

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Applicant’s Statement of The New Macedonia Baptist Church
2026 Jackson Street, NE; Square 4220, Lot 802

I. INTRODUCTION.

This Statement is submitted on behalf of The New Macedonia Baptist Church (the “**Applicant**”), owner of the property located at 2026 Jackson Street, NE (Square 4220, Lot 802) (the “**Subject Property**”). The Subject Property is located in the MU-4 Zone and is currently unimproved. The Applicant is proposing to construct a new mixed-use building (the “**Building**”) with retail on the ground level and 31 residential units on the floors above (the “**Project**”).

The Property was the subject of a recent Map Amendment (21-14) and is now subject to IZ+; accordingly, 20% of the net residential GFA will be set aside for IZ units. The Property is also subject to two, 15-foot Building Restriction Lines (“**BRL**”) – one to the south along Jackson Street and one to the east, along 22nd Street. The MU-4 zone also has a 15-foot rear yard requirement. There is no way to legally build within the BRLs and the Applicant is instead pursuing relief from the rear yard requirement in order to build at the rear of the lot to make up for two BRLs which consume a full fifty percent (50%) of the total perimeter of the Subject Property.

In terms of specific relief, the Project will require a special exception pursuant to G-1200-1201 (from the requirements of G-405.2), and a variance from G-1201.1(a). Given the limitations on the site, the Applicant is proposing rear-facing (north-facing) windows. G-1201.1(a) requires that “no apartment window [be] located within forty feet (40 ft.) directly in front of another building.” There is an adjacent building at 3200 22nd Street, NE, which has recently been approved for 10 residential units via BZA relief, is also owned by the Applicant. The Applicant is unable to provide forty feet (40 ft.) between the proposed apartment windows and the adjacent building at

3200 22nd Street, NE. Therefore, the Applicant must request variance relief pursuant to X § 1002.1 from the window requirement of G- 1201.1(a).

II. JURISDICTION OF THE BOARD.

The Board has jurisdiction to grant the special exception approval requested pursuant to X § 901.1, Subtitle G §§ 409 and 1200 from the requirements of G § 405.2 and to grant the variance relief pursuant to X § 1002.1.

III. BACKGROUND.

A. Description of the Subject Property and Surrounding Area.

The Subject Property is located in the MU-4 Zone. It is a large corner lot measuring 9,430 square feet in land area. The Subject Property is the only unimproved lot in the square, and most of the surrounding squares. The Property is also subject to two fifteen-foot (15 ft.) BRLs — one on the east adjacent to 22nd Street and one on the south adjacent to Jackson Street, NE — whereas all other properties in this square only have at most one BRL. Accordingly, this is the only property in the area burdened by two BRLs.

As a corner lot, the Subject Property borders the intersection of Rhode Island Avenue, NE. The properties along Rhode Island Avenue, NE are located in the MU-4 Zone and are all used for commercial purposes. Abutting the Subject Property to the north is 3200 22nd Street, NE, the future site of 10 residential units, which is also owned by the Applicant in this case. Abutting the Subject Property to the south is Jackson Street, NE. Abutting the Subject Property to the west is the side yard of a detached single-family dwelling (2024 Jackson Street, NE). Abutting the Subject Property to the east is 22nd Street, NE. The area is characterized by a mix of commercial and low-to moderate-density residential uses.

B. Proposed Project.

The Applicant is proposing to construct a new, mixed-use Building with 31 residential dwelling units and approximately 2,000 square feet of retail space. The proposal is subject to IZ+, so at least 20% of the residential GFA will be set aside for IZ units. The Applicant is providing 5 parking spaces on the ground level of the Building. Aside from its rear yard, the Building will comply with all other development standards of the MU-4 Zone.

IV. THE APPLICATION SATISFIES THE GENERAL AND SPECIFIC SPECIAL EXCEPTION REQUIREMENTS.

A. Overview.

Pursuant to Subtitle X § 901.2 of the Zoning Regulations, the Board is authorized to grant special exception relief where, 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; subject also, in this case, to the specific requirements for relief under G § 1200.

In reviewing applications for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites are satisfied, the Board ordinarily must grant the application. See, e.g., *Nat'l Cathedral Neighborhood Ass'n. v. D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000).

B. General Special Exception Requirements of Subtitle X § 901.2 and Requirements of G § 1200.

Subtitle G § 409 states that the Board of Zoning Adjustment may grant special exception relief from the development standards of Subtitle G subject to any applicable conditions of Subtitle G, Chapter 12 and the General Special Exception requirements of Subtitle X, Chapter 9. The general special exception requirements are as follows: "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 Maps ...” (11 DCMR Subtitle X § 901.2).

The requirements of G § 1200 mirror the general special exception requirements except that G § 1200(a) includes that the special exception be in harmony with the general purpose and intent of the *MU zone*, as well as the Zoning Regulations and Zoning Maps. The Application meets the requirements of G § 1200 and X § 901.2 as follows:

(a) Will be in harmony with the general purpose and intent of the MU zone, the Zoning Regulations, and Zoning Maps;

According to Subtitle G § 400.3, the purpose and intent of the MU-4 Zone is to “Permit moderate-density mixed-use development; provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core; and be located in low- and moderate-density residential areas with access to main roadways or rapid transit stops, and include office employment centers, shopping centers, and moderate bulk mixed-use centers.” The Application is in harmony with the general purpose and intent of the MU-4 Zone, as it proposes moderate density mixed-use development, outside of the central core, in an area with access to main roadways, shopping centers, and rapid transit stops.

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

The surrounding residential properties will be sufficiently separated by existing side yards and the building has been designed so that there are no west-facing windows on the first two stories which will help maintain the privacy of the only adjacent single-family property to the west.

(c) Is subject in each case to any applicable conditions specified in this chapter.

The specific rear yard requirements are described below.

C. Rear Yard Relief: Requirements of G § 1201.

Subtitle G § 1201.1 sets forth additional conditions for relief from the rear yard requirements of G § 405.2. The Board of Zoning Adjustment may grant relief from the rear yard requirements of Subtitle G as a special exception pursuant to Subtitle X, provided:

- (a) No apartment window shall be located within forty feet (40 ft.) directly in front of another building;**

The Applicant is requesting variance relief from the rear yard special exception requirement G-1201.1(a) because the proposed Building will have apartment windows within forty-feet (40 ft.) directly in front of another building — the neighboring building that the Applicant also owns.

- (b) No office window shall be located within thirty feet (30 ft.) directly in front of another office window, nor eighteen feet (18 ft.) in front of a blank wall;**

The Applicant is not proposing office use.

- (c) In buildings that are not parallel to the adjacent buildings, the angle of sight lines and the distance of penetration of sight lines into habitable rooms shall be considered in determining distances between windows and appropriate yards;**

The adjacent buildings to the north and west are parallel. If there are any concerns about non-parallel buildings across the street, the Applicant can provide sight line diagrams.

- (d) Provision shall be included for service functions, including parking and loading access and adequate loading areas; and**

The Applicant is not required to provide any loading and will comply with the parking requirements.

- (e) Upon receiving an application to waive rear yard requirements in the subject zone, the Board of Zoning Adjustment shall submit the application to the Office of Planning for coordination, review, report, and impact assessment, along with reviews in writing from all relevant District of Columbia departments and agencies, including the Department of Transportation, the District of Columbia**

Housing Authority and, if a historic district or historic landmark is involved, the Historic Preservation Office.

The Applicant acknowledges that the Board shall submit the Application to the Office of Planning for coordination, review, report, and impact assessment, along with reviews in writing from all relevant District of Columbia departments and agencies, including the Department of Transportation, the District of Columbia Housing Authority and, if a historic district or historic landmark is involved, the Historic Preservation Office.

V. THE APPLICATION SATISFIES THE REQUIREMENTS FOR AREA VARIANCE RELIEF

The burden of proof for an area variance is well established. The Board of Zoning Adjustment may grant an area variance if it finds that “(1) there is an extraordinary or exceptional condition affecting the property; (2) practical difficulties will occur if the zoning regulations are strictly enforced; and (3) the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan.” *Dupont Circle Citizens Ass'n v. D.C. Bd. of Zoning Adjustment*, No. 16-AA-932, 2018 WL 1748313, at *2 (D.C. Apr. 12, 2018); *Ait-Ghezala v. District of Columbia Bd. of Zoning Adjustment*, 148 A.3d 1211, 1216 (D.C. 2016) (quoting *Washington Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 1000 (D.C. 2005)) (internal quotation marks omitted). As set forth below, the Applicant meets the three-part test for the requested variance for relief from C-306.1(a).

A. Extraordinary or Exceptional Condition affecting the Subject Property resulting in a Practical Difficulty if the Zoning Regulations were Strictly Enforced.

1. Court of Appeals Case Law

To prove an extraordinary or exceptional condition, or uniqueness, the Applicant must show that the property has a peculiar physical aspect or other extraordinary situation or condition.

Monaco v. D.C. Board of Zoning Adjustment, 407 A.25 1091, 1096 (D.C. 1979). Moreover, the unique or exceptional situation or condition may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579A.2nd 1164, 1168 (D.C. 1990).

The second prong of the variance test is whether a strict application of the Zoning Regulations would result in a practical difficulty. It is well settled that the BZA may consider “a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’... Increased expense and inconvenience to an applicant for a variance are among the factors for the BZA’s consideration.” *Gilmartin*, 579 A.2d at 1711. Other factors to be considered by the BZA include: “the severity of the variance(s) requested”; “the weight of the burden of strict compliance”; and “the effect the proposed variance(s) would have on the overall zone plan.” Moreover, it is proper for the BZA to consider “economic use of property and increased expense and inconvenience to the applicant.” *Neighbors for Resp. Gov’t LLC v. D.C. BZA* (D.C. 2018) (citing *Gilmartin* 579 A.2d at 1170-71). Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is “unnecessarily burdensome,” not impossible.

2. Subject Property and Case

The request for variance relief is specifically to allow apartment windows within 40 feet of another building—in this case the Applicant’s building to the north, separated by 6.7 feet. As described above, the Property is unique due to a confluence of factors, including its size, unimproved status, BRLs, and history. It is also the only property in the square and the surrounding squares that is currently unimproved. It is subject to 2 BRLs where, at most, other properties in the area are only subject to one. So, it is both the only unimproved property and the only property subject to two BRLs in the area, making it unique.

Additionally, there is some history that shapes the current status of the lot. It was previously used as a church until a fire destroyed the building. As the property was previously in the R-1-B zone, the large size, proximity to Rhode Island, and BRLs made this property impossible to develop given the R-1-B zone is largely limited to detached single-family homes and the BRLs impacted the available area in the event a subdivision could be approved. Accordingly, the owners successfully pursued a Map Amendment to change this to the MU-4 zone. Even with those efforts, the BRLs still severely limit the buildable land area and make it impossible to achieve the permitted 3.0 density and 75% lot occupancy afforded to IZ projects in this zone.

Without the variance relief, the Applicant would have two choices: (1) remove all windows from the north side of the property; or (2) comply with the full 15-foot rear yard requirement on the north-side. The first choice would require a full redesign, as the proposed windows are required for the existing unit layouts to comply with building code requirements. Accordingly, the Applicant would have to redesign the entire building with windows facing south, west, and east only. This would result in a U-shaped building or a building with multiple courtyards. The resulting building would not only have an inferior design, likely requiring additional relief for courts, but would also result in the loss of square footage akin to the square footage lost in the by-right scenario—or scenario 2.

Scenario 2 contemplates a by-right design where the Applicant provides a full 15-foot rear yard. The lot frontage is 115 feet; accordingly, a 115 ft. x 15 ft. rear yard would result in a loss of 1,725 square feet per floor, for a total of 6,900 square feet (or .73 FAR). This would result in a total FAR of 2.27 and lot occupancy of 56%-- well under the permitted 3.0 FAR and 75% permitted for IZ projects and still under the 2.5 FAR and 60% permitted for non-IZ projects. The resulting

loss of square footage would equate to a loss of 8-10 units, which is an obvious practical difficulty given that the proposed project is already well under the permitted FAR for IZ projects.

3. BZA Case Law

The Board has found that the existence of a BRL on a property can result in a practical difficulty for an applicant. BZA Application No. 20430 of 1501 Erie St. Construction LLC (July 11, 2022) (holding that “the existence of a building restriction line across the northern lot, which greatly reduces the buildable area” created a practical difficulty for the applicant). Similarly, the Office of Planning and Board have found that a property’s exceptional situation can result in a practical difficulty to an applicant if it makes it “very difficult to use the front portion of the lot, and naturally push[es] the mass of the building toward the rear of the lot.” *See* BZA Application No. 20469 of Daniel Hogenkamp (August 10, 2021).

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

The District of Columbia Court of Appeals has stated that “[t]he variance procedure has many purposes. It is designed to provide relief from the strict letter of the regulations ... and prevent usable land from remaining idle.” *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972) (footnote omitted). Permitting the relief will allow the Applicant to utilize the unique dimensions of the site to make the proposed Building more compatible with the MU-4 Zone and the surrounding area than a significantly smaller matter-of-right building. Moreover, the proposed uses are permitted as a matter-of-right.

Relief from the minimum rear yard requirement will permit the construction of a new mixed-use building, which will provide 31 new residential units — 20% of which will be IZ units for the District — that will otherwise conform to the applicable development standards as well as

to the existing building restriction line. Approval of the Application will facilitate the construction of a new detached mix-used building, consistent with the purpose of the MU-4 Zone to provide moderate-density mixed-use developments. But for the existence of 2 BRLs—completely unique to this property, this project would be permitted by right as the building could be shifted forward exactly 15 feet and the windows would be permitted at the 15 ft. mark.

The requested relief is relatively minor in that the difference in window location between a matter-of-right project and the proposed project is only 15 feet (a building with a 15-foot distance from property line with compliant rear yard is permitted to have windows facing another building). The Applicant owns the property to the north, which is being developed as a 10-unit multi-family building and can apprise new owners of the subject development. Presumably the goal of the regulation governing window locations was to protect the privacy of the respective adjacent residents. Given that the Applicant has control over the subject Building's design, it has placed the windows in locations so as to not impact the privacy of the respective residents. The Applicant can provide more information about the site lines. 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 stated above, this Application meets the requirements for special exception and variance relief by the Board, and the Applicant respectfully requests that the Board grant the requested relief.

Respectfully submitted,

Applicant's Statement
2026 Jackson Street, NE

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