

May 31, 2019



Meridith H. Moldenhauer
Direct Phone 202-747-0767
Direct Fax 202-683-9389
mmoldenhauer@cozen.com

VIA IZIS

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

**Re: BZA Application 20047 – 3301 Lowell Street NW
Applicant’s Additional Request for Special Exception Relief**

Dear Chairperson Hill and Members of the Board:

On behalf of the District Department of General Services (the “Applicant”), please find enclosed the Applicant’s Additional Request for Special Exception Relief. The Applicant requests this relief pursuant to 11 DCMR § X-901.2 and Subtitle C § 1603.6 from the requirement for rooftop recreation areas to provide 10 ft. wide access to two public right-of-ways.

This filing includes the following materials:

1. Statement of the Applicant including the burden of proof for this additional relief
2. Amended Form 135 Self-Certification
3. Plans illustrating relief request, attached at **Tab A**
4. Certificate of Service

Thank you for your attention to this matter. If you have any questions please do not hesitate to contact me on behalf of the Applicant.

Sincerely,

COZEN O'CONNOR

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

Meridith H. Moldenhauer
1200 19th Street NW
Washington, DC 20036

Board of Zoning Adjustment
District of Columbia
CASE NO. 20047
EXHIBIT NO. 28

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

**APPLICATION OF DISTRICT
DEPARTMENT OF GENERAL SERVICES**

**3301 LOWELL STREET NW
ANC 3C09**

ADDITIONAL REQUEST FOR SPECIAL EXCEPTION RELIEF

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of the District Department of Public Schools and the District Department of General Services (collectively the “Applicant”), the operators of the property located at 3301 Lowell Street NW, (Square 2088; Lots 001 and 800) (the “Property”) in support of their Additional Request for Special Exception Relief pursuant to 11 DCMR Subtitle X § 901.2 from Subtitle C § 1603.6 from the requirement to provide 10 ft. wide access to rooftop recreation areas to two public-right of ways (“Rooftop Access Requirement”).

II. BACKGROUND AND INITIAL APPLICATION

The Applicant filed their initial application on April 30, 2019 seeking special exception relief from the maximum FAR permitted for public schools in the R-1-B zone under Subtitle C § 1604.2, and special exception relief from the retaining wall height requirements under Subtitle C §§ 1401.3, 1401.4 and 1401.5. The plans included with the initial application show the rooftop gymnasium recreation area at the north side of the Project. *See* BZA Ex. No.1603.6 13-15. As shown in the attached “Recreational Roof Access” diagram, at **Tab A**, the plans for the recreational roof areas were recently revised to include separate recreational roofs over the gymnasium area (“Roof 1”) and the stage (“Roof 2”). After filing, the Applicant’s counsel met with the Zoning Administrator and confirmed his interpretation of the Rooftop Access Requirement. Based on the Zoning Administrator’s analysis, the Project requires additional relief from the Rooftop Access Requirement.

Pursuant to Subtitle C § 1603.6, the Rooftop Access Requirement is as follows:

The roof area of a public education building or structure shall be used only for open space, recreation areas, or other athletic and field equipment areas in lieu of similarly used space normally located at ground level provided direct pedestrian access not less than ten feet (10 ft.) in width from at least two (2) public rights-of-way shall be provided to each roof area used for these purposes.

Roof 1: Although the Project provides three access points collectively totaling over 10 ft. wide (West Access A is 7 ft. in width and West Access B and C are both 8 ft. in width) (collectively the “Roof 1 West Access”) to the Roof 1 area from the public right-of-way on the west side of the Property (34th Street NW), the significantly steeper slope of the Property to the east of Roof 1 necessitates a longer stairway, resulting in one 6 ft. wide access point to the rooftop area to the right-of-way (33rd Place NW) on the east side of the Property (the “East Access”).

Roof 2: As illustrated by the Recreational Roof Access Diagram, there are two access points to Roof 2, one from Playground 2 at the north end of the Property and one from the Play Field at the northwest corner of the Property. Both access points are less than 10 ft. wide necessitating relief from the Rooftop Access Requirement.

As designed, both the West Access and the East Access to Roof 1 and the access to Roof 2, as well as the access between Roof 1 and Roof 2, comply with the D.C. Building Code and anticipated load limits. Adding an additional four feet to the stairway of the East Access of Roof 1 would unnecessarily remove green area and encroach on the children’s recreational field (identified as “Play Field in the Recreational Rooftop Access Diagram) that was specifically identified as a community asset by the neighborhood during initial community meetings for the overall Eaton School modernization project. Adding additional width to the access points of Roof 2 would further limit much-valued green area. Accordingly, the Applicant requests special exception relief from the Rooftop Access Requirement pursuant to Subtitle C § 1610.2.

The Applicant hereby incorporates the arguments set forth in the Burden of Proof in support of the original relief requests in its initial application, at BZA Exhibit No. 17.

III. NATURE OF SPECIAL EXCEPTION RELIEF SOUGHT AND STANDARD OF REVIEW

Under D.C. Code § 6-641.07(g)(2) and 11 DCMR X § 901.2, the Board is authorized to grant a special exception where it finds the special exception:

- (1) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
- (2) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
- (3) Subject in specific cases to special conditions specified in the Zoning Regulations. 11 DCMR Subtitle X § 901.2.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific requirements for the relief are met. In reviewing an application for special exception relief, “[t]he Board’s discretion . . . is limited to a determination of whether the exception sought meets the requirements of the regulation.” *First Baptist Church of Wash. v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

IV. APPLICANT MEETS BURDEN FOR SPECIAL EXCEPTION RELIEF

A. The Relief is Harmonious with the General Purpose and Intent of the Zoning Regulations and Maps

The additional relief requested from the Rooftop Access Requirement will be in harmony with the purpose and intent of the Zoning Regulations and related maps. The purposes of the R-1-B zone are, among other things, to permit stable, low- to moderate-density residential areas suitable for family life and supporting uses. Public education buildings and public recreation centers are

permitted as a matter of right, subject to the conditions of Subtitle C, Chapter 16. Subtitle D §§ 100, 104. Further, the purposes of the R-1-B zone are to stabilize residential areas and to promote a suitable environment for family life.

The requested relief will be in harmony with the purpose and intent of the Zoning Regulations and related maps because the requested relief promotes a suitable environment for family life in the R-1-B zone by allowing an efficient and multi-purpose oriented modernization design of a neighborhood public elementary school. The Project does not require height relief and, except for FAR, complies with all other mass and density requirements, such as lot occupancy and setbacks. Further, the Zoning Regulations specifically provide relief from the development standards of Subtitle C, Chapter 16 as a special exceptions. Subtitle C § 1610.2. The proposed rooftop recreation design and access, as designed, align with this intent, as the relief will allow the Applicant to provide additional recreation area and green space on the roof of the elementary school gymnasium without unnecessarily encroaching on the play fields on the east or west sides of the Property.

B. The Proposed Relief will not Adversely Affect the Use of Neighboring Property

The proposed relief from the Rooftop Access Requirement to permit the access to recreational Roof 1 and Roof 2 to be less than 10 ft. wide will not adversely affect the use of the neighboring property. Rooftop recreation areas are permitted as a matter-of-right in the R-1-B zone subject to satisfying the Rooftop Access Requirement of Subtitle C § 1603.6. In this case, the requested relief from the Rooftop Access Requirement to allow access to the recreational roofs recreational to be less than 10 ft., will not detract from the use of the rooftop recreation space or conflict with safety standards. Accordingly, the requested relief will not adversely affect the use of neighboring property or impact the neighborhood's ability to use the rooftop recreation area.

V. **CONCLUSION**

For 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 special exception for relief from the Rooftop Access Requirement.

Respectfully Submitted,

COZEN O'CONNOR



Meridith H. Moldenhauer
1200 19th Street NW
Washington, DC 20036

CERTIFICATE OF SERVICE

I certify that on May 31, 2019, a copy of this Additional Request was served via email on the Office of Planning and Advisory Neighborhood Commission 3C09, as follows:

District of Columbia Office of Planning
1100 4th Street SW, Suite E650
Washington, DC 20024
planning@dc.gov
karen.thomas@dc.gov

Advisory Neighborhood Commission 3C
Nancy MacWood, SMD 3C09 and Chair
3C09@anc.dc.gov

COZEN O'CONNOR



Meridith H. Moldenhauer
1200 19th Street NW
Washington, DC 20036



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



FORM 135 – ZONING SELF-CERTIFICATION

<i>Project Address(es)</i>	<i>Square</i>	<i>Lot(s)</i>	<i>Zone District(s)</i>
3301 Lowell Street, NW, Washington DC 20008	2088	001, 0800	R-1-B

Single-Member Advisory Neighborhood Commission District(s): 3C-09

CERTIFICATION

The undersigned agent hereby certifies that the following zoning relief is requested from the Board of Zoning Adjustment in this matter pursuant to:

Relief Sought	<input type="checkbox"/> X § 1000.1 - Use Variance	<input type="checkbox"/> X § 1002.1 - Area Variance	<input checked="" type="checkbox"/> X § 901.1-Special Exception
Pursuant to Subsections			C-1604.2; C-1401.3, C-1401.4, C-1401.5 C-1603.6

Pursuant to 11 DCMR Y § 300.6, the undersigned agent certifies that:

- (1) the agent is duly licensed to practice law or architecture in the District of Columbia;
- (2) the agent is currently in good standing and otherwise entitled to practice law or architecture in the District of Columbia; and
- (3) the applicant is entitled to apply for the variance or special exception sought for the reasons stated in the application.



The undersigned agent and owner acknowledge that they are assuming the risk that the owner may require additional or different zoning relief from that which is self-certified in order to obtain, for the above-referenced project, any building permit, certificate of occupancy, or other administrative determination based upon the Zoning Regulations and Map. Any approval of the application by the Board of Zoning Adjustment (BZA) does not constitute a Board finding that the relief sought is the relief required to obtain such permit, certification, or determination.

The undersigned agent and owner further acknowledge that any person aggrieved by the issuance of any permit, certificate, or determination for which the requested zoning relief is a prerequisite may appeal that permit, certificate, or determination on the grounds that additional or different zoning relief is required.

The undersigned agent and owner hereby hold the District of Columbia Office of Zoning and Department of Consumer and Regulatory Affairs harmless from any liability for failure of the undersigned to seek complete and proper zoning relief from the BZA.

The undersigned owner hereby authorizes the undersigned agent to act on the owner's behalf in this matter.

I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this form is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both.
(D.C. Official Code § 22 2405)

 <small>Owner's Signature</small>		Allam Al-Atami <small>Owner's Name (Please Print)</small>				
 <small>Agent's Signature</small>		Meredith Moldenhauer <small>Agent's Name (Please Print)</small>				
Date	05/31/2019	D.C. Bar No.	494695	or	Architect Registration No.	

INSTRUCTIONS

Any request for self-certification that is not completed in accordance with the following instructions shall not be accepted.

1. All self-certification applications shall be made on this form. All certification forms must be completely filled out (front and back) and be typewritten or printed legibly. All information shall be furnished by the applicant. If additional space is necessary, use separate sheets of 8½" x 11" paper to complete the form.
2. Complete one self-certification form for each application filed. Present this form with the Form 120 - Application for Variance/Special - Exception to the Office of Zoning, 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001.

ITEM	EXISTING CONDITIONS	MINIMUM REQUIRED	MAXIMUM ALLOWED	PROVIDED BY PROPOSED CONSTRUCTION	VARIANCE Deviation/Percent
Lot Area (sq. ft.)	66,150 sq. ft.	N/A	N/A	N/A	N/A
Lot Width (ft. to the tenth)	N/A	N/A	N/A	N/A	N/A
Lot Occupancy (building area/lot area)	N/A	N/A	N/A	N/A	N/A
Floor Area Ratio (FAR) (floor area/lot area)	0.79	N/A	0.9	1.17	Relief Requested
Parking Spaces (number)	N/A	N/A	N/A	N/A	N/A
Loading Berths (number and size in ft.)	N/A	N/A	N/A	N/A	N/A
Front Yard (ft. to the tenth)	9.6 ft.	0	N/A	9.6'	N/A
Rear Yard (ft. to the tenth)	94.5'	25'	N/A	48.5'	N/A
Side Yard (ft. to the tenth)	N/A	N/A	N/A	N/A	N/A
Court, Open (width by depth in ft.)	N/A	N/A	N/A	N/A	N/A
Court, Closed (width by depth in ft.)	N/A	N/A	N/A	N/A	N/A
Height (ft. to the tenth)	56'-9"	N/A	60'	56'-9"	N/A



If you need a reasonable accommodation for a disability under the Americans with Disabilities Act (ADA) or Fair Housing Act, please complete Form 155 - Request for Reasonable Accommodation.

TAB A

Recreational Roof Access

There are 2 recreational roof areas that contribute to the proposed playground area:
 - Roof 1 Area above the Gymnasium
 - Roof 2 Area above the Stage

The proposed access width provides more than the Building Code required egress width for both area, based on their size and occupancy. The roofs thereby meet the intent of the maintaining public access to all Public School recreational assets and do not diminish the assets of the community.

Summary of Roof 1 Access



The gym roof is provided with 35 linear feet of access total based on 23 linear feet width at the West Access (Stair and Barrier free), 6 linear feet width at the North Stair, and 6 linear feet width at the East Stair. This is in excess of the required egress width for the roof's occupancy under the D.C. Building Code.

$4,129 \text{ sq.ft.} \div 5 \text{ sf/person} = 826 \text{ person occupancy}$
 $826 \times 0.2 = 165.16''$ (13'-8" linear feet) required by the D.C. Building Code.

Summary of Roof 2 Access

The stage roof is provided with 12'-7" of access total based on 7'-10" linear feet of egress at the north and 4'-9" linear feet of egress stair at the east. This is in excess of the required egress width for the roof's occupancy under the D.C. Building Code.

$839 \text{ sq.ft.} \div 5 \text{ sf/person} = 168 \text{ person occupancy}$
 $168 \times 0.2 = 33.56''$ (2'-4" linear feet) required by the D.C. Building Code.

-  Recreational Roof 1
-  Recreational Roof 2

