

July 7, 2025

**VIA IZIS** 

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Frederick L. Hill, Chairperson Board of Zoning Adjustment 441 4th Street, NW, Suite 200S Washington, DC 20010

Re: BZA Case No. 21341

**Applicant's Supplemental Statement** 

Chairperson Hill and Honorable Members of the Board:

The District of Columbia Department of General Services (the "Applicant") submits the following supplemental statement in support of its application to construct a new antenna tower in the RA-1 zone.

Following multiple discussions with the Department of Buildings Zoning Administrator, the zoning relief required to accommodate the proposed antenna tower at the MPD 4th District Headquarters (PAR 01010055) was clarified and this submission addresses that change. The Zoning Administrator on July 2, 2025 determined that the methodology for the relief requires a use variance because the subject property is located in a residential zone. The Applicant has attached an updated Burden of Proof ( $\underline{\textbf{Tab A}}$ ) and Zoning Self Certification Form ( $\underline{\textbf{Tab B}}$ ) to reflect the new relief requested.

On Monday, June 23, 2025, the Applicant presented the project to Advisory Neighborhood Commission 4B (the "ANC"). Due to time constraints, the ANC was unable to hold a vote. The ANC has taken formal action to support the relief during a special meeting on July 6, 2025, at which the Applicant advised the ANC of the new use variance relief and the ANC voted on the properly requested zoning relief.

The Applicant has also included a Motion to Late File this supplemental material, attached as <u>Tab C</u>. The hearing is scheduled for Wednesday, July 30, 2025, and materials were due on or before June 30, 2025, pursuant to Subtitle Y § 300.15. The Applicant respectfully submits that there is good cause for the Board to accept this filing, as the enclosed materials reflect recent developments stemming from its discussions with the Department of Buildings Zoning Administrator the ANC.

Sincerely,

Cozen O'Connor

Meridith Moldenhauer

Zachary Bradley

#### **Certificate of Service**

I hereby certify that on this 7th day of July, 2025, a copy of the foregoing Supplemental Statement and enclosures was served, via email, on the following:

District of Columbia Office of Planning 1100 4<sup>th</sup> Street SW, Suite E650 Washington, DC 20024 planning@dc.gov

Advisory Neighborhood Commission 4B c/o Sophia Tekola, SMD 4B06, Chairperson 4B06@anc.dc.gov

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## Tab A

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

MODIFIED STATEMENT OF THE APPLICANT

APPLICATION OF

D.C. DEPARTMENT OF GENERAL SERVICES

ANC 4B

#### I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of the Applicant, D.C. Department of General Services (the "Applicant"), as the implementing agency executing this project on behalf of the D.C. Office of Unified Communications ("OUC"), for the property located at 6001 Georgia Avenue (SSL: PAR01010055) (the "Property"), in support of its application for use variance relief pursuant to 11 DCMR Subtitle X § 1001.4 for the construction an antenna tower in the RA-1 zone.

This request reflects a modification of the relief previously contemplated. The Applicant initially anticipated seeking special exception relief under Subtitle C § 1313.6. Upon further consultation with the Zoning Administrator, it was determined that use variance relief, rather than special exception, is required because the new antenna tower will be sited in the RA-1 portion of a split-zoned lot, and the RA-1 zone does not permit antenna towers as a matter-of-right or by special exception. In addition, the proposed tower does not comply with the setback and separation requirements of Subtitle C §§ 1313.8 and 1313.9. The Applicant incorporates by reference the area variance arguments previously set forth in §§ VII and VIII of its earlier Burden of Proof statement, in the record as **Exhibit 11**.

#### II. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the "Board") has jurisdiction to grant the variance relief requested herein pursuant to Subtitle X § 1000.1 and Subtitle Y § 100.3 of the Zoning Regulations.

#### III. BACKGROUND

#### A. The Property and the Surrounding Neighborhood

The Property is a large, rectangular-shaped lot approximately 133,981 sq. ft. in land area. The Property is bounded by Quackenbos Street NW to the north, Peabody Street NW to the south, 9th Street NW to the east, and Georgia Avenue NW to the west. The Property is a split-zoned lot located in MU-4 and RA-1 zones in the Brightwood neighborhood of Ward 4. A copy of the Zoning Map exists in the record at **Exhibit 11.** 

The Property is improved with two existing self-supporting towers: one measuring 400 feet and the other 700 feet in height (the "Existing Antennas") maintained and operated by OUC. The Existing Antennas are located in the RA-zoned portion of the Property. The Property is also improved with a structure that serves as the Washington D.C. Metropolitan Police Department's Fourth District Headquarters and two accessory structures. It is situated approximately one mile south of the Maryland border. The surrounding area is primarily residential in character, with a mix of single-family homes, apartment buildings, and neighborhood-serving retail along Georgia Avenue. The Property is not located within a historic district.

#### **B.** The Project

The Applicant proposes to remove the Existing Antennas and replace them with a single, consolidated 500-foot self-supporting antenna tower (the "Proposed Antenna"). The architectural plan set exists in the record as **Exhibit 11**. The Proposed Antenna will be engineered to accommodate the relocation of all existing telecommunications equipment currently in use, including critical infrastructure operated by the Metropolitan Police Department, the Federal Bureau of Investigation, the Washington Metropolitan Area Transit Authority, and the Office of Unified Communications. The Proposed Antenna will be located entirely within the RA-zoned portion of the Property. The Proposed Antenna is necessary to replace structurally compromised infrastructure and to ensure the continuity of essential public safety and government

communications throughout the District.

#### IV. NATURE OF VARIANCE RELIEF SOUGHT AND STANDARD OF REVIEW

After seeking confirmation from the Department of Buildings Zoning Administrator the Applicant is now seeking use variance relief pursuant to Subtitle X § 1001.4 to construct an antenna tower in the RA-1 zone. While the Existing Antennas have long operated on the site, they are not permitted either by right or special exception in the RA-1 zone. Thus, the Applicant seeks variance relief to allow the replacement of the structurally compromised Existing Antennas with the new, consolidated Proposed Antenna in order to support critical public safety and government communications infrastructure.

Under D.C. Code  $\S$  6-641.07(g)(3) and 11 DCMR Subtitle X  $\S$  1000.1, the Board is authorized to grant variance relief where it finds that three conditions exist:

- (1) The Property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;
- (2) The owner would encounter practical difficulties or undue hardship if the zoning regulations were strictly applied; and
- (3) The variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.
- 11 DCMR Subtitle X § 1001.1; see also French v. Board of Zoning Adjustment, 658 A.2d 1023, 1035 (1995); see also Capitol Hill Restoration Society, Inc. v. Board of Zoning Adjustment, 534 A.2d 939 (1987).

A use variance should be granted "where a reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations." *See id.* at 542. The Court of Appeals has recognized that approval of a use variance is justified when the relief requested is minor relative to the nature of the surrounding community. *See Oakland Condominium v. Board of Zoning Adjustment*, 22 A.3d 748, 750 (2011). In the *Oakland* case, the Court of Appeals affirmed the Board's holding that the goal of zoning regulations as to non-conforming uses was to control the

proliferation of *new* uses, not necessarily continued uses. *See id.* at 757.

In assessing the variance test, the Board may apply a more flexible standard of review for a public service organization, "especially where the organization is seeking the zoning relief in order to meet a public need or serve the public interest." *See Neighbors for Responsive Government v. D.C. Bd. of Zoning Adjustment*, 195 A.3d 35, 56 (D.C. 2018); *see also Monaco v. D.C. Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097 (1979). The flexible standard of review can be applied regardless of whether the applicant seeks to expand an existing use or add a new use to the property in question. *See id.* at 59. As part of this reduced standard of review, the Board may more fully weigh the equities of an individual case, including the organization's needs, in finding an exceptional situation or condition. *See id.* at 56; see also Monaco at 1098; *see also National Black Child Development Institute, Inc. v. D.C. Bd. of Zoning Adjustment*, 483 A.2d 687, 690 (1984).

#### V. <u>APPLICANT MEETS BURDEN FOR VARIANCE RELIEF</u>

### A. The Property is Affected by an Exceptional Situation or Condition

The phrase "exceptional situation or condition" applies not only to the land, but also to the existence and configuration of a building on the land. *See Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment,* 320 A.2d 291, 294 (D.C. 1974). The unique or exceptional situation may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Bd. Of Zoning Adjustment,* 579 A.2d 1164, 1168 (D.C. 1990).

The exceptional situation or condition affecting the Property arises in large part from the programmatic need for a highly specialized communications facility to support essential public safety and government operations. The scale, function, and infrastructure requirements of the Proposed Antenna go well beyond typical land use and create unique siting constraints that limit viable alternatives. The Existing Antennas are the only facilities of their size and capacity in the District and serve as critical infrastructure for public safety and government communications.

Furthermore, they are structurally compromised and cannot remain in service.

This situation is further distinguished by the permitting and regulatory history. *Oakland Condo. v. D.C. Bd. of Zoning Adjustment*, 22 A.3d 748, 754 (D.C. 2011). The Existing Antennas current nonconforming location contribute to the unique condition as the prior permitting history creates a exceptionally unique condition for phasing out the Existing Antennas for the Proposed Antennas. Additionally, the Applicant engaged in extensive pre-filing consultations with the Zoning Administrator and is submitting this updated request for relief based on a good-faith understanding of the Zoning Administrators clarification that use variance relief was required.

The Property is also uniquely impacted by its split zoning. The existing MPD Building occupies the entire MU portion of the lot where the tower would be permitted by special exception. The combination of split zoning, the location and condition of the Existing Antennas, the unique scale of the infrastructure, and the essential nature of the services it supports together constitute an exceptional situation or condition under the variance standard.

#### B. The Applicant Will Face Undue Hardship with Strict Zoning Compliance

Here, the Applicant faces undue hardship complying with Subtitle C § 1313.4, which prohibits antenna towers in the RA zone. Operationally, the RA-zoned portion of the Property is the only feasible location for the Proposed Antenna. Relocating the Proposed Antenna to the MU-zoned portion of the Property would require demolition of the existing MPD building, which is not a practical or feasible option. Alternatively, abandoning the site altogether and relocating the infrastructure to a different MU-zoned property elsewhere in the District would require extensive analysis, site acquisition, and engineering to determine viability; such an option is not viable. Any alternative would result in substantial undue hardship to the Property owner, the District, by delaying the replacement of the structurally unsound Existing Antennas. This delay could lead to loss of critical services and impose significant city wide impacts given the critical nature and

complexity of the infrastructure involved. Here, no zoning-compliant alternative exists that would allow the necessary infrastructure to be constructed without unacceptable disruption to public services. The inability to use the RA-1 portion of the lot for this purpose creates an undue hardship for the District as property owner and service provider.

### C. The Variance Relief Will Not Cause Substantial Detriment to the Public Good or the Zoning Regulations and Maps

The Proposed Antenna will not be of substantial detriment to the public good and will not substantially impair the intent, purpose, or integrity of the Zoning Regulations. The Project does not introduce a new use but replaces two existing nonconforming antenna towers that have operated on the Property for decades. The Proposed Antenna consolidates the Existing Antenna's into a single, modern structure designed to current safety and engineering standards, thereby improving site conditions and reducing the overall intensity of the use.

The surrounding neighborhood is already accustomed to the presence of large-scale antenna infrastructure. The Existing Antennas have long shaped the physical character of the site, and the Project maintains that balance by keeping the use in place without expanding its footprint or introducing new impacts. In fact, replacing two towers with one will reduce visual clutter and overall site disruption.

Replacing the Existing Antennas is also necessary to ensure uninterrupted public safety and government communications. Relocating the infrastructure to another site in the District would not only create serious logistical and operational burdens, but could also shift impacts to communities unfamiliar with a tower of this scale. The Proposed Antenna preserves continuity of service, minimizes change to the neighborhood, and improves safety and compliance. The Project serves the public interest by maintaining critical infrastructure in a safer and more compliant form, with minimal impact on the surrounding community.

#### VI. ADDITIONAL DOCUMENTATION REQUIRED UNDER § 1313.11

The Applicant incorporates § VI of its original Burden of Proof, in the record as **Exhibit 11** for this section.

#### VII. COMMUNITY OUTREACH

The Property is located within the boundaries of ANC 4B. The Applicant notified ANC 4B of its intent to file and presented the Project to the community on May 28, 2024. The Applicant presented to the ANC on June 23, 2025. The Applicant was made aware that The Bridges Academy, a nearby school, currently uses the National Park Service owned land directly north of the project site (PAR 01010054 and Square 2983 Lot 0801) as a play space. As indicated in the submitted Plan Set, this area will be used by MPD for temporary parking during construction while the existing MPD parking lot is closed. *See* Ex. 11, Tab B. The Applicant has sent a letter to The Bridges Academy notifying them of the project, emphasizing its critical importance to citywide and neighborhood public safety, and providing a timeline for the planned work.

At a special meeting held on July 6, 2025, the ANC voted in favor of a resolution supporting the relief requested. During the meeting, the Applicant updated the ANC on the revised scope of zoning relief, informing them that the application now seeks use variance relief. The ANC subsequently voted to adopt a resolution in support of the application.

#### VIII. <u>CONCLUSION</u>

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

Respectfully Submitted, COZEN O'CONNOR

Meridith H. Moldenhauer

Zachary Bradley

## Tab B

#### BEFORE THE BOARD OF ZONING ADJUSTMENT DISTRICT OF COLUMBIA FORM 135 – ZONING SELF-CERTIFICATION Project Address(es) Square Lot(s) Zone District(s) 6001 Georgia Avenue NW PAR 0101/0055 MU-4/RA-1 4B05 Single-Member Advisory Neighborhood Commission District(s): **CERTIFICATION** The undersigned agent hereby certifies that the following zoning relief is requested from the Board of Zoning Adjustment in this matter pursuant to: X § 1000.1 - Use Variance X § 1002.1 - Area Variance X § 901.1-Special Exception Relief Sought 1313.8 and 1313.9 1313.4 **Pursuant to Subsections**

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)

Satish Bagai  Satish Bagai  Satish Bagai  Owner's Signature Office Control by Satish Bagai Office Control by Satish Bagai Office Control by Satish Bagai Control by Satish Bagaine Control Control Bagaine Control Con				Owner's Name (Please Print) Satish Bagai				
Agent's Signature					Agent's Name (Please Print)  Meridith Moldenhauer			
Date	5/2/2025	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 <u>completely</u> 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 4<sup>th</sup> 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.)	~133,980	N/A	N/A	~133,980	N/A
Lot Width (ft. to the tenth)	~235.58	N/A	N/A	~235.58	N/A
Lot Occupancy (building area/lot area)	~13.64%	N/A	60%	~13.64%	N/A
Floor Area Ratio (FAR) (floor area/lot area)	~0.33	N/A	2.5	~0.33	N/A
Parking Spaces (number)	120	~23	N/A	120	N/A
Loading Berths (number and size in ft.)	1	1	N/A	1	N/A
Front Yard (ft. to the tenth)	N/A	N/A	N/A	N/A	N/A
Rear Yard (ft. to the tenth)	320	15	N/A	320	N/A
Side Yard (ft. to the tenth)	10	N/A	N/A	10	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)	N/A	N/A	N/A	N/A	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 C

#### **INFORMATION**

A motion is a procedural device requested by a party to the case to bring a limited, contested issue before the Zoning Commission (ZC) or the Board of Zoning Adjustment (BZA) for decision. A party may submit a motion at any point; however, it is recommended that motions be submitted ahead of time for consideration by the ZC or BZA.

Use this form if you are a party to a case and you would like to request that the ZC or BZA entertain your motion. For example:

- a). Motion to continue or dismiss; or
- b). Motion to reopen a closed record to accept a document.

A motion will be entertained by the ZC or BZA at a meeting or as a preliminary matter at a hearing. At that time a decision will be rendered. Please note, in the case of a request to reopen the record, pursuant to 11 DCMR Subtitle Z § 602.6 and Subtitle Y § 602.6, the request will be presented to the Chair for consideration. The request must demonstrate good cause and the lack of prejudice to any party. If granted, the materials shall be entered into the record.

#### **INSTRUCTIONS**

Any Motion, as provided by the District of Columbia Zoning Regulations (11 DCMR), that is not completed in accordance with the following instructions shall not be accepted:

- 1. Forms must be completely filled out. All information shall be furnished by the Maker of the Motion or Request. If additional space is necessary, use separate sheets of 8 ½" x 11" paper to complete the form (drawings and plans may be no larger than 11" x 17").
- 2. On this sheet and/or on a separate sheet of 8 ½" x 11" paper, state:
  - Case Number;
  - Name of Movant;
  - The relief you are requesting;
  - Each and every reason you believe you are entitled to relief and why the ZC or BZA should grant your motion, including relevant references to the Zoning Regulations or Map;
  - Whether consent was obtained by other parties;
  - Certificate of Service;
  - Signature and Date; and
  - Contact Information.
- 3. Submit the required Form 150 to the Office of Zoning using:
  - o The Interactive Zoning Information System at www.dcoz.dc.gov for electronically filed cases;
  - o In person or by US mail at 441 4<sup>th</sup> Street, N.W., Suite 200-S, Washington, D.C. 20001; or
  - o By email to <a href="mailto:zcsubmissions@dc.gov">zcsubmissions@dc.gov</a> for the BZA.
- 4. Pursuant to 11 DCMR Subtitle Z § 407.3 and Subtitle Y § 407.3, at the time of filing, Movants of Motions are required to serve all Applicants, Petitioners, Appellants, Parties, and/or Intervenors, and the Office of Planning in the above-referenced ZC or BZA case via either mailed letter, hand-delivery, or electronic mail.



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.



### BEFORE THE ZONING COMMISSION OR BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA



#### **FORM 150 – MOTION FORM**

THIS FORM IS FOR PARTIES ONLY. IF YOU ARE <u>NOT</u> A PARTY PLEASE FILE A FORM 153 – REQUEST TO ACCEPT AN UNTIMELY FILING OR TO REOPEN THE RECORD.

Before completing this form, please review the instructions on the reverse side. Print or type all information unless otherwise indicated. All information must be completely filled out.

				· ·						
CASE NO.:										
Motion of:	☐ Applicant	☐ Petitioner	☐ Appellant	☐ Party	☐ Intervenor	□ Other				
PLEASE TAKE NOTICE, that the undersigned will bring a motion to:										
Points and Authorities:										
			Points and Auti	iorities:						
	On a separate sheet of 8 ½" x 11" paper, state each and every reason why the Zoning Commission (ZC) or Board of Zoning Adjustment (BZA)									
material facts. If yo	should grant your motion, including relevant references to the Zoning Regulations or Map and where appropriate a concise statement of material facts. If you are requesting the record be reopened, the document(s) that you are requesting the record to be reopened for must be submitted separately from this form. No substantive information should be included on this form (see instructions).									
be submitted separa	ately from this form	. No substantive ii	nformation shou	d be included o	on this form (see in	structions).				
			Consent	:						
Did movant obtain	Did movant obtain consent for the motion from all affected parties?									
	es, consent was obtained by all parties   Consent was obtained by some, but not all parties									
	empt was made									
Further Explanation:										
CERTIFICATE OF SERVICE										
I hereby certify that	on this	D day of		Month		, Y Y Y Y				
I served a copy of th	e foregoing Motion	to each Applicant,	, Petitioner, App	ellant, Party, an	d/or Intervenor, ar	nd the Office of Planning				
in the above-referen	erenced ZC or BZA case via:    Mailed letter									
Signature:	MM -									
Print Name:										
Address:										
Phone No.:			E-	Mail:						