

HILLEL AT THE GEORGE WASHINGTON UNIVERSITY



**APPLICATION TO THE DISTRICT OF COLUMBIA ZONING COMMISSION
FOR VARIANCE AND SPECIAL EXCEPTION RELIEF**

ZONING COMMISSION CASE NO. 06-11L

SUPPLEMENTAL STATEMENT OF THE APPLICANTS

JUNE 9, 2014

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

Final Statement of the Applicant
ANC 2A

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

INTRODUCTION

This statement and the attached documents support the application of Hillel at The George Washington University (“**Hillel**”) and the George Washington University (“**University**”) (together, “**Applicant**”) for variance relief and special exception approval to permit the construction of a new mixed-use 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 (“**Campus Plan**”). The Property is improved with Hillel’s existing two-story religious facility. The Applicant proposes to demolish the existing building and replace it with a new four-story religious facility (“**Project**”). The Project will contain a new chapel and auditorium, kosher kitchens and a dining facility, and other student-oriented spaces for counseling, education, and social interaction. Two floors within the Project will be leased to the University for student life and academic uses (“**University Use**”).

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 provisions.¹ Finally, the Applicant seeks special exception approval for an amendment to the Campus Plan and further processing of the Campus Plan to authorize university use within the facility.

Related to the Project, the University is also seeking approval for a minor modification to Z.C. Order No. 06-11/06-12 (the “**Campus Plan Order**”), which is pending before the Zoning Commission as Case No. 06-11M/06-12M (the “**Minor Modification**”). In the Minor Modification, the University seeks to clarify that the proposed University Use does not require second-stage PUD approval through proposed language that states

PUD approval is not required for additional density or change in use associated with university use approved in Z.C. Order No. 06-11L that is located within the proposed development to be undertaken by Hillel on Square 42, Lots 820 and 840.

In its filing, the University explained that the clarification represented a modification of little or no consequence to the overall Campus Plan order because the amount of space involved is minor, the PUD process is not appropriate for the size of the Project, and the issue arises out of a unique set of circumstances driven not by the University but by Hillel’s needs. The hearing on the relief requested herein will provide all parties with an opportunity to fully discuss and evaluate the limited impacts associated with the proposed University Use.

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

¹ The initial application also sought approval for relief from the uniform height requirements. That relief is no longer requested.

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. Finally, the Applicant seeks special exception approval pursuant to Sections 210 and 3104.1 to amend the Campus Plan and grant further processing approval to permit student life and academic uses within the Project.

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, and Section 3035 of the Zoning Regulations. Pursuant to a vote at a regularly-scheduled public meeting on May 12, 2104, the Commission voted to consolidate Hillel's then-pending BZA application regarding the variance and special exception relief for the Project with the University's application for special exception approval of the University Use. (The Commission also elected to hold the Minor Modification in abeyance pending the outcome of the public hearing on this case.)

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. A driveway capable of parking four cars in tandem 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 currently 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

A. Hillel and the Proposed Project

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 1930's 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 Jewish faith and identity. 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. While primarily serving Jewish students on campus, Hillel opens its programs and services to students of all faiths on campus. In addition, as part of its mission, Hillel welcomes community members to its religious events, educational programs and volunteer efforts on behalf of the local community.

Hillel is also expanding programs that will deepen and grow its mission. For example, Gather the Jews (“GTJ”), which is a young adult network that has emerged as the preeminent resource for young adults seeking connections and information on Jewish social, religious, and learning opportunities in the DC area. GTJ’s partnership with Hillel joins Hillel’s infrastructure with GTJ’s demographic reach and allows both organizations to promote identity building and growth to the next generation of Jews. As GTJ and Hillel continue to grow, the Hillel facility will need to serve as an all-encompassing resource for undergraduate and graduate students, alumni, and the young local Jewish community.

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 will lease the top two floors to the University for academic and student life uses, which will help fund the construction of the Project.

As shown on the plans attached as Exhibit A, the Project consists of four stories above grade and measures approximately 56’1” 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 15 parking spaces, but no parking will be provided within the Project.² No loading facilities are required for a house of worship with less than 30,000 square feet of gross floor area.

B. University Use Within the Project

The University intends to lease and use the upper two floors of the Project for campus-related student life space that may include student organizations, auxiliary services, and student activities, and academic uses for classroom space ("University Use"). The revenue from the lease will allow Hillel to finance construction of the Project. The University Use will occupy approximately 9,150 square feet of gross floor area. Accordingly, the University requests an amendment to the Campus Plan to designate the Property for campus life and academic/administrative uses. The University also requests further processing approval under the amended Campus Plan to permit such use upon the completion of the Project.

In response to comments from Advisory Neighborhood Commission 2A, the University has agreed to two limitations regarding the University Use. First, the University will refrain from using the space within the Project for faculty and staff offices except for staff offices directly related to the student life uses within the Project. Second, the University will forego the density approved for Site 77D under the Campus Plan to offset the additional density proposed for the Project. (The Campus Plan approved a total of 9,504 square feet of additional residential / campus life / athletic use for Site 77D, but the University elected to renovate the property without utilizing this additional density.) As a result, the University Use within the Project will not result in any increase in university use over and above the amount approved by the Zoning

² 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.

Commission in the Campus Plan. (Also, as a result of this commitment, the Project will not result in any additional density under the Campus Plan Order, which further emphasizes that its impact on the Campus Plan / PUD is minor.)

**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) 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 existing inefficient facilities, so that it may further its mission to serve the Jewish population at the University in an active and meaningful way. More importantly—and crucial to the variance test—to accomplish its mission, Hillel must be located on or as close to the campus population as possible. There are few if any other available locations on or near the GW campus that could accommodate Hillel. As of June 4, 2014, there were no commercial properties or land for sale in Zip Code 20037, and no residential properties of requisite lot size for sale in Zip Code 20037.

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 specific 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).

Finally, Hillel's status as a religious organization creates an additional exceptional situation under federal and constitutional law. Under the federal Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C.A. §2000cc ("RLUIPA"), governments must ensure that "individualized assessments" (that is, review of requests for variances and special exceptions) made in the implementation of land use regulations do not impose a substantial burden on religious exercise unless the imposition of that burden furthers a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest. RLUIPA's requirements create an additional exceptional situation that further justifies the consideration of Hillel's religious mission and needs.

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 capacity of the Project and its ability to meet Hillel's needs. 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;
- 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 and other holiday meals;
- 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, all of 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 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 Hillel staff.

Hillel's needs also include its future growth. Through Gather the Jews, Hillel is emerging as not only a prominent resource for GW students but also alumni and other young adults in the DC Jewish community. As GTJ and other initiatives grow, Hillel will use the third and fourth floors to accommodate this growth. It would be practically difficult to try and add the expansion space as a future date.

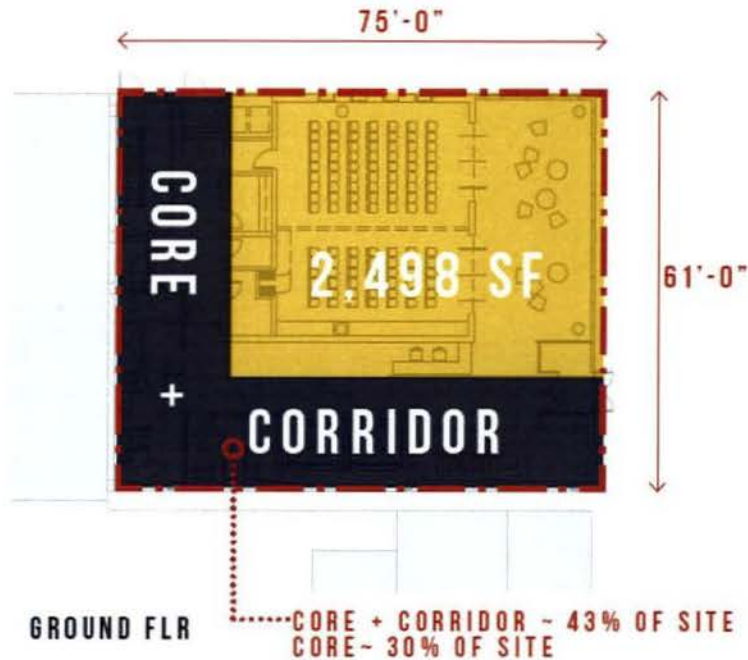
Lot Occupancy and Rear Yard Variances—Building Layout-Driven Practical Difficulty

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. For example:

- Hillel's church use is considered an assembly use under the building code, which drives requirements for multiple stairways as well as corridors that are larger than in other types of construction.
- 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 during this holiday).
- 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. The kitchen use also leads to a requirement for an additional service

elevator from the ground floor to the lower level in order to separate food and trash from passenger elevators.

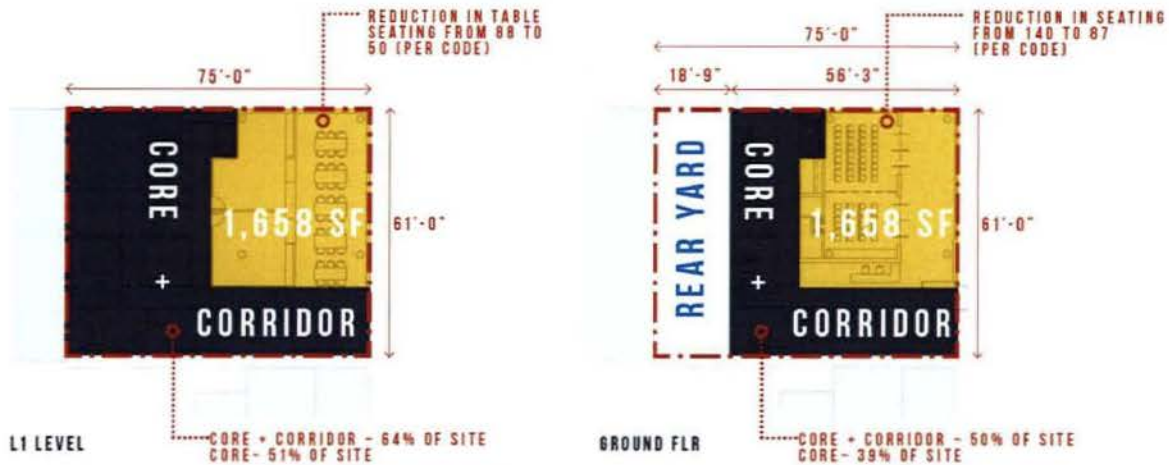
As a result, the Project has an exceptionally large building core that, because of the small lot size, occupies 43% of the lot area on each floor:



(Figure 1: Core Factor.) This is significantly larger than the core factor in a typical small commercial office or residential building, which is usually around 20-25%. 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, even with the lot occupancy and rear yard variances, the Applicant is left with a useable floor area of approximately 2,500 square feet on the ground floor and less than 2,300 square feet on the upper floors. The narrowness of the lot further reduces the utility of the usable floor area.

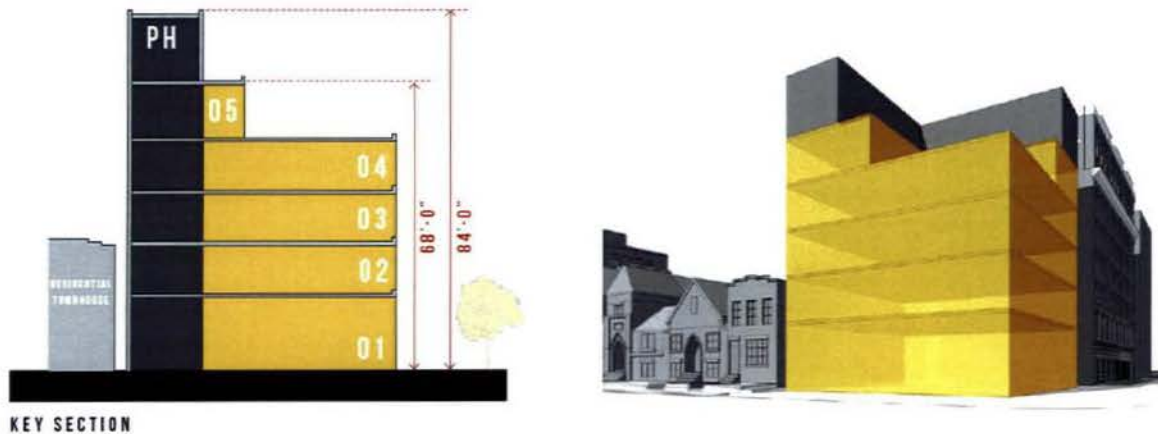
Compliance with the lot occupancy and rear yard requirements would eliminate the ability to accommodate Hillel's program needs on the Property. As the size of the floorplate is reduced, so is program space lost, because the required core remains the same size. As shown

below, zoning compliance would reduce the amount of seating in both the ground floor worship and lower level dining areas below Hillel's requirements:



(Figure 2: Rear Yard and Lot Occupancy Use Impacts.) This reduction in capacity would impose a substantial burden on Hillel's religious exercise.

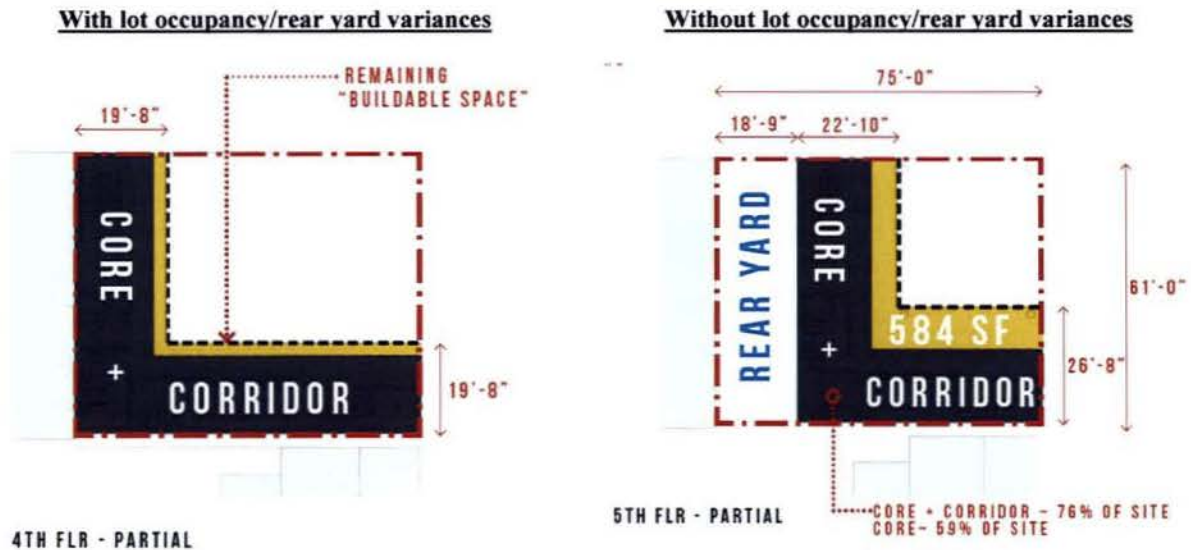
Theoretically, the Property permits a height of 90 feet, and Hillel could make up the lost space with an additional floor. However, this results in a highly inefficient taller building:



(Figure 3: Rear Yard and Lot Occupancy Height Impacts.) More importantly, as a practical matter, this would also impose a substantial burden on Hillel's religious exercise, as the seating for the worship space cannot be split among multiple floors.

FAR Variance—Building Layout-Driven Practical Difficulty

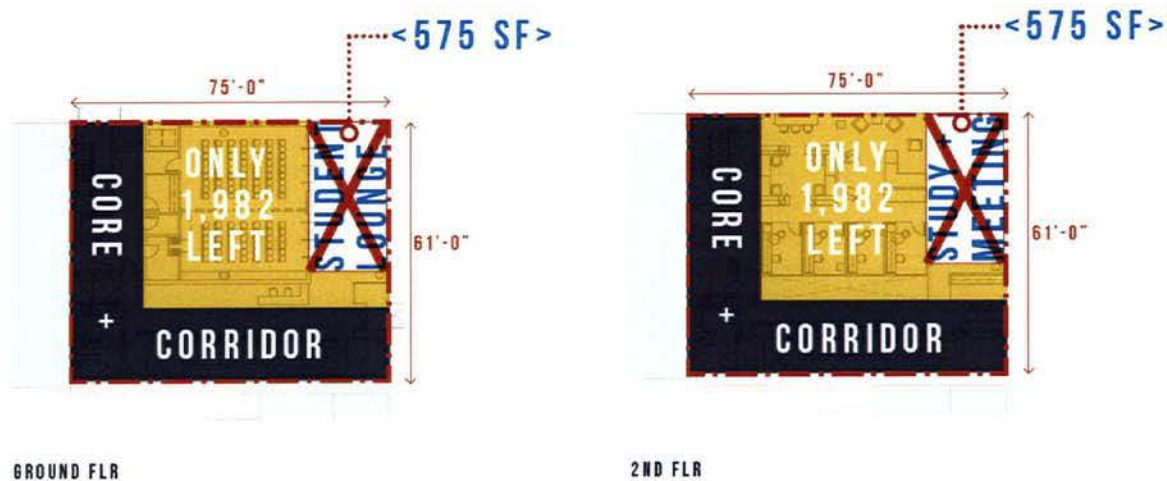
Compliance with the FAR limitation creates a practical difficulty for similar reasons. Even though the Project occupies 100% of the lot on all four floors, the applicant has introduced a light-well into the building, which reduces the FAR to 3.75. The same building core efficiency and lot area constraints mean that it is impractical to build a reduced floor plate at the top floor; with or without the other variances, the level would consist almost entirely of building core and corridor space:



(Figure 4: FAR Impact on Top Floor.) Moreover, a partial floor would also limit 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 top floor and forego a significant amount of permitted density: the loss of the top floor reduces the Project's FAR to well 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.³ In the short term, the loss of a floor would deprive Hillel of space needed for revenue required 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%; in other words, Hillel is left with less than 2,000 useable square feet on each floor. Functionally, this either reduces worship space and seating or eliminates the student lounge/pre-function space on the ground floor, and it similarly reduces student study and meeting space on the second floor.



(Figure 5: FAR Impact on Ground and Second Floors.)

³ 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.

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 institutions 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.⁴

Here, the building design reflects the need to create a strong presence at the small corner lot, which exists in an area of larger residential and 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 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 programs. The base is articulated through the use of stone in a chiseled, rough finish, with openings lined by bronze-colored 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-colored 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” among the 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

⁴ 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.

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 essentially means that any below-grade parking structure consists entirely of ramps. As a result, the garage would yield just a couple of parking spaces, and still not meet the parking requirement. Furthermore, the ramp from the street to the underground level would reduce the ground floor plan and the available amount of space for worship services. Similarly, underground parking would preclude placing the Kosher kitchen and dining facilities in the basement level. Such facilities would need to be located on one of the above-grade floors, which then eliminates a floor devoted to other uses. Finally, the intake and exhaust for the garage

would also increase the size of the building core, further exacerbating the existing difficulties in making use of the limited floor plate on each level.

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 56'1" 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 Church, it will not create shadow impacts on the Church. Shadow studies are included in Exhibit A. 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. Eliminating the existing driveway allows for the elimination of a curb cut, which will improve the pedestrian experience along H Street. Hillel's members are largely 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 currently employs approximately 5 staff members, three of whom take transit. The staff members who drive will either also choose to take transit or will be able to park in public parking facilities on or near campus. As set forth on the memorandum attached as Exhibit B, ample public parking is available to accommodate not only staff but also any visitors who choose to drive to Hillel. The memorandum also addresses how Hillel's loading and service needs will be able to be managed from the curb lane on H Street.

**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 when compliance would be restrictive, prohibitively costly, or unreasonable because of conditions of relating to the building.

The proposed roof structure will measure approximately 16 feet tall but it will only be set back approximately 9 feet on the east façade and approximately 11 feet on the north elevation. Compliance with the 1:1 setback requirement is unnecessarily restrictive and unreasonable because of the Project’s mechanical requirements and code-driven elevator and stairway requirements.

For the reasons discussed in detail above, the roof structure must contain multiple stairways and elevator penthouses associated with the building’s core, which drives the configuration and size of the roof structure such that it extends toward the north and east exterior walls of the building. The small lot also results in less overall roof area available to accommodate mechanical equipment. The design team has lowered the mechanical penthouse as much as it can, but a 16-foot tall roof structure is required to accommodate and screen the building’s elevators, stairways, and mechanical equipment. Finally, Hillel’s need for a large-enough roof area to accommodate religious ceremonies related to the Sukkot holiday preclude

expanding the roof structure in other directions. As a result, the roof structure is unable to meet the full setback requirement on the north and east sides of the building.⁵

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

**VII. THE APPLICATION MEETS THE CRITERIA FOR SPECIAL
EXCEPTION APPROVAL FOR UNIVERSITY USE UNDER SECTION
210 OF THE ZONING REGULATIONS**

The proposed University Use meets the standards of Section 210 of the Zoning Regulations as set forth below.

***A. Section 210.2: The Use is Located so that it is Not Likely to Become
Objectionable to Neighboring Property***

The proposed University Use is minor, and will not generate any objectionable impacts on the surrounding residential community. The proposed University Use will not result in an increase in student population or intensity of use on the campus—the small amount of space is merely decompression space that will accommodate existing or new programs and initiatives. Similarly, the University Use will not generate any objectionable traffic or parking impacts, because the users of the space will already be located on the campus. Finally, the University Use is located within the building, which is itself within the Campus Plan boundaries, and will not generate noise or other objectionable impacts on the surrounding residential neighborhoods.

⁵ Under well-established interpretations set forth in BZA Appeal No. 17109, no setback is required from the west and south walls because they are not exterior walls; rather, these walls are interior walls because they are built to the property line and abut adjacent properties that are also permitted to reach the same maximum height under the Zoning Regulations. See Appeal No. 17109 at 12-13.

B. Section 210.3: Compliance with Maximum Bulk Requirement

The University will remain in compliance with the maximum bulk requirement. The University Use will increase the total FAR of the campus by 0.007 FAR, which is a de minimis increase. The total FAR for the residentially-zoned portions of the campus upon the addition of the University Use and completion of all other development approved by the Zoning Commission will remain at 3.16 FAR, which is well within the permitted FAR of 3.69 approved in the Campus Plan. Finally, the University has agreed to forego the development of Site 77D, which ensures that the total FAR for the residentially-zoned portions of the campus will remain within the 3.69 FAR approved by the Commission in the Campus Plan.

C. Section 210.4: Relationship to the Campus Plan as a Whole

The proposed mixed-use campus life and academic/administrative designation is consistent with the Campus Plan as a whole, including the use designation of adjacent and nearby properties. Again, the Property will be used for campus-related student life and academic uses that include student organizations, auxiliary services, student activities, and classroom space. The proposed mix of campus life and academic uses reflects the location of the Property near both residential/student life and academic buildings. The Property is adjacent to Amsterdam Hall, a residence hall, and proximate to Fulbright Hall, another residence hall, and the Lerner Health and Wellness Center. However, the Property is also close to a number of existing and proposed academic buildings, including Ross Hall, the under-construction Science and Engineering Hall, Tompkins Hall, and a proposed academic/administrative site across 23rd Street in Square 56.

D. Sections 210.5 and 210.6: Not Applicable⁶

E. Section 210.7: Consistency with the Comprehensive Plan

The proposed University Use is consistent with the Comprehensive Plan. The use is consistent with the Property's designation in the Institutional land use category. Furthermore, the University Use arises out of a partnership with Hillel that will promote and sustain Hillel's service to the surrounding community. Such partnerships are encouraged pursuant to Section EDU-3.2 of the Comprehensive Plan. Moreover, the partnership with Hillel will specifically support community improvement and contribute to the District's culture in accordance with Policy EDU-3.3.2.

F. Section 3104: Special Exception Standards

For reasons similar to those set forth above, the proposed University Use also meets the general special exception standards of Section 3104. The proposal locates university use within the boundaries of the Campus Plan, which is consistent with the general purpose and intent of Section 210 as well as the specific goals of the Campus Plan. Furthermore, the use is relatively small and is located near the heart of the campus, away from surrounding residential properties. Accordingly, it is unlikely to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map.

G. Conclusion

For all of the reasons set forth above, the University respectfully requests that the Commission approve an amendment to the Campus Plan as well as further processing of that Plan to permit the University Use on the Property.

⁶ Section 210.5 only applies to the interim use of off-campus property. Section 210.6 only applies when major buildings are moved off campus. Neither applies here.

VIII. COMMUNITY OUTREACH

The Applicant has engaged ANC 2A, St. Mary's Church, and the Foggy Bottom/West End neighborhood in discussions regarding the project. Hillel first presented its plans for the Project to ANC 2A at a public meeting in October 2013. After the filing of the initial BZA application in February 2014, Hillel met with representatives of ANC 2A to review the design and discuss specific concerns regarding the Project. Hillel has since presented the Project as filed to ANC 2A at its May 2014 meeting, and expects to return to the ANC at its June 2014 meeting.

The University has also discussed the University Use with updates at the quarterly Campus Plan Advisory Committee meetings (including extended discussions at the November 2013 and March 2014 CPAC meetings) and discussions with ANC 2A. As a result of these discussions, the University agreed to the two conditions identified above: prohibiting faculty/staff offices within the University Use, and foregoing development rights at Site 77D.

Regarding St. Mary's Church ("Church"), once Hillel's Board authorized the concept design for the Project, representatives for Hillel first reached out to the Church in January 2014 to discuss the plans for the Project and set a meeting to review the Church's concerns. Hillel presented the design of the Project to the Church in February 2014 (a January 2014 presentation was cancelled due to a snowstorm), and since that time has engaged in active meetings and other discussions with the Church regarding construction impacts from the Project as well as other areas of concern.

The Church's primary concerns have revolved around potential construction impacts to the Church, which is a historic building. Hillel has engaged a general contractor with extensive experience with construction next to historic structures (as is often the case in the District of

Columbia). To address the Church's concerns, Hillel has proposed an extensive construction management plan that would, among other measures:

- Facilitate direct communication of construction schedule updates, complaints, and other issues
- Repair any damage to the Church caused by the construction of the Project
- Indemnify the Church for any damage
- Cause its general contractor (and excavation subcontractor) to carry \$8 million in insurance (the amount identified by the Church as sufficient) and name the Church as an additional insured
- Stop construction work for all weddings and funerals
- Reimburse the Church for the cost of consultants hired by the Church to review the construction plans for the Project
- Reimburse the Church for lost rental income caused by the construction impacts of the Project

These measures are in addition to the standard construction management measures regarding pre- and post-construction surveys, site cleanliness and security, rodent abatement, hours of construction, parking, and the like. Hillel's proposal to go above and beyond standard construction management measures is contingent on the Church's approval of underpinning access along the shared boundary line and the Church's support for the Project. Hillel will continue to work with the Church to reach agreement on construction management issues prior to the public hearing.

IX. WITNESS TESTIMONY

At the public hearing, the Applicant will present testimony from the following witnesses:

- Representative of Hillel:
 - Mission; current and future programs
 - Project goals
 - Community outreach

- Mitigation efforts
- Representative of the University: testimony regarding university use and outreach
- Project Architect:
 - Overview of the site, surrounding area, and land use
 - Site planning and compatibility with surrounding area
 - Project design: design considerations, site layout and programming, site design and materials, and code issues specific to this facility
 - Variance relief: discussion of burden of proof
 - Special exception relief: discussion of the burden of proof

The Applicant requests one hour to present its testimony. Representatives of the project architect will be presented as an expert in the field of architecture and copies of their resumes are included as Exhibit C.

X. CONCLUSION

For all of the above reasons, the Applicant is entitled to the requested variance and special exception relief in this case. We look forward to presenting the application to the Commission at the public hearing on June 23, 2014.

Respectfully submitted,

_____s_____

David M. Avitabile

Date: June 9, 2014