the District proposes to close DC General - a former hospital that has served as the District's largest family shelter for seven years. DC General is too big, too old, and geographically removed from the services that individuals experiencing homelessness need to exit emergency temporary housing and get back on their feet. The Homeward DC proposal will replace DC General with several short-term family housing facilities across the city. These new facilities will foster small, family environments that promote privacy and ensures security and effective service delivery. The height, and other areas of relief, stem from the

essential elements of the District's reform and overhaul of the crisis response system that is charged with caring for families who are experiencing homelessness . Consequently, not only are the number of family units limited to 10 families per floor, each family is only given access to the ground floor and the floor they reside on. This results in a necessary duplication of facilities as each community (group of 10 families) is provided with their own laundry facility, common room, and quiet space. Moreover, the Project exceeds the legislatively established "family-unit to bathroom" ratio, by ensuring that only two families, at most, share a family bathroom. The need to provide safe, respectable, small-scale, community focused, short-term housing facilities has driven the design choices. In response to the confluence of factors affecting the Property, particularly the lot shape and the programmatic needs associated with the use, which requires in part, direct lines of sight for security reasons and outdoor recreational space, the proposed building cannot build out, have an "L" shape, or take advantage of the full size of the lot. Instead, the proposed building, which is located on the widest portion of the lot, is stacked increasing the efficiency of design and increasing the height. Thus, the most efficient design for the building results in a height that exceeds the permitted matter of right height, but in a lot occupancy of only 18%, far less than the 40% permitted as a matter of right.

In summary, the optimal size for a short-term family housing facility with full wrap around service provided on-site is 50 families. To provide a building with residential floor plans that promote community yet provide privacy in a building whose entire first floor is dedicated to wrap around services, offices and amenities, in a building that is only 40 feet in height and three stories would be impossible given the physical restraints of the Property and design requirements of the proposed use. Ultimately, a matter of right height would jeopardize the Applicant's ability to satisfy the overall goal of closing D.C. General and improving the District's crisis response system by creating an efficiently designed, safe and welcoming, short-term family housing facility in each ward.

2. *Parking*

Strict application of the zoning code for off-street parking would result in a practical difficulty for the Applicant. Pursuant to § 2101.1, the required number of off-street parking spaces for a community based residential facility with more than 16 persons is determined by the Board of Zoning Adjustment. The Project proposes to provide 11 off-street parking spaces. To confirm that 11 off-street parking spaces would be sufficient for the parking demands generated by the proposed use, the Applicant retained Wells + Associates as a traffic consultant. Jami Milanovich, a principal with Wells + Associates, a professional engineer and an expert in traffic and transportation analysis, managed the transportation study of this site. Her resume is included at **Exhibit B**. Pursuant to the Transportation Assessment, attached as **Exhibit C**, the Applicant contends that 11 off-street parking spaces are sufficient for the Project.

As documented in the Transportation Assessment, the majority of short-term family housing residents rely on public transportation². In recognition of that fact, there are policies in place to alleviate the transit cost for parents and children who live at the facility. Notably, all residents will receive a transit subsidy, and all children who are enrolled in a DC Public School are eligible to receive a DC One Card, which permits free Metrorail or Metrobus rides. The Property is served by multiple WMATA bus routes and is close to several other alternative transportation options. In the event that a family does own a vehicle, unrestricted on-street parking is available in front of the Property, south of Hendley Elementary School, and north of Darrington Street SE.

The Project is expected to have a maximum of approximately 38 staff on-site at any one time when taking into account shift changes. As noted in the Traffic Assessment, attached as **Exhibit C**, based on driving tendencies of staff currently working at DC General, it is anticipated that 80% of the staff will drive to work. Thus, the peak parking demand is expected to occur during a shift change and will likely result in a demand of approximately 30 spaces. As the majority of parking in the neighborhood (59 percent) is unrestricted and approximately 139 on-street parking spaces are available during peak parking

² Currently, at DC General, the District's largest family short-term family housing facility, less than one percent of the residents own a vehicle.

demand times, the proposed 11-off street parking spaces are sufficient and on-street parking is capable of accommodating the additional 19 vehicles.

The Applicant also seeks relief from § 2116.4 since the strict application of the zoning regulations regarding the location of parking spaces would eliminate six of the proposed 11 off-street parking spaces and would dramatically reduce the off-street parking being proposed for the Project. Pursuant to § 2116.4, parking spaces shall not be located between a lot line abutting a street and a building façade. The Project proposes to provide six spaces between the building façade and the street lot line. The shape of the Property, the building restriction line, the steep topography, and the need to provide adequate recreational space for the residents limits where parking can be located on-site. The six parking spaces between the building façade and street lot line are substantially set back from the right of way due to the building restriction line and are screened from the public right of way by trees. Without relief from the locational requirement, the Applicant would not be able to meet the parking demand for the Project, would need off-street parking relief, and would face a practical difficulty.

3. Loading

The Project includes daily meals for all the residents and plans to receive meal deliveries twice a day. To accommodate that and other delivery services, the Applicant proposes to provide a service/delivery space and a loading area on-site. Currently the alley located to the east and south of the Property is 16 feet wide. The Applicant, during the course of construction, proposes to widen the east portion of the alley to 20 feet by setting the parking back approximately four feet off the Property line. The increased width of the alley will be a benefit to the Project and to the community at-large. Importantly, it will improve the maneuverability within the alley and increase the ease of access for the daily deliveries. Pursuant to § 2201.1, the loading requirement for the Project is one loading berth at 30 feet, one loading platform at 100 square feet and one service/delivery space at 20 feet. Meals will be delivered in a van and trash collection will be three to four times a week in trucks that are typically no longer than 30 feet. Therefore, the proposed use and the services provided on-site do not necessitate

having a 30-foot loading berth or 100 square foot loading platform. To add a 100 square foot platform and 30-foot berth to the Property would reduce the area dedicated to the playground and basketball half-court. Moreover, strict application of the loading requirement would result in the construction of an unused berth and platform- a waste of space and government resources.

C. No Substantial Detriment to Public Good or Inconsistency with Zone Plan

There will be no substantial detriment to the public good and no substantial impairment to the intent, purpose, and integrity of the zone plan by approving the zoning relief. Approval of the height, parking, and loading relief being requested will not have a substantial detriment to the public good. Due to the downward slope from 4th Street SE to 6th Street SE, the full height of the proposed building is not visible from most vantage points. See Line of Sight, Sheet A3.2 of the Plans attached as **Exhibit A**. Additionally, as viewed from the street frontage, the proposed building will appear to have a height similar to the multifamily buildings uphill from the Property. As to parking and loading, the Transportation Assessment, attached as **Exhibit C**, concluded that the on-street parking available in the vicinity was sufficient to address any overflow parking generated from the Project, and that the proposed service/delivery space can accommodate the meal delivery service and trash collection without having an adverse impact on the community. Further, despite not having a zoning requirement to provide short-term or long-term bicycle parking spaces on-site, the Project will provide two-short term bicycle parking spaces and six long-term bicycle parking spaces.

The Project and the relief requested will not cause a substantial impairment to the intent, purpose, and integrity of the zone plan because the proposed use is permitted with a special exception and thus presumed appropriate in the zone. Furthermore, the Project aligns with the stated goals of the Comprehensive Plan. The Comprehensive Plan's Housing Element specifically states, "Provisions to assist the homeless must include emergency shelter, transitional housing, and permanent housing, along with supportive services." 10A DCMR § 516.4. The Project proposes to provide emergency shelter to

families and will include on-site support services. The Project embodies the Comprehensive Plan directive to:

Encourage the provision of homeless services through neighborhood-based supportive housing and single room occupancy (SRO) units, rather than through institution-like facilities and large-scale emergency shelters. The smaller service model can reduce the likelihood of adverse impacts to surrounding uses, improve community acceptance, and also support the reintegration of homeless individuals back into the community. (Policy H-4.2.8: Neighborhood-Based Homeless Services, 10A DCMR § 516.14)

As a short-term family housing facility with only 50 units, the proposed facility furthers the Comprehensive Plan's goal of providing a smaller service model. The District's Interagency Council on Homelessness, Mayor, and entirety of City Council share the goal of closing DC General, which can be described as an "institution-like" "large-scale" shelter and replacing it with smaller, local short-term housing in each ward. This Project is a critical element of that initiative. For these reasons, approval of the zoning relief requested will not cause a detriment to the public good or Zone Plan.

V. APPLICANT MEETS BURDEN OF PROOF FOR SPECIAL EXCEPTION

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. Therefore, pursuant to § 360.1, the Applicant requests special exception relief under §§ 3104 and 358.

A. The Project is in harmony with the general purpose and intent of the zone plan

The Project is in harmony with the general purpose and intent of the zone plan. The construction of a new short-term family housing facility with safe and secure accommodations is consistent with the

law and policies of the District, and will be a great benefit to families in the District experiencing homelessness. Moreover, the provision of a short-term family housing facility with only 50 family units and wrap around services on-site aligns with the stated goals in the Comprehensive Plan's Housing Element to provide small-scale emergency shelters.

B. The Project will not tend to adversely affect the use of neighboring property

The proposed Project will not adversely affect the use of neighboring property. The Property is currently vacant and unimproved. The proposed Project will improve the Property; result in additional lighting and “eyes on the street”; activate a dead space between residential buildings and Hendley Elementary School; and dramatically improve the view shed with thoughtfully designed landscaping. More than just aesthetics, the Project will lead to increased safety and maneuverability in the alley due to the proposed widening of the east portion of the alley from 16 feet to 20 feet. The increased width of the alley will improve accessibility for residents and for emergency vehicles. As noted in Exhibit D, a letter from the DC Fire and Emergency Medical Services Offices, the “site is fully accessible and in compliance with the fire code for fire department access.”

Additional alley improvements include updating the lamplights with LED lights and adding lights to poles that currently do not have lamps. The Project, as reported in the Transportation Assessment, see Exhibit C, will not have adverse impact on the on-street parking available in the neighborhood and loading needs will be addressed on-site. Therefore, the Project will not adversely affect the use of neighboring property.

C. The Project satisfies the provisions of § 358

The Project satisfies the specific requirements of §358. The proposed facility is the only community based residential facility with seven or more people in the area, and though the facility will be able to accommodate 50 families, the facility will not have an adverse impact on the neighborhood due to traffic, noise or operations. The Project is estimated to generate no more than more than 20 trips during

peak hours and the provision of 11 off-street parking spaces was deemed to be sufficient to satisfy the demand for parking during that period of time. The Property is directly south of Hendley Elementary School and proximate to several multifamily residential buildings. The noise generated at the Property is expected to be similar or less than the noise generated by the uses in the vicinity. Moreover, it is important to note, that the building, in particular the basketball court and playground are substantially setback from residences in the vicinity.

Pursuant to § 358.8, the Applicant seeks the Board's approval to have a facility with more than 25 persons. Section § 358.8, permits the Board to approve a facility with more than 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. To meet the District's goal of providing comprehensive services to families in temporary need of assistance in an environment that is safe and welcoming, a 50 family unit facility is required at the Property. A facility with 50 units provides the necessary density to support and justify on-site wrap around services and a clinic. Furthermore, as the District's goal is to close DC General, the city's largest family homeless shelter, and open smaller, more dignified family facilities in each ward, a smaller facility at the Property, with significantly fewer units, would fail to offer a sufficient number of replacement units to achieve that goal.

VI. COMMUNITY OUTREACH

The Applicant has conducted significant community outreach prior to and following the initial submission. On February 8, 2016, senior members of the Mayor's administration, with staff and experts from the Department of Human Services, the Department of General Services, and the Mayor's Office on Community Relations and Services, held coffee chats with neighborhood leaders in each ward. The

purpose of these meetings was to share the plan with and hearing potential concerns from allies and groups that would feel the greatest impact in advance of sharing the plan with the public.

On February 11, 2016, the same teams of administrative officials who met residents during the coffee chats, hosted community meetings in their respective wards to present the plan to the public, solicit feedback and answer questions. Additionally, the administrative teams participated in community meetings with the Magnolia Condo Association, Councilmember May, and ANC 8D. Finally, the administrative team hosted a community meeting on April 7th to solicit feedback on some of the design elements of the building as well as the development of Short-Term Family Housing Advisory Teams.

The Applicant presented to ANC 8D on May 26th and will present to ANC again on June 23rd.

VI. REQUEST TO SUPPLEMENT THE RECORD

The Applicant will present to ANC 8D on June 23, 2016, the Thursday evening before the hearing. We respectfully request to late file an update to the Board concerning the outcome of that meeting before the hearing for this Application.

VII. WITNESSES

The following witnesses will appear on behalf of the Applicant:

1. Matthew Davitt, Sorg Architects
2. Jami Milanovich, Wells + Associates
3. Henry Miller, DGS
4. Laura Zeilinger, Director of the District Department of Human Services
5. Any other witnesses as deemed necessary.³

VIII. THE RECORD

³ The Applicant request flexibility in substituting or adding witnesses based on District staff availability.

The Applicant retained zoning counsel after the initial filing of this application. To ensure the completeness of the record, please find attached a signed Self-Certification form and a Letter of Authorization attached as Exhibit E. Also attached, as Exhibit F, is a plat map of the Property.

IX. CONCLUSION

For the reasons stated above, and for the reasons enumerated in the Applicant's prior filings in this case, we hereby submit that the application meets the requirements for area variance and special exception relief.

We look forward to presenting our case to the Board on June 28, 2015.

Respectfully submitted,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS,
LLP



Meridith H. Moldenhauer
Ajoke Agboola
1912 Sunderland Place, N.W.
Washington, D.C. 20036
(202) 429-9000