

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

**401 Anacostia Road, SE
Parcel 203, Lot 9**

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted on behalf of Mary’s House for Older Adults, Inc. (the “Applicant”) in support of its application pursuant to Subtitle X § 901.2 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”) to permit a special exception use in R-Use Group C; and pursuant to 11-X DCMR § 1000.1 for variances from the special exception criteria under 11-U DCMR § 203.1(g)(2)¹, the driveway width requirement of 11-C DCMR § 711.6, the lot occupancy requirement of 11-D DCMR § 304.2, and the side yard requirement of 11-D DCMR § 307.4. Approval of the requested relief will enable the Applicant to construct a continuing care retirement community (“CCRC”) for 15 individuals in the R-3 zone at premises 401 Anacostia Road, SE (Parcel 203, Lot 9) (the “Property”).

Attached hereto is a letter from the Applicant authorizing the filing and processing of this application. Also provided is a filing fee in the amount of \$5,720 for the special exception and variance relief requested.

Pursuant to Subtitle Y § 300.15, the Applicant will file its prehearing statement with the Board of Zoning Adjustment (“BZA” or “Board”) no fewer than 21 days prior to the public hearing for the application. In this statement and at the public hearing, the Applicant will provide testimony and evidence to meet its burden of proof to obtain the Board’s approval of the requested special exception and variance relief. The foregoing statement serves as a preliminary discussion to demonstrate how the Applicant meets the burden of proof for this case.

I. BACKGROUND

A. Expiration of BZA Order No. 19482

The subject application is prompted by a revitalized effort to construct the proposed CCRC at the Property. In February 2017, the Applicant filed BZA Application No. 19482, which

¹ Pursuant to 11-U DCMR § 203.1(g)(2), a continuing care retirement community use that does not include assisted living or skilled nursing is limited to eight residents. The term “assisted living facility” is not defined in the 2016 Zoning Regulations. Pursuant to 11-B DCMR § 100.1(g), words not defined in the Zoning Regulations shall have the meanings given in Webster’s Unabridged Dictionary. According to Webster’s Unabridged Dictionary, the word “assisted living” is defined as “a system of housing and limited care that is designed for senior citizens who need some assistance with daily activities but do not require care in a nursing home.” The proposed continuing care retirement community use will have health and wellness programming, physical and hydrotherapy coordination and referral of community and social based services available for residents. The Applicant is in the process of seeking confirmation from the Zoning Administrator (“ZA”) that the limited care provided at the proposed continuing care retirement community constitutes an assisted living facility. Upon receipt of the ZA’s confirmation, the Applicant will withdraw its variance request from 11-U DCMR § 203.1(g)(2).

requested the same relief that is now sought with this application. The Board approved the prior application by summary order; however, due to circumstances beyond its control the Applicant was unable to file for building permits within the two-year validity period as required under Subtitle Y § 702.1. As a result, the prior approval expired. The Applicant now has funding for the project and hence seeks to effectively renew the special exception and variance relief that was previously approved by the Board, which will allow construction of the project to proceed. The plans included with this application are **exactly** the same as the plans previously approved under BZA Order No. 19482. (See Sheets A1-A3, A5.)

B. Property and Surrounding Area

The Property contains approximately 8,885 square feet of land area and is located in the Fort Dupont Park neighborhood of Southeast, Washington D.C. See Baist Atlas Map at **Tab A**. As shown on the portion of the Zoning Map attached hereto as **Tab B**, the Property is located in the R-3 zone district, and is directly adjacent to land that is zoned RA-1. The Property is currently improved with a vacant, single-family residence. The Property abuts Anacostia Road, SE to the east and Minnesota Avenue, SE to the west. The Property is mid-block on the west side of Anacostia Road, which runs between B Street, Croffut Place, SE, and Ely Place SE.

The predominant land uses near the Property are moderate-density multi-family apartment buildings and institutional buildings (e.g., Kimball Elementary School, Sousa Middle School, religious buildings). The Property is bordered to the north by a large apartment building and associated parking lot. Further to the north along Anacostia Road are several four-story apartment buildings, each with surface parking lots. To the south of the Property is a religious institutional building and its parking lot, which also wraps around and borders the Property to the west. To the east, across Anacostia Road, are several apartment complexes. To the southeast of the Property is Fort Circle Park, which includes the Washington Nationals' Youth Baseball Academy.

Furthermore, the Property is well-serviced by Metrobus. Bus lines V1, V2, and V4 are located within 0.1 miles of the Property, while bus lines U5 and U6 are also nearby. The Property is also 0.3 miles from a Capital Bikeshare station, which is located at the intersection of Ely Place and 37th Place, SE.

C. Proposed Continuing Care Retirement Community

1. Design

The Applicant proposes to construct a CCRC for seniors who are sixty years or older and identify as lesbian, gay, bisexual, transgendered, queer, or same gender-loving ("LGBTQ/SGL") (hereinafter referred to as the "Project"). As indicated on the architectural plans submitted with this application, which are exactly the same as those previously approved by the BZA, the Project is designed with three stories and a basement. The first floor will consist of communal amenities, including a living room, kitchen, dining room, library, office and great room as well as one dwelling unit. The first floor offers multiple spaces and opportunities for residents to share meals and enjoy recreational activities, while also providing quiet space for more personal pursuits. The second and third floors will consist of an additional 14 dwelling units, each with a space for a bed,

bath, and small independent living area. Thus, the Project will include a total of 15 units. To provide for graceful aging in place, the basement level will offer exercise equipment, an area for physical therapy, yoga, and a small hydrotherapy pool. The building roof will feature a green, vegetated area and a terrace. The Project also will feature four off-street parking spaces made accessible via a curb cut located on the southern edge of the Property.

To illustrate the Project's design and location in relation to nearby buildings, the Applicant has attached contextual images at **Tab C**.

2. Purpose

The Applicant is a non-profit organization that desires to provide housing for an undeserved population that would be the first of its kind in the District. The purpose of the Project is to establish a warm, intimate, and home-like atmosphere for senior-aged LGBTQ/SGL community members who are unfortunately often subjected to bigoted and prejudicial housing practices. The proposal involves a shared housing experience that honors the whole person as s/he ages in an environment of dignity and respect regardless of gender and/or sexual orientation. The Applicant aims to provide the residences at a rate affordable to moderate income individuals. Accordingly, the Project will serve as a unique and important contribution to the District's housing supply, expanding the diversity of housing types and addressing the cultural and relational implications of seniors who identify as LGBTQ/SGL.

II. VARIANCE RELIEF

A. Relief Requested

Pursuant to Subtitle X § 1000.1, the Applicant is requesting a variance from Subtitle U § 203.1(g)(2) which limits a CCRC use to eight (8) residents if it does not contain assisted living or skilled nursing facilities. The proposed CCRC would contain 15 residents. As noted above, the Applicant is in the process of seeking confirmation from the Zoning Administrator ("ZA") on whether the limited care provided at the proposed CCRC constitutes "assisted living." *See* Fn. 1. Should the ZA provide such confirmation, the Applicant will withdraw this particular variance request. Additionally, the Applicant is requesting area variances from the driveway width requirement under Subtitle C § 711.6, the lot occupancy requirement of Subtitle D § 304.2, and the side yard requirement of Subtitle D § 307.3 in the R-3 zone.

B. Burden of Proof

Pursuant to D.C. Code §6-641.07(g)(3) and 11-X DCMR § 1000.1, the Board is authorized to grant variances "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." Under these circumstances the Board can grant variance relief, provided that there will be no "substantial detriment to the public good" and "without substantially impairing the intent,

purpose, and integrity" of the Zoning Regulations. A showing of "practical difficulties" must be made for an area variance, whereas the more difficult showing of "undue hardship" must be made for a use variance. *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535 (D.C. 1972).

With respect to area variances, "[i]n order to prove that an applicant suffers from 'practical difficulties' two elements must be proven: The applicant must demonstrate that (1) compliance with the area restriction would be unnecessarily burdensome; and (2) the practical difficulties are unique to the particular property...Economic use of the property has been considered as a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty in variances cases." *Fleischman v. D.C. Bd. of Zoning Adjustment*, 27 A.3d 554, 561-62 (D.C. 2011) (emphasis added).

Furthermore, the District of Columbia Court of Appeals has held that "an exceptional or extraordinary situation or condition" may encompass the building on a property, not merely the land itself." *See Clerics of St. Viator v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974); *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

C. Argument

An Applicant for an area variance must prove that, as a result of the attributes of a specific piece of property described in Subtitle X § 1000.1, the strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to the owner of the property. Given the history and purpose of the Project, the strict application of the condition that limits a CCRC without assisted living or skilled nursing facilities to eight residents is an exceptional situation that would impose an undue burden upon the Applicant.

As discussed above, the Applicant successfully obtained the requisite special exception approval for the Project in June 2017. *See* BZA Order No. 19482. At that time, there were no special conditions that needed to be satisfied for the Board to approve a CCRC as a special exception in the R-3 zone. Only a month following the issuance of BZA Order No. 19482 did the Zoning Commission approve a text amendment that added the specific criteria under Subtitle U § 203.1(g), which are now applicable to the Project. *See* Z.C. Case No. 17-01. Although the Project satisfies most of this new criteria, the eight-resident limitation creates an extraordinary situation in this case.

Due to circumstances beyond its control, the Applicant was unable to submit for a building permit that would have vested the previous approval prior to enactment of the aforementioned amendments to the CCRC (special exception) use criteria. Under the current use criteria, the Applicant would suffer unreasonable practical difficulties if the proposed CCRC is required to adhere to the eight-resident maximum. Importantly, the Applicant has recently secured funding for the Project – funding that is based on the 15 units that were previously approved under BZA Order No 19472. A redesign of the proposed CCRC would require a substantial effort and is unnecessary in this instance, given that the same exact plans previously garnered approval from the community and the Board. Additionally, a redesign of the Project would jeopardize the Applicant's funding

and ability to deliver the Project that was previously approved. The Board's approval of the requested variance relief would provide a significant assist in this regard.

It is well-established that the Board can take into consideration an organization's mission when considering requests for zoning relief ("the BZA may be more flexible when it assesses a non-profit organization...[and] **public need for the use is an important factor** in granting or denying a variance." *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091, 1098 (emphasis added)). Such is the case in this application.

The Applicant is a non-profit organization committed to helping the LGBTQ/SGL community by developing housing and inclusive environments that comprehensively address affordability and access, and eliminating discrimination based upon the status of the individual. Thus, the Applicant's intent and purpose for the Project are directly in line with the District's goals related to housing, equity, and inclusivity. Increasing the city's housing supply remains a foremost priority, especially for the undeserved LGBTQ/SGL community. In addition, there is an ongoing need to provide the senior population with more housing opportunities and resources to gracefully age in place. The Project will advance these important objectives. Thus, the policy considerations weigh in favor of granting a variance to allow more than eight residents at the Project. The circumstances surrounding the original approval of the Project remain the same. The layout, scale, and design of the Project will be compatible with the surrounding area, and the need for this type of housing overrides any concerns that would support limiting the CCRC to eight residents. The Project will have a greater impact in addressing the District's housing needs if permitted to accommodate 15 residents, and it will not cause any greater impact on adjacent properties or the Zone Plan than had previously been evaluated by the Board. For these reasons, a variance from Subtitle U § 203.1(g)(2) should be granted in this case.

The physical constraints of the Property also create practical difficulties when considering the purpose of the Project. Pursuant to Subtitle C § 711.6, a driveway width of 20 feet is required. However in this case, the Applicant proposes an eight-foot driveway width in order to accommodate the Project. The lot has a narrow width of 60 feet; and unlike other R-3 zoned property in the square it is surrounded on three sides by other properties and does not benefit from any form of alley access. The lack of an alley, coupled with the requirement to place the four parking spaces at the rear of the building (*see* Subtitle C § 710.2), necessitates the need for the driveway located at the southern edge of the Property. If the reduced driveway width is not allowed – i.e., a strict application of the 20-foot driveway width requirement is applied – this would significantly reduce the building envelope, which in turn would diminish the number of units and/or room for ancillary activities that are vital to Project (e.g., dining room, recreation, wellness). Even with a reduced width, the drive aisle still enables access to the parking spaces. As such, variance relief is appropriate, not only to allow a substantial CCRC development, but to ensure parking access in order to deter on-street parking that would result in adverse impacts to adjacent properties.

The topographical constraints discussed above support the Applicant's request for other area variances. Pursuant to Subtitle D § 304.2, a maximum lot occupancy of 40% is permitted. The Applicant is proposing 47% lot occupancy. Pursuant to Subtitle D § 307.4, an eight foot side yard is required; however the proposed Project will not provide a side yard along the northern lot line

in order to accommodate the 8-foot driveway along the southern lot line. Unlike a regular apartment building, the Project has programmatic requirements, such as being ADA compliant with wheel chair accessibility on all floors, which require larger than usual floorplates. If the Applicant were required to meet the lot occupancy and side yard requirements the CCRC building would have to be reduced significantly, making it practically difficult for the Applicant to carry out the Project.

Furthermore, lot occupancy and side yard requirements are designed to allow adequate light, air and privacy between buildings. The adjacent parking lots to the north and west provide substantial separation from other adjacent uses, and the required side yard would be provided along the southern lot line of the Property. Therefore, light, air, and privacy would not be substantially impacted, and the increased lot occupancy and the lack of a side yard along the northern property line would not tend to be a detriment to the public good.

In sum, approval of the requested variances is appropriate relief for this case. The eight-resident maximum – a condition that did not exist beforehand when the Board approved the CCRC in 2017 – would be unnecessarily burdensome given the history and purpose of the Project. The constraints of the Property create practical difficulties with respect to parking access and the programmatic needs of the Project. The requested area variances result in no substantial detriment to the public good and do not undermine the purpose and intent of the Zoning Regulations – especially when considering that a CCRC is permitted by special exception in the R-3 zone. Each area variance enables the Project to be constructed to its fullest potential despite the physical constraints of the Property.

III. SPECIAL EXCEPTION RELIEF

A. Relief Requested

As stated above, the Applicant seeks special exception relief pursuant to 11-U DCMR § 203.1(g) from the use permissions of R-Use Group C. The Board can grant the relief requested pursuant to the general special exception standard of review set forth in 11-X DCMR § 901.2.

B. Burden of Proof

Pursuant to D.C. Code §6-641.07(g)(2) and 11-X DCMR § 901.2, the Board is authorized to grant special exceptions where it finds the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map, will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, and will meet such special conditions as may be specified in the Zoning Regulations. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested relief are met. In reviewing an application for special exception relief, “[t]he Board’s discretion... is limited to a determination of whether the exception sought meets the requirements of the regulation.” *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 706 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*,

305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

C. Special Exception for Continuing Care Retirement Community Use

The Project will be harmonious with the purpose and intent of the Zoning Regulations and Zoning Map. Subtitle B § 100.2 of the Zoning Regulations defines “continuing care retirement community” as follows:

A building or group of buildings providing a continuity of residential occupancy and health care for elderly persons. This facility includes dwelling units for independent living, assisted living facilities, or a skilled nursing care facility of a suitable size to provide treatment or care of the residents; it may also include ancillary facilities for the further enjoyment, service, or care of the residents. The facility is restricted to persons sixty (60) years of age or older or married couples or domestic partners where either the spouse or domestic partner is sixty (60) years of age or older.

The Applicant proposes to construct a CCRC on the Property. Under Subtitle D § 100.2(b), the R zones are intended to “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[.]” (emphasis added.) As discussed above, the Project offers affordable housing opportunities for the elder LGBTQ/SGL population in a comfortable, low-intensity environment. Thus, the proposed use is entirely consistent with the stated intent of the R-3 zone. Furthermore, the Property is generally surrounded by land that is zoned R-3 and RA-1, and which contains numerous apartment buildings. As such, the proposed use will be compatible with the existing character of the surrounding area, as a CCRC is residential in nature.

The Project will not tend to affect adversely the use of neighboring property. Adjacent properties along Anacostia Road are primarily moderate density apartment buildings of three or four stories. To the south of the Property is a religious institutional building. There are also several multi-story apartment houses directly behind the Property along Minnesota Avenue. Given the Property’s adjacency to apartment buildings that are of greater density than the proposed Project, the proposed CCRC will blend in seamlessly with the Fort Dupont Park Area. The contextual images provided with this application confirm that the Project’s height and density align with the size and character of other buildings in the neighborhood. (See Tab C).

Lastly, the Project satisfies the “special conditions” required for CCRC special exception approval under Subtitle U § 203.1(g):

203.1 The following uses shall be permitted as a special exception in R-Use Groups A, B, and C, if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9 subject to applicable conditions of each section:

...

(g) *Continuing care retirement community, subject to the provisions of this paragraph:*

- (1) *The use shall include on or more of the following services:*
(A) *Dwelling units for independent living;*
(B) *Assisted living facilities; or*
(C) *A licensed skilled nursing facility;*

The Project will include 15 dwelling units for independent living, or in the alternative, assisted living facilities to support the LBGTQ/SGL community aged sixty years and older. (See Fn. 1.)

- (2) *If the use does not include assisted living or skilled nursing facilities, the number of residents shall not exceed eight (8);*

As detailed in Section II of this statement, the Applicant is requesting a variance from this requirement. As previously noted, the Applicant will withdraw its request for relief from this requirement if the ZA confirms that the limited care provided at the proposed CCRC are considered “assisted living facilities.”

- (3) *The use may include ancillary uses for the further enjoyment, service, or care of the residents;*

As discussed above, the first floor of the Project will consist of several communal amenities, including a living room, kitchen, dining room, library, office and great room. Additionally, the basement level will include exercise equipment and other opportunities for physical and assisted living activities.

- (4) *The use and related facilities shall provide sufficient off-street parking spaces for employees, residents, and visitors;*

The parking requirements for a CCRC in the R-3 zone are specified under Subtitle C. Under Subtitle C § 701.5, the proposed CCRC is a residential use that must provide one parking space per six units (e.g., housing reserved for the elderly). As such, a minimum of three parking spaces must be provided for the 15 proposed dwelling units. The Project will provide four parking spaces at the rear of the Property, thus satisfying the minimum parking requirement.

- (5) *The use, including any outdoor spaces provided, shall be located and designed so that it is not likely to become objectionable to neighboring properties because of noise, traffic, or other objectionable conditions; and*

The location and layout of the proposed CCRC is not likely to become objectionable to neighboring properties because of noise, traffic, or other objectionable conditions. The Project is modest in scale and intensity. The older residents of the Project are unlikely to cause any objectionable conditions.

- (6) *The Board of Zoning Adjustment may require special treatment in the way of design, screening of buildings, planting and parking areas, signs, or other requirements as it deems necessary to protect adjacent and nearby properties.*

The Applicant acknowledges this provision and will implement any special treatment measures that the Board deems necessary for the success of the Project.

IV. DESIGN FLEXIBILITY

The Applicant respectfully requests design flexibility in order to make modifications to the Project that may deviate from the architectural plans submitted with this application. The Applicant recognizes that such design flexibility will be granted so long as the changes do not increase the special exception relief being requested under Subtitle Y § 901.2 and Subtitle U § 203.1(g), the variances requested pursuant to Subtitle X § 1000.1, or create new areas of relief that require further review by the Board.

V. COMMUNITY ENGAGEMENT

The Property is located within the boundaries of Advisory Neighborhood Commission (“ANC”) 7F04. The affected ANC previously voted to support the zoning relief for the Project. (*See* BZA Case No. 19482, Ex. 56.) As required under 11-Y DCMR § 300.8(1), the Applicant’s counsel has informed ANC 7F of this application for special exception and variance relief, and will present the current application at an upcoming duly scheduled meeting of the ANC. The Applicant will continue to diligently engage and collaborate with the ANC throughout the course of this Project.

TAB A

543 P 203/75
2.21 Ac.

2.45 Ac.

5440

312

314

316
318

320

322

324

176.36

P 203
74
8077

326

328

47.7

P 203
61
6375

238.72

46.15

39.2

352
354
358

107

92.05

124

31.95

224.450

20 in 400

4272
8028

4158
8944

4168
9766

3815
3500

3584
704

ST.

33

129.56

28.72

317

131.06

319

28.01

71.12

146

P 203
9

918

P 203
47

J. M. Kidwell
25595

15409
APTS.

801

P 203
66

P 203
63

23046

20 Ac.

P 203
10

30 Ac.

203 Ac.

336.56
220

125.51

187.85
137.13

APTS.

2

42645

127.13

5434

12371

11040

60

7500

125

2863

2736

2736

2736

2736

3025

P 203
124

148.28

151.8

52.10

253.81

3501

3463

3434

3430

3426

3422

3418

3414

8 in

115.08

55

41.52

3269

4715

802

1117

20

2005

15

15

15

15

15

20

7542

1771

2006

20

20

20

20

20

20

20

20

20

20

20

20

20

20

TAB B

Portion of the Zoning Map Showing the Property

**401 Anacostia Road, SE
Parcel 203, Lot 9**

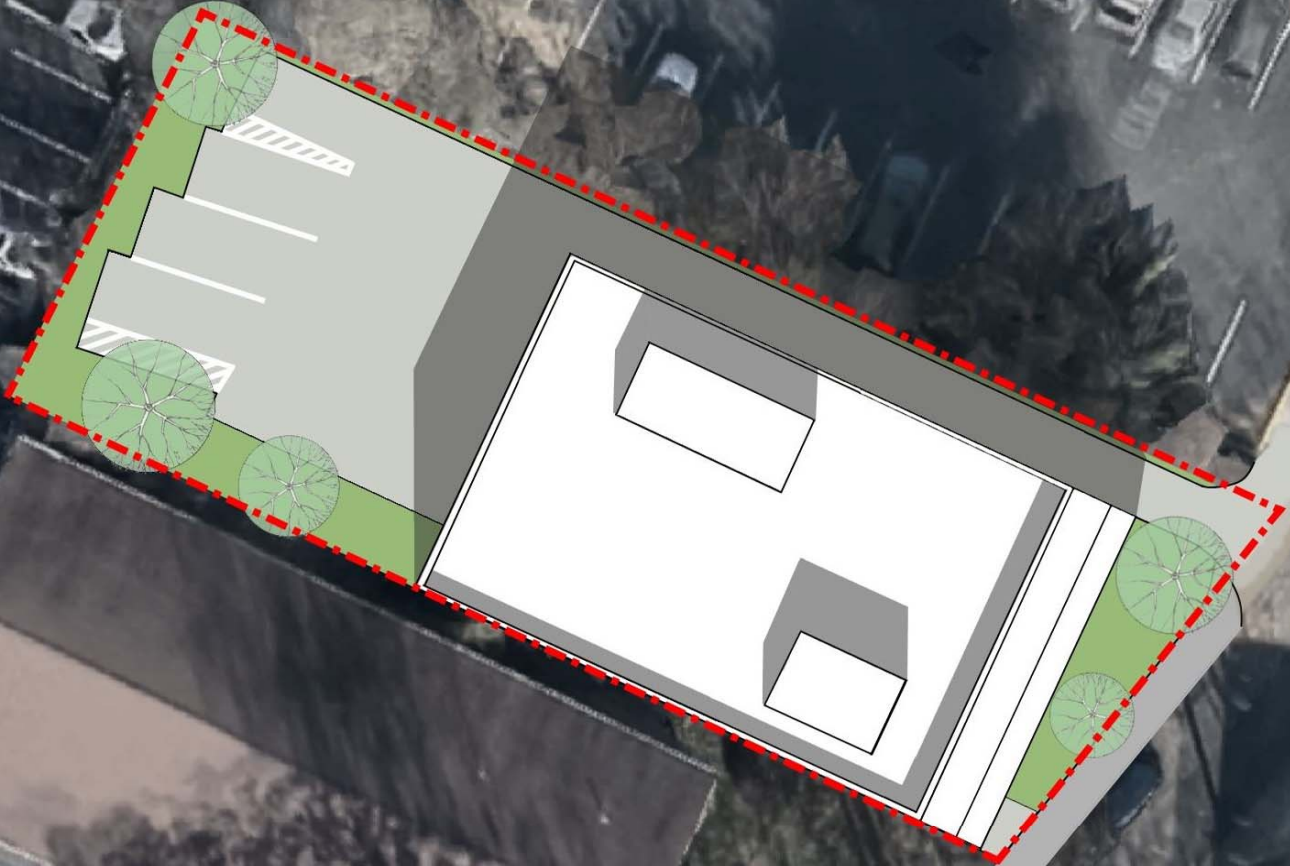
ZONE: R-3

Source: https://handbook.dcoz.dc.gov/zr16_map



<input checked="" type="checkbox"/>	Zone Boundary	
<input checked="" type="checkbox"/>	Zone District	
<input type="checkbox"/>	Pending Zones	
<input type="checkbox"/>	PUDs	
<input type="checkbox"/>	Pending PUDs	
<input type="checkbox"/>	Campus Plans	
<input type="checkbox"/>	Credit Trade Area	
<input type="checkbox"/>	Downtown Sub-Area	
<input type="checkbox"/>	Downtown Designated Street	
<input type="checkbox"/>	Historic Landmark	
<input type="checkbox"/>	Historic District	
<input type="checkbox"/>	Control Employment	

TAB C



0' 20' 40' 80'





Aracosta Ave

Google



KINGDOM HALL
406

Anacostia Rd

