

December 8, 2025

VIA IZIS

Anthony Hood, Chairperson
D.C. Zoning Commission
Office of Zoning
441 4th Street, NW, Suite 200-S
Washington, DC 20001

**Re: Z.C. Case No. 25-17: Living Classrooms Design Review Application
Motion to Amend the Application within 30 Days of the Hearing**

Dear Chairman Hood and Members of the Zoning Commission:

The Applicant hereby moves to amend the Application to request variance relief to permit the Project's proposed height and requests that the Commission waive Subtitle Z, Section 401.5 to allow such amendment within 30 days of the public hearing.

I. Background

In the Application, the Applicant requested height flexibility to permit the Project to reach a height of 40 feet as measured from the Project's proposed finished grade, which is approximately seven feet higher than the existing grade. The Project's elevated grade is a direct result of the Applicant's elevation of the site out of the 500-year floodplain in accordance with the resilience focus of the Comprehensive Plan and District regulations and requirements regarding floodplain development. The Applicant requested flexibility from Subtitle B's "rules of measurement" for height, which ordinarily require that building height for a nonresidential building in a zone that is limited to a height of 40 feet be measured from the adjacent natural or finished grade, whichever is lower.

In its December 1, 2025 hearing report, the Office of Planning indicated it could not support using design review flexibility from the "rules of measurement" but instead proposed using design review flexibility to allow a height of 47 feet, as measured from the lower natural grade. The Applicant reviewed this approach and concluded that it was also problematic, as design review height flexibility is limited to the height that is permitted for a Planned Unit Development, and

Subtitle K, Section 200.13 limits the permitted height of a PUD in the SEFC Zones to the matter-of-right height.¹

Therefore, the Applicant now amends the application to request a variance from Subtitle B, Section 307.2 of the height “Rules of Measurement” to permit the Applicant to measure height from the finished grade. Such variance relief is warranted by the exceptional condition of this unique waterfront parcel and its interplay with the strict requirements for the rules of measurement, which were developed for a very different context for low-scale neighborhood development and not intended to apply to such waterfront situations, where elevating out of the floodplain is a common practice. The variance relief is required to accommodate the programmatic and structural needs of the Project, and such relief will not impair the intent and purposes of the Regulations and will not cause substantial detriment to the public good. To the contrary, the variance relief will allow the development of the Property in accordance with best practices for resilient design advance the public good through education and workforce training. A detailed variance analysis follows below.

II. There is Good Cause for Permitting the Amendment of the Application Under Subtitle Z, Section 101.9

There is good cause to permit the amendment of the Application, as permitted under Subtitle Z, Section 101.9, as the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

- The request for height flexibility—and grounds for such flexibility rooted in the rules of measurement—has been present in the Application from its initial filing and was reflected in the notice of public hearing. Similarly, all of the facts supporting the variance relief were previously stated in the Application. Thus, the “issues involved” have been fairly stated.
- There is no opposition to the Application. Both the Office of Planning and Advisory Neighborhood Commission 8F, each of which who are afforded great weight, support the height flexibility to allow the Project as proposed by the Applicant. OP’s only issue was the process by which such height flexibility is achieved.

¹ The definition of “Development Standards” in Subtitle A, Section 201.3 includes the “General Provisions” of a subtitle as an area from which design review flexibility can be granted, and so the Commission theoretically has the authority to grant flexibility from K 200.13 as well as the specific height limit of K 231.3, but this arguably runs counter to the intent of the Regulations, which is to limit design review height to what is permitted for a PUD.

- The issue regarding the method of height relief arose in OP’s hearing report and the issue could not have been addressed sooner.

Finally, the Applicant understands that a decision on the Application will not be rendered until January 2026 in order to provide for the required referral period for the Application’s special exception relief from the floodplain requirements. That additional period provides an opportunity for any person or party at the hearing to raise concerns with the use of the variance as the method for height flexibility.

III. The Application Meets the Burden of Proof for Variance Relief from Subtitle B, Section 307.2

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 “peculiar and exceptional practical difficulties” for the property owner; 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., D.C. Code § 6-641.07(g)(3); Gilmartin v. D.C. Bd. 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 rules of height measurement in Subtitle B § 307.2.

Additionally, when the property owner seeking a variance is a public service or non-profit entity, the Board may be more flexible in deciding whether to grant the request, “especially where the organization is seeking the zoning relief in order to meet a public need or serve the public interest.” Neighbors for Responsive Gov’t, LLC v. D.C. Bd. of Zoning Adjustment, 195 A.3d 35, 56 (D.C. 2018). Referred to as “public good flexibility,” this doctrine recognizes that “the public need for the use is an important factor in granting or denying a variance.” Monaco v. D.C. Bd. of Zoning Adjustment, 409 A.2d 1067, 1098 (D.C. 1979) (citation omitted). Consideration of the public need is strong enough that public good flexibility may be applied in a joint application for a variance by a not-for-profit entity and a for-profit organization. See McDonald v. D.C. Bd. of Zoning Adjustment, 291 A.3d 1109, 1126 (D.C. 2023) (affirming Board’s application of public good flexibility to joint application for church and assisted living facility by non-profit in partnership with for-profit organization).

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

The first prong of the variance test requires a property owner to show that extraordinary or exceptional conditions affect the subject property. These conditions do not need to inhere in the land itself and may arise from a confluence of factors. See Clerics of St. Viator v. D.C. Bd. of

Zoning Adjustment, 320 A. 2d. 291 (D.C. 1974) (holding that the exceptional situation or condition standard goes to the property, not just the land); Gilmartin, 579 A.2d at 1167 (concluding it is not necessary that the exceptional situation or condition arise from a single situation or condition on the property). 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.

In Monaco, the Board extended the exceptional condition beyond the land or improvements to also include the needs of an organization devoted to public service which seeks to upgrade and expand its existing inadequate facilities. See Monaco, 407 A.2d at 1099; Neighbors, 195 A.3d at 55. Nonprofit organizations that are eligible for public good flexibility may demonstrate that its needs are an “exceptional condition” by showing: “(1) that the specific design it wants to build constitutes an institutional necessity, not merely the most desired of various options, and (2) precisely how the needed design features require the specific variance sought.” McDonald, 291 A.3d at 1124 (citing Draude v. D.C. Bd. of Zoning Adjustment, 527 A.2d 1242, 1256 (D.C. 1987)). Since Monaco, application of the Court’s doctrine of “public good flexibility” has been extended beyond government-adjacent entities to a social service center, university hospital, houses of worship, a continuing care retirement facility, and other organizations serving a public need. See id., at 1124.

Here, the topography of the existing lot combined with its waterfront location and its specific identification as a future home for Living Classrooms combine with the application of the restrictive rule of measurement to this parcel to create a unique condition. As set forth in the Application, this parcel was specifically identified in the SEFC Master Plan as a future home for Living Classrooms and its education and workforce development programs. The current elevation of the property is approximately seven feet below the elevation that is required to bring the Property out of the 500-year floodplain and meet the District’s floodplain requirements, as directed by the Comprehensive Plan (which places the Property in a Resilience Focus Area) and regulations from the Department of Energy and the Environment (“DOEE”). Therefore, the finished grade of the parcel must be elevated by seven feet in order to construct a building on the Property in furtherance of the SEFC Master Plan’s goals.

Virtually all waterfront sites are located in a non-residential zone, and in almost all of those non-residential zones, height is measured from the curb opposite the middle of the front of the building. However, in zones that are limited to a height of 40 feet, like the SEFC-4 Zone, the non-residential zone rules of measurement require height to be measured from the adjacent natural or finished grade at the front of the building, whichever is lower. This “grade” requirement, which is ordinarily required only for residentially-zoned property, creates an inherent conflict with the

regulatory and policy goals for waterfront sites within a floodplain, which is ordinarily to elevate the site out of the floodplain. Thus, the exceptional condition arises from the unique confluence of the Property's topography and location within a floodplain.

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

To satisfy the second element for an area variance, 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. D.C. Bd. of Zoning Adjustment, 287 A.2d 535, 542 (D.C. 1972), 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." 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 Adjustment, 606 A.2d 1362, 1365 (D.C. 1992) (citing Gilmartin, 579 A.2d at 1167). To demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome, not impossible.

It is well settled that the Board 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 Board's consideration." Gilmartin, 579 A.2d at 1171 (citing Barbour v. D.C. Bd. of Zoning Adjustment, 358 A.2d 326, 327 (D.C. 1976)); see also Tyler, 606 A.2d at 1367. 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." Gilmartin, 579 A.2d at 1171.

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. See e.g., St. Mary's Episcopal Church v. D.C. Zoning Comm'n, 174 A.3d 260, 271 (D.C. 2017) (applying doctrine to second "practical difficulties" prong"), McDonald, 291 A.3d at 1125 ("By statute and case law, the first and second prongs of the general test for a variance are clearly connected; the identified exceptional conditions are relevant because they create 'practical difficulties' for the applicant that the requested variances would alleviate."). In Monaco, the Court articulated the following standard for public institutions seeking variance relief based on institutional necessity:

- 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

- 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). Notably, the Draude court concluded that evidence that conformance with the Zoning Regulations would require significant reductions in floor area would support variance relief.

Here, the strict application of the height rules of measurement to the Project creates a practical difficulty for the Applicant to accommodate its needs on the Property. The floor-to-floor height of the Project is driven by its educational and workforce development programming as well as the structural needs for the building.

- The ground floor includes restaurant space for the workforce development program that will require greater clear ceiling heights as well as space for restaurant mechanical equipment.
- The upper floors include classroom space for the educational program that will require higher ceiling heights as well as space for audio-visual equipment.
- The structural systems and engineering require additional space between floors to accommodate structural support as well as plenum space for ductwork and other mechanical systems.

Strict compliance with the height rules of measurement results in a loss of seven feet of building height, which, across only 3 floors, results in significantly lower ceiling heights that inhibit the ability to achieve these programmatic and structural needs. Further, another location without the height restriction is not feasible because this is the location that was specifically selected for Living Classrooms, not only because Living Classrooms’ program includes shipboard educational programming and the ship docks at The Yards’ marina but also because it is proximate to the communities that are served by Living Classrooms.

For these reasons, the requested variance from the height rules of measurement requirements is entirely driven by the Applicant’ programmatic needs, the structural design of the building, and the unique waterfront location.

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 requested variances can be granted without causing substantial detriment to the public good and without substantial impairment to the intent, purpose, and integrity of the Zone Plan. See Gilmartin, 579 A.2d at 1167. The requested variance relief will also not impair the intent, purpose, and integrity of the Zone Plan. Pursuant to Subtitle A § 101.1, the Zoning Regulations establish the minimum requirements for the promotion of the public health, safety, morals,

convenience, order, and general welfare to: (i) provide adequate light and air, (ii) prevent undue concentration of population and overcrowding of land, and (iii) provide distribution of population, business and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational, and cultural opportunities; and that will tend to further economy and efficiency in the supply of public services.

Here, the variance from the height rules of measurement will not cause substantial detriment to the public good or compromise the Zoning Regulation's ability to achieve the purposes stated above. First, the relief will further the development of the Project, which furthers goals for uses that advance educational opportunities and otherwise advances the public good for all the ways set forth in the Application. Second, the Project is otherwise located in an area where there is ample light and air around the Property. Third, the relief is consistent with the intent of the Regulations as applied to the SEFC Zones and in particular the existing development of the SEFC-4 Zone.

- As a general rule, the height in most non-residential zones is measured from a curb elevation, not the grade around the building. Grade elevations are typically used only for residentially-zoned property as set forth in Subtitle B, Section 308. Thus, measurement of building height from the adjacent curb elevation (by definition a finished grade condition), applies to other development in the SEFC-1 through SEFC-3 Zones as well as in the adjacent DC Water Sites PUD.
- The requirement to use grade for the measuring point for a non-residential zone is limited to zones where a height of 40 feet is permitted, which is generally only the MU-3 Zone (the lowest-density neighborhood commercial zone) and the MU-11 Zone (the lowest-density waterfront zone). Prior to 2018, the prior version of B-307.2 allowed for measurement from the finished grade in these zones. Those were the settled expectations that were in place for the establishment of the SEFC Overlay in 2003, the original approvals for other pavilion buildings in Yards Park in 2009 and 2016, and to the conversion of the SEFC Overlay to the special purpose SEFC Zone with the adoption of the 2016 Zoning Regulations.
- B 307.2 was amended in 2018 to require height measurement from the lower of adjacent natural or finished grade as part of a broader change to the rules of measurement that was focused on clarifying height measurement in residential zones, where the rules of measurement established height measurement from existing grade. This is different from non-residential zones, where the prior rules expressly permitted measurement from finished grade. In amending the Regulations, the Commission

applied the new “natural or finished, whichever is lower” definition across all zones, but the change creates an issue for waterfront sites like the Property, which must elevate out of the floodplain to meet resiliency requirements and thus should be able to measure from “finished” grade.

With the relief, the height of the Project will be consistent with other pavilions within Yards Park as measured from absolute grade elevations. The existing District Winery building approved in Z.C. Case No. 08-04B is 40 feet tall, plus a 10-foot penthouse, from elevation ~13, which was the then-required elevation to get out of the 100-year floodplain, and the Project will measure to a height of 40 feet, plus a 4-foot penthouse, as measured from elevation ~14, which is the elevation required to get out of the 500-year floodplain. Therefore, the Project will actually be shorter than the District Winery building. (For context, the Lumbershed Building, which was an adaptive reuse of an existing building, measures approximately 36 feet from elevation ~13.)

Conclusion

Please feel free to contact me at (202) 721-1137 if you have any questions regarding the above. We look forward to presenting the application at today’s public hearing.

Sincerely,

/s/
David Avitabile

Certificate of Service

The undersigned hereby certifies that copies of the foregoing document will be sent by electronic mail to the following addresses on December 8, 2025.

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