

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 21047 of Kesher Israel Congregation of Georgetown, pursuant to 11 DCMR Subtitle X, Chapter 9 for a special exception under Subtitle C § 1506.1 from the penthouse setback requirements of Subtitle C § 1504.1 and, pursuant to Subtitle X § 1002, for area variances from the rear yard requirements of Subtitle D § 207.1 and from the lot occupancy requirements of Subtitle D § 210.1 to allow a three-story addition to three existing attached or semi-detached buildings devoted to religious and accessory office and education uses in the R-3/GT zone at 2801 and 2803 N Street, N.W. and 1308 28th Street, N.W. (Square 1235, Lots 161, 163, and 800).

HEARING DATE: February 28, 2024
DECISION DATE: March 13, 2024

DECISION AND ORDER

This self-certified application was filed on October 17, 2023 on behalf of Kesher Israel Congregation of Georgetown, the Georgetown Synagogue-Kesher Israel Congregation, and Samuel J. Rosenstein Trustees (collectively, the “Applicant”), the owners of the property that is the subject of the application. Following a public hearing, the Board voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. In accordance with Subtitle Y §§ 400.4 and 402.1, the Office of Zoning provided notice of the application and of the public hearing by letters dated November 7, 2023 to the Applicant, the Office of Planning (“OP”) and the Historic Preservation Office, the District Department of Transportation, the Department of Buildings, Advisory Neighborhood Commission (“ANC”) 2E, the ANC in which the property is located, Single Member District ANC 2E06, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 2 as well as the Chairman and the at-large members of the D.C. Council, and the owners of all property within 200 feet of the subject property. Notice was sent to the Commission of Fine Arts by November 14, 2023. Notice was published in the *D.C. Register* on November 24, 2023 (70 DCR 015307) as well as through the calendar on the Office of Zoning website.

Parties. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 2E were automatically parties in

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this proceeding. The Board granted a request for party status in opposition to the application submitted by Luis deBaca, the owner of the property abutting the subject property to the north. (Exhibit 22.) The Board also granted a request for party status conditionally in support of the application submitted by Jennifer Arndt, the owner of the property abutting the subject property to the west. (Exhibits 41, 41A.)

Applicant's Case. The Applicant provided evidence and testimony in support of the application including from Rabbi Hyim Shafner, representing Kesher Israel Congregation of Georgetown, Aaron Tessler, a congregant and vice president of Kesher's board of directors, Steven Kleinrock, an expert in architect, and Shane Dettman, an expert in zoning and land use planning.¹

OP Report. By memorandum dated February 15, 2024, the Office of Planning recommended approval of the special exception and area variances requested by the Applicant. (Exhibit 28.)

ANC Report. By letter dated February 7, 2024, ANC 2E indicated that at duly noticed public meeting held on January 29, 2024, where a quorum was present, ANC 2E approved a resolution in support of the application with conditions. (Exhibit 20.)

Party in support with conditions. The party conditionally in support of the application initially opposed the Applicant's proposal, citing especially structural concerns as well as privacy and noise impacts, but subsequently indicated support for approval of the application with the conditions proffered by ANC 2E. (Transcript of February 28, 2024 at 112.)

Party in opposition. The party in opposition asserted that approval of the application would negatively affect the use of the abutting property by harming the structural integrity of the dwelling, by altering the residential appearance and character of the semi-detached building by allowing a substantially larger institutional structure on the abutting lot owned by the Applicant, and by raising concerns about security. The party in opposition asked the Board to adopt the conditions proffered by ANC 2E. (Exhibit 22.)

Persons in support. The Board received letters and heard testimony in support of the application from the Applicant's congregants, residents living near the subject property, and organizations including nearby religious institutions and the Citizens Association of Georgetown.

FINDINGS OF FACT

1. The property that is the subject of this application comprises three contiguous lots in Square 1235, one corner lot and two interior lots that abut the corner lot to the north and west. The corner lot (Lot 800) is located at the northwest corner of the intersection of 28th and N Streets N.W., with the address 2801 N Street, N.W. The abutting lot to the north (Lot 161) is located on the west side of 28th Street, with the address 1308 28th Street. The abutting lot to the west (Lot 163) is on the north side of N Street with the address 2803 N Street,

¹ The Board also recognized a witness proffered by the Applicant, Kenneth Hill, as an expert in structural engineering.

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N.W.

2. The subject property is rectangular, with a total lot area of approximately 6,055 square feet.² (Exhibit 14.) The subject property has approximately 60 feet of frontage along N Street N.W. and approximately 100 feet of frontage along 28th Street N.W. (Exhibits 15, 21A1.)
3. The corner lot (Lot 800) is improved with a building built in 1931 as an orthodox synagogue.³ The building contains approximately 4,802 square feet of gross floor area configured as two stories and a mezzanine, and is approximately 37 feet in height. The Lot 800 building is attached to the building on the abutting lot to the west, and is built to the lot lines along N and 28th Streets. The building extends approximately 60 feet along 28th Street, creating an irregular rear yard of 20 feet at its widest point.
4. The building on Lot 800 contains a projecting bay window on its east façade (facing 28th Street) as well as a projecting portico above the primary entrance on the south façade (on N Street). The only exterior modification made to the building since its construction was the installation of unenclosed fire egress stairs to the rear of the building in 1967. (Exhibit 12.)
5. The interior of the synagogue building has not changed significantly since its construction. The first floor contains restrooms, a community room/library, a small kitchen, and a staircase leading to the second floor and mezzanine. The main sanctuary is located on the second floor, with additional congregant gallery seating located on the mezzanine. The second and third floors are accessible by an internal staircase and the external egress stairs. (Exhibits 12, 21A1, 21A2.)
6. Lot 161 is improved with a semi-detached building that was constructed circa 1899. The two-story building contains approximately 1,834 square feet of gross floor area. The building is attached to a similar two-story building to the north, and has a narrow side yard on the south side of the lot. The building extends approximately 45 feet, creating a rear yard of approximately 15 feet.
7. The building on Lot 161 was formerly used as a principal dwelling and was acquired by the Applicant in 1992 for use as an annex to the synagogue on the adjoining Lot 800. In 2005 the Applicant completed the construction of a mikvah in the lowest level of the

² Each of the three existing lots is rectangular. Lots 163 and 800 are each approximately 30 feet wide and 80 feet deep, with lot areas of approximately 2,400 square feet. Lot 161 is approximately 20 feet wide and 60 feet deep, with a lot area of approximately 1,200 square feet. (Exhibits 15, 21A1.)

³ The Applicant purchased Lot 800 in 1915 and converted an existing dwelling for use as a synagogue until a larger building was needed. The existing building has operated as an Orthodox Jewish congregation since 1931. (Exhibit 12; Transcript of February 28, 2024, at 123.)

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building.⁴ The upper floors contain administrative offices. (Exhibits 12, 21A1, 21A2.)

8. Lot 163 is improved with a semi-detached building constructed as a principal dwelling circa 1877. The two-story building is approximately 15 feet wide and contains approximately 1,751 square feet of gross floor area. The building is attached to the synagogue building on the east and has a side yard of approximately 15 feet on its west side. The building is approximately 34 feet deep, creating a rear yard of approximately 46 feet. (Exhibit 12.)
9. The interior layout of the building on Lot 163 was reconfigured in 1951, when the primary entrance to the building was relocated from the south façade along N Street N.W. to the west façade, new window openings were made on each level, and a new cornice was created on the western elevation. The Applicant purchased Lot 163 in April 2022 intending to use the building for administrative and rabbinic offices. (Exhibits 12, 21A1, 21A2.)
10. In total, the three existing buildings create a lot occupancy of approximately 53 percent at the subject property. (Exhibit 21A1; Transcript of February 28, 2024 at 142.)
11. The Applicant proposed to subdivide the three existing lots into one new record lot and to construct an addition that will create a single, larger building from the three existing buildings, which currently do not have any interior connection. (Exhibits 12, 21A1, 21A2.)
12. The addition will be three stories and 32 feet, 3.25 inches in height, and will contain a cellar. The addition will contain 4,558 square feet of gross floor area, increasing the overall gross floor area of the combined buildings on the subject property to 12,688 square feet. (Exhibit 21A1.) As a result, the lot occupancy at the subject property will increase to 79 percent. (Exhibit 14; Transcript of February 28, 2024, at 142.)
13. The addition will occupy the existing open area between the synagogue on Lot 800 and the semi-detached building to the north on Lot 161 as well as a portion of the open area between the Lot 163 building to the west of the synagogue and the Lot 161 semi-detached building to the north. The existing egress stair and a shed in the rear yard of Lot 800 as well as an exterior entrance to the building on Lot 163 will be demolished.
14. The rear yard of the new lot will be provided along the rear (west) lot line of the subject property, where an open area will extend for the width of the lot between the Applicant's enlarged building and the abutting property to the west. The majority of the open area will be approximately 14 feet, 10 inches wide. A new entry vestibule will be created near the middle of the west façade, resulting in a rear yard of three feet, 10 inches for the new

⁴ Construction of the mikvah, which the Applicant described as a “ritual bath,” entailed an increase of approximately 18 inches in the elevation of the first floor and associated framing, which was altered to raise the ceiling height in the lowest level of the building. (Exhibit 12.)

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building for a distance of 13 feet. The open area will extend approximately 10 feet, nine inches deep adjacent to a planned elevator, which will be located next to the vestibule. (Exhibits 12, 21A1, 28, 38; Transcript of February 28, 2024, at 141.)

15. At the ground level, the addition will contain the main entrance vestibule and lobby accessible from N Street in the west portion of the enlarged building. The one-story vestibule will be set back 42 feet from the N Street sidewalk, where a gate will be installed to control access to the subject property. The open area between the new gate on N Street and the entry vestibule will provide a pathway to the main entry to the building as well as a garden area. (Exhibit 12.)
16. In addition to the new entrance, the ground level will be configured as a main lobby containing a new elevator and code-compliant fire egress stairs to connect all floors of the building, a social hall, a kitchen, accessory office and meeting space, storage, an internal trash room, and restroom facilities. (Exhibits 12, 38; Transcript of February 28, 2024 at 135.)
17. The second floor of the enlarged building will contain the main sanctuary within the original synagogue structure, which will be renovated, as well as a rabbinic suite and waiting area within the existing structure now on Lot 163. A new library and restroom facilities will be located in the existing structure now on Lot 161. The second floor of the addition will be configured as a new study room in the eastern portion of the building between the main sanctuary and library, and a new lobby will connect the programmatic elements of the second floor and provide access to the elevator and fire egress. (Exhibits 12, 38.)
18. The third floor will include a reconstructed mezzanine within the main sanctuary structure, designed with code-compliant aisles and spacing. A small group gathering space, restroom facilities, and a family lounge will also be provided on the third floor as well as a lobby to connect programmatic elements and provide access to the elevator and fire egress stairs. An outdoor terrace, with a 36-inch glass railing, will be provided on the east side of the third floor of the addition, overlooking 28th Street N.W. (Exhibits 12, 38.)
19. The cellar level will contain mechanical areas, restrooms, and a new mikvah and related facilities (reception, changing, and laundry rooms). (Exhibits 12, 38.)
20. The roof level of the project will contain the override for the new elevator along the west (rear) wall of the building and the top of the new egress stair. The elevator override will be located near the midpoint of the west façade and will extend approximately five feet, one inch above the roof of the addition, with no setback from the west wall of the building. The new egress stair in the existing structure on Lot 163 will extend approximately three feet, seven inches above the existing roof level, and approximately six inches above an existing parapet wall, without a setback from the edge of the roof along N Street. The roof

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will also contain mechanical units ranging in height from approximately 3 feet to 4 feet, 10 inches. (Exhibits 12, 38.)

21. The new addition will have three windows on each floor of the west façade. The windows will be residential scale, double-glazed casement windows capable of opening a maximum of four inches. (Exhibits 12, 21A1, 38; Transcript of February 28, 2024 at 173-174.)
22. The property abutting the subject property to the west (2809 N Street, N.W.) contains a two-story row dwelling. The building has no windows on its east façade that would provide views of the Applicant's building.
23. The property abutting the subject property to the north (1310 28th Street, N.W.) contains a two-story semi-detached principal dwelling that shares a party wall with the Applicant's building on Lot 161.
24. The subject property is located in the Georgetown historic district. Each of the Applicant's existing buildings is a contributing structure to the historic district. (Exhibit 12.)
25. At a public meeting on September 21, 2023, the U.S. Commission of Fine Arts indicated no objection to the concept design for the Applicant's project based on a recommendation from the Old Georgetown Board ("OGB"), but asked the Applicant to reconsider aspects of the east façade as well as the proposed fenestration on the west façade of the new building. The Applicant subsequently revised plans for the east and west façades for submission to OGB at a meeting on March 7, 2024. (Exhibits 12, 21.)
26. There are 15 religious institutions within half a mile of the subject property, which are located on lots ranging in size from 3,500 to 34,850 square feet. The median land area of properties within a half-mile of the Applicant's lot that contain religious institutions is approximately 10,200 square feet, and the average lot area is 13,372 square feet. (Exhibit 12.)
27. The area surrounding the subject property primarily contains principal dwellings in two- or three-story row or semi-detached buildings interspersed with religious institutions and commercial uses. The subject property is two blocks north of the M Street commercial corridor. (Exhibits 12, 28.)
28. The subject property is located approximately a half-mile from the Foggy Bottom-GWU Metrorail station and within a quarter-mile of a Priority Corridor Network Metrobus Route. There are multiple Capital Bikeshare stations within a quarter-mile of the subject property. (Exhibit 12.)
29. The Applicant entered into an agreement with ANC 2E indicating the Applicant's intention to comply with the provisions adopted by the ANC as conditions for its support of the

application. The provisions addressed the installation of landscaped buffers in specified locations on nearby properties, construction management measures, and limitations on the use of the open area along the west side of the subject property and the third-floor outdoor terrace on the east side of the Applicant's building, including prohibitions on music or amplified sound. (Exhibits 47, 47A.)

30. The subject property is located in a Residential House (R) zone, a Georgetown Residential House zone (R-3/GT).
31. The R zones are residential zones, designed to provide for stable, low- to moderate-density residential areas suitable for family life and supporting uses. (Subtitle D § 101.1.) The R zones are intended to:
 - (a) provide for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development;
 - (b) recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city;
 - (c) allow for limited compatible accessory and non-residential uses;
 - (d) allow for the matter-of-right development of existing lots of record;
 - (e) establish minimum lot area and lot width for the subdivision and creation of new lots of record; and
 - (f) discourage multiple dwelling unit development. (Subtitle D § 101.2.)
32. The purpose of the R-3 zone is to allow for row houses, while including areas within which row houses are mingled with detached houses, semi-detached houses, and groups of three or more row houses. The R-3 zone is intended to permit attached row houses on small lots. (Subtitle D §§ 101.8 and 101.9.)
33. The purposes of the Georgetown Residential House (R-3/GT) zone are to:
 - (a) protect the Georgetown National Historic Landmark District and its historic character, buildings, and open space in a manner consistent with the goals and mandates of the Historic Landmark and Historic District Protection Act of 1978, and the Old Georgetown Act, approved September 22, 1950 (64 Stat. 903; D.C. Official Code §§ 6-1201-1206);
 - (b) protect the integrity of "contributing buildings," as that term is defined by the Historic Landmark and Historic District Protection Act of 1978;
 - (c) recognize the compatibility of any development with the purposes of the Old Georgetown Act and the Historic Landmark and Historic District Protection Act of 1978;
 - (d) limit permitted ground coverage of new and expanded buildings and other construction to encourage a general compatibility between the siting of new or expanded buildings and the existing neighborhood; and

(e) retain the quiet residential character of these areas and control compatible nonresidential uses. (Subtitle D § 1100.2.)

CONCLUSIONS OF LAW

The Applicant seeks two area variances and a special exception to allow a three-story addition to connect and enlarge three existing attached and semi-detached buildings devoted to religious and accessory office and education uses in the R-3/GT zone at 2801 and 2803 N Street, N.W. and 1308 28th Street, N.W. (Square 1235, Lots 161, 163, and 800).

Area Variances. The Applicant proposed to construct an addition to the existing buildings that would result in a rear yard of three feet, 10 inches at the subject property, where a minimum of 20 feet is required under Subtitle D § 207.1. The addition would increase lot occupancy at the subject property to 79 percent, where a maximum of 60 percent is permitted under Subtitle D § 210.1. The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3), to grant a variance where, “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,” the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. (See 11 DCMR Subtitle X § 1000.1.) Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning and to the issues and concerns stated by ANC 2E, the Board concludes that the application satisfies the requirements for approval of the requested area variances.

Extraordinary or exceptional situation. For purposes of variance relief, the “extraordinary or exceptional situation” need not inhere in the land itself. *Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). The extraordinary or exceptional conditions affecting a property can arise from a confluence of factors; the critical requirement is that the extraordinary condition must affect a single property. *Metropole Condominium Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1082-1083 (D.C. 2016), citing *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

The Board may consider the property owner’s needs in finding an exceptional situation or condition when the applicant is a non-profit organization and the proposed use is a public service. *Monaco*, 407 A.2d 1091 (D.C. 1979) (BZA considered permissible factors in applying the first branch of the variance test to a public service organization; the organization’s wish to move to a particular site did not make the site unique, but the Board properly recognized that the site’s location made it “uniquely valuable” to the organization and “uniquely suitable for [its] headquarters.”) Generally, an applicant’s desire to utilize property for a certain use is not by itself

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sufficient to create an extraordinary or exceptional situation or condition under the zoning regulations, *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540 (D.C. 1972), but subsequent decisions modified *Palmer*, permitting the Board to weigh more fully the equities in an individual case. *National Black Child Development Institute, Inc. (“NBCDI”) v. District of Columbia Bd. of Zoning Adjustment*, 483 A.2d 687, 690 (D.C. 1984). Consistent with “a well established element of our governmental system,” the Board “may be more flexible when it assesses a non-profit organization,” even if “a commercial user before the BZA might not be able to establish uniqueness in a particular site’s exceptional profitmaking potential.” *Monaco* at 1098, quoting 3 R. Anderson, *American Law of Zoning* s 14.78 (1968). The characterization of a proposed use as a public service is significant, and “when a public service has inadequate facilities and applies for a variance to expand ..., then the Board of Zoning Adjustment does not err in considering the needs of the organization as possible ‘other extraordinary and exceptional situation or condition of a particular piece of property.’” *Monaco* at 1099. *See also NBCDI*, 483 A.2d 687 (D.C. 1984). The *Monaco* doctrine has been extended and applied to, *inter alia*, houses of worship. *See Dupont Circle Citizens Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 182 A.3d 138, 142-43 (D.C. 2018) (collecting cases and noting that “it requires no extension of the *Monaco* doctrine to hold that a church may be a public service organization entitled to additional flexibility”); *see also St. Mary’s Episcopal Church v. District of Columbia Zoning Comm’n*, 174 A.3d 260, 268-271 (applying public good flexibility to a university’s organization for Jewish students) and *McDonald, et al v. District of Columbia Bd. of Zoning Adjustment*, D.C. Court of Appeals 20-AA-0264 (decided April 6, 2023) (In granting variances needed for development of a continuing care retirement community, Board properly applied the public good flexibility doctrine to applicants, a church that was a non-profit entity providing community services and a for-profit entity that proposed to serve a statutorily recognized public need by constructing an assisted living facility in an area with high demand for continuing care retirement communities), *affirming* Application No. 19823 (Wisconsin Avenue Baptist Church; February 14, 2020). The Board may consider the public interest nature of a variance application both with respect to exceptional situation and practical difficulty. *Neighbors for Responsive Gov’t, LLC v. District of Columbia Bd. of Zoning Adjustment*, 195 A.3d 35, 56 (D.C. 2018); *Monaco*, 407 A.2d 1091, 1098 (D.C. 1979).

The Board concludes that the subject property is faced with an exceptional situation and condition by virtue of a confluence of factors, including the Applicant’s long-standing use of the site in a public service, its need to upgrade its facilities and to expand in a location proximate to its congregation,⁵ and the physical constraints of the site, which is improved with three buildings that lack internal connections, have misaligned floors, and are contributing to a historic district. The

⁵ The Applicant testified that its synagogue must be located within a reasonable walking distance of its congregant members due to unique institutional principles of Orthodox Judaism: on the Jewish Sabbath and on holidays, Orthodox Jews are explicitly prohibited from operating or riding any kind of vehicle (car, bus, train, bike, scooter, Ubers, Metro, etc.), and are not allowed to carry or use umbrellas, regardless of the weather; therefore, Sabbath-observant members of a Jewish Orthodox congregation typically live within a 30-minute walk of a synagogue. (Exhibit 12; Transcript of February 28, 2024, at 125-126.) According to the Applicant, the “closest full service Orthodox synagogue in the District” is located six miles from the subject property and the Applicant’s sustained presence at the subject property “is critical to the cohesion and stability of Kesher’s existing congregation” of approximately 300 families who live in Georgetown or within walking distance of the subject property. (Exhibit 12.)

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Board credits the Applicant's testimony that its institutional programs and administrative needs have increased since the 1930s, leading to the Applicant's acquisition of two buildings on adjoining lots. However, the three buildings require improvements to address matters relating to accessibility, life safety, and security. The Board also agrees with the Applicant that the subject property is unusually small in comparison to other nearby places of worship.

Practical difficulties. An applicant for an area variance is required to show that the strict application of the zoning regulations would result in "practical difficulties." *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). A showing of practical difficulty requires "[t]he applicant [to] demonstrate that ... compliance with the area restriction would be unnecessarily burdensome...." *Metropole Condominium Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1084 (D.C. 2016), quoting *Fleishman v. District of Columbia Bd. of Zoning Adjustment*, 27 A.3d 554, 561-62 (D.C. 2011). In assessing a claim of practical difficulty, proper factors for the Board's consideration include the added expense and inconvenience to the applicant inherent in alternatives that would not require the requested variance relief as well as "the weight of the burden of strict compliance" and the effect the requested variances would have on the overall zone plan. *Barbour v. District of Columbia Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976); *Gilmartin* 579 A.2d at 1171. The need to expand does not automatically exempt a public service organization from all zoning requirements. In applying for an area variance, a public service organization must show (1) that the specific design it wants to build constitutes an institutional necessity, not merely the most desired of various options, and (2) precisely how the needed design features require the specific variance sought. *Draude v. District of Columbia Bd. of Zoning Adjustment*, 527 A.2d 1242, 1256 (D.C. 1987).

The Board concludes that the strict application of the zoning regulations would result in peculiar and exceptional practical difficulties to the Applicant as the owner of the subject property because compliance with the applicable rear yard and lot occupancy requirements would prevent the Applicant from accommodating its present and future needs at the site, potentially precluding its continued presence at its current location and jeopardizing its continued existence. The Board credits the Applicant's assertion that the project design was "driven by [the Applicant's] specific religious and institutional needs"⁶ and that strict compliance with zoning requirements "would significantly and negatively impact [the Applicant's] ability to address the programmatic needs of its current congregation and resolve the significant accessibility and code compliance issues currently present" at the subject property. (Exhibit 12.)

⁶ The Applicant stated its institutional needs as: a modernized synagogue, fully accessible and providing code-compliant elevator access, circulation aisles, and fire suppression and egress; a safe, secure facility with necessary protection of the entry and perimeter that provides a transition from the street to the building interior; improved building and programmatic efficiency through the integration of the three existing buildings into a single building with a lobby and circulation area; adequate social hall and kitchen space for congregant gatherings and occasional larger gatherings during mission-related events; an appropriately sized study hall and library; space for member counseling, education, and small informal gatherings and socializing; installation of new plumbing, electrical, mechanical, and life safety systems that conform to applicable codes; accessible restrooms consistent with code requirements considering the building size and occupancy. (Exhibit 12.)

The application described the Applicant's need to expand its facilities to meet current code, accessibility, life safety, security, and programmatic requirements. For example, the accessibility and mechanical, engineering, and plumbing systems of the existing synagogue have not been fully modernized to current codes and other requirements since the building was constructed in the 1930s. (Exhibits 12, 38.) The Applicant's project will improve security through the provision of an entry vestibule and will enhance accessibility by making interior connections to the existing buildings, such as providing elevator access to each floor.

With respect to lot occupancy, the Applicant testified that the difference between 53 percent (the existing lot occupancy) and 60 percent (the maximum permitted as a matter of right) equated to "only 424 square feet of land area being available to Kesher to address [its] institutional needs ... while remaining within the matter-of-right maximum lot occupancy." The Board credits the Applicant's assertion that 424 square feet was insufficient to address "its institutional needs, particularly the significant accessibility, egress, and security needs" and that strict compliance with the lot occupancy requirements would require the Applicant to reduce the size of its planned addition by approximately 1,150 square feet, which would "effectively eliminate[] all the proposed building core elements (elevator, stairs, lobby, vestibule) that are required to address the considerable accessibility and security issues on the Property." (Exhibit 12.) The core elements could not be inserted into the Applicant's existing structures without causing significant impacts to the historic façades and layouts of the buildings, the interior of the existing sanctuary, and the size of the existing programmatic spaces that the Applicant described as already insufficient to meet institutional needs. Similarly, the Applicant testified that "[c]ompliance with the 20-foot rear yard requirement would cause many of the same practical difficulties" (Exhibit 12.)

No substantial detriment to the public good. Approval of the requested area variances will not result in substantial detriment to the public good. The Board credits the Applicant's testimony that the project was intended primarily to provide additional space and to address accessibility and circulation issues, upgrade life-safety measures, enhance security, and to provide the basic infrastructure, support spaces, and programmatic spaces to accommodate the needs of the Applicant's congregation. The seating capacity of the synagogue will not change significantly, and the Applicant did not anticipate an increase in the size of its membership or programming at the site as a result of the new building. (Exhibits 12, 39.) The project design will not unduly impact the light or air available to nearby properties, or compromise the privacy available to any other property. Neither abutting property has windows that face the Applicant's building, and the provision of a rear yard at the subject property will minimize light and air impacts of the new development. Under the circumstances, the Board did not agree with ANC 2E or the other parties that approval of the variances should be subject to conditions restricting the use of the rear yard or the new 3rd-floor terrace.

No impairment of the zone plan. Approval of the requested variances will not substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. The Residential House zones accommodate non-residential uses that support the predominantly

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low- to moderate-density residential areas suitable for family life. The requested variances will be consistent with the Residential House zoning designation of the subject property by facilitating the orderly development and use of land and structures; recognizing and reinforcing the importance of neighborhood character, walkable neighborhoods, and improvements to the overall environment to the health of the city; and allowing for limited compatible non-residential uses. Approval of the requested variances is also consistent with the intent of the R-3/GT zone to protect the Georgetown National Historic Landmark District and its historic character, buildings, and open space. The Applicant's project was designed to protect the integrity of its three contributing buildings, and the additional ground coverage of the new development will encourage a general compatibility between the siting of the addition and the existing neighborhood without impeding the quiet residential character of the areas or introducing an incompatible nonresidential use at the subject property.

Special exception. The Applicant proposed to locate an elevator override and the top of a new egress stair on the roof of the addition without providing the setbacks from building walls required under Subtitle C § 1504.1.⁷ As shown on the plans submitted with the application, the elevator override and egress stair will extend approximately five feet and approximately 3.5 feet above the roof, respectively, with no setbacks. (Exhibits 21A1, 38, 39.) The Board is authorized under Subtitle C § 1506.1 to grant relief from the setback requirements as a special exception, and is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to grant special exceptions, as provided in the Zoning Regulations, when, in the judgment of the Board, the special exception 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 Map, subject to specific conditions. (See Subtitle X § 901.2.) Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning and to the issues and concerns stated by ANC 2E, the Board determined that the application met the requirements for approval of the requested special exception.

Consistent with the requirements of Subtitle C § 1506.1(b), the Board concludes that the Applicant demonstrated that a reasonable effort was made to provide for the stairway and elevator override in compliance with the required setbacks. The application demonstrated that the Applicant's ability to provide needed mechanical equipment, stairway, and elevator override with the required setbacks was hindered by the configuration of the subject property and the three existing contributing buildings. The Applicant's plan to enlarge the existing buildings, with new internal connections to create one building, limited the options for locating the new elevator. Nonetheless, the Applicant attempted to reduce the degree of relief needed; for example, the Board credits the expert testimony of the Applicant's architect that the mechanical system selected for the project to power the elevator reduced the amount of setback relief needed. (Transcript of February 28, 2024 at 147.) The Board also credits the testimony of the Office of Planning that "locating the proposed elevator and stairway at the required setback distance from the rear wall would be difficult to

⁷ Pursuant to Subtitle C § 1504.1, a penthouse or rooftop structure must be set back from the edge of the roof upon which it is located by a distance equal to its height from the front, rear, and certain side building walls (with certain exceptions not relevant to this application).

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accomplish,” in part because of “the inability to locate an elevator in the existing historic structures.” (Exhibit 28.)

The Board agrees with the Applicant and the Office of Planning that the application satisfied the criteria for approval of the requested special exception under Subtitle C § 1506.1(c). The strict application with the setback requirements would result in construction that would be unduly restrictive, prohibitively costly, unreasonable, and inconsistent with building codes. The Applicant designed the development to provide a new elevator, which is needed to provide greater accessibility than is available in the existing buildings. The new elevator was planned for the addition and not within an existing structure, as would be necessary to achieve compliance with the setback requirement. Locating the elevator within the building core would compromise the west wall of the synagogue, limit accessibility by hindering access to the egress stairs, and create issues related to compliance with code requirements. (Exhibits 28, 39; Transcript of February 28, 2024 at 120, 145-146.) Similarly, the location of a new egress stair was selected to avoid intruding on a planned lobby and adverse consequences for the interiors of the existing buildings. The Board credits the expert testimony of the Applicant’s architect that the locations of the elevator and stair, which determined the locations of the related penthouses, were designed to facilitate safe egress out of the building. (Transcript of February 28, 2024 at 135.)

For the same reasons, the Board concludes that, due to conditions relating to the Applicant’s buildings, full compliance with the penthouse setback requirements would be unduly restrictive, prohibitively costly, and unreasonable. The application demonstrated that, despite the required setbacks, the planned design of the addition will minimize the visibility of the elevator override and stair from abutting streets or other properties, especially considering that the addition will have a lower height than any of the three existing buildings, the existence of a parapet wall that will obstruct views of the stairs, and the location of the elevator override in the interior of the lot. The Board agrees with the Office of Planning’s favorable comments on the planned locations for the elevator override and the top of the new egress stairs, which were based on OP’s conclusion that the strict application of the setback requirements “would result in unduly restrictive construction.” (Exhibit 28.)

Subtitle X, Chapter 9. The Board concludes that approval of the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, as is required for approval of the application under Subtitle X § 901.2 and Subtitle C § 1506.1(a). Approval of the special exception is consistent with the purpose of Subtitle C § 1506.1, which provides flexibility from the penthouse and rooftop structure setback requirements when, as in this instance, the strict application of the requirements would be unduly restrictive and inconsistent with building codes. Approval of the requested special exception is consistent with the intent of the Residential House (R) zones to provide for stable residential areas suitable for family life and supporting uses, to provide for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development, to recognize and reinforce the importance of neighborhood character, walkable neighborhoods, and improvements to the overall environment to the overall housing mix and health of the city, and to

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allow for limited compatible non-residential uses. Approval of the requested special exception is consistent with the purposes of the Georgetown Residential House (R-3/GT) zone to protect the Georgetown historic district and the integrity of contributing buildings. Especially considering the limited visibility of the planned penthouses, the Board concludes that relief from the setback requirements will not detract from the historic character of the buildings at the subject property. The Board credits the testimony of the Office of Planning that the absence of setbacks would not alter the historic exterior of the three buildings (Exhibit 28) and also notes that the Applicant is pursuing approval of the project from the Commission of Fine Arts and has cooperated with the Old Georgetown Board on its design.

The Board concludes that approval of the requested special exception will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. The Applicant submitted a sight-line study (Exhibit 21A1 at 23) demonstrating that the elevator override will not be visually intrusive, while the egress stair and mechanical units on the roof of the new building will not be visible from the street level. (Transcript of February 28, 2024 at 147.) Nor will the Applicant's penthouse proposal adversely affect the light, air, or privacy available to nearby properties.

Great weight. The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04.) For the reasons discussed above, the Board agrees with OP’s recommendation that, in this case, the application should be approved.

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976. (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A).) In this case, ANC 2E voted in support of the application with certain conditions and with the expectation that the Board would accept the conditions or the Applicant would “proactively keep its commitment to its neighbors regarding the conditions.” (Exhibit 20.) For the reasons discussed above, the Board determined that the application met the requirements for approval of the requested zoning relief without the imposition of any conditions. The Board also notes that some of the conditions stated by ANC 2E are outside the scope of the Board’s jurisdiction in this application; for example, those conditions addressing the installation of landscaping on adjoining properties and construction management matters. The Board was not persuaded that limits on the use of the open area and third-floor terrace were necessary, especially considering that the Applicant’s proposal is not likely to increase the intensity of the use of the subject property and that views from the subject property into nearby residences will be limited. The Board notes that the Applicant agreed to implement the measures proposed by the ANC to address concerns raised by the owner of adjoining properties.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof for a special exception under Subtitle C § 1506.1 from the penthouse setback requirements of Subtitle C § 1504.1 and, pursuant to Subtitle X § 1002, for area variances from the rear yard requirements of Subtitle D § 207.1 and from the lot occupancy requirements of Subtitle D § 210.1 to allow a three-story addition to three existing buildings devoted to religious

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and accessory office and education uses in the R-3/GT zone at 2801 and 2803 N Street, N.W. and 1308 28th Street, N.W. (Square 1235, Lots 161, 163, and 800). Accordingly, it is **ORDERED** that the application is **GRANTED** in conformance with the plans in the record, as shown in Exhibits 21A1 and 21A2, incorporating updates made in Exhibit 38, provided that the Applicant shall have the flexibility to modify the approved plans as required to secure final approval from the U.S. Commission of Fine Arts and Old Georgetown Board, or their respective staffs, provided that no modification may substantially alter the exterior design shown on the approved plans, and provided further that no modification will create any new areas of relief.

VOTE: 5-0-0 (Frederick L. Hill, Lorna L. John, Chrishaun S. Smith, Carl H. Blake, and Anthony J. Hood voting to APPROVE)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:  On behalf of
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: June 13, 2025

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF BUILDINGS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE

RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.