

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

**APPLICATION OF
5TH STREET PARTNERS LLC
HEARING DATE: JUNE 28, 2016**

**BZA APPLICATION NO. 19289
SQUARE 3260, LOT 54
ANC 4D02**

STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This statement is submitted by 5th Street Partners LLC, on behalf of the District of Columbia Government (the “Applicant”), in support of its application to the Board of Zoning Adjustment (“BZA” or “Board”), pursuant to 11 DCMR §§ 3104.1 and 3103.2 for (i) special exception relief pursuant to 11 DCMR § 732.1 to permit an emergency shelter in the C-2-A District; (ii) a variance from the height requirements of 11 DCMR § 770.1; (iii) a variance from the floor area ratio (“FAR”) requirements of 11 DCMR § 771.2; and (iv) a variance from 11 DCMR § 2001.3, to permit the construction of an addition to an existing non-conforming structure that already exceeds the maximum permitted building height limitation in the C-2-A District at 5505 5th Street, NW (Square 3260, Lot 54) (the “Site”).

**II.
JURISDICTION OF THE BOARD**

The Board has jurisdiction to grant the special exception and variance relief requested herein pursuant to 11 DCMR §§ 3103 and 3104.

III. **BACKGROUND**

A. Description of the Site and Surrounding Area

The Site consists of Lot 54 in Square 3260 and has a total land area of approximately 8,722 square feet. Square 3260 is bounded by Longfellow Street, NW to the north, 4th Street, NW to the east, Kennedy Street, NW to the south, and 5th Street, NW to the west. The Site is in the southwest portion of Square 3260 with frontage on 5th Street. The Site is otherwise bounded by private property to the north, east, and south, and abuts a public alley at its northeastern-most corner for approximately nine feet. The Site is presently improved with a vacant 5-story building. The Applicant proposes to adaptively reuse the existing building and construct a new addition to the building in connection with the proposed use of the Site.

The Site is located in the heart of the Kennedy Street neighborhood, which is a mixed-use community located in northwest Washington DC, with a mix of residential, retail and service uses. “The institutions along Kennedy Street—its churches, service agencies, and charter school—help to anchor a neighborhood characterized by easy links to DC’s Metro system via several bus routes... The Kennedy Street neighborhood encompasses the Brightwood Park and South Manor Park neighborhoods and is home to eclectic specialty shops and a full range of services.” *Washington DC Economic Partnership, DC Neighborhood Profiles 2014, p. 30.*

The Site itself is located directly adjacent to properties containing commercial uses fronting Kennedy Street. The closest commercial uses include restaurants, carry-out food establishments, a salon, a neighborhood market, and other businesses, all located around the intersection of 5th and Kennedy Streets, NW. Residential uses, including both single-family and higher density apartment houses, also surround the Site.

B. Existing Zoning

As shown on the Zoning Map attached as Exhibit A, the Site is located in the C-2-A District. The C-2-A District permits a maximum height of 50 feet, a maximum density of 2.5 FAR (3.0 FAR as an Inclusionary Zoning (“IZ”) development), and a maximum residential lot occupancy of 60%. 11 DCMR §§ 770.1, 771.2 and 772.1. The C-2-A District permits emergency shelters for 5 to 25 persons, not including resident supervisors or staff and their families, as a special exception. 11 DCMR § 732.1. The Board may approve an emergency shelter for more than 25 persons pursuant to the criteria listed in 11 DCMR § 358. The Board is also authorized to determine the number of required on-site parking spaces for an emergency shelter with 16 or more persons. 11 DCMR § 2101.1.

C. Closing DC General: Short-term Family Housing

The District’s plan to end homelessness involves the closure of DC General, the city’s largest family homeless shelter. In order to do so, the Mayor and the DC Council have advanced an all eight ward strategy that replaces DC General Family Shelter with smaller, more dignified facilities across the District. These short-term family housing facilities will provide the safety, security and wrap-around supportive services families experiencing homelessness need in order to quickly get back on their feet.

After a thorough search, the Department of General Services (“DGS”), on behalf of the Mayor, has identified the Site as the emergency shelter location for Ward 4. The DC Council has concurred, and has determined that the Site will be purchased by the District for occupancy as an emergency shelter for 49 District families. As described below, the existing building on the Site will be renovated and an addition will be added at the rear. The facade of the renovated building

will be upgraded, and the building will provide short-term housing with administrative offices, common areas, recreation space and adequate on-site parking.

D. Project Description

As shown on the architectural plans and elevations (the “Plans”) attached hereto as Exhibit B, the Applicant proposes to redevelop the Site by adaptively reusing the existing building as a multiple dwelling, to be occupied as an emergency shelter, and constructing a new addition at the rear of the Site to help accommodate the proposed new use. The renovated building will include 49 residential family units with a total of 148 beds and approximately 24,752 square feet of gross floor area. The pedestrian entrance to the building will be on 5th Street, NW. The first through fifth floors will contain private room-style units for families with 2-4 beds in each unit. Bathrooms, shower facilities, and support features will be located on each floor. In addition to residential units, the building’s ground floor will also contain a computer room for residents, a conference room, offices, clinic, and staff lounge. The cellar level will include a dining/indoor recreation area and a warming kitchen to store and serve prepared meals that are delivered to the facility.

Eleven parking spaces will be located in a below-grade garage, accessed from an existing curb cut on 5th Street. Secure bicycle parking will also be provided for approximately 17 bikes within the garage. The project includes an on-site playground and outdoor recreation space, and the District will provide on-site wrap around services and programming for resident families. Moreover, the adaptive re-use of the renovated building has been sensitively designed to be compatible with the architecture of the surrounding community and the existing context of the Kennedy Street neighborhood.

IV.
THE APPLICANT MEETS THE TEST FOR
SPECIAL EXCEPTION APPROVAL

The Applicant seeks special exception relief from 11 DCMR §§ 732.1 and 3104.1 to locate an emergency shelter in the C-2-A District.

A. Standard for Approving Special Exception Relief

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 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.*

B. The Applicant Meets the Test for Special Exception Relief under 11 DCMR §§ 732.1(c), 360 and 358

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

As confirmed by the records of the Office of the Zoning Administrator and the Office of the Deputy Mayor for Health and Human Services (“DMHHS”), there is no other property

containing a community-based residential facility for seven or more persons in the same square.

Section 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.

As confirmed by the records of the Office of the Zoning Administrator and the DMHHS, there is no other property containing a community-based residential facility for seven or more persons within 500 feet from any portion of the Site.

Section 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.

The Applicant will provide 11 off-street parking spaces in a parking garage on the lower level of the building. The parking spaces will be accessed from 5th Street via an existing curb cut. Pursuant to 11 DCMR § 2101.1, the minimum parking requirement for an emergency shelter for 16 or more persons is as prescribed by the Board. The District of Columbia government has determined, based upon experience with other such housing in the District, that the 11 on-site parking spaces will be adequate at this location for the needs of building occupants and employees.

The District has estimated that the maximum number of employees on site at any one time will be between 24 and 26, depending upon the day. This will include a maximum of 11 security staff; a maximum of four case workers; a maximum of nine staff for building management; plus two staff twice per week for additional programing. The complete list of staff and times is included in the traffic report at Exhibit C. Final staffing schedules and details on allocation of the on-site parking for employees and staff will be determined by the service provider.

The Department of Human Services (“DHS”) has found at other similar facilities in the District that residents typically do not have cars. Moreover, residents will receive transit

subsidies to encourage public transit use.

There are a variety of public transportation options in the surrounding area, including a Metrobus stop at the corner of 5th and Kennedy Streets, NW that is served by the 62, 63, and E4 Metrobus lines (with a total of eight Metrobus routes in close proximity to the Site). A Capital Bikeshare station is located at the corner of 5th and Kennedy Streets, NW, and five permanent carshare spaces are located within 0.4 miles of the Site. The Site is also located in a mixed-use, walkable neighborhood, such that residents and staff at the Site will be able to accomplish daily errands on foot. Furthermore, the building will include approximately 17 bicycle parking spaces in the garage. Based on the foregoing, the proposed on-site vehicle parking is sufficient for the staff and employees who work at the Site.

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

DGS will ensure that the proposed emergency shelter will meet all applicable code requirements, and DHS will ensure that the facility will meet all applicable licensing requirements.

Section 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.

a. Traffic. As set forth more fully in Exhibit C, the emergency shelter will not have an adverse impact on the neighborhood because of traffic. There is adequate off-street parking at the Site for the emergency shelter use, and a ready supply of on-street parking in the surrounding area, such that the proposed use will not create any adverse traffic or parking conditions in the neighborhood. There are also a variety of public transportation options in the surrounding area, such that vehicle use is expected to be minimal.

b. Noise. The emergency shelter will be a residential use, and inherently will not

produce any adverse impacts due to noise. To the extent that any noise is produced by this facility, it would be the same as that for any other multi-family residential use—apartment, condo, etc.—and might include, for instance, the sounds of children playing in the playground. There will be adequate staff on site 24 hours per day, seven days a week, to address noise levels should they ever exceed acceptable volumes.

c. Operations. The proposed use will not adversely impact the neighborhood due to its operations. The residential building will operate similar to a multi-family apartment building, many of which are found in close proximity to the Site. The proposed facility will be self-contained, with on-site dining, laundry, playground and total wrap-around services for the residents. There will be a warming kitchen, but no central kitchen for food preparation on-site. Meals will be delivered twice each day, and the delivery van will use the parking garage. Trash removal will occur three to four times per week.

d. Similar facilities in the area. There are no other community based residential facilities for seven or more persons in the area.

Section 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.

There are no other community-based residential facilities located in the square or within 500 feet of the Site.

Section 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.

The emergency shelter will house approximately 148 persons, not including resident supervisors or staff and their families. 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 4. It is imperative that all 270 units at DC General be replaced before DC General can be closed. The aggregate number of units in the replacement sites across all eight Wards is the minimum necessary to meet that need. Thus, a facility for more than 15 persons at the Site is an absolute necessity.

A restriction in the number of occupants to a maximum of 25 would require that there be at least six separate emergency shelter facilities in Ward 4, located at least 500 feet from each other, and not in the same square as each other. The delivery of comprehensive and extensive wrap-around services on site for the residents could not efficiently or effectively be replicated six-fold at numerous different smaller facilities spread throughout Ward 4. The effectiveness and efficiency of the program requires that these comprehensive and extensive on-site services be delivered in one central location in each Ward. Thus, there is no way to achieve the District's program goals in Ward 4 with a smaller facility or series of facilities, and no other reasonable alternative to meet the District's program goals for Ward 4, other than what is being proposed.

Section 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. See Exhibits 17 through 20 of the record.

C. 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 § 732.1, 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.

D.C. Code § 6-641.02 (2001). Those purposes are reproduced in the text of the Zoning Regulations as well. *See* 11 DCMR §§ 101.1-101.2.

The adaptive reuse of the existing building on the Site as a multiple dwelling, to be occupied as an emergency shelter for 49 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 renovated design and massing are consistent with the architecture 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 will be a residential use and is therefore not likely to produce any adverse impact due to noise or general operations. As stated above, there is adequate off-street and on-street parking for the emergency shelter use, as well as a variety of public transportation options in the surrounding area.

Accordingly, the proposed use is in harmony with the purpose and intent of the Zoning Regulations and meets the test for special exception relief under 11 DCMR §§ 732.1 and 3104.1.

V.

THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

Pursuant to 11 DCMR § 3103.2, the Applicant requests area variances from 11 DCMR §§ 770.1, 771.2, and 2001.3(b) to construct an addition to a non-conforming structure that already exceeds the maximum permitted height and will exceed the maximum permitted density.

Pursuant to 11 DCMR §§ 770.1 and 771.2, the maximum permitted building height in the C-2-A District is 50 feet and the maximum permitted density is 2.5 FAR.¹ As shown on the Plans, the existing building on the Site has a height of 59 feet, 2 inches and a density of 1.99 FAR. The Applicant proposes to maintain the building's existing height and construct an addition that matches the existing building height and increases the Site's density to 2.83 FAR.

Pursuant to 11 DCMR § 2001.3 “[e]nlargements or additions may be made to [a nonconforming structure] provided:

- a) The structure shall conform to percentage of lot occupancy requirements, except as provided in § 2001.13; and
- b) The addition or enlargement itself shall:
 1. Conform to use and structure requirements; and
 2. Neither increase or extend any existing, nonconforming aspect of the structure; nor create any new nonconformity of structure and addition combined.”

In this case, the existing nonconforming structure, together with the addition, meets the lot occupancy percentage requirements, but does not conform to the height requirements. 11 DCMR

¹ An emergency shelter is a multiple dwelling, but is not permitted to utilize the inclusionary bonus density of 3.0 FAR in the C-2-A zone. However, if this use were classified as an apartment house, it could be built to a maximum density of 3.0 FAR under IZ.

§ 2001.13 is inapplicable in this case. The proposed addition will extend the existing non-conforming height. The proposed addition will bring the building to an FAR of 2.83, which is greater than the 2.5 FAR permitted for an emergency shelter, but less than the 3.0 FAR permitted for an apartment house or other multiple dwelling with IZ in the C-2-A zone.

A. Standard for Approving an Area Variance

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 unusual because of its size, shape or topography or other extraordinary or exceptional situation or condition;
- (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 Board of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also, Capitol Hill Restoration Society, Inc. v. District of Columbia Board 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 variance test.

B. 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 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 irregularly-shaped Site is an interior lot with approximately 100 linear feet of street frontage on 5th Street, NW, and private property on all other sides, except for a public alley that abuts the Site for a length of 9 feet. The Site is the largest lot within Square 3260 and is improved with an existing building that was constructed in the 1950s. The building is located on a berm, with the first floor being located approximately eight feet above the elevation of the measuring point at the curb. The existing building has been vacant for many years, and creates design, programmatic, and structural constraints that restrict the ability to provide matter-of-right height and density for the addition to the renovated building, in order to meet the program goals of the District. Moreover, given that the building will house families, the Applicant configured the uses within the building to avoid the location of any residential uses in the cellar (which is not acceptable for the District's program), thus making it more difficult to accommodate 49 families while still meeting the height and FAR requirements.

In addition, the exceptional situation and condition arises in this case from the District's initiative to end homelessness by closing DC General and opening smaller, individual emergency shelters in each Ward. The Mayor and the DC Council have determined that the Site is to be purchased by the District for occupancy as an emergency shelter for 49 families.

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 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 in each Ward, with up to 50 units each, in order to provide the kind of services that help families

transition from shelter living to independent living as quickly as possible. These types of facilities will create an overall healthier, more effective homelessness system, and will make the best possible use of taxpayer dollars by more quickly and effectively lifting families out of homelessness. *See Ending Homelessness in the District – A Plan to Close DC General.*

In this case, the Mayor selected, and the Council confirmed, the Site as the short-term family housing location for Ward 4, to be purchased by the District for that purpose. The District's goal to provide one facility in each Ward, each containing up to 50 family-sized units, greatly limits the available, affordable, and appropriately-sized properties on which to locate the facilities. Given the current market conditions, properties within Ward 4 are expensive, and large vacant lots are difficult to find. There were a limited number of sites in Ward 4 that were available for a homeless shelter. The Site is the only one that meets all of the District's requirements for housing for up to 50 families. The Mayor and Council have agreed that the Site is the best option, and imposed specific conditions on development of the emergency shelter use. For example, the shelter is required to have up to 50 units; appropriate bathrooms, shower facilities, breakrooms, age-appropriate recreation space, and other accessory space; office space for case management and training; medical support team space; security space, including security stations on each floor; a central food service area; laundry facilities and storage facilities; and parking. *See Ward 4 Letter of Intent from DGS.* These requirements create an exceptional situation and condition that directly impacts the Applicant's ability to provide a zoning-compliant project.

C. Strict Application of the Zoning Regulations Would Result in a Practical Difficulty to the Owner

The strict application of 11 DCMR §§ 770.1, 771.2, and 2001.3(b) will result in a practical difficulty. The District of Columbia will be the owner of the Site. 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.

Pursuant to 11 DCMR § 770.1, buildings in the C-2-A District are permitted to have a maximum height of 50 feet. The existing building on the Site has an existing height of 59 feet, 2 inches, which the Applicant proposes to maintain. The Applicant also proposes to construct the new addition to a height of 59 feet, 2 inches, in order to provide a consistent floor plate with the existing building at each level and maximize space devoted to residential units.

Pursuant to 11 DCMR § 771.2, properties in the C-2-A District are permitted to have a maximum density of 2.5 FAR. A multiple dwelling in the C-2-A District with at least ten residential units is permitted to achieve a density of 3.0 FAR. However, this does not apply to emergency shelters. The existing building on the Site has an existing density of 1.99 FAR. The proposed addition to the building will increase the Site's density to 2.83 FAR.

The Applicant cannot meet the height limitation of 50 feet since it is adaptively reusing an existing building that already has a non-conforming height of 59 feet, 2 inches. Reducing the height of the existing building to 50 feet would require the demolition of the fifth floor, which would significantly reduce the total number of residential units provided in the building and contradict the District's goal of providing up to 50 units in the new short-term emergency shelters for families experiencing homeless. Reducing the building height would also make it significantly more difficult for the Applicant to provide support spaces (e.g. space for offices, medical support, security stations, kitchens and food preparation, laundry, storage) that are required to be part of the emergency shelter use.

Moreover, maintaining the existing non-conforming 59 feet, 2 inches height but reducing the height of the addition to 50 feet would require an awkward and unworkable configuration of steps and ramps connecting each existing floor level to the corresponding floor level at each story of the addition, or else eliminate the fifth floor of the addition entirely, thus forcing the location of those fifth floor residential units into the cellar parking area to meet the program needs of the District and reducing the proposed number of on-site parking spaces. As described above, locating residential units in the cellar of this building is inconsistent with the program goals of the District.

Reducing the height of the addition to 50 feet and increasing the building footprint and number of units per floor in the addition from four to six, in order to maintain the 49 units in the building, is also not possible. Such a configuration would exceed the maximum permitted lot occupancy, would still exceed the maximum FAR, and would also take up valuable outdoor space for active and passive recreation for the residents. It would also result in the blocking of some windows for units in the existing building.

Reducing the square footage of some or all of the 49 units, and/or reducing the square footage of some or all of the support spaces, in order to reduce the building density and the height of the addition to the matter-of-right limits would not be feasible. The building layout has been designed to be as efficient as possible in the delivery of temporary living accommodations for the residents, and the delivery of comprehensive and extensive wrap-around services for those residents. Reducing the size of the units would reduce the number of prospective occupants, which is contrary to the directives of the Mayor and Council for the Site.

Furthermore, the only other theoretical alternative to achieve the District's program goals at the Site without increasing density beyond the permitted 2.5 FAR or the height of the addition above 50 feet would be to eliminate the top two floors of the addition and to locate eight units in the cellar, thus eliminating the on-site parking. However, locating dwelling units in the cellar of the building is unacceptable for the program, and the 11 proposed parking spaces are necessary for the emergency shelter use. In addition, those eight units cannot be located elsewhere in Ward 4, more than 500 feet away from the Site, and in a different square, and still deliver the same type of wrap-around services as will be provided at the Site, nor can the residents of a theoretical eight-unit remote facility be expected to travel to the Site for meals and other services. Such an arrangement would be contrary to the program goals of the District.

Thus, to meet both the 50 foot height and the 2.5 FAR limitations would require the elimination of the top two floors of the addition, or eight units, requiring the relocation of those units to the cellar, or to an off-site location. Alternatively, to retain 49 units in the building would require that the units be smaller in size. Neither of these options would achieve the District's program goals for the Site.

As described above, in order to provide shelter for 49 families, the existing building on the Site needs to be expanded. The Applicant proposes to construct an addition at the rear of the Site, which will generate additional capacity for residential units and required support spaces. Without the addition as proposed, the project could not meet the District's goal of providing a new short-term emergency shelter for 49 individual families at this Site.

D. The Requested Relief Will Not Result in a Substantial Detriment to the Public Good Nor a Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan

The requested height and density relief can be granted without substantial detriment to the public good and without substantial impairment of the intent, purpose, or integrity of the zone plan. The renovation and construction of the building as a new emergency shelter facility, with safe and secure accommodations to house 49 families, is consistent with the express directives of the Mayor and Council, and the law and policies of the District, and will be a great benefit to the District's families that experience homelessness. The Site will offer safe and dignified temporary accommodations to families in private rooms, and will provide much-needed supportive services necessary to assist families transitioning to sustainable permanent housing.

Furthermore, the adaptive reuse of the existing vacant building has been designed to be consistent with the architecture of the surrounding area. The height of the addition will match the height of the existing building. The additional density beyond 2.5 FAR results from the inclusion of the top two floors of the addition. The building addition will not be visible from the street. The maximum lot occupancy and minimum yard and court requirements will be met. A multiple dwelling in the C-2-A zone that is used as an apartment house could be built to 3.0 FAR, but a multiple dwelling in the C-2-A zone that is used as an emergency shelter is limited to 2.5 FAR.

VI.

COMMUNITY INPUT

The District has held several meetings with the community about this project prior to the filing of this BZA application, and comments were incorporated into the final design that is before the Board. On February 8, 2016, senior members of the Bowser Administration, with staff and experts from the DHS, DGS, 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 hear potential concerns from neighbors and groups that would be most directly affected in advance of sharing the plan with the public.

On February 11, 2016, the same teams of Administration 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.

Since February, Administration officials have met with ANC Commissioners in Ward 4, the 16th Streets Heights Civic Association and ANC 4D, the ANC in which the Site is located. The 16th Street Heights Civic Association meeting was held on April 12, 2016. The District also held a meeting to solicit input on design elements on April 4, 2016 at the Hattie Holmes Senior Wellness Center, which is several blocks from the site. Finally, on April 26, 2016 neighborhood leaders organized a Safety Walk with the Deputy Mayor for Health and Human Services and other key government stakeholders.

The Applicant has requested an opportunity to make a presentation to ANC 4D at their June 21, 2016 monthly meeting, and on June 7, 2016 was told that a response to that request would be given by June 15, 2016 which is after the date of this filing. However, on June 10, 2016 the Single Member District Commissioner (4D02) filed a memo with the Board (Exhibit 35) requesting a postponement of the public hearing, for the following reasons:

--The Council has determined that the Site is to be purchased by the District, rather than leased, and the resulting savings could be used to build a facility with private bathrooms and kitchens, and other structural changes to the building, which may enhance the living experience of the residents of the building.

--The Council has determined that the Site is to be purchased by the District for the Ward 4 emergency shelter site, but if the owners do not agree to sell the building, the need for a BZA hearing will be moot.

The Applicant has reaffirmed its request to the ANC for an opportunity to make a presentation on June 21, 2016 so that the ANC can take an official position on the merits of the application, in case the Board decides that these issues are not zoning-related. The Applicant believes that these issues are in fact not zoning-related. The application before the Board is for an emergency shelter for the Ward 4 community, approved by the Mayor and Council, pursuant to a comprehensive program with policies, guidelines and requirements developed under the auspices of the DHS and DGS. Moreover, the Council has determined that the District will acquire the Site for use as the Ward 4 emergency shelter, and has authorized the Mayor to do so, either through a negotiated transaction, or by way of condemnation. Either way, the District will ultimately own the Site for this purpose if the Board approves this application.

VII.

EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION

- | | |
|-------------------|--|
| <u>Exhibit A:</u> | A portion of the Zoning Map showing the Site |
| <u>Exhibit B:</u> | Updated Architectural Plans and Elevations for the Project |
| <u>Exhibit C:</u> | Transportation Report of Gorove/Slade Associates |
| <u>Exhibit D:</u> | Outlines of Testimony |

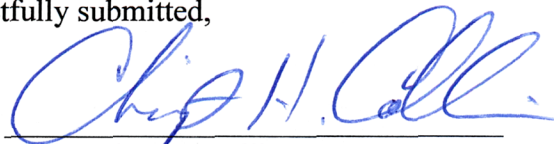
VIII.
WITNESSES

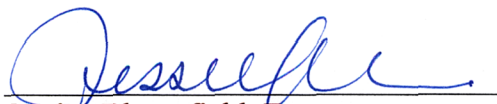
- A. Stephen Campbell, DGS and Lisa Franklin Kelly, DHS
- B. Bruce Finland, MED Developers
- C. Sean Pichon, PGN Architects
- D. Daniel B. VanPelt, Gorove/Slade Associates

IX.
CONCLUSION

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

Respectfully submitted,

By: 
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By: 
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