

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

Application of
Second New Saint Paul’s Baptist Church

ANC 5C07

STATEMENT OF THE APPLICATION

I.

Nature of Application

This is an application by the Second New Saint Paul’s Baptist Church (the “**Applicant**” or “**Church**”) for variance and special exception relief to allow a slight expansion and modernization of an existing apartment building at 2412 Franklin Street NE (Square 4286, Lot 20) (the “**Property**”). The Property is located in the R-1-B Zone.

Specifically, the Applicant requests variance relief from the restriction on expanding a nonconforming use under 11-C DCMR § 204.1 and the maximum height limit under 11-D DCMR § 303.1. Furthermore, the Applicant requests special exception relief from the penthouse enclosing wall and setback requirements under 11-C DCMR §§ 1503.4 and 1504.1. Except for the relief requested herein, the project will conform to the Zoning Regulations in all other aspects.

II.

Jurisdiction of the Board

The Board has jurisdiction to grant the variance relief requested pursuant to 11-X DCMR § 1000.1 and special exception relief pursuant to 11-X DCMR § 900.1.

III.

Description of the Property and Project

A. **Description of the Property and Surrounding Area**

The Property is an oddly shaped parcel that is bounded on the north by single family houses; to the south by Franklin Street NE, the Second New Saint Paul's Baptist Church and a single-family house; to the east by single family houses, and to the west by Mills Avenue NE. The Property contains approximately 51,459 square feet of land area. The Property has limited frontage on Mills Avenue NE and Franklin Street NE. The Property is the largest lot by a significant amount in the Square and among all of the surrounding squares north of Franklin Street.

The Property is located in the Langdon neighborhood of Ward 5 and is surrounded by detached single family houses to the north, east, and south. To the west of the Property is the Langdon Park Forest Patch and Recreation Center. All of the surrounding properties are in the R-1-B zone.

Second New Saint Paul's Baptist Church owns both 2400 Franklin St. NE and the Property at 2412 Franklin St. NE. While the former is occupied by the Church's sanctuary, 2412 Franklin St. (the Property) is occupied by Green Valley Apartments. Together, both properties further the Church's mission of religious outreach and community engagement. Specifically, Green Valley Apartments is a four-story, 44-foot tall apartment building containing 100 apartments (the "**Building**"). A surface parking lot is located immediately west of the Building on the Property.

The Church constructed the Building circa 1971 to provide desperately needed affordable housing for seniors in the neighborhood. The Building has been continuously operated by the Church, and it continues to provide affordable housing (restricted to individuals earning no more than 50% of the median family income ("**MFI**")) for seniors aged 62+. While the Building has provided housing to a vulnerable population for more than 50 years, it has never undergone a major renovation or modernization.

B. Description of the Project

Given its age, the Building is in significant need of modernization and renovation to continue to provide the safe, clean, and adequate housing for its intended senior residents. The current facility is limited in its ability to offer modern residential finishes, amenities, and accessibility features. Accordingly, the Applicant proposes to fully modernize and renovate the Building, including a new elevator, and meeting rooms. Following the renovation, the number of apartments will remain at 100, and the Building will not accommodate any more residents than it currently does. All of the units will continue to be age restricted and income restricted at 50% MFI. Specifically, as it relates to the relief requested herein, the renovation plans include an additional elevator and an expanded front entry vestibule (the “**Project**”), as shown in the architectural plans and drawings included with this application (the “**Plans**”).

An additional elevator is necessary because the Building serves a senior community and is required to have an elevator that can accommodate ambulance stretchers in the event of a medical emergency. Currently, neither of the two existing elevators can accommodate an ambulance stretcher. While the Applicant explored different options for the new third elevator’s location, the only viable option is where it is being proposed on the north side exterior of the Building, adjacent to the current elevator lobby and within the current footprint of the loading dock. This option avoids a significant interior reconfiguration, interruption of the single corridor, and loss of units. However, as shown on the Plans, this elevator addition will slightly expand the gross floor area (“**GFA**”) of the Building by approximately 810 square feet, and since it must rise to the fourth floor to the full building height of 44 feet, it will exceed the maximum permitted height in the zone. In addition, the new elevator overrun will rise approximately 5’-6” above the Building’s

roof adjacent to the existing penthouse, but because of its location on the Building's north façade, it will not be set back from the roof edge nor have the same height as the existing elevator overrun.

An enlarged front entry vestibule is also proposed because the current mailboxes, housed in the entryway, are non-compliant with both ADA and USPS regulations. Furthermore, the corridor space and existing lobby are quite small and narrow and thus do not easily accommodate seniors in wheelchairs or other mobility assistance devices. Without the expanded vestibule, residents will continue struggle to access and use the entryway. By expanding the entry vestibule as shown on the Plans, the Applicant will install ADA and USPS compliant mailboxes, expand the lobby, and ensure that critical pathways of travel are accessible through the Building entrance. The enlarged vestibule will expand the Building's gross floor area by approximately 190 square feet.

IV.

Description of Relief Requested

Pursuant to Subtitle C § 204.1, a nonconforming use of a structure shall not be extended in gross floor area. The existing Building is a nonconforming multifamily residential use, but it desperately needs renovation and modernization. As discussed above, the modernization is not possible within the current footprint, which necessitates a small amount of additional gross floor area to accommodate the proposed new elevator and the entry vestibule. Accordingly, pursuant to Subtitle X § 1001.3, an area variance is requested to allow an expansion of a nonconforming use.

Furthermore, pursuant to Subtitle D § 303.1, the maximum permitted building height, not including the penthouse or rooftop structures, in the R-1-B zone is 40 feet (three stories). The Building has an existing nonconforming height of 44 feet and four stories, and the proposed third elevator's core will exceed the maximum allowable height by rising to the full building height of

44 feet. It is not possible to construct a third elevator that serves all four floors without exceeding this height limit. Therefore, the Applicant also requests an area variance from the maximum height limit.

Lastly, under Subtitle C §§ 1503.4 and 1504.1, a penthouse shall have enclosing walls of a single uniform height and shall be set back 1:1 from a side building wall not built to the Property line. The proposed third elevator overrun will rise above the roof and not be setback from the roof edge. Moreover, the proposed third elevator's overrun enclosure will differ in height from the existing elevator penthouse enclosure. Therefore, the Applicant requests special exception relief from the penthouse enclosing walls and setback requirements pursuant to Subtitle C §1506.1.

V.

Satisfaction of Standards for Relief

Variance Relief

The burden of proof for area variance relief is well established. Under the Zoning Regulations and relevant case law, the applicant must demonstrate that (1) the property is affected by an exceptional or extraordinary situation or condition, that (2) the strict application of the Zoning Regulations will result in a practical difficulty to the applicant, and that (3) the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan. Subtitle X § 1002.1; McDonald v. D.C. Bd. of Zoning Adjustment, No. 20-AA-0264, 2023 WL 2799378 (D.C. Apr. 6, 2023).

Exceptional or Extraordinary Condition

In McDonald v. DC Board of Zoning Adjustment, the court described the first prong as referring to “something unique about the property itself, often a topographical characteristic or pre-existing structure on the land. *Id.* The condition can arise from “a confluence of factors,” but

the “critical point is that the extraordinary or exceptional condition must affect a single property,” rather than exist as part of “the general conditions in the neighborhood. *Id.* In the case of applicants seeking a variance “to meet a public need or serve the public interest,” the Board may consider the applicant’s particular proposed use and its needs as an exceptional condition.

Public Good Flexibility

The “public good flexibility” principle extends to social service centers, university hospitals, and churches. In all these scenarios, the applicant must satisfy two additional prongs: (1) the organization must show that the specific design it wants to build constitutes an institutional necessity, not merely the desired of various options, and (2) precisely how the needed design features require the specific variance. Furthermore, the doctrine is not limited to the first prong of the test and can be applied to the second, “practical difficulty” prong.

Practical Difficulty

In reviewing the standard for practical difficulty in Palmer v. D.C. Bd. Of Zoning Adj., the court stated that “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. [Footnote omitted.] The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case.” 287 A.2d at 542. In area variances, applicants do not need to show “undue hardship”; instead, they only need to satisfy “the lower ‘practical difficulty’ standards.” Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1365 (D.C. 1992) (citing Gilmartin, 579 A.2d at 1170).

The Commission may consider “a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty.’” Gilmartin, 579 A.2d at 1171 (citing Barbour v. D.C. Bd. of Zoning Adj., 358 A.2d 326, 327 (D.C. 1976)); see also Tyler, 606 A.2d at 1367. Other

factors to be considered by the Commission include whether the variance is an institutional necessity for an organization serving the public good.

No Substantial Detriment to the Public Good or Impairment to the Zone Plan

The standard for the third part of the test is whether granting the requested relief will cause substantial detriment to the public good and impair the intent, purpose, or integrity of the zone plan. If the area variance relief does neither, the third prong is satisfied.

As outlined below, this application satisfies the three-part test for area variance relief and two-part test of the public good flexibility doctrine.

1. **Expansion of Nonconforming Use**

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

Here, the Property meets the “exceptional conditions” element of the variance test and qualifies for the public good flexibility doctrine. The Building is the only multifamily apartment building in a multiple block radius of the R-1-B zone. This nonconforming structure and use significantly limits any changes to the Building that results in a unique condition that affects only the Property and Building among many other properties in a multiple block radius.

Further, Second New Saint Paul’s Baptist Church is a service-oriented leader in the local community. Initially started on M Street in 1923, the Church moved to 2400 Franklin St NE in 1957. Since then, the Church has been a long-standing pillar of the community, including the construction of the Green Valley Apartments to provide affordable housing for seniors in need. Suffice it to say, the Applicant meets a public need and serves the public interest.

1. The Specific Design is an Institutional Necessity

Both the proposed third elevator and entry vestibule are institutional necessities for this all-affordable senior apartment building. As described above, the third elevator is necessary because

Green Valley Apartments is a senior community and must accommodate ambulance stretchers in case of a medical emergency. Currently, neither elevator can accommodate ambulance stretchers, so a third elevator must be built to meet this requirement.

For the entry vestibule, the current mailboxes are non-compliant with ADA and USPS regulations. Without an expanded vestibule, the updated mailboxes will make it difficult for senior residents, including those who use wheelchairs and walkers, to access and navigate the entryway.

2. The Needed Design Features Require a Variance to Expand the GFA of a Nonconforming Use

Reiterating the arguments above, a variance is needed because the current Building footprint cannot accommodate a third elevator or expanded mailbox area. Adding the third elevator within the existing Building would necessitate extensive interior reconfiguration, loss of residential units, and/or obstruction of the corridor. Similarly, the mailbox area cannot be updated while also providing the needed circulation area for the senior residents within the existing structure without losing circulation space and/or residential units, so the expanded vestibule is necessary.

B. Strict Application of the Zoning Regulations would Result in a Practical Difficulty

The second requirement for area variance relief, that strict application of the Zoning Regulations would result in a “practical difficulty,” is satisfied. The practical difficulty in complying with the nonconforming use requirement stems from the institutional necessity to (1) renovate the Green Valley Apartments modern and accessible features; (2) accommodate elevator size requirements for a senior community; (3) accommodate larger and more functional mailboxes; and (4) satisfy other institutional goals for community-enhancing wellness and amenity space. Because the Building is a unique nonconforming use in this location, the Applicant is prevented from satisfying any of these necessities if they result in additional GFA. As explained above,

complying with the zoning standard that prohibits GFA expansion would compromise the Building's circulation, add significant cost and process, and cause a loss in residential units critical to the Church's mission for the Building to house as many in-need seniors as possible.

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 third part of the test for area variance relief, that granting the requested relief will not cause substantial detriment to the public good and will not impair the intent, purpose, or integrity of the zone plan, is also satisfied here. The proposed modernization and renovation will not impair the intent, purpose, or integrity of the zone plan or negatively impact neighbors' access to air or light because the size of the addition will not materially alter the massing of the Building. Beyond the addition of a third elevator and modest expansion of the entry vestibule, the exterior of 2412 Franklin St NE will remain virtually the same. Most of the renovation and modernization will take place inside the structure. Most importantly, the addition of GFA as proposed will not increase the intensity of the nonconforming use: the number of apartments and residents will be the same as now. Therefore, the intent of the zone plan will not be negatively affected by the proposed variance relief.

2. Maximum Height Limitation

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

The exceptional situation and condition are as described above: the Building is a nonconforming use and has a nonconforming height among a neighborhood of single-family houses zoned R-1-B.

1. The Specific Design is an Institutional Necessity

The third elevator is an institutional necessity, and as described above, it cannot be added within the existing structure. The third elevator is necessary because Green Valley Apartments is a senior community and required to accommodate ambulance stretchers. Currently, neither existing elevator can accommodate ambulance stretchers, so a third elevator must be built to meet this requirement. The only feasible location for the new elevator is on the north exterior of the Building, which results in an addition that exceeds the maximum permitted height in the zone. The additional height for the new elevator shaft will allow the new elevator to service all four floors of the Building.

2. The Needed Design Features Require a Maximum Height Variance

The maximum height variance is required because the necessary elevator cannot be accommodated within the zone's 40-foot height limit. Without this relief variance, the elevator could not service the fourth floor of the Building.

B. Strict Application of the Zoning Regulations would Result in a Practical Difficulty

The practical difficulty in complying with the maximum height limitation stems from the institutional necessity to renovate the Green Valley Apartments to include modern and accessible features, particularly with regard to adding an elevator that can accommodate an ambulance stretcher. Because the Building is a uniquely nonconforming structure in this location, the Applicant is prevented from satisfying this necessity in a manner that is feasible for the Applicant. As explained above, complying with height limitation by including the new elevator inside the existing structure would compromise the Building's circulation, add significant cost and process, and cause a loss in residential units critical to the Church's mission for the Building to house as many in-need seniors as possible.

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

Granting the requested relief from the height limitation will not cause substantial detriment to the public good and will not impair the intent, purpose, or integrity of the zone plan. The proposed modernization that will include the additional elevator will not negatively impact neighbors' access to air or light because it will not materially change the massing of the Building. Further, it will not increase the overall height of the Building since the addition will only rise to the height necessary for the elevator to reach the top floor. Accordingly, the requested relief will not result in a meaningful change to the Building that will impair the intent of the Zoning Regulations to prevent the expansion of a nonconforming structure.

3. **Special Exception Relief – Penthouse Setback & Enclosing Wall Requirements**

Pursuant to Subtitle C § 1503.4, the penthouse regulations require enclosing penthouse walls to be uniform in height. Furthermore, pursuant to Subtitle C § 1504.1, the penthouse regulations require that a penthouse is set back a distance equal to its height from the front, rear, side building walls of the roof on which it is located. Here, the proposed third elevator overrun penthouse will differ in height from the existing elevator penthouse, and the enclosure will not be set back from the side building wall.

Subtitle C § 1506.1 allows relief from the penthouse setback and enclosure requirements as a special exception subject to the following conditions:

- (a) *The special exception requirements of Subtitle X, Chapter 9;*
- (b) *The applicant's demonstration that reasonable effort has been made for the housing for mechanical equipment, stairway, and elevator penthouses to be in compliance with the required setbacks; and*
- (c) *The applicant's demonstration of at least one of the following:*
 - (1) *The strict application of the requirements of this chapter would result in construction that is unduly restrictive, prohibitively costly, or unreasonable, or is inconsistent with building codes;*

- (2) *The relief requested would result in a better design of the penthouse or rooftop structure without appearing to be an extension of the building wall;*
- (3) *The relief requested would result in a penthouse or roof structure that is visually less intrusive; or*
- (4) *Operating difficulties such as meeting D.C. Construction Code, title 12 DCMR requirements for roof access and stairwell separation or elevator stack location to achieve reasonable efficiencies in lower floors, size of Subtitle C § 115 building lot, or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly, or unreasonable.*

As set forth below, the proposed relief from the penthouse requirements meets these conditions and warrants approval.

1. *Reasonable effort has been made for the housing for mechanical equipment, stairway, and elevator penthouses to be in compliance with setback and enclosure requirements.*

The Applicant examined other options for the necessary third elevator core in this existing all-senior building. However, it quickly realized that locating the new elevator core and overrun so that it would be adequately set back is not feasible because of the significant cost, interior passageway disruption, and loss of residential units that would result. Still, the Applicant has taken steps to limit the areas of non-compliance by minimizing the new overrun's height, which necessitates relief from the single enclosure height requirement.

2. *The strict application of the requirements of Chapter 15 of Subtitle C would result in construction that is unduly restrictive, prohibitively costly, or unreasonable, or is inconsistent with building codes.*

Since the Project involves the modernization of an existing building, the Project is only economically and programmatically feasible if it can make an exterior addition to the existing structure. Including the third elevator inside the structure of the existing Building so that the new overrun penthouse is adequately set back would result in inefficiencies in the Building's interior layout, disrupt internal circulation that is currently accommodated with a single corridor, be prohibitively costly, and result in the loss of much-needed residential units. Therefore, the exterior

