

**BEFORE THE ZONING COMMISSION
OF THE DISTRICT OF COLUMBIA**

Preliminary Statement of the Applicant
ANC 2A

Z.C. Case No. 06-11L
Hearing Date: June 23, 2014

PRELIMINARY STATEMENT OF THE APPLICANT

This is the statement of Hillel at The George Washington University (“**Hillel**” or “**Applicant**”), a co-applicant in Z.C. Case No. 06-11L, for variance relief and special exception approval to permit the construction of a new facility at 2300 H Street NW (Square 42, Lots 820 and 840 (“**Property**”).

The Property is a corner lot with frontage on both 23rd Street NW and H Street NW and is located in the R-5-D Zone District. The Property is located within the boundary of the Foggy Bottom Campus Plan. The Property is improved with Hillel’s existing two-story church. The Applicant proposes to demolish the existing building and replace it with a new four-story religious facility (“**Project**”). The Applicant proposes to lease two floors of the Project to The George Washington University (“**University**”), the co-applicant in Case No. 06-11L.

The Applicant seeks variance relief and special exception approval to accommodate the redevelopment of the constrained and small corner lot. Specifically, the Applicant requests variance relief from the floor area ratio (“**FAR**”), lot occupancy, rear yard, and parking requirements. The Applicant also seeks special exception approval to authorize a roof structure not meeting the setback and uniform height provisions.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Zoning Commission (the “**Commission**”) approve variance relief pursuant to Section 3103.1 of Title 11 of the District of Columbia Municipal Regulations (the “**Zoning Regulations**”) from the FAR requirements (§ 402), lot occupancy

requirements (§ 403), rear yard requirements (§ 404), and parking requirements (§ 2101). The Applicant also requests that the Commission approve a special exception pursuant to Section 3104.1 of the Zoning Regulations to authorize a roof structure not meeting the setback and uniform height provisions.

II. JURISDICTION OF THE COMMISSION

The Commission has the authority to grant the relief requested pursuant to the Zoning Act of 1938. D.C. Code § 6-641.01 et seq.

III. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

The Property is located at the intersection of 23rd Street NW and H Street NW and consists of approximately 4,575 square feet of land area. The Property is improved with Hillel's existing two-story facility. Some surface parking and loading is located off H Street.

Property to the west is owned by the University and improved with a 9-story residence hall. Property to the south consists of property owned by St. Mary's Episcopal Church and improved with the church and related uses. The portion of the church property immediately adjacent to Hillel is improved with a townhouse that is rented out for residential use. Property to the north and east contains University-related uses. The Foggy Bottom-GWU Metrorail station is approximately one block north of the Property.

IV. BACKGROUND AND PROJECT DESCRIPTION

Hillel at the George Washington University serves more than 3,000 Jewish undergraduates and 1,500 Jewish graduate students of GW. GW Hillel was created in the 1930s and moved to its current location, the Gewirz Center (23rd & H) in 1986. GW Hillel is one of the most active and rapidly growing Jewish campus communities in North America, offering a

wide array of opportunities for Jewish students of all backgrounds and interests to plug in to Jewish life at GW.

The mission of GW Hillel is to provide an open, warm, and pluralistic environment in which students can shape their college experience by connecting socially, culturally, and spiritually to their Judaism. Hillel aims to foster students' personal development and creativity by facilitating work in cultural events, spiritual practices, and educational opportunities. Through self-reflection and expression, students at Hillel can find connection and identity with their Jewishness, taking part in the colorful, unfolding narrative of the Jewish people. Ultimately, the goal of GW Hillel is to prepare students for their entry into the wider world with a strong, deeply rooted Jewish identity. Through social justice work, interfaith dialogue, and civic engagement, Hillel promotes the core values of hesed, tzedakah, and tikkun olam, strengthening the bonds of loving kindness and social responsibility as the foundation for a fully Jewish life.

The Applicant proposes to construct a new four-story facility on the Property containing approximately 17,156 square feet of gross floor area. The Project will also contain one below-grade story. The majority of the Project will be used by Hillel as a place of worship and related accessory uses. The first floor will contain the primary chapel space as well as a lobby for informal student gathering. The second floor will contain offices and meeting spaces for student counseling. The lower level will contain a kosher food service facility (including separate kitchens for meat and dairy) as well as a dining and student life space. The upper two floors will accommodate future program growth. In the near term, Hillel intends to lease the top two floors to the University for academic and student life uses, which will help fund the construction of the Project.

The Project measures approximately 58'6" feet in height, which is well below the 90 foot height limit in the R-5-D Zone District. The Project will have a maximum FAR of approximately 3.75, which exceeds the maximum permitted FAR of 3.5 by 0.25 FAR (7%). The Project will occupy 100% of the lot, which exceeds the 75% lot occupancy limitation. The Regulations also require a 15-foot rear yard, but because the project occupies 100% of the lot, no rear yard is provided. Hillel's portion of the Project requires 11 parking spaces, but no parking will be provided within the Project.¹ No loading facilities are required for a house of worship with less than 30,000 square feet of gross floor area.

V. THE APPLICATION MEETS THE REQUIREMENTS FOR AREA VARIANCES UNDER SECTION 3103.2 OF THE ZONING REGULATIONS

The burden of proof for an area variance is well established. The applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition; (ii) that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant; and (iii) that 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. *See, e.g., Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). As set forth below, the Applicant meets the three-part test for the requested variance from the FAR, lot occupancy, rear yard, and parking requirements.

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

The Court of Appeals held in Clerics of St. Viator v. D.C. Bd. of Zoning Adj., 320 A. 2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land. The Court in Monaco v. D.C. Bd. of Zoning Adj., 407 A.2d 1091, 1099 (D.C. 1979)

¹ No additional parking is required for the university use within the Project because the property is located within the boundaries of the University's campus plan.

went even further and noted that the exceptional situation or condition is not limited to the land or improvements, but also applies to the needs of an organization devoted to public service which seeks to upgrade and expand its existing inadequate facilities. Furthermore, the Court held in Gilmartin v. D.C. Board of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990), that it is not necessary that the exceptional situation or condition arise from a single situation or condition on the property. Finally, it is not necessary that the Property be unreservedly unique. Rather, applicants must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood. See Gilmartin, 579 A.2d at 1167.

As noted above, the Court has found that the exceptional condition may arise from a confluence of factors. This includes the location and expansion needs of a public institution. For example, in Draude v. D.C. Board of Zoning Adjustment, 582 A.2d 949, 955-56 (D.C. 1990), the Court upheld the granting of variance relief from the FAR requirements, which permitted the University to expand its ambulatory care center known as the Burns Building, based on the Board's findings that several circumstances, considered together, made the property unique. The Draude court cited, among other factors, the existence and purpose of the Burns Building, the proximity of the expansion to the existing Burns Building, the physical connections between the existing building and its addition, and the proximity of the care center to the GW Hospital. Id.

Here, the Property's size and shape are unique. At only 4,575 square feet, the Property is considerably smaller than the lots for other nearby religious institutions:

<u>Church</u>	<u>Location</u>	<u>Lot Area</u>
Hillel	Square 42	4,575 s.f.
St. Mary's	Square 42	12,545 s.f.
St. Paul's	Square 28	30,512 s.f.

St. Stephen Martyr	Square 27	12,362 s.f.
Western Presbyterian	Square 31	21,249 s.f.
United	Square 121	11,618 s.f.
St. Thomas	Square 156	15,612 s.f.
St. John's	Square 200	15,975 s.f.
Church of the Pilgrims	Square 2510	34,850 s.f.

The Property is also considerably smaller than all but one of the other synagogues in the District of Columbia:

<u>Synagogue</u>	<u>Location</u>	<u>Lot Area</u>
Hillel	2300 H Street NW	4,575 s.f.
Historic 6 th & I	6 th & I Streets NW	8,500 s.f.
National Synagogue	7712 16 th Street NW	30,812 s.f.
Adas Israel	2850 Quebec Street NW	130,005 s.f.
Kesher Israel	2801 N Street NW	2,400 s.f.
Washington Hebrew Congregation	3901 Macomb Street NW	96,564 s.f.
Temple Micah	2829 Wisconsin Ave NW	23,907 s.f.
Jewish Community Center	1529 16 th Street NW	21,150 s.f.

Therefore, the Property's small size makes it unique for its existing and proposed institutional / religious use. The Property is also located on a corner lot, which is a unique condition. Finally, the Property is only 61 feet wide along 23rd Street, which is relatively narrow.

In addition to its small size, corner lot configuration, and narrowness, the Property is also exceptional because of the Applicant's unique institutional and religious needs. Hillel is faced with the institutional need to upgrade and improve its facilities, so that it may further its mission to serve the Jewish population at the University in an active and meaningful way. Furthermore, to accomplish its mission, Hillel must be located on or as close to the campus population as possible. Finally, Hillel's facility must be able to accommodate religious services and practices unique to the Jewish faith. These exceptional circumstances are unique to Hillel, and are not related to general conditions in the neighborhood. The BZA has previously found that an

applicant's institutional need and mission constitute a unique condition that supported granting a FAR variance. See, e.g. BZA Application Nos. 18007, 16312, and 16654 (multiple FAR variances for Sibley Memorial Hospital); see also Z.C. Order No. 04-19 (granting height variance to D.C. WASA based on same conclusion).

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

To satisfy the second element for an area variance standard, the appropriate test is whether the strict application of the zoning regulations results in a “practical difficulty.” In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in Palmer v. Board of Zoning Adjustment, 287 A.2d 535, 542 (D.C. App. 1972), 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.” In area variances, applicants are not required to show “undue hardship” but must satisfy only “the lower ‘practical difficulty’ standards.” Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1365 (D.C. 1992) (citing Gilmartin v. Bd. of Zoning Adj., 579 A.2d 1164, 1167 (D.C. 1990)). Finally, 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 applicant for a variance are among the factors for BZA's consideration.” 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 v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1367 (D.C. 1992). 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.”

Gilmartin, 579 A.2d at 1171. Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome, not impossible.

In Monaco, the Court has also specifically articulated a standard for public institutions seeking variance relief based on institutional necessity:

- (1) The organization must show that “the specific design it wants to build constitutes an institutional necessity, not merely the most desired of various options”; and
- (2) The organization must show “precisely how the needed design features require the specific variance sought.”

Draude, 527 A.2d at 1256 (summarizing the Monaco test). Based on this test, the Draude court concluded that evidence that conformance with the Regulations would require significant reductions in floor area would support variance relief.

1. Variance Relief from the FAR, Lot Occupancy, and Rear Yard Requirements

Here, complying with the Zoning Regulations with respect to FAR, lot occupancy, and rear yard would create a practical difficulty for the Applicant to accommodate its existing and planned future needs on the Property. As described in detail below, the design of the Project is driven by Hillel’s specific religious and institutional needs, and strict compliance with the Regulations would significantly reduce the floor area of the Project. Accordingly, under the Monaco test, variance relief is justified.

Hillel’s Institutional Needs

The Project must be able to accommodate Hillel’s religious and programmatic needs, which include:

- A sanctuary that is large enough to accommodate worship services for the University’s Jewish population, both for regular worship and for special services during the High Holy Days;

- A vestibule that provides transition from the street to the sanctuary;
- Two kitchens to accommodate Kosher food preparation rules and provide Kosher food services to Jewish students who keep Kosher;
- Dining space that is large enough to accommodate regular Shabbat services as well as Seder during Passover;
- A rooftop that is large enough to accommodate the construction of a sukkah for religious services during the Sukkot holiday as well as elevator and stairway access to the roof;
- Space for student counseling, ministry, and education; and
- Informal gathering and socializing spaces to draw students into the facility and promote continued exploration and understanding of the Jewish faith.

These religious needs result in certain minimum area requirements for the primary chapel / assembly space, the kitchen and dining space, and the roof area, which drive the design of the Project to occupy 100% of the lot on every floor.

Here, Hillel's needs translate into a need to accommodate seating for at least 140 students for worship within the combined chapel and auditorium space, and accommodate seating for at least 140 students in the combined dining area in the basement and the auditorium. On the ground floor, in addition to the chapel and auditorium, Hillel also requires room for a modest student lounge area that doubles as a pre-function space for large worship services; this space will serve an important role in conveying people into and out of the auditorium space both functionally during events and safely during emergencies. On the basement level, in addition to the dining room, Hillel also requires separate meat and dairy kosher kitchens. On the second floor, Hillel requires other space to accommodate Hillel's other activities, which go well beyond worship and dining. The second floor provides necessary space for student meetings, counseling, educational programs, and social interaction as well as office space for the Rabbi and staff.

Hillel's needs also include its future growth. Hillel is implementing a couple of initiatives that are expected to significantly increase its programming needs over time through its Gather the Jews and H23 initiatives. Over time, Hillel will seek to use the third and fourth floors to accommodate this growth.

Lot Occupancy and Rear Yard Variances—Building Layout-Driven Practical Difficulty

The floor layouts for the Project arise from the Property's size and location as well as Hillel's specific institutional needs and create a practical difficulty in complying with the lot occupancy and rear yard requirements. Hillel's church use is considered an assembly use under the building code, which drives requirements for multiple elevators and stairways as well as corridors that are larger than in other types of construction. For example:

- The assembly use and occupant load on the roof, which is driven by Sukkot worship needs, leads to code-required increase in width of stairways and use-driven requirement for a second elevator to the roof (both for redundancy and to accommodate anticipated high occupancy.
- The assembly use drives up the plumbing requirements. (A business use as defined under the Code would halve the code requirements.)
- Kitchen use leads to requirements for exhaust shafts that must be accommodated within the core.

As a result, the Project has an exceptionally large building core that, because of the small lot size, occupies 45% of the lot area on each floor. Furthermore, because of the small lot size and corner lot configuration, the core is pushed against the edge of the building, resulting in an inefficient single-loaded corridor layout. As a result, the Applicant is left with a useable floor

area of only 2,720 square feet on each floor. The narrowness of the lot further reduces the utility of the usable floor area.

Compliance with the lot occupancy and rear yard requirements reduces the ability to accommodate Hillel's program needs. As the size of the floorplate is reduced, all that is lost is program space, because the required core remains the same. Furthermore, compliance results in a taller building to make up for the lost space on each floor.

FAR Variance—Building Layout-Driven Practical Difficulty

Compliance with the FAR limitation creates a practical difficulty for similar reasons. Even though the Project occupies 100% of the lot on all four floors, the applicant has introduced a light-well into the building, which reduces the FAR to 3.75. The same building core efficiency and lot area constraints mean that it is impractical to build a reduced floor plate at the fourth floor: the level would consist almost entirely of building core and corridor space. Moreover, a partial floor would also eliminate the ability to use the rooftop for Sukkot and other outdoor religious services – neither the setback area nor the roof of the partial fourth story would be large enough. Therefore, if the Applicant were to comply with the FAR limitation, it would need to entirely eliminate the fourth floor and forego a significant amount of permitted density: the loss of the fourth floor reduces the Project's FAR to a 2.85 FAR – or 0.65 FAR below what is permitted as a matter of right. The loss of a floor would significantly and adversely impact Hillel's mission in two ways. In the long term, the loss of a floor would deprive Hillel of the right to construct future expansion space now that accommodates its forecasted future needs,

when it is most efficient to do so.² In the short term, the loss of a floor would deprive Hillel of space needed for revenue to fund the construction of the new facility.

For similar reasons, attaining compliance with the FAR limitations by removing additional density from each floor creates a practical difficulty. Hillel would need to reduce each floor plate by 20%, or about 575 square feet from each floor, to reduce the building to a 3.5 FAR. This shrinks each floorplate to about 4,000 square feet and increases the core factor to 50%; functionally, it eliminates the student lounge/pre-function space on the ground floor and student study and meeting space on the second floor.

FAR, Lot Occupancy, and Rear Yard Variances—Design-Driven Practical Difficulty

The design requirements for the Project also arise from the exceptional conditions related to the religious function, lot shape, and location of the Property, and create a practical difficulty in complying with the FAR, lot occupancy, and rear yard requirements. Religious buildings for institutes such as museums, synagogues, and churches are not mere accommodations for their daily activities. Being public buildings, they are also an external expression of their unique cultural identity. Churches and synagogues express their architectural presence through the use of height, embellishments like domes and towers, intricate articulation and ornate details.³

Here, the building design reflects the need to create a strong presence at the small corner lot, amid a sea of much larger institutional buildings. The massing is one of simple moves, both literal and symbolic: the strong base represents their history and the enduring commitment of the

² As a practical matter, it makes little economic or design sense to construct a one- or two-story addition in the future. The current structure would still need to be designed to support the addition (as well as anticipate future changes in code requirements for such an addition), the marginal cost of construction would be significantly higher, and the addition would need to be constructed while the building is occupied and in use.

³ The Talmud generally requires that synagogues be sited at the highest spot of the city and that the synagogue be the tallest building, but as a practical matter this cannot be accomplished, so presence must be accomplished through other means.

elders; it contains the most formal spaces of the building. The perched “box” represents their optimism for the future generation, and houses the day to day program. The base is articulated through the use of stone in a chiseled, rough finish, with openings lined by bronze panels. It is layered with glass and perforated bronze screens around the corner of 23rd and H. The top is composed as a stone frame, honed and smooth in contrast with the base, layered with punched windows and bronze metal panels.

Together, the simple massing and its deliberate articulation are able to “hold the corner” at 23rd and H Streets as well as “hold its own” against the larger institutional buildings that surround the Property on the Foggy Bottom Campus, giving the building an appropriate institutional presence. Introducing a setback on the fourth floor to reduce the building’s FAR or otherwise reducing the massing through façade modifications would fundamentally alter the intentional presence of the Project. Furthermore, because the building is on a corner lot, even if it were possible to cut away a portion of the building to reduce the lot occupancy/FAR and create a rear yard, the resulting space would create a “gap” in the urban fabric and street-wall, which is inconsistent with planning policies, particularly in a high density zone.

For all the reasons set forth above, the specific location and design of the Project is driven by Hillel’s institutional needs for minimum-sized areas for religious services, and these particular needs require variance relief from the FAR, lot occupancy, and rear yard requirements.

2. Parking Variance

For similar reasons, complying with the Zoning Regulations with respect to parking creates a practical difficulty for the Applicant. For the reasons described above, the Applicant is unable to set aside surface area for parking. District planning policies prohibit “back-in” parking facilities wherever possible, so any surface parking would require a significant amount of lot

area to accommodate turning radii. This would significantly impact the ground floor of the Project and significantly reduce Hillel's floor area, as well as create unsightly surface parking at ground level. Underground parking is also not an option; the Property's exceptionally small size and narrowness would require a disproportionate amount of ramping and preclude underground facilities. Furthermore, this underground level would eliminate the basement level devoted to the Kosher kitchen and dining facilities. Finally, eliminating the existing parking and loading driveway allows for the elimination of a curb cut, which will improve the pedestrian experience along H Street.

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

Finally, the Applicant must demonstrate that "granting the variance will do no harm to the public good or to the zone plan." *Gilmartin*, 579 A.2d at 1167. Here, the requested variances can be granted without causing any adverse impact on the neighboring properties. The variances from the FAR, lot occupancy, and rear yard for the proposed 58'6"-foot building result in no greater impact than a matter of right project, given that a 90-foot building could be constructed as a matter of right. Furthermore, because the Project is located to the north of St. Mary's, it will not create shadow impacts. The FAR variance is minor and does not impact the integrity of the zone plan.

Similarly, the parking variance will not adversely impact or affect neighboring properties. Hillel's members are all GW students who are already present on the campus for classes. Furthermore, many of these students – and most of the undergraduate students – live on or close to campus. Therefore, they are all most likely to walk to services and activities at Hillel. Hillel employs approximately 5 staff members, three of whom take transit. The two staff members who drive will be able to park in public parking facilities on or near campus.

VI. THIS APPLICATION SATISFIES THE CRITERIA FOR A SPECIAL EXCEPTION FOR A ROOF STRUCTURE NOT MEETING ALL REQUIREMENTS

Section 411.11 provides that “where impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable, the [Board] shall be empowered to approve, as a special exception under § 3104, the location, design, number, and all other aspects of such structure regulated under §§ 411.3 through 411.6, even if such structures do not meet the normal setback requirements...” Accordingly, under this Section, the Commission may approve a roof structure that does not meet the setback requirements or the uniform height requirements when compliance would be restrictive, prohibitively costly, or unreasonable because of conditions of relating to the building.

Here, complying with the setback and uniform height requirements is unnecessarily restrictive and unreasonable because of the Project’s mechanical requirements and code-driven elevator and stairway requirements. The roof structure must accommodate and screen the building’s mechanical equipment, which may require a height of up to 18 feet. Accordingly, pursuant to the requirements of the Zoning Regulations, the roof structure is generally a uniform structure of equal height. However, for the reasons discussed in detail above, the roof structure must also contain multiple stairways and elevator penthouses associated with the building’s core, which drives the layout and location of the roof structure extending toward the exterior walls of the building, beyond the setback requirement. The roof structure features a small metal trellis canopy, which is below the height of the remainder of the roof structure.

Even with the roof structure, the building is well within the 90-foot height limit, and so the roof structure relief is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

VII. CONCLUSION

For all of the above reasons, the Applicant is entitled to the requested variance and special exception relief in this case.

Respectfully submitted,

_____s_____

David M. Avitabile

Date: May 14, 2014