

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

Application of
Washington Area Bicyclist Association

BZA Application No. _____
ANC 5B04

STATEMENT OF THE APPLICANT

I. Nature of the Application

Washington Area Bicyclist Association (the “**Applicant**” or “**WABA**”), a 501(c)(3) not-for-profit organization, seeks the following relief to convert the existing vacant two-story residential building on the property (the “**Existing Building**”) located at 1110 Hamlin Street, NE (Square 3876, Lot 0047) (the “**Property**”) to office use for its headquarters:

1. Special exception relief pursuant to 11-A DCMR § 207.2 and 11-X DCMR § 901.2 of the Zoning Regulations to extend office use permitted in the MU-3A portion of the Property into the R-2 portion of the Property; and
2. Area variance relief pursuant to 11-G DCMR § 5200.2 and 11-X DCMR § 1001.3(a) of the Zoning Regulations to exceed, by 0.045, the 1.0 maximum floor area ratio (“**FAR**”) permitted by 11-G DCMR § 201.1.

The Property is located partially in the MU-3A zone and partially in the R-2 zone. WABA requests the stated relief to extend the MU-3A zone to the entirety of the Property so that it can convert the entirety of the Existing Building on the Property as an office for its headquarters (the “**Project**”). The Project does not involve any material exterior modifications to the Existing Building, which although nonconforming in some respects because it was constructed prior to the implementation of zoning, nonetheless complies with the Zoning Regulations in all other respects. WABA does not seek to expand the footprint of the Existing Building, so the FAR variance request seeks only to use the Existing Building for office use.

II. Jurisdiction of the Board

The Board has jurisdiction to grant the requested relief pursuant to 11-X DCMR §§ 901.1 and 1000.1.

III. The Property, the Project, and the Applicant

A. Description of the Property and Surrounding Area

The Property is located in the Brookland neighborhood, on the block bounded by Hamlin Street, NE to the south, 10th Street, NE to the west, Irving Street, NE to the north, and 12th Street, NE to the east. It is located within the boundaries of ANC SMD 5B04 and is only 0.7 miles (an approximately 4-minute bike ride) from the Metropolitan Branch Trail. The Property is 2,300 square feet of total land area, with 1,600 square feet in the R-2 zone and 700 square feet in the MU-3A zone. The Property has 50 feet of frontage on Hamlin Street, NE. The easternmost 15 feet of the Property is within the MU-3A zone, and the westernmost 35 feet is within the R-2 zone. In 1925, then Lot 21 in Square 3876 was subdivided to form the existing Lots 46 and 47, the latter lot being the Property and the former now being known as Lot 51.¹

The Property is currently improved with the two-floor, detached Existing Building, which has a total gross floor area (“GFA”) of approximately 2,402.6 square feet.² The Existing Building has an FAR of 1.045.

B. Description of the Existing and Intended Uses of the Property and the Applicant

WABA seeks to convert the Existing Building to office use for its headquarters. The Existing Building was built in 1925 per DC Building Permit data on HistoryQuest DC. In 1950 the Board approved the use of the Existing Building as a multi-unit flat. At that same time, the

¹ See Subdivision Plat attached at Exhibit B.

² The GFA has been calculated using the perimeter-wall method pursuant to 11-B DCMR § 304.2. Approximately 21.5 feet of the Existing Building’s perimeter is more than 5 feet above grade and the total perimeter is 144 feet (44 + 34.5 + 16 + 12 + 9.5 + 28). As such, 14.9% (21.5 ÷ 144) of the level below grade counts as GFA. The total footprint of the Existing Building is 1,118 square feet ((16 x 44) + (34.5 x 12)). Because the Existing Building has two floors that are fully above grade, there are 2,236 square feet (1,118 x 2) of GFA fully above grade. Using the perimeter-wall method, the Existing Building has 166.6 square feet (14.9% x 1,118) of GFA attributable to the level partially below grade. Therefore, the Existing Building’s total GFA is 2,402.6 square feet (2,236 + 166.6).

Board denied an application to permit the use of the Existing Building as a law office on the objection of neighboring property owners.³

The Existing Building is currently not occupied, and portions of the interior remain unfinished. The Applicant is under contract to purchase the Existing Building from the current owner. The Existing Building has been on the market since March 2024.

The Existing Building also already includes roof-mounted solar panels.

WABA was founded in 1972 and is a registered 501(c)(3) not-for-profit organization. Its mission is to “empower[] people to ride bikes, build connections, and transform places.”⁴ WABA “envision[s] a just and sustainable transportation system where walking, biking, and transit are the best ways to get around.”⁵ For its new headquarters, WABA seeks an office space that (i) is located close to the Metropolitan Branch Trail and its Gearin’ Up bicycle repair shop and (ii) has sufficient space for its bicycle storage needs—criteria that the now-vacant Existing Building satisfies. Given WABA’s mission and its employees’ personal dedication to cycling, WABA does not expect any regular, daytime, vehicle parking use associated with the Project.⁶ Nevertheless, the Property includes one off-street vehicle parking space, which the Applicant does not propose to change.

IV. Requested Relief

A. Special Exception for a Lot with Split Zoning

The Applicant seeks to extend the MU-3A zone from the MU-3A portion of the Property to the R-2 portion of the Property to allow the entire Existing Building to be used as an office for WABA’s headquarters.

³ See Exhibit C1.

⁴ See About WABA, available at <https://waba.org/about/> (last visited October 16, 2024).

⁵ *Id.*

⁶ WABA operates Gearin’ Up, its a bicycle repair shop in Eckington, where it stores a van used in WABA’s off-site activities, but the van would not be parked at the Property.

Under 11-A DCMR §§ 207.1 and 207.2, when a lot that was in single ownership on May 12, 1958, is divided by a zone boundary line, the regulations applicable to that portion of the lot located in a lesser restrictive use zone that control the use of structures and land may be extended to that portion of the lot in a more restrictive use zone as a special exception for up to 35 feet of the portion of the lot in the more restrictive zone, provided that certain criteria are met. The Property was subdivided in 1925 and in single ownership in 1958. As such, because the Property is split between the MU-3A zone, which permits office use as a matter of right, and the R-2 zone, which does not, the Project requires special exception relief under Section 207.2 in order to use the entire Existing Building for office use.

B. Area Variance to Permit an FAR Increase of 0.045 (102.6 sf)

The Applicant seeks to use the entire Existing Building for its headquarters, notwithstanding that the Existing Building exceeds the MU-3A zone's FAR limit on non-residential uses by 0.045 (or 102.6 sf).

Under 11-G DCMR § 201.1, the maximum permitted non-residential FAR in the MU-3A zone is 1.0. The Existing Building has an FAR of 1.045. WABA proposes to use the entire Existing Building as office use, so it requires area variance relief in order to proceed with this *de minimis* deviation. Notably, all of the FAR above 1.0 is located in a partially below-grade, partially unfinished level. WABA does not propose to expand the footprint of the Existing Building⁷ and anticipates using all the FAR in excess of 1.0 as indoor storage for bicycles and related equipment essential to the function of WABA's mission.

⁷ WABA does not propose to expand the footprint of the Existing Building in any way but may need to install an exterior ramp to ensure the Existing Building provides for an ADA-accessible entrance, which the Existing Building currently does not. WABA may also install outdoor bicycle parking on the Property for WABA employees.

V. Satisfaction of Standards for Relief

A. Special Exception for a Lot with Split Zoning to Extend the MU-3A Portion of the Property into the R-2 Portion of the Property

The special exception to extend the MU-3A zone from the MU-3A portion of the Property to the R-2 portion of the Property requires compliance with (1) specific special exception criteria in Subtitle A applicable to split lot zoning and (2) the general special exception criteria of Subtitle X applicable to all special exceptions.

For special exception relief to extend a zone boundary for a split-zoned lot under 11-A DCMR § 207.2, an applicant must demonstrate (a) that the extension of the less restrictive zone into the more restrictive zone is not more than 35 feet; (b) compliance with the requirements of 11-A DCMR § 207.1(d) regarding FAR limitations that are not applicable here; (c) no adverse effect upon the present character and future development of the neighborhood; and (d) adherence with requirements imposed by the Board pertaining to design, appearance, screening, location, or other requirements deemed necessary to protect adjacent or nearby property.

Additionally, under 11-X DCMR § 901.2, in order to obtain special exception relief in general, an applicant must show that the requested relief will (a) be in harmony with the intent and purpose of the Zoning Regulations and Zoning Maps and (b) not tend to affect adversely the use of neighboring properties.

For the reasons set forth below, the Project meets all the relevant special exception criteria.

1. The Project satisfies the specific requirements of 11-A DCMR § 207.2.

a. The extension shall be limited to that portion of the lot in the more restrictive use zone but not exceeding 35 feet.

The Property satisfies this requirement as shown on the Subdivision Plat at Exhibit B. The Plat shows the entirety of the former Lot 21 with 135 feet of frontage along Hamlin Street, NE. The former Lot 21 was subdivided into Lot 46 (now Lot 51), which occupies the eastern 85 feet

of frontage along Hamlin Street, NE and the existing Lot 47 (i.e., the Property), which occupies the western 50 feet of frontage along Hamlin Street, NE. Pursuant to 11-A DCMR § 206.4, the otherwise non-delineated width of the MU-3A Zone as it extends across the former Lot 21 is deemed to be 100 feet.⁸ As such, the easternmost 15 feet of the Property are in the MU-3A zone and the portion of the Property located in the R-2 zone is exactly 35 feet. Accordingly, the Property satisfies this first requirement of Subtitle A, Section 207.2.

b. In authorizing an extension, the Board shall require compliance with 11-A DCMR § 207.1(d).

This requirement of Section 207.2 is not applicable to the Property. 11-A DCMR § 207.1(d) states in relevant part, “For computation purposes, any portion of the lot located in an R-1 or R-2 zone shall be deemed to be limited to a floor area ratio (FAR) of 0.4.”

In BZA Case No. 20095, the Board ratified a prior Zoning Administrator determination that concluded the FAR of the building in the less restrictive zone is limited to 0.4 when the less restrictive zone is the R-2 zone.⁹ Here, the R-2 zone is the more restrictive zone, therefore the permitted FAR of the less restrictive MU-3A zone applies. As such, this requirement is not applicable.

c. The extension of the MU-3A Zone shall have no adverse effect upon the present character and future development of the neighborhood.

The extension of the MU-3A zone to the entirety of the Property will not have any adverse effects now or in the future. The neighborhood around the Property is characterized by a mix of residential and commercial uses. This character is evidenced by the existing land uses, those permitted in the zone designations for the Property and nearby areas, and in the designations on

⁸ This dimension is further evidenced by historic zoning maps dating as far back as 1958. See Exhibit B.

⁹ See BZA Case No. 20095 at Ex. 40 (attached at Exhibit C2); see also, BZA Case No. 20638 at Ex. 30 (attached at Exhibit C3).

the Comprehensive Plan's Generalized Policy Map (the "GPM") and Future Land Use Map (the "FLUM") and in the Comprehensive Plan's Upper Northeast Area Element and the December 2008 Brookland/CUA Metro Station Small Area Plan ("SAP"):

- i. Consistency with Existing Land Uses in the Neighborhood Surrounding the Property: The special exception to permit the extension of the MU-3A zone across the entirety of the Property will not have an adverse effect on the present or future character of the neighborhood because that character is already a mix of low-density commercial and low-density residential uses. The immediately adjacent building to the east is a two-story commercial building with office and restaurant uses. Directly across Hamlin Street, NE from the Property is a low-density commercial child development center. To the west of the Property are two-story attached dwelling units. As evidenced by the existing land use map attached hereto as part of Exhibit B, each of these uses is characteristic of many of the buildings fronting on or near 12th Street, NE in the vicinity of the Property. As shown on the zoning map attached at Exhibit B, zone designations for the block including the Property are split between mixed-use (MU-3A) and residential (R-2) zoning, with PDR-1 zoning applying to the block immediately to the west of the block that includes the Property.
- ii. Consistency with Comprehensive Plan's Future Land Use and Generalized Policy Maps: Furthermore, the Project and the relief for an extension of the mixed-use MU-3A zone is not inconsistent with the Comprehensive Plan's FLUM, GPM, or Area Element. The Property is designated on the FLUM as Mixed-Use Low Density Commercial and Low Density Residential. An excerpt of the FLUM is attached at Exhibit B. Low Density Commercial areas contain retail, office, and service businesses as the predominant uses. Low Density Residential areas generally favor single family detached and semi-detached housing units. The Existing Building is a multiple dwelling detached structure that has been vacant for some time. The Applicant desires to use the Existing Building in a manner directly consistent with its Low Density Commercial designation and, due to the unique nature of the Applicant's mission, not inconsistent with a Low Density Residential neighborhood. The Property is split-designated on the GPM as a Neighborhood Conservation Area and a Main Street Mixed Use Corridor. An excerpt of the GPM is attached at Exhibit B. The Neighborhood Conservation Area designation permits modest change in use. The Main Street Mixed Use Corridor designation favors a pedestrian environment. The requested relief here is consistent with both designations because the proposed office space would be a traditional office use for WABA staff. Furthermore, the Applicant's employees commute to work either by bicycle or via Metro. Per the Area Element, Upper Northeast neighborhoods such as Brookland are known for "community organizations [that] are actively involved in discussions about the community's future."¹⁰ For nearly 52 years, WABA has been a stalwart advocate for improvements across the District, and now it wishes to invest in property in the Brookland neighborhood to continue its

¹⁰ 10-A DCMR § 2400.8 (Comprehensive Plan, Chapter 24, "Upper Northeast Area Element," at p. 24-2).

mission. WABA is a prime example of an active community organization and does not plan on hitting the brakes on its advocacy for its community any time soon.

- iii. Consistency with the Small Area Plan: The Property is part of the 12th Street Sub Area within the SAP. The SAP's Guiding Principles include "[c]reat[ing] an active pedestrian neighborhood with mixed-use development," "[a]dd[ing] new retail and businesses to compliment 12th Street and provide needed services," "protect[ing] the neighborhood from additional traffic," and "[p]romot[ing] and integrat[ing] bus, shuttles, bikes, rail and other transit options."¹¹ WABA's intended use of the Existing Building complements the mixed-use environs, does not increase vehicle traffic in the area, and fosters a bicycle-friendly environment. Additionally, the 12th Street Sub Area consists of "a mix of small commercial and residential uses" with "the commercial core of 12th Street [lying] primarily between Monroe and Otis Streets" although there are "additional shops and businesses found to the north and south."¹² The Property is south of the commercial core, but the proposed use is nonetheless consistent with the surrounding area in general, as demonstrated by the commercial use immediately to the east and nearby non-residential uses that can be seen on the SAP map attached at Exhibit B.

For the reasons set forth above, the extension of the MU-3A zone into the westernmost 35 feet of the Property will have no adverse effect upon the present character and future development of the surrounding neighborhood.

d. The Board may impose requirements pertaining to design, appearance, screening, location of structures, lighting, or any other requirements it deems necessary to protect adjacent or nearby property.

Given the nature of the nearby uses and the proposed use of the Project, the Applicant does not believe that any such requirements are necessary. WABA does not intend to have any meaningful amount of on-street or off-street vehicular parking. Its entire mission is to advocate for bicycle use, and the Existing Building contains an unfinished lower level with an entrance from the driveway that permits easy access for bicycles. A public alley separates the Existing Building from residences to the west along Hamlin Street, NE. WABA's office hours are typical daytime hours, so the Applicant is unlikely to have any disturbing light, noise, or other impacts on the

¹¹ Brookland/CUA Metro Station Small Area Plan, at p. 2

¹² Brookland/CUA Metro Station Small Area Plan, at pp. 26-27

evening or on weekends for nearby residences. However, the Applicant will comply with any reasonable requirements that the Board imposes.

2. The requested relief is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not adversely affect or impact surrounding areas.

The requested special exception relief is consistent with the purposes of the MU zones. The MU zones are intended, in part, to “[r]eflect a variety of building types, including, but not limited to ... buildings made up entirely of non-residential uses” and “[e]ncourage safe and efficient conditions for pedestrian and motor vehicle movement.” The MU-3 zones specifically are intended to “[p]ermit low-density mixed-use development and [p]rovide ... limited community facilities with a minimum impact upon surrounding residential development.”

The requested relief, which would permit small-scale office use, would enhance the surrounding residential neighborhood by allowing an otherwise vacant building to be utilized by a community-oriented organization. Furthermore, the Applicant advocates for safe and efficient transportation as a key tenet of its mission, which is also directly in line with the intent of the MU zones and an asset to the neighborhood.

Arguably the R-2 zone requirements are less consistent with the Property than those of the MU-3A zone because the R-2 zone requires a minimum lot size of 3,200 square feet (and 2,500 sf for detached structures such as the Existing Building) whereas the Property is only 2,300 square feet.¹³

For the reasons set forth in this section and sections V.A.1.c. and d. above regarding consistency with planning guidance and a lack of adverse effects on the surrounding area, the requested relief satisfies the general special exception requirements.

¹³ See 11-D DCMR § 202.2.

B. Area Variance to Permit an FAR Increase of 0.045 (102.6 sf)

The Applicant does not propose to expand the footprint of the Existing Building, which in its existing condition has an FAR very slightly in excess of the 1.0 FAR limit on non-residential uses in the MU-3A zone. The extension of the MU-3A to the entirety of the Property requires a very modest FAR variance, and the Project satisfies the burden of proof for that relief.

The burden of proof for an area variance is well established. In general, an applicant must demonstrate that (a) the property is affected by an exceptional or extraordinary situation or condition; (b) the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant; and (c) the granting of the variance will not cause substantial detriment to the public good or substantially impair the intent, purpose or integrity of the Zone Plan. Specific to this Application, the Board's review of the request for variance relief should account for the public good nature of the Applicant's use and the *de minimis* request of the relief requested.¹⁴

As set forth below, the Project satisfies the three-part test for the requested variance from the FAR requirement of the MU-3A zone under the *Monaco-McDonald* line of cases.

1. The Board Should Apply the "Public Good Flexibility" to the Requested Relief

WABA is an organization that advocates for the public good as a registered 501(c)(3) not-for-profit organization with a public interest mission.

The DC Court of Appeals has repeatedly held that the Board may be "more flexible" in applying the three-part variance test when the applicant is a not-for-profit organization, "especially where the organization is seeking the zoning relief in order to meet a public need or serve the public interest."¹⁵ The "public good flexibility" doctrine was first established when the Court ruled

¹⁴ See 11-X DCMR § 1002.1. See also *St. Mary's Episcopal Church v. D.C. Zoning Comm'n*, 174 A.3d 260, 269 (D.C. 2017); see also, *McDonald v. D.C. Bd. of Zoning Adjustment*, 291 A.3d 1109 (D.C. 2023).

¹⁵ *Neighbors for Responsive Government, LLC v. D.C. Board of Zoning Adjustment*, 195 A.3d 35, 56 (D.C. 2018).

that “when a public service has inadequate facilities and applies for a variance to expand ... then the Board ... does not err in considering the needs of the organization” as an exceptional condition.¹⁶ More recently, the Court reaffirmed its rationale in *Monaco* and elaborated that the objective of the “public good flexibility” doctrine applicable to variances is meant “to facilitate construction for organizations so that they can serve public needs.”¹⁷ The Board should apply the public good flexibility standard here given WABA’s mission of serving public needs regarding safe and sustainable transportation training and advocacy.

The Court in *McDonald* restated the two-part test for public good flexibility: an organization must show (a) that the specific design it wants to build constitutes an institutional necessity; and (b) precisely how the needed design features require the specific variance sought.¹⁸ WABA has spent months searching for a space that was within its limited budget, accessible by bike, and with sufficient storage for bikes that have been donated or belong to its employees. The Existing Building is within WABA’s budget, a 4-minute bike ride from the Metropolitan Branch Trail, and contains ample storage space in the basement for temporary storage of materials essential to its public interest mission. Furthermore, WABA does not propose to make any meaningful exterior changes to the Existing Building other than to make it more accessible if necessary. The existing FAR of 1.045 has been an element of the Existing Building since it was originally built, and WABA merely wishes to adaptively reuse the otherwise vacant space without modifying it. All the space in the Existing Building that exceeds an FAR of 1.0 is partially below grade and partially finished. The portion of the Existing Building that exceeds an FAR of 1.0 does not expand the amount of space that will be devoted to office employees. Instead, the excess

¹⁶ *Monaco v. D.C. Bd. of Zoning Adjustment*, 407 A.2d 1091, 1099 (D.C. 1979).

¹⁷ *McDonald*, 291 A.3d at 1126.

¹⁸ *McDonald*, 291 A.3d at 1124.

approximately 102.6 square feet is used for mission-supporting materials storage unique to WABA's public interest functions and not generally applicable to office uses.

2. The Requested FAR Relief Satisfies the Three-Prong Area Variance Test

a. The Property is Affected by Multiple Exceptional Conditions.

Multiple, related conditions make the Property exceptional relative to other nearby properties and in light of WABA's public interest mission. These conditions include the size of the Property, the location of the public alley, the zone boundary line, and the nature of the Existing Building and similar nearby buildings.

In *McDonald*, the Court described the first prong of the variance test as referring to "something unique about the property itself, often a topographical characteristic or pre-existing structure on the land."¹⁹ 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."²⁰ The Court of Appeals has previously held that the exceptional situation or condition standard goes to the property, not just the land.²¹ As noted above, the Court in *Monaco* noted that the exceptional situation or condition is not limited to the land or physical improvements, but also applies to the needs of an organization devoted to public service which seeks to upgrade and expand its existing inadequate facilities.²² Subsequent to *Monaco*, in *McDonald* the Court recently held that "when an applicant seeks 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."²³

¹⁹ *Id.* at 1123.

²⁰ *Id.* at 1121.

²¹ *Clerics of St. Viator v. D.C. Bd. of Zoning Adj.*, 320 A.2d 291 (D.C. 1974).

²² *Monaco*, 407 A.2d at 1099.

²³ *McDonald*, 291 A.3d at 1123.

Unique conditions that affect the Property include the location of the zone boundary line, the Property's size, the alley immediately adjacent to the Property, the lack of yard on the Property, and the lack of standalone single-family homes in the vicinity of the Property:

- i. The Existing Building Is in Two (2) Zones: The Property is affected by a unique condition insofar as the boundary between the MU-3A zone and the R-2 zone splits not only the Property but also the Existing Building itself. Lots split by zone boundaries are comparatively rare across the District although there are some others in the vicinity of the Property, including the five lots immediately to the north of the Property. However, the condition here that makes the Property especially unique is that the *Existing Building* itself is within two zones. The zone division of the lots immediately to the north of the Property segments only parking spaces at the rear of the mixed-use buildings. As shown on the maps attached at Exhibit B, along the entire 12th Street, NE corridor in Brookland, only a handful of *existing buildings* are split by the zone boundary. All but one of the split zoned *buildings* along the 12th Street, NE corridor are entirely non-residential in nature (e.g., the PEPCO facility at 1032 Irving Street, NE, St. Anthony's School at 3400 12th Street, NE, the Post Office at 3401 12th Street, NE, the Archdiocese for the Military Services, at 3730 12th Street, NE, and the storefront at 3923 12th Street, NE), and all have frontage on 12th Street, NE. The Property is in a class of its own in the neighborhood in this regard.
- ii. The Property Is an Unusually Small Lot: The 2,300 sf Property is the result of a subdivision that left it notably smaller than the other properties in the same square.²⁴ The average lot area of the lots in Square 3876 exceeds 4,000 sf, and even excluding the anomalously large Casey Trees-owned lot on the northeast corner of Square 3876, the average lot area of the remaining exceeds 3,700 sf, which is more than 60 percent greater than the area of the Property. Only two lots in the square are smaller, and only one has a similar set of dimensions. The 1925 subdivision also created a "stovepipe" condition for Lot 46 (now Lot 51) to the east of the Property, where the narrow stovepipe creates a four-foot-wide pedestrian corridor between the lot to the east and the adjacent public alley to the west at the cost of removing lot area from the Property.
- iii. The Alley in Square 3876 Creates Unique Conditions: The smaller-than-average Property also directly abuts a public alley. As a result, the Property has a much smaller yard than nearby properties and no meaningful rear yard at all. The existing condition photos attached at Exhibit B demonstrate the Property's substantial lack of yard. The location of the alley also creates an exceptional condition for the Property. Along the 12th Street, NE corridor, alleys parallel to the corridor are often the boundary between the mixed-use zones and the residential zones. Given the location of the public alley in Square 3876, the alley is not the dividing line between the mixed use and residential zones. This creates a split lot condition along the 12th Street, NE corridor that is largely unique to the Property.

²⁴ See Exhibit B Zoning Map.

- iv. Detached Building: The Existing Building is also the only detached structure fronting on Hamlin Street, NE between 10th and 12th Streets, NE.
- v. WABA-Related Unique Conditions: Finally, with respect to the *Monaco-McDonald* considerations given WABA's mission, WABA requires a new space that meet its unique programmatic needs. The same factors that demonstrate WABA's qualification for public-good flexibility also demonstrate the extent to which the proposed use and its needs are truly exceptional. Unlike most offices, WABA's programmatic needs require adequate bicycle storage that accommodates above-average bicycle commuting use by its employees in addition to bicycles that are donated to it as part of its charitable mission and on-site storage of other mission-supporting equipment. Furthermore, WABA is especially in need of a location that is accessible by bicycle from the District's trail system including the Metropolitan Branch Trail which is a 4-minute ride from the Property, and the Metrorail system. The Property is also a less than 10-minute bicycle ride from WABA's Gearin' Up space, which provides bicycle repair services, youth job training, and refurbished bicycles for the District. Although the Gearin' Up facility is separate from the Property, its close location to the Property is important for WABA's public interest mission.

These unique facets of WABA are components of the exceptional situation confronting the Property in light of the *Monaco-McDonald* public good flexibility applicable to an area variance.

b. Strict Application of the Zoning Regulations Would Result in Practical Difficulty.

The Project requires a *de minimis* amount of FAR relief but even the small amount of relief required would result in a practical difficulty in complying with the Zoning Regulations given the conditions of the Existing Building.

In reviewing the standard for practical difficulty, the Court of Appeals has stated that “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. 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.”²⁵ With respect to area variances, applicants do not need to show “undue hardship”; rather, they only need to satisfy “the lower ‘practical difficulty’ standards.”²⁶

²⁵ *Palmer v. D.C. Bd. of Zoning Adj.*, 287 A.2d 535, 542 (D.C. 1972) (citations omitted).

²⁶ *Tyler v. D.C. Bd. of Zoning Adj.*, 606 A.2d 1362, 1365 (D.C. 1992) (citing *Gilmartin*, 579 A.2d at 1170).

Factors that the Board may consider include “[i]ncreased expense and inconvenience to [the] applicant.”²⁷ Other factors to be considered by the Board 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.”²⁸ As with the first prong of the variance test, the Board may also apply the Court’s public good flexibility doctrine to the second prong of variance test.²⁹

The confluence of unique factors that affect the Property—the location of the zone boundary line, the Property’s size, the alley immediately adjacent to the Property, the lack of yard on the Property, the lack of other detached structures in the vicinity of the Property, and the needs of WABA’s mission—creates a situation in which strict application of the FAR requirements of the MU-3A zone would make it impossible for WABA to comply with the FAR requirements here. The Existing Building is not an ideal residential space, nor does it resemble nearby residential properties in the neighborhood. The building cannot readily be reduced by 102.6 sf to make it conform to the Zoning Regulations’ FAR limit. Any change to reduce the Existing Building’s gross floor area by any amount would be very difficult and unnecessarily burdensome.

Furthermore, the requested relief seeks an FAR increase of only 0.045 (i.e., 102.6 sf) over the matter of right limit for non-residential uses in the MU-3A zone. All the additional FAR is in an unfinished partially below grade level. The relief does not arise from WABA’s desire to change the property or increase the FAR; rather, the FAR has existed since the Existing Building’s construction and WABA merely wishes to utilize the entire space to serve its public interest

²⁷ *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.

²⁸ *Gilmartin*, 579 A.2d at 1171.

²⁹ *See e.g., St. Mary’s Episcopal Church*, 174 A.3d at 271 (applying doctrine to second “practical difficulties” prong”).

mission. As was discussed at length in the special exception analysis, the proposed relief is consistent with the overall zone plan.

The proposed relief is truly *de minimis*, but it would make a monumental difference to WABA.

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 proposed relief is consistent with the purpose of the Zoning Regulations and the MU zone specifically, as well as with the Comprehensive Plan and its attendant maps. The relief would enhance the public good given its reuse of a long vacant building and the public good nature of WABA's mission.

WABA is a longstanding advocate for positive change in the District and is an asset to the public good. Furthermore, WABA does not intend to change the footprint of the Existing Building in any way, thus the requested relief will have at least neutral impact on the Zone Plan, although for the reasons set forth in the special exception analysis above, the Applicant contends that the relief is instead complementary to the Zone Plan.

VI. Statement of Community Outreach

The Applicant has had preliminary conversations about the Project with Ra Amin, the ANC SMD for the Property, and the Applicant and property owner have had preliminary conversations with neighbors about the Project. Following the scheduling of this application for a public hearing the Applicant intends to present to the full ANC 5B about the Project and will be available to any interested members of the public to discuss the requested relief.

VII. Conclusion

For the above reasons, the Board should grant the special exception and area variance relief sought herein.

Respectfully Submitted,

/s/ David A. Lewis

David A. Lewis

/s/ Olivia K. Torres

Olivia K. Torres*

*Licensed in NY only.