

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Applicant's Statement of Institute of Caribbean Studies
1106 3rd Street, NE (Square 0748, Lots 72 and 824).

I. INTRODUCTION.

This Statement is submitted on behalf of Institute of Caribbean Studies (the “**Applicant**”), owner of the property located at 1106 3rd Street, NE (Square 0748, Lots 72 and 824¹) (the “**Property**”). The Property is zoned PDR-1 and is currently improved with a two-story row building that has been vacant for approximately 10 years. The Applicant, the Institute of Caribbean Studies (ICS), is a nonprofit organization selected by the District of Columbia’s Department of Housing and Community Development (DHCD) to redevelop the property at 1106 3rd Street NE through a Solicitation for Offer (SFO) issued December 9, 2022. As part of this public selection process, ICS agreed to conditions that were later memorialized in a series of enforceable legal documents, including a recorded Affordable Housing Covenant, Loan Agreement, Deed of Trust, and Declaration of Covenants.

These agreements impose binding obligations on ICS to deliver two deeply affordable residential units — one targeted at 50% of Area Median Income (AMI) and another at 80% AMI — while also providing nonprofit office space on-site.² Accordingly, the Applicant is proposing an interior renovation, a three-story rear addition, and a third story addition (the “**Project**” or the “**Addition**”). The Applicant is proposing office use on the first floor, and two residential units above, one on each floor.

Office space is permitted as a matter-of-right in the PDR-1 Zones, but residential use is not permitted. Accordingly, the Applicant is seeking relief from the use provisions of U-801 in order to increase the existing non-conforming residential use.

Additionally, The Applicant seeks special exception relief pursuant to Subtitle J § 5200.1 from the transition setback requirements of Subtitle J § 210.1, which apply to PDR-zoned lots abutting residential zones or uses. These setbacks are required unless the PDR-zoned lot is used exclusively for residential purposes.

¹ Lot 824 is a small tax lot with 168 square feet of land area that will be combined with Lot 72 to create one single record lot for the Project.

² See Exhibit B of the Declaration of Covenants and Exhibit B of the Affordable Housing Covenant.

In this case, the subject Property will be used for both residential and nonprofit office purposes, as required by the DHCD covenant. Because the project includes office use, the transition setback requirements are triggered—despite the inclusion of residential use—solely due to the presence of the office component. This office use disqualifies the site from the residential-only exemption under J § 210.1.

Accordingly, relief is sought under Subtitle X § 901, the general special exception criteria, as applied through J § 5200.1, to allow reduced or waived transition setbacks that would otherwise require up to 25 feet of building separation from adjacent residential zones or uses and would be impossible to meet given the lot is only 17.8 feet in width.

II. JURISDICTION OF THE BOARD.

The Board has jurisdiction to grant the special exception relief pursuant to X-901.2 and the use variance requested pursuant to X-1002.

III. BACKGROUND.

A. Description of the Subject Property and Surrounding Area

The Property is an interior lot comprised of Lot 72 and Lot 824 and has a total square footage of 1,658 square feet of land area. It is currently improved with a two-story row building most recently used as a single-family dwelling. Abutting the Property to the north is 1108 3rd Street, NE, a row building used as a single-family dwelling. Beyond that, to the north, are five other row buildings used as single-family dwellings. Abutting the Property to the south is 1100 3rd Street (Lot 83), which is owned by the District and is used as a park area. Further south, across L Street, is Swampoodle Dog Park and Playground. Abutting the Property to the west is an apartment building. Abutting the Property to the east is 3rd Street, NE. Third Street serves as the boundary between the PDR-1 zone in which the Property is located, and the MU-5A Zone and RF-1 Zone across third street. Directly across third street is an apartment building and many blocks of row dwellings in the RF-1 Zone beyond that. Similarly, L Street serves as the boundary between the PDR-1 zone and MU-5A zone. The western portion of the square is zoned PDR-3. Overall, there is a mix of zoning and a variety of uses making up this diverse neighborhood and portion of the District.

The Property benefits from exceptional transportation access and neighborhood connectivity, making it highly suitable for both residential and nonprofit office use. Located in the

heart of the Near Northeast neighborhood—adjacent to the vibrant NoMa and H Street corridors—the site boasts a Walk Score of 88, classifying it as a "Very Walkable" where daily errands can be accomplished on foot. The Property is within a three-minute walk of Noma Gallaudet Metro Station, providing access to Metrorail's Red Line, enabling regional and intercity transit without reliance on a car. In addition to rail service, the Property is served by several Metrobus routes—including the D8, X1, and X2—along H Street and Florida Avenue, ensuring robust east-west and north-south bus connectivity.

The area is also well-integrated into the District's bicycle infrastructure, with Capital Bikeshare stations, protected bike lanes, and proximity to the Metropolitan Branch Trail. The Property lies within Ward 6 in a neighborhood that has undergone significant transformation from industrial to mixed-use, residential, and cultural uses. This transition enhances the site's compatibility with the proposed affordable housing and community-serving office use. Nearby amenities include grocery stores, cafes, theaters, and parks.

In sum, the Property's central location, unparalleled access to public transportation, and surrounding walkable amenities create a highly livable environment, strongly supporting the viability and community value of the proposed redevelopment.

B. Proposed Project.

The Applicant is proposing a renovation and Addition to the existing building, including a three-story rear Addition to extend the existing building further to the west, as well as a third story Addition on top of the existing building footprint. There is an existing mural on the property, facing south, which will not survive the construction. That wall faces the park, and the Applicant will have a new mural painted after the proposed Project is complete. The Applicant is in contact with NoMa BID, which coordinates the NoMa in Color Mural Festival. Through that festival and associated program, NoMa BID has offered to paint a new mural.

IV. SPECIAL EXCEPTION RELIEF

As described above, the Applicant cannot meet the transition setback requirements of J-210.1 and cannot be exempt due to the presence of the office use. The request for special exception relief is evaluated pursuant to J-5200, subject to the special exception criteria of X-901.2. The proposal meets the general special exception criteria as follows:

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

The proposal is fully consistent with the general purpose and intent of the Zoning Regulations, which seek to balance land use compatibility, neighborhood character, and policy-driven goals such as affordable housing and economic development. The requested relief from transition setback requirements arises solely because the site cannot meet the setback triggered by the nonprofit office component. However, this use is modest in scale, low impact, and serves the immediate community, encouraging equitable access to opportunity. Furthermore, the Property lies in a transitional area at the edge of NoMa, where industrial uses are diminishing, and new mixed-use development is increasingly common. Allowing the Project to move forward with reduced setbacks supports compatible infill that respects both the regulatory intent and the evolving urban context.

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

The proposed development will not adversely affect the use of neighboring properties. The adjacent lots are not anticipated to be negatively impacted by a low-density project that includes only two residential units and a nonprofit office component. In fact, this Project will improve the existing condition—a long-vacant and underutilized structure—by introducing new affordable housing, neighborhood-serving programming, and streetscape improvements.

The physical scale of the Project is consistent with surrounding development patterns, and the proposed nonprofit office use will not generate material impacts related to noise, parking, or traffic. Landscaping and a fence could further buffer any perceived transitions between uses. The special exception relief sought is limited to transition setback requirements that, if strictly applied, would render the site functionally undevelopable, or unable to meet the . Granting this relief enables a context-sensitive, mission-driven redevelopment that promotes community reinvestment without displacing existing uses or introducing disruptive impacts.

V. USE VARIANCE.

The Applicant is requesting use variance relief from the Use Permissions of U § 801 in order to construct a new multi-family building in the PDR-1 Zone. The Board is authorized to grant use 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 conditions;
- (2) The owner would encounter an 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.

See French v. District of Columbia Board of Zoning Adjustment, 628 A.2d 1023, 1035 (D.C. 1995); see also, Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment, 534 A.2d 939 (D.C. 1987).

Purpose of the Variance

The variance procedure has many purposes. It is designed to provide relief from the strict letter of the regulations, protect zoning legislation from constitutional attack, alleviate an otherwise unjust invasion of property rights, and prevent usable land from remaining idle. These purposes infuse meaning into the phrase “exceptional and undue hardship.” *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 541-42 (1972).

“Reasonably Adapted”

It is well established that because of the nature of variances and their effects on the zone plan, the stricter “undue hardship” standard applies to requests for use variances while the “practical difficulty” standard applies to requests for area variances. *Palmer v Board of Zoning Adjustment* 287 A.2d 535 (D.C. 1972). For the Board to grant use variance relief, “it must be shown that the regulations ‘preclude the use of the property in question for any purpose for which it is reasonably adapted, *i.e.*, can the premises be put to any conforming use with a fair and reasonable return arising out of the ownership thereof?’” *Palmer v. BZA*, at 542, citing 2 A. Rathkopf, *The Law of Zoning and Planning*, Note 21, at 45-5 (3d ed. 1962).

Flexible Non-Profit Standard

As articulated by the D.C. Court of Appeals in *Monaco v. BZA*, 407 A.2d 1091 (D.C. 1979), the use variance standard may be applied more flexibly when a nonprofit or public-serving entity seeks relief in order to carry out its mission in the public interest. The Court recognized that regulatory compliance burdens imposed on mission-driven organizations—particularly where they stem from government-imposed obligations or serve clear community goals—may qualify as

“exceptional conditions” under the variance test. The Court upheld relief where the applicant faced an involuntary and mission-driven hardship, necessitating a deviation from strict use permissions to function. This principle was reaffirmed in *National Black Child Development Institute v. BZA*, 483 A.2d 687 (D.C. 1984), where the Court again upheld a variance for a nonprofit organization seeking to serve a vulnerable population, emphasizing that hardship arising from the need to operate in a constrained zoning environment—to fulfill a public interest mission—may justify a more flexible application of the use variance standard. Together, these decisions support the notion that nonprofit entities attempting to meet public needs under restrictive zoning conditions may merit zoning relief that might not be available to private or for-profit actors.

A. The Subject Property is Unique Because it is Affected by an Exceptional Situation or Condition.

Confluence of Factors:

As recognized in *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164 (D.C. 1990), an exceptional condition can arise from a confluence of factors affecting a single property. This site is burdened by an extraordinary confluence of legal, regulatory, physical, and practical constraints: (1) expired nonconforming residential rights, (2) a binding affordability and nonprofit office and deeply affordable unit obligations; (3) property history; and (4) a physically constrained lot.

These conditions are not self-imposed but rather stem from involuntary District mandates and the site's inherent limitations, and failure to retain the previous status with long-time nonconforming residential use on the Property. Under *Monaco v. BZA*, such overlapping public-service obligations and property-specific burdens justify a more flexible application of the use variance test and strongly support granting the requested relief to enable ICS to fulfill its mission while complying with the District's own affordability goals.

1. Expired Nonconforming Use Due to Long-Term Vacancy

The subject Property has been vacant for over a decade, far exceeding the three-year limit established by Subtitle C § 204.1 of the Zoning Regulations for maintaining a nonconforming use. As a result, the prior residential use, though once legally nonconforming, is now considered abandoned, and cannot be re-established without zoning relief. Even a single residential unit, let

alone two, would now require a use variance, as the Property can no longer rely on any “grandfathered” rights. This circumstance dramatically heightens the burden on the Applicant, who must now overcome the full threshold for reintroducing residential use in the PDR-1 zone. Importantly, this condition is uniquely applicable to this specific site. Unlike many other nonconforming residential properties that retain legal status due to ongoing occupancy or recent use, this site’s prolonged vacancy places it in a distinct regulatory posture, one where the prior use has been fully extinguished, and redevelopment is constrained by both zoning and covenantal obligations. This intensifies the practical and legal barriers faced by the Applicant and further supports the argument that the property is subject to an “exceptional situation” under *Monaco v. BZA*.

2. DHCD Covenant Restrictions:

The Property is subject to a recorded Affordable Housing Covenant imposed by the District’s Department of Housing and Community Development (DHCD), which requires the creation of two affordable homeownership units (targeted at 50% and 80% AMI, respectively) and nonprofit office space. These requirements are binding for 40 years and were imposed as part of the District’s Solicitation for Offer (SFO) process, through which ICS was competitively selected. The covenant is not aspirational or discretionary—it represents a land use obligation that directly conflicts with the underlying PDR-1 zoning, which prohibits residential use altogether and severely limits office use. This creates a circumstance where the Applicant is bound by the District to deliver uses the Zoning Regulations do not allow. And then as noted above, DHCD held the Property for a number of years, losing its grandfathered nonconforming status, which only became nonconforming in ZC Case No. As noted in *McDonald v. DC Board of Zoning Adjustment*, “When an applicant seeks a variance to meet a public need or serve the public interest, **the Board of Zoning Adjustment may consider the applicant's particular proposed use and its needs as an exceptional condition**, because public need is an important factor in granting or denying a variance.” *McDonald*, 291 A.3d 1109 (DC Ct. App 2023).

Further, the Applicant, the Institute of Caribbean Studies (ICS), is a 501(c)(3) nonprofit organization dedicated to cultural, educational, and civic programming. As the D.C. Court of Appeals recognized in *Monaco v. BZA*, 407 A.2d 1091 (D.C. 1979), and *National Black Child Development Institute v. BZA*, 483 A.2d 687 (D.C. 1984), the variance standard may be applied

more flexibly when a nonprofit seeks relief to advance a public-serving mission. In this case, the nonprofit's hardship arises not from speculative development pressure, but from the regulatory burden of complying with District-imposed affordability and office requirement. Similarly, in *McDonald v. BZA*, 291 A.3d 1109 (D.C. 2023), the Court reaffirmed that when an applicant seeks relief to meet a public need, the BZA may consider that use itself as part of the exceptional condition analysis. And finally, the Board and Office of Planning has previously considered the need to adhere to similar DHCD programs as a factor in assessing whether a property is faced with an exceptional condition/situation leading to an undue hardship. In BZA Case No. 20197, OP stated in its report:

The applicant has entered into an operating agreement with the District of Columbia Department of Housing and Community Development (DHCD) through the Vacant to Vibrant DC initiative to construct a three-unit apartment house, allocating two of the units available to residents earning 80% to 120% of the median family income. The programmatic need to adhere to Vacant to Vibrant requirements with DHCD contribute to an exceptional situation that would result in an undue hardship to the applicant, should a third dwelling unit not be allowed.

OP Report Case No. 20197.

3. Property History:

The building was constructed in 1896, predating the zoning regulations, and was constructed as a dwelling unit. It appears that DHCD acquired the Property via a Trustee's Deed in 1989, likely due to default. The Property was subject to extended vacancy which appears to have been the result of lien complications, title clearance issues, and delays commonly associated with public agency property disposition and redevelopment programs. DHCD ultimately sold the property to the Applicant in 2025 (after they obtained the contract in 2024), by which time it had deteriorated significantly and had been unused for an extended period, resulting in the loss of the grandfathered residential status.

B. Strict Application of the Zoning Regulations Would Result in an Undue Hardship to the Owner.

An owner is presented with an undue hardship when their "property cannot be put to any zoning-compliant use for which it can be reasonably adapted." *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. 1972). In a recent case, the D.C. Court of Appeals

upheld this Board's approval of a use variance and noted that economic harm to an owner in converting a portion of their property into a zoning-compliant use, coupled with significant limitations on the utility of a building, constituted undue hardship necessary to satisfy the second prong of the use variance test. *The Oakland Condo v. District of Columbia Bd. of Zoning Adjustment*, 22 A.3d 748 (D.C. 2011).

There are no matter-of-right options that meet the DHCD covenant requirements. Strict application of the Zoning Regulations imposes an undue hardship on the Institute of Caribbean Studies (ICS) by making it legally and physically impossible to comply with the District of Columbia's recorded covenant and financing agreements to provide residential use. ICS, a nonprofit organization, was awarded the Property through a competitive District-issued Solicitation for Offers (SFO), conditioned on its delivery of affordable residential units and nonprofit office space. These obligations are enforceable for 40 years and were memorialized in the Affordable Housing Covenant, Loan Agreement, and Settlement Statement.

Under current zoning (PDR-1), residential use is not permitted, and the residential use has been abandoned, requiring the establishment of new residential use via use variance. There are no matter-of-right development options that would allow ICS to satisfy its legal obligations to DHCD. If zoning relief is not granted, ICS would be in default under its financing documents and risk reversion of the property back to the District. This hardship is not speculative, it is real, documented, and contractually triggered by failure to meet the required use mix.

Moreover, the physical configuration of the building compounds the problem. Delivering two deeply affordable homeownership units—targeted at 50% and 80% MFI—on top of operational office space requires efficient spatial separation and subsidy-dependent construction. As confirmed in the Loan Agreement and project pro forma, the only financially viable way to meet this mandate is by splitting the structure into two stacked condominium units, with shared access to ground-floor nonprofit office space. There is no economically or physically viable alternative to satisfy both the density and use requirements within the building envelope, especially with deeply affordable homeownership goals.

Additionally, the subject Property's small lot size and constrained layout impose a significant physical hardship that limits feasible development options—even in the absence of the

DHCD-mandated residential and office uses. The narrow width, shallow depth, and vertical organization of the existing structure make it physically impractical to accommodate multiple uses or subdivide the building in a way that supports both operational functionality and regulatory compliance. Any matter-of-right PDR use would need to fit within these same spatial confines, yet most permitted PDR uses—such as production, warehousing, or light manufacturing—would result in materially greater intensity and potential adverse impacts on adjacent residential zones, likely not meeting the requirements to waive the transitional setbacks.

In contrast, the proposed nonprofit office use is uniquely tailored to the site's limitations: it occupies only a single floor, serves a public mission, and generates minimal traffic, noise, or logistical burden. Even modest expansions of the office footprint—such as spanning all three levels—could begin to strain the character and compatibility of the site with neighboring residential uses. In that sense, this office use represents one of the only viable, low impact uses available that aligns with both zoning objectives and neighborhood context. The existing lot constraints, when layered with transition setbacks and nonconforming use expiration, leave the Applicant with no by-right options that are both physically workable and neighborhood-appropriate, further reinforcing the need for the requested relief.

This hardship is not self-imposed in the *Monaco* sense. While ICS submitted a proposal under the SFO, the residential and office use requirements were dictated by the District as conditions of award. ICS is not asking for relief to pursue a profit-driven use—it is asking for relief to comply with District-imposed mandates. As the D.C. Court of Appeals recognized in *Monaco v. BZA*, 407 A.2d 1091 (D.C. 1979), and reaffirmed in *NBCDI v. BZA*, 483 A.2d 687 (D.C. 1984), nonprofits seeking to carry out a public-serving mission under restrictive zoning are entitled to a more flexible application of the variance standard, particularly where the hardship arises from public mandates and regulatory conflict, not voluntary development choices.

C. Relief Can be Granted without Substantial Detriment to the Public Good and without Impairing the Intent, Purpose, and Integrity of the Zone Plan.

The request is to provide affordable units in a configuration consistent with the needs identified in the area and generally consistent with the block, which is made up of residential row houses in a PDR zone. While this may be zoned PDR-1, the Property is located on the transitional

edge of NoMa, where older industrial uses are steadily being replaced by mixed-use and residential development. The proposed continuation—and modest expansion—of residential use at this site is compatible with the evolving context and does not conflict with the purposes of the PDR zone, which remains intact elsewhere in the area. The proposal will be consistent with the pattern on the block. It should further emphasize that the Future Land Use (FLU) Map still designates the area as “Commercial Moderate Density, Residential Moderate Density, and Pro-Tech,” opening the door for additional residential and commercial density in addition to PDR uses. The alternative solution, a map amendment, would take over a year and cost nearly three times more than a BZA variance, delaying much-needed affordable housing and significantly delaying the schedule associated with the recorded covenant.

The proposal will be generally consistent with what already exists on the block. By providing two affordable units and nonprofit office space, the project fulfills DHCD’s covenant requirements while addressing the broader public need for affordable housing. Additionally, the nonprofit office space will advance the mission of the Institute of Caribbean Studies, dedicated to highlighting the contributions of Caribbean Americans and advocating on issues affecting Caribbean Americans. This aligns with the District’s housing priorities and provides a clear public benefit. Accordingly, relief can be granted without substantial detriment to the public good and without impairing the intent, purpose, and integrity of the Zone Plan.

VI. CONCLUSION.

For the reasons outlined in this Applicant’s Statement, the Applicant respectfully requests the relief as detailed above.

Respectfully Submitted,

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