

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

**Application of Amaro LLC
101 Q Street, N.E. (Square 3518, Lot 25)**

STATEMENT OF THE APPLICANT

This statement is submitted on behalf of Amaro LLC (“Applicant”), in support of its application for special exception approval pursuant to Subtitle U § 802.1(c), Subtitle C § 1502.1(d) and Subtitle X § 901.2 of the Zoning Regulations of the District of Columbia 2016 (“Regulations,” Title 11 DCMR) to construct an emergency shelter, including penthouse, on property it owns located at 101 Q Street NE (Square 3518, Lot 25) (“Property”). In accordance with Subtitle Y § 300.15 of the Regulations, Applicant will file a Prehearing Statement with the Board of Zoning Adjustment (“Board”) no fewer than twenty-one (21) days prior to the public hearing for this Application. This Preliminary Statement, the Prehearing Statement, and testimony and evidence presented by Applicant at the public hearing will satisfy the burden of proof for the Board to approve the relief requested.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board approve the following relief:

- 1) a Special Exception for an emergency shelter, pursuant to Subtitle U § 802.1(c); and
- 2) Special Exception relief to allow an enclosed stairwell to the rooftop penthouse to be located along the side building wall, pursuant to Subtitle C §§ 1502.1(d) and 1504.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the special exception relief requested pursuant to Subtitle X § 900.2, Subtitle Y §100.3, and Subtitle C § 1504.

III. BACKGROUND

A. The Property and Surrounding Area

The Property is identified as Lot 25, Square 3518 and is comprised of approximately 10,762 square feet of land area. The Property is bounded by Q Street to the north, First Street to the west (with parking spaces), and surface parking lots serving adjacent PDR-2 zoned properties to the east and south. *See Zoning Map at Tab 19.* The Property is zoned PDR-2 and is improved with a two-story office building containing approximately 16,624 square feet of building area. Space within the building is currently leased to Pathways to Housing DC, a non-profit organization that provides support services to homeless persons, Foer Medical Arts Pharmacy of Maryland and DC Forensic Nurse Examiners (collectively, the "Tenants"). The Tenants are all aware of the subject Application and may occupy space in the new building once constructed. The existing building has been in existence since 1910, having been utilized originally as a feed and grain warehouse, and later as an ice cream factory.

The area around the Property is developed with commercial uses. XM 1500 Eckington LLC ("Sirius XM") owns and occupies the land to the east and southeast of the Property consisting of Lots 29 and 30 in Square 3518 (the "Sirius Land"). The south portion of the Sirius Land is improved by a three-story office building and parking facility, while the north portion of the Sirius Land (east of the Property) is improved by a large surface parking lot. There are two lots located immediately south of the Property, Lot 816 and Lot 805. Lot 805 is owned by 72 Florida Titleholder, LLC, which is believed to be owned and operated by Foulger-Pratt (the "Foulger Land") while Lot 816 is owned by XM Investment LLC (the "XM Land"). The Foulger Land is currently improved by a small one-story commercial facility but is expected to be redeveloped into a self-storage facility, while the XM Land is currently improved by a two-story office structure. The land to the southwest of the Property is owned by 50 Florida Avenue Development Associates (the "50 Fla. Land"). The 50 Fla. Land is currently being redeveloped into a nine-story mixed use planned unit development containing retail, residential, and parking uses, in accordance with Zoning Commission Order No. 12-02, dated October 21, 2013.

BDC Q Street LLC owns and occupies land to the north and northwest of the Property across Q Street, consisting of Lots 801, 43, 70, and 63 in Square 3519 (the "BDC Land"). Lot

801 of BDC Land (north of the Property) is improved by a surface parking lot. Lot 40 of the BDC Land is improved by a two-story commercial structure and Lot 70 is improved by a three-story commercial structure which previously contained the Friendship Public Charter School. It is believed that Lots 40 and 70 are in the process of being redeveloped for future office uses. Lot 63 of the BDC Land is improved by a two-story commercial structure containing the Capitol Dialysis Center and UIP Property Management offices.

B. Applicant

The Applicant owns the subject Property and is owned and operated by a non-profit organization that seeks to ensure safety and self-determination for survivors of domestic violence in the District of Columbia. Families suffering from domestic violence often are faced with the risk of homelessness when seeking to escape abuse, and thus an essential and principal component of the services offered by Applicant is the provision of up to 30 days of confidential and immediate crisis housing for families that are at high risk of serious injury in the event they return home. In addition to this service, Applicant also assists with court advocacy, connects families with needed counseling, and serves as a public advocate for system reform.

As part of its operations, Applicant previously licensed units in a condominium complex which Applicant then offered to families in need as temporary housing, but the license has expired. In addition to these units, Applicant also expends funds to obtain hotel rooms for survivors when no shelter space is available. The services provided by Applicant are necessary to serve the citizens of the District and resulted in the provision of life-saving crisis housing for hundreds of families in each of the past several years.

Applicant acquired the Property with the intent to redevelop it into a mixed-use building including an emergency shelter with living units and office space operated by Applicant, and the potential for other complementary service providers and office users to occupy space on the lower levels. The subject Special Exception Application is needed only for the emergency shelter use, as office space is permitted by-right in the PDR-2 zone. In addition, Special Exception relief is requested to allow an enclosed stairwell to access the rooftop area which will include a communal recreation room and outdoor space for the families. If Applicant is unable to redevelop the Property to create this additional shelter space, Applicant may no longer be able to provide badly needed crisis housing.

C. The Project

Applicant seeks to construct a five-story building containing an emergency shelter, including living units, administrative offices and related facilities, as well as additional commercial office space that may be rented to other office users. The proposed facades of the building include a mixture of masonry, steel and siding materials that create a contemporary clean appearance with warm tones to create a welcoming residential feel.

The building will contain 32,251 square feet of gross floor area (“GFA”). The lowest level of the building will have a ceiling that is less than 4 feet above the adjacent finished grade, and thus constitutes a “cellar”, which is excluded from the calculation of GFA. Subtitle B, § 100.2. This cellar area, about 6,740 square feet, will contain office space with areaways along the front of the building, mechanical space, and storage areas. The ground floor of the building will contain 6,124 square feet of GFA, and will include the entrance to the emergency shelter units on the upper floors, as well as office space for the Applicant and/or other office users. The second floor will contain 6,583 square feet of office GFA that may be used by the Applicant or rented to other users. The third, fourth and fifth floors will contain 6,388 square feet, 6,578 square feet and 6,578 square feet respectively, and will consist of 30 dwelling units (studios, one bedroom, two bedroom and three bedroom units) and a laundry room for the emergency shelter clients. The units have the ability to be connected, by way of shared doorways, to allow for larger family situations, and each will contain a kitchen area. All units will be completely furnished, and will include bath and kitchen supplies. The emergency shelter use will also include on-site caseworkers and other staff, which will provide services and support to assist families in their time of crisis and transition. As much as possible, the area will be designed like a typical apartment building. Safety of all residents will be supported through cameras which will be monitored at Applicant’s 24/7 courthouse location and in staff areas. Security guards will be used during certain non-office hours. Access will also be restricted through a system of fobs, restricted access areas, and strictly enforced rules prohibiting visitors and prohibiting disclosing the location of the facility.

The rooftop will be used for an outdoor play area for children of approximately 1,349 square feet, an outdoor terrace for adults of about 293 square feet, and enclosed communal recreation space of about 2,049 square feet. The remainder of the rooftop will be used for a green roof. In addition, the rooftop of the penthouse communal recreation areas will be used for

mechanical equipment and a green roof. There is a centrally located elevator and stairwell that goes to the rooftop level, and a second enclosed stairwell used to provide emergency access and egress to/from the rooftop, will be located along the eastern building wall. The penthouse mechanical and communal recreation and amenity space are all excluded from the calculation of GFA pursuant to Subtitle C, § 1503.1(a) – (c).

For purposes of the requested Special Exception, the Applicant is seeking some flexibility in the approval in order to use the majority of the building, up to 30,000 square feet, for the emergency shelter use and the remaining 2,251 square feet for other office uses. Essentially, this could fluctuate based upon the needs of the Applicant to use the ground and second floor areas or to rent that space out. In terms of calculating vehicular parking, we have used a reasonable split of 25,000 square feet of shelter use and 6,818 square feet of office use on the ground and second floors, plus 6,740 square feet of office in the cellar (which is counted for parking purposes only and not FAR), for a total of 13,558 square feet of office, recognizing that if these numbers change there will still be sufficient parking and future occupancy permits will require compliance with all parking criteria.

The Project will include 11 on-site vehicular parking spaces, six (6) long-term bicycle parking spaces, four (4) short-term bicycle parking spaces, a fenced in waste and recycling area, and landscaping improvements. There is currently an agreement with the District of Columbia Department of Transportation ("DDOT") to allow use of the adjacent 5 parking spaces along First Street. Although these spaces are not required to satisfy the parking for the new building, the Applicant will pursue a continuation of this agreement. All such improvements are depicted on the Architectural Plans attached at Tab 8 (the "Plans") to the Application.

With the exception of the special exception relief requested to operate the emergency shelter and to approve the stairwell located on the side wall of the penthouse level of the Project, the Project complies with all other development standards applicable to the PDR-2 zone, as more fully set forth in the Table of Zoning Calculations attached at Tab 9 to the Application. Particularly:

- (i) The Project satisfies the 3.0 FAR restriction under Subtitle J, §§ 202.1 and 202.3 of the Regulations for both the emergency shelter use as well as any potential office use;
- (ii) The Project includes a rear yard of at least 12 feet (Subtitle J, § 205.2);

- (iii) The required Green Area Ratio ("GAR") is 0.3 pursuant to Subtitle J, §208.1, and the Project proposes 0.3 GAR (see GAR Score Sheet at Tab 8);
- (iv) The Project will include 11 vehicular parking spaces, which is in excess of the 9 spaces required under the Regulations based upon the following: shelter use of 25,000 square feet (requirement is 0.5 spaces per 1,000 square feet or 13 spaces), and the office use of 7,251 square feet on the ground and second floors, plus 6,740 square feet of potential office use in the cellar which is counted for parking purposes only (Subtitle C, § 709.1(e)) is 13,558 square feet (requirement of 0.5 spaces per 1,000 square feet after the first 3,000 square feet, thus 10,558 square feet divided by 1,000 times 0.5 results in 6 spaces), for a total of 18 for the Property, and then a 50% reduction is allowed based on proximity to NoMa/Gallaudet Metrorail and Priority Metrobus Routes, resulting in a requirement of 9 spaces, as more fully evidenced by the materials contained at Tab 18 ;
- (v) The Project is required to have four (4) short-term bicycle spaces (based upon 25,000 square feet of emergency shelter use and 7,251 square feet of other office uses) and provides four (4) short-term spaces; and, is required to have six (6) long-term bicycle parking spaces and provides six (6) such spaces; and
- (vi) The Project has a maximum height at the parapet wall of 56.67 feet, which is below the maximum permissible building height of 60 feet, and the penthouse is 12 feet in height and one story, as permitted by Subtitle J, § 203.6.

The Property does not abut a residential zone and therefor is not subject to side yard or transition setback requirements, and a court is not required in the PDR-2 zone. Subtitle J, §§ 204, 206, 207 and 209. As seen on the aerial photographs of the Property, included at Tab 12 and the Zoning Map information provided at Tab 19, the eastern lot line of the Property abuts a commercial parking lot and the western lot line of the Property abuts an extension of First Street NE which is improved by public parking spaces adjacent to the Property.

Loading berths and service/delivery spaces are only required for an emergency shelter use that meets or exceeds 30,000 square feet of GFA and office uses that meet or exceed 20,000 square feet of GFA. Subtitle C, §901.1. As discussed, the maximum shelter use would be less

than 30,000 square feet, likely to be about 25,000 square feet, and the other office space would be about 7,251 square feet with a potential maximum of 12,000 square feet.

IV. SPECIAL EXCEPTION RELIEF AND STANDARD OF REVIEW

Applicant seeks a Special Exception to operate an emergency shelter, which is permissible in a PDR-2 zone if: (i) no more than 150 persons are served by the shelter; (ii) there is no other property containing an emergency shelter serving 5 or more persons in the same square or within a radius of 1,000 feet from any portion of the Property; and (iii) the use is not located within 1,000 feet of a waste-related service, and the general criteria for a special exception are met. Subtitle U, § 802. Applicant also seeks a Special Exception from the penthouse side setback requirements for one penthouse-level stairwell, which is permissible as the Project is not constructed to the maximum height allowed by the Height Act, and so long as other considerations are satisfied. Subtitle C, §§ 1504.1 and 1504.2. The proposed Project and requested Special Exceptions satisfy the criteria for the granting of both Special Exceptions, as is discussed more fully below.

V. DISCUSSION

A. The Application Satisfies the PDR-2 Zone Specific Requirements for the Emergency Shelter

Subtitle U § 802.1(c), which governs use permissions within a PDR-2 zone, provides that a special exception to permit an emergency shelter is appropriate, subject to satisfaction of the following conditions:

- (1) There shall be a maximum limit of three hundred (300) persons, not including resident supervisors or staff and their families, provided that for facilities over one hundred and fifty (150) persons the Board of Zoning Adjustment 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 there is no other reasonable alternative to meet the program needs of that area of the District;*

The proposed emergency shelter can accommodate a maximum of 91 people within the dwelling units, which is below the 150 and 300 maximum required in this section.

- (2) There shall be no other property containing an emergency shelter use for five (5) or more persons in the same square or within a radius of one thousand feet (1,000 ft.) from any portion of the property;*

There is no other emergency shelter within a radius of 1,000 feet from any portion of the Property, as confirmed by the radius map attached at Tab 19 to the Application.

- (3) The use shall not be located within one thousand feet (1,000 ft.) of a waste-related services use; and*

The proposed emergency shelter is not located within 1,000 feet of a waste-related service, as further confirmed by the radius map attached at Tab 20 to the Application.

- (4) The use shall not be permitted in the PDR-3, PDR-4, or PDR-7 zones.*

The Property is in the PDR-2 Zone, so this section is not applicable.

Accordingly, all requirements of Subtitle U § 802.1(c) are satisfied.

B. The Application Satisfies the Factors Considered for a Special Exception Granting Relief from the Penthouse Setback Requirements

Pursuant to Subtitle C, § 1502.1(d) of the Regulations, a penthouse must be setback from the edge of the roof upon which it is located, "A distance equal to one-half (0.5) of its height from any side building wall of the roof upon which it is located that is not adjoining another building wall and not meeting the conditions of paragraphs Subtitle C §§ 1502.1(c)(1) through (5)." The conditions of Subtitle C §§ 1502.1(c)(1) through (5) relate to buildings used as detached dwellings, rowhouses, or flats; buildings in the R-1 through R-3 and RF zones; buildings located adjacent to property with lower permitted matter-of-right height or with a designated historic landmark or contributing structure; or buildings with walls that border any

court other than closed courts. The Property does not meet any of these conditions, therefore, the Applicant is requesting relief from the requirement to setback the penthouse egress stairwell (labeled as Stairwell #1) one-half the distance of its height, which is ten feet (10'), from the side wall of the building, thus requiring a five-foot (5') setback.

Pursuant to Subtitle C, § 1504.1, relief from the penthouse setback requirements of Subtitle C, § 1502, may be granted by the BZA subject Subtitle X, Chapter 9 and subject to the following considerations:

- a) The strict application of the requirements of this chapter would result in construction that is unduly restrictive, prohibitively costly, or unreasonable or inconsistent with building codes;*

The Applicant is providing victims of domestic violence a place to live for a short period of time, up to 30 days, in order for them to recover from their trauma and make plans to find a more stable living arrangement. Many times these victims include children of all ages. In trying to create typical living environment, the Applicant is providing outdoor space on the rooftop where children and adults can feel secure and still be outside. There are Code requirements to provide more than one ingress/egress to the rooftop, and the Applicant has designed the building to accommodate one stairwell and elevator in the center of the building and which meets the setback requirements (labeled as Elevator #2 and Stairwell #2). It is only this second required stairwell, on the east side of the building, that does not meet the 5-foot setback requirement. In this case, the exterior wall of the building will be up against the Property line on the east side, which is permitted. Thus, the internal design of the floorplates is consistent from the ground floor up in order to be as efficient as possible in providing space for the emergency shelter clients. It would be costly and unreasonable to have to shift this staircase over and would reduce the number of units available and the families that could be served.

- b) The relief requested would result in a better design of the roof structure without appearing to be an extension of the building wall;*

The proposed design would allow a stairwell that is twenty feet (20') long to be located along a wall that is sixty feet (60') long. It is located about midway along the wall and there is sufficient space from the front and rear walls to create an open appearance on the east facade. Even if the stairwell were setback five feet, the appearance from the ground or even a taller

building would be much the same. The remaining elements of the rooftop, mainly the children's play area and the recreational spaces, are better designed with the stairwell along the building wall.

c) The relief requested would result in a roof structure that is visually less intrusive;

The proposed stairwell does not result in a visually intrusive roof structure. There are only two roadways adjacent to the property, Q Street NE on the north and First Street NE on the west. From the vantage point of Q Street, the side stairwell is over 22 feet behind the front building wall (double the setback requirement). From the vantage point of First Street, the side stairwell is not visible at all. Further, as the Property is within a PDR Zone, many of the adjacent uses are non-residential in nature, with adjacent uses largely consisting of surface level parking. It is likely only from these parking areas (one of which is located to the east and the other of which is located at the rear of the Property) that the stairwell is visible. In addition, allowing the stairwell to hug the building wall frames the rooftop structures and the minimal width of the stairwell is not intrusive.

d) Operating difficulties such as meeting D.C. Construction Code, Title 12 DCMR requirements for roof access and stairwell separation or elevator stack location to achieve reasonable efficiencies in lower floors; size of building lot; or conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly or unreasonable;

As discussed in paragraph (a) above, the Code requires that there be two points of egress from the rooftop, and the lower levels are all designed to accommodate two elevators and two stairwells in an efficient manner. The shape of the lot, which is angled in the rear, creates some limitations on the footprint of the building as well as the need for the owner, a non-profit social service entity, to provide sufficient units to help meet the growing demand for its services.

e) Every effort has been made for housing for mechanical equipment, stairway, and elevator penthouses to be in compliance with the required setbacks; and

All of the other setback requirements for the rooftop structures, including the rear stairwell and elevator, community recreational room, and mechanical equipment, are satisfied.

- f) The intent and purpose of this chapter [Chapter 15 of Subtitle C] and this title [Title 11] shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.*

Neither the intent nor purpose of Subtitle C or the Regulations will be materially impaired by the second stairwell being along the building wall. Part of the intent of Chapter 15 is to limit penthouse spaces and to keep them within the required setbacks especially when the height of the building is maximized pursuant to the Height Act. Subtitle C, § 1504.2. In this case, because Q Street is a ninety-foot (90') right-of-way, the Height Act would allow a ninety-foot tall building, but the Regulations limit the height to sixty feet (60') and this is what the Applicant proposes. Further, the intent of the Regulations to promote the public health, safety, morals, convenience, order, prosperity and general welfare, is not materially impaired by the one stairwell. The existence of the stairwell, in the proposed location, will help the Applicant to provide a safe and secure outdoor environment for its clients and promote public health, safety and welfare.

The light and air of the adjacent properties will not be adversely affected by the penthouse stairwell location. Rather, as can be seen by the Photographs enclosed at Tab 12 and the Plans, including the perspective drawings, the Project is a freestanding structure that is not adjacent to any improvements. Indeed the area to the east of the Property, where the small stairwell will be located, is a surface parking lot. Light and air can still flow freely around the stairwell structure.

As the proposed stairwell is necessary to satisfy Code requirements, is designed in a reasonable and efficient manner, will help maximize outdoor play space and indoor communal and amenity space on the rooftop, will not result in a visually intrusive roof structure and has no impact on the light and air benefitting adjacent properties, the requested special exception relief should be granted.

C. The Project Will Meet the General Special Exception Review Standards

Pursuant to Subtitle X, § 901.2, the BZA is authorized to grant special exceptions where the special exception:

(a) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;

The Project is in harmony with the general purpose and intent of the Regulations and the Zoning Map. The PDR-2 zone is intended to allow medium-density commercial uses that minimize adverse impacts upon adjacent, more restrictive zones. Provision of an emergency shelter and additional office space with the proposed penthouse stairwell is a medium density commercial use which, although not directly aligned with production, distribution, or repair, certainly is within the scope of commercial density contemplated for such uses.

Furthermore, the emergency shelter will provide housing that is safe and secure, in a fashion consistent with the law and policies of the District. As mentioned above, the Regulations are intended to promote the health, safety and general welfare of the District. The shelter meets the criteria and requirements of the Regulations (except for the minor stairwell setback) and will reduce pressure on existing District services, by providing a significant benefit to families faced with the choice of homelessness or the continued suffering of violence. In addition, the shelter will advance a District goal to render homelessness a rare, brief, and non-recurring experience. Thus, not only is the Project consistent with the uses within a PDR-2 zone, the Project also satisfies the other goals of the District with respect to addressing and eliminating homelessness. In fact, the Project is supported by the Metropolitan Police Department, the Attorney General of the District of Columbia, the Office of Victim Services and Justice Grants, Councilmember Charles Allen, the Local Initiatives Support Corporation, and relevant service providers in the District of Columbia, as evidenced by the Letters of Support contained at Tab 5 of the Application.

(b) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and

The Project as proposed, will provide emergency shelter to families in need of assistance, and commercial office space. This mix of uses will complement one another and keep the area

activated but not distracting to neighbors. There are some limited areas for outdoor activities, mostly on the rooftop, which should not interfere with the uses and activities on neighboring properties. There will be eleven on-site parking spaces and it is anticipated based on prior experience of the Applicant, that employees of the emergency shelter, and many families utilizing shelter services will utilize public transit. The Project is conveniently situated to address these needs because it is located within three blocks of several bus stops which serve the 80, 90, 92, P3, P6, and X3 bus lines, and is located 0.5 miles from the NoMa-Gallaudet U. New York Avenue Metro Station, as evidenced by the Transit Information contained at Tab 18 of the Application. A letter from The Traffic Group, contained at Tab 21, states that even with slightly more area than currently being proposed, the Project would only generate 8 or 9 peak hour trips and would not create an adverse effect on traffic conditions.

The Project is designed to provide enhanced security, through use of perimeter fencing, a security gate, and electronic security monitoring. These facilities will help protect the clients as well as provide safety for the adjoining neighborhood.

(c) Will meet such special conditions as may be specified in this title.

The requested Special Exceptions meet the criteria for granting by the BZA, as set forth above.

VI. COMMUNITY OUTREACH

Applicant has conducted extensive community outreach prior to submission of the Application. This has included meetings with neighbors, ANC members, the Zoning Administrator and Office of Planning staff. These efforts are more fully described on the Certification and Pledge of Notification Efforts contained at Tab 6 of the Application.

VII. CONCLUSION

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

Respectfully Submitted,

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