

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

**Application for 850 Delaware Avenue, SW
Square 590E, Lot 800**

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted by the District of Columbia in support of an application pursuant to 11-X DCMR §§ 901.2 and 1000.1 for (i) special exception relief pursuant to 11-U DCMR § 320.1(a) to permit an emergency shelter in the RF-1 District with more than 15 persons; (ii) special exception relief pursuant to 11-C DCMR § 703 for a partial reduction in the number of required parking spaces; and (iii) a variance from the building height and number of stories requirement of 11-E DCMR § 303.1, to permit the construction of a new emergency shelter with ground and cellar level medical care use in the RF-1 District at 850 Delaware Avenue, SW (Square 590E, Lot 800) (the “Site”).

Pursuant to 11-Y DCMR § 300.15, the Applicant will file its Prehearing Statement with the Board of Zoning Adjustment (“BZA” or “Board”) no fewer than 21 days prior to the public hearing for the application. In this statement, and at the public hearing, the Applicant will provide testimony and evidence to meet its burden of proof to obtain the Board's approval of the requested variance and special exception relief. The following is a preliminary statement demonstrating how the Applicant meets the burden of proof.

I. BACKGROUND

A. Description of the Site and Surrounding Area

As shown on the architectural plans and elevations included with this application (the “Plans”), the Site consists of Lot 800 in Square 590E, which is owned by the District of Columbia, and has a total land area of approximately 24,187 square feet. Lot 800 is the only lot in Square 590E and is a corner lot bounded by H Street, SW to the north, private property to the east, I Street, SW to the south, and Delaware Avenue, SW to the west. The Site is generally triangular in shape. The northwest portion of the Site includes a portion of former U.S. Reservation No. 220 (the “Reservation 220”), which was transferred from the jurisdiction of the National Park Service to the District of Columbia for highway purposes in 1957. *See* Sheet s 4-5 of the Plans, indicating the “Property Boundary for Federal Land” in blue, and the Transfer of Jurisdiction of Reservation 220, dated February 20, 1957, and also included in the application materials. Reservation 220 has a land area of approximately 11,065 square feet, and approximately 4,878 square feet of Reservation 220 is included in Lot 800. *See* Sheet 2 of the Plans; the Transfer of Jurisdiction of Reservation 220; and the Topographic Survey of Square 590E and Reservation 220, all included in the application materials.

The Site is presently improved with a 3-story building that the Applicant proposes to raze in connection with redevelopment of the Site. The existing building houses the Unity Health Care

Center, which provides primary health care services to homeless and low-income individuals, regardless of their ability to pay. *See* www.unityhealthcare.org. The Applicant will include a new facility for primary health care services to homeless and low-income individuals in the proposed new building, as further described herein.

The Site is located in the Southwest Waterfront neighborhood of the District. The surrounding neighborhood consists of a mix of residential, institutional, and office uses. The nine-story Capitol Park Plaza apartment building (in the RA-3 zone) is located directly across Delaware Avenue to the west of the Site; the Randall School property (approved as a PUD and map amendment to the C-3-C District in Z.C. Case No. 07-13, as amended and extended, and now expired) abuts the Site to the east; the Friendship Baptist Church is located directly across I Street to the south of the Site; and a variety of low-rise garden-style apartments are located to the north and northwest of the Site. The Site is located approximately 0.3 miles from the Waterfront Metrorail station, which services the Metrorail Green line, approximately 0.4 miles from the Federal Center Metrorail station, which services the Metrorail Blue, Orange, and Silver lines, and approximately 0.5 miles from the Navy Yard Metrorail station, which services the Metrorail Green line. The Site is also located within 0.3 miles of nine bus lines; within 0.4 miles of seven Zipcar locations; and within 0.4 miles of three Capital Bikeshare stations. *See* www.walkscore.com.

B. Existing Zoning

The Site is located in the RF-1 District. The RF Districts are designed to be mapped in areas identified as low-, moderate-, or medium-density, suitable for residential life and supporting uses. *See* 11-E DCMR § 100.2. The RF Districts are intended to “reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city.” 11-E DCMR § 100.3(a). The RF-1 District permits medical care use as a matter-of-right (*see* 11-U DCMR § 301.1(k)) and emergency shelter use with more than 15 persons as a special exception (*see* 11-U DCMR §§ 320.1(a) and 203.1(h)).

The RF-1 District requires/permits the following development standards for the proposed emergency shelter and medical care uses:

- A maximum building height of 35 feet and three stories (11-E DCMR § 303.1) and 40 feet as a special exception (11-E DCMR § 303.3). The RF-1 District also permits a maximum height of 90 feet if the building is removed from all lot lines for a distance equal to the height of the building above the natural grade (11-E DCMR §§ 303.5), or if the building is an institutional building and it is removed from all lot lines for a distance of not less than one foot for each foot of height in excess of 35 feet (11-E DCMR § 303.6);
- A maximum penthouse height of 12 feet (11-E DCMR § 303.7); and for the Site, a setback of 1:1 from the edge of the roof upon which the penthouse is located (11-C DCMR § 1502.1(a));
- A minimum lot width of 40 feet and a minimum lot area of 4,000 square feet (11-E DCMR § 201.1);
- A maximum lot occupancy of 40% (11-E DCMR § 304.1);
- A minimum rear yard depth of 20 feet (11-E DCMR § 306.1);

- No side yard is required, but if provided, a minimum width of five feet. No side yard is required along a side street abutting a corner lot in an RF-1 zone; (11-E DCMR §§ 307.2 and 307.3);
- No courts are required, but if provided, a minimum open court width of 2.5 inches per foot of height but not less than 6 feet; a minimum closed court width of 2.5 inches per foot of height but not less than 12 feet; and a minimum closed court area of twice the square of the required width of court but not less than 250 square feet (11-E DCMR § 203.1); and
- A minimum 50% pervious surface (11-E DCMR § 204.1).

The parking requirement for an emergency shelter is 0.5 parking spaces per 1,000 square feet of gross floor area; the parking requirement for medical care use is one parking space per 1,000 square feet of gross floor area in excess of 3,000 square feet, with a minimum of one space required (11-C DCMR § 701.5).

The loading requirement for an emergency shelter with 30,000 to 100,000 square feet of gross floor area is one loading berth at 12 feet by 30 feet, one loading platform at 100 square feet, and one service/delivery space at 10 feet by 20 feet (11-C DCMR §§ 901.1 and 905). No loading is required for a health care use with less than 30,000 square feet of gross floor area.

The bicycle parking requirement for an emergency shelter is one long-term bicycle parking space for each 10,000 square feet of gross floor area, and one short-term bicycle parking space for each 10,000 square feet of gross floor area; the requirement for medical care use is one long-term bicycle parking space for each 10,000 square feet of gross floor area and one short-term bicycle parking space for each 40,000 square feet of gross floor area (11-C DCMR § 802.1).

Pursuant to 11-U DCMR §§ 320.1(a) and 203.1(h), the RF-1 District permits emergency shelter use for five to 15 persons, not including resident supervisors or staff and their families, as a special exception and subject to the conditions listed in 11-U DCMR § 203.1(h). The Board may approve an emergency shelter for more than 15 persons if it finds that the program goals and objectives of the District of Columbia cannot be achieved by a facility of a smaller size at the subject location and if there is no other reasonable alternative to meet the program needs of that area of the District. 11-U DCMR § 203.1(h)(7). As described below, the project meets the standards set forth in 11-U DCMR §§ 203.1(h) and must accommodate more than 15 persons in order to meet the District’s goals and objectives for providing short term family housing.

C. Closing DC General: Short-term Family Housing

The District’s plan to end homelessness involves the closure of the DC General Family Shelter (“DC General”), the city’s largest family homeless shelter. Pursuant to the Homeless Shelter Replacement Act of 2016, dated June 13, 2016 (D.C. Act 21-412) (the “Homeless Shelter Act”), the Council authorized funding to develop replacement shelter facilities in Wards 3, 4, 5, 6, 7 and 8, to provide temporary shelter for families experiencing homelessness. The Council found that DC General is “antiquated and inadequate, and its current conditions limit the District’s ability to provide necessary services and support to families experiencing homelessness.” *See* D.C. Act 21-412, Sec. 2(3). The Council also determined that “children and families do best when short-term housing is provided in smaller-scale, service-enriched, community-based settings, and it is therefore in the best interest of the District to replace the DC General Family Shelter with a series

of facilities throughout the District that provide temporary shelter.” *Id.* at Sec. 2(4). Constructing the new shelters will “advance the important goals of ensuring that the District owns the land on which each of the facilities is constructed and that each of the facilities is located in a different Ward, which in turn will allow the District to provide small-scale, community-based temporary housing services throughout the District.” *Id.* at Sec. 2(8).

The Council approved the Site as the Ward 6 shelter location in the Homeless Shelter Act specifically to “construct a facility to provide temporary shelter for families experiencing homelessness containing 50 DC General Family Shelter replacement units on District-owned land at 850 Delaware Avenue, SW, Square 590E, Lot 800.” The Homeless Shelter Act also permits the Site to be “utilized to locate a health-services facility serving families experiencing homelessness.”

As described below, and in accordance with the Council’s mandate in the Homeless Shelter Act, the Site will be developed with a new seven-story building that contains 50 units of short-term family housing with space for ongoing support services, a medical care facility on the cellar level with access from the first floor level, and adequate on-site parking and loading for the Site’s proposed uses.

On June 28, 2016, the BZA reviewed and approved variances and special exception relief for the District’s emergency shelters in Wards 4, 7 and 8 (*see* BZA Order Nos. 19289, 19287, and 19288). The importance of and need for the emergency shelter in this case is based on the same goals and objectives as these three previously-approved cases.

II. PROJECT DESCRIPTION

The Applicant proposes to redevelop the Site by razing the existing building and constructing a new building with emergency shelter and medical care uses. The building will include 50 units for families, and will be able to accommodate up to 166 persons at full occupancy. Approximately 51,791 square feet of gross floor area will be devoted to the emergency shelter use (plus approximately 2,121 square feet of cellar floor area). Approximately 1,214 square feet of gross floor area will be devoted to the lobby entrance for the medical care facility, which will occupy approximately 6,646 square feet of cellar floor area. The entrance to the emergency shelter use will be on Delaware Avenue, SW, and the entrance to the medical care facility will be on I Street, SW. The first floor will contain the building lobbies, a dining and serving area for building residents, offices for case management and training, meeting space, a computer lab, exam room, and storage/trash areas. The cellar level will contain the health clinic facilities, as well as storage and long-term bicycle parking. Floors two through seven will contain 50 private room-style units for families with 2-4 beds each. They will also contain private and family bathrooms, community rooms, covered outdoor play spaces, and laundry and storage facilities.

The Site is a corner lot fronting on Delaware Avenue to the west, with the rear yard abutting the Randall School site to the east. Thirteen surface parking spaces will be located in the Site’s rear yard, with ingress from H Street and egress onto I Street. Zoning-compliant facilities for loading and short-term bicycle parking will also be located in the rear yard. Appropriate screening for the on-site parking will be provided in compliance with 11-C DCMR §§ 714.

III. SPECIAL EXCEPTION RELIEF

A. Relief Requested

1. Emergency Shelter Use.

The Applicant seeks special exception approval pursuant to 11-U DCMR §§ 320.1(a) and 203.1(h), and 11-X DCMR § 901.2, to locate an emergency shelter with more than 15 persons in the RF-1 District. An emergency shelter for five to 15 persons, not including resident supervisors or staff and their families, is permitted as a special exception in the RF-1 District, subject to the conditions listed in 11-U DCMR § 203.1(h). The Board may approve an emergency shelter for more than 15 persons if it finds that the program goals and objectives of the District of Columbia cannot be achieved by a facility of a smaller size at the subject location and if there is no other reasonable alternative to meet the program needs of that area of the District. 11-U DCMR § 203.1(h)(7). The emergency shelter use will accommodate up to 166 individuals, not including resident supervisors or staff and their families. Limiting the proposed use to 15 individuals would not meet the District's program goals and objectives, and there is no other reasonable alternative to meet the program needs in Ward 6.

2. Parking

The Applicant seeks special exception approval pursuant to 11-C DCMR § 703 and 11-X DCMR § 901.2, for a partial reduction in the number of required on-site parking spaces. Pursuant to 11-C DCMR § 701.5, the proposed emergency shelter use is required to provide 26 parking spaces, and the proposed medical clinic use is required to provide one parking space. However, the Applicant proposes to only provide a total of 13 parking spaces, of which 12 will be for the emergency shelter, thus necessitating relief.

11-C DCMR § 703 provides flexibility from the required minimum number of parking spaces when the provision of the required number of spaces would be contrary to other District of Columbia regulations; or impractical or unnecessary due to the shape or configuration of the site, a lack of demand for parking, or proximity to transit. The BZA may grant a full or partial reduction in the number of required parking spaces, subject to the general special exception requirements of Subtitle X, and the applicant's demonstration of at least one of the conditions listed in 11-C DCMR § 703.2. As set forth below, the project meets the requirements and conditions of 11-C DCMR § 703.2 and 11-X DCMR § 901.2

B. Burden of Proof

Pursuant to D.C. Code §6-641.07(g)(2) and 11-X DCMR § 901.2, the Board is authorized to grant a special exception where it finds the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property, subject in each case to the special conditions specified. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested relief are met. In reviewing an application for special exception relief, "[t]he Board's discretion... is limited to a determination of whether the exception sought meets the requirements

of the regulation.” *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 706 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id*

C. **The Applicant Meets the Test for a Special Exception Relief for the Emergency Shelter Use Under 11-U DCMR § 203.1(h)**

Section 203.1(h)(1) - In R-Use Group A, there shall be no other property containing an emergency shelter for seven (7) or more persons either in the same square or within a radius of one thousand feet (1,000 ft.) from any portion of the property.

Not applicable – The Site is not located within R-Use Group A.

Section 203.1(h)(2) - In R-Use Groups B and C, there shall be no other property containing an emergency shelter for seven (7) or more persons either in the same square or within a radius of five hundred feet (500 ft.) from any portion of the property.

Not applicable – The Site is not located within R-Use Groups B or C.

Section 203.1(h)(3) – There shall be adequate, appropriately located, and screened off-street parking to provide for the needs of occupants, employees, and visitors to the facility.

The Applicant will provide 12 off-street parking spaces for the emergency shelter. The spaces will be located in the rear yard to the east of the proposed building. The parking spaces will be accessed from H Street, SW (ingress) and I Street, SW (egress). Pursuant to 11-C DCMR § 701.5, the minimum parking requirement for the emergency shelter and medical care uses is 27 spaces, and as described below, the Applicant has requested a special exception for a partial reduction in the number of required parking spaces. The District of Columbia government has determined, based upon experience with other similar housing facilities in the District, that the 12 proposed on-site parking spaces for the emergency shelter use will adequately provide for the needs of residents, employees, and visitors to the Site. The District Department of Human Services (“DHS”) has found at other similar facilities in the District that residents typically do not have cars. DHS has concluded that the 12 proposed on-site parking spaces for the emergency shelter will be sufficient for the staff who work at the Site.

Moreover, the parking will be screened with a 42-inch tall evergreen hedge located along the Site’s east property line. The screening will meet the requirements set forth in 11-C DCMR § 714.

Section 203.1(h)(4) – The proposed facility shall meet all applicable code and licensing requirements.

The District Department of General Services will ensure that the proposed emergency shelter will meet all applicable code requirements, and DHS will ensure that the facility will meet all applicable licensing requirements.

Section 203.1(h)(5) – The facility shall not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area.

The emergency shelter will not have an adverse impact on the neighborhood because of traffic. The proposed emergency shelter use is anticipated to generate a nominal number of new vehicular trips, such that the project will not create any adverse traffic conditions. As stated above, residents of similar sites within the District typically do not have cars, and 12 on-site parking spaces will be sufficient for the staff who work at the emergency shelter. Moreover, the Site is within close walking distance of the Waterfront, Federal Center, and Navy Yard Metrorail stations, multiple Metrobus routes, car-share spaces, and Capital Bikeshare stations, which will accommodate many of the employee and visitor trips to the Site and further reduce potential increases in traffic generated by the emergency shelter use. The Site is also located in a mixed-use, walkable neighborhood, such that residents and staff at the Site will be able to accomplish daily errands on foot rather than needing to rely upon a private vehicle.

The emergency shelter will not have an adverse impact on the neighborhood because of noise or operations. The emergency shelter will be a residential use, and inherently will not produce any adverse impacts due to noise or operations. The emergency shelter will operate similar to a multi-family apartment building, which use is found in multiple locations in the surrounding neighborhood. The proposed facility will be self-contained, with on-site dining, laundry, recreation areas, and total wrap-around services for the residents. There will be no central kitchen or food preparation on-site, and instead meals will be delivered twice each day, with deliveries utilizing the on-site loading facilities. Trash will be picked up in the rear yard, accessed through the ingress and egress established for on-site parking and loading.

Section 203.1(h)(6) – The Board of Zoning Adjustment may approve more than one (1) emergency shelter in a square or within one thousand feet (1,000 ft.) only when the Board of Zoning Adjustment finds that the cumulative effect of the facilities will not have an adverse impact on the neighborhood because of traffic, noise, or operations;

As confirmed by the Department of General Services, there are no other emergency shelters located in the square or within 1,000 feet of the Site.

Section 203.1(h)(7) – The Board of Zoning Adjustment may approve a facility for more than fifteen (15) persons, not including resident supervisors or staff and their families, only if the Board of Zoning Adjustment finds that the program goals and objectives of the District of Columbia cannot be achieved by a facility of a smaller size at the subject location and if there is no other reasonable alternative to meet the program needs of that area of the District.

The emergency shelter will house up to 166 persons, not including resident supervisors or staff and their families. The program goals and objectives of the District of Columbia cannot be achieved by a facility of a smaller size at the Site and there are no other reasonable alternative locations to meet the program needs of Ward 6. *See* Homeless Shelter Act, Sec. 2(7), stating that “[i]t is in the best interest of the District to construct these new temporary shelter facilities on District-owned land, in part to avoid the disruption to the provision of services in the continuum of care that would accompany the eventual expiration of leases.” The aggregate number of units in the replacement sites is the minimum necessary to meet that need. Thus, a facility for more than 15 persons at the Site is an absolute necessity. The District undertook an aggressive search for sites throughout the District, and the Council designated the Site as the Ward 6 emergency shelter location.

A restriction on the number of occupants to a maximum of 15 would require that there be at least 12 separate emergency shelter facilities in Ward 6 to house the maximum of 166 persons that can be accommodated at the Site, each of which would be limited to a maximum of 15 persons, and each required to be located at least 1,000 feet from each other, and not in the same square as each other. The delivery of comprehensive, on-site wrap-around services for the residents could not efficiently or effectively be replicated at numerous different smaller facilities spread throughout Ward 6. The program requires that the comprehensive services be delivered in one central location in each Ward. *See* Homeless Shelter Act, Sec. 2(8), stating that each of the facilities will “allow the District to provide small-scale, community-based temporary housing services throughout the District.” Thus, it is impractical to achieve the District’s program goals in Ward 6 with a smaller facility or series of facilities, and there is no other reasonable alternative to meet the District’s program goals for Ward 6, other than what is being proposed.

D. The Applicant Meets the Test for a Special Exception Relief for Parking Under 11-C DCMR § 703.2

The BZA may grant a full or partial reduction in the number of required parking spaces, subject to the general special exception requirements of Subtitle X, and the applicant’s demonstration of compliance with at least one of the eight conditions listed in 11-C DCMR § 703.2. In this case, the project complies with several of the eight listed conditions as follows:

11-C DCMR § 703.2(b) - *The use or structure is particularly well served by mass transit, shared vehicle, or bicycle facilities, and*

11-C DCMR § 703.2 (c) - *Land use or transportation characteristics of the neighborhood minimize the need for required parking spaces*

The Site is particularly well-served by mass transit, shared vehicle, and bicycle facilities. The Site is conveniently located within close walking distance of four different Metrorail lines (approximately 0.3 miles from the Waterfront Metrorail station, which services the Metrorail Green line, approximately 0.4 miles from the Federal Center Metrorail station, which services the Metrorail Blue, Orange, and Silver lines, and approximately 0.5 miles from the Navy Yard Metrorail station, which services the Metrorail Green line). The Site is also located within 0.3 miles of nine different bus lines; within 0.4 miles of seven Zipcar locations; and within 0.4 miles

of three Capital Bikeshare stations. See www.walkscore.com. Therefore, the new emergency shelter and medical care uses will be particularly well served by alternative transportation modes.

Moreover, the land use characteristics of the area surrounding the Site minimize the need for providing the required number of on-site parking spaces. The Site is located in a walkable, mixed-use neighborhood, such that residents, visitors, and staff at the Site will be able to accomplish daily errands on foot. The Site is located within walking distance of a variety of pharmacies, grocery stores, schools, and parks. To the southwest of the Site (approximately 0.3 miles) is the Waterfront Metrorail station, which is surrounded by a CVS pharmacy and a Safeway grocery store. To the southeast of the Site (approximately 0.5 miles) is the Navy Yard Metrorail station, which is also surrounded by retail and service establishments that can be easily accessed on foot. Moreover, the Site is located one block north of Lansburgh Park, and within 0.5 miles of an elementary school and a junior high school. Based on these surrounding land uses and the above-referenced transportation options, the Site clearly meets the standards of 11-C DCMR § 703.2(b) and (c).

11-C DCMR § 703.2(e) - The nature of the use or structure or the number of residents, employees, guests, customers, or clients who would reasonably be expected to use the proposed building or structure at one time would generate demand for less parking than the minimum parking standards.

The Applicant will provide 12 on-site surface parking spaces for the emergency shelter, in addition to the one required surface parking space for the medical care uses. The parking spaces will be accessed through ingress from H Street and egress onto I Street. The District of Columbia government has determined, based upon experience with other such housing in the District, that the 12 on-site parking spaces for the emergency shelter will be adequate at this location for the needs of building occupants and employees.

DHS has found at other similar facilities in the District that residents typically do not have cars. All residents will receive WMATA Metro vouchers to encourage public transit use. In addition, all children who are enrolled in a DC public school are eligible to receive a DC One Card, which permits free Metrorail and Metrobus rides. As described above, there are a variety of public transportation options in the surrounding area. The District has estimated that the maximum number of employees on Site at any one time will be between 24 and 26, depending upon the day. This will include a maximum of 11 security staff; a maximum of four case workers; a maximum of nine staff for building management; plus two staff twice per week for additional programming. Final staffing schedules and details on allocation of the on-site parking for employees and staff will be determined by the service provider.

Given the fact that (i) the Zoning Regulations require 26 parking spaces for the residents of the 50 units in the facility, as well as for the staff of the facility, but that the residents of the facility will not bring cars to the Site; and (ii) there is ready availability of public transit within close proximity to the Site, the 12 parking spaces provided for the emergency shelter will be adequate for the use.

E. The Applicant Meets the General Test for Special Exception Relief Under 11-X DCMR § 901.2

In addition to satisfying the specific requirements set forth in 11-U DCMR §§ 203.1(h) and 703.2 the Applicant must also demonstrate that the requested special exception meets the more general requirements of 11-X DCMR § 901.2. Before granting an application for a special exception, the Board must determine that the requested relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps." 11-X DCMR § 901.2(a-c). The stated purposes of the Zoning Regulations are set forth in section 6-641.02 of the D.C. Code:

Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the national capital, and zoning regulations shall be designed to lessen congestion in the street, to secure safety from fire, panic, and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration of population and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein.

D.C. Code § 6-641.02 (2001).

Development of the Site as a 50-unit emergency shelter is consistent with the purposes described above. The project will promote the appropriate distribution of homeless families to create conditions that are favorable to health, safety, and prosperity, and will further the efficiency in the supply of public services. The building's proposed design and massing will fit in with the architecture of the surrounding area and will provide adequate light and air to the building's residents and to occupants of surrounding properties. As a primarily residential use, the emergency shelter will not produce any adverse impacts due to noise or general operations. As stated above, there is adequate off-street parking and loading for the proposed uses on the Site, and the project is not anticipated to generate appreciable traffic increases. Accordingly, the proposed uses are in harmony with the purpose and intent of the Zoning Regulations and the project meets the test for special exception relief under 11-U DCMR §§ 203.1(h), 703.2, and 11-X DCMR § 901.2.

IV. VARIANCE RELIEF

A. Relief Requested for Building Height

Pursuant to 11-X DCMR § 1000.1, the Applicant requests an area variance from 11-E DCMR § 303.1, which limits the maximum building height in the RF-1 District to 35 feet and three stories.

B. Burden of Proof

Under D.C. Code § 6-641.07(g)(3) and 11-X DCMR § 1000.1, the Board is authorized to grant an area variance where it finds that three conditions exist:

1. the property is affected by exceptional size, shape, or topography or other extraordinary or exceptional condition or situation;
2. the owner would encounter practical difficulties if the zoning regulations were strictly applied; and
3. the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

See French v. District of Columbia Bd. of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)). *See also, Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). As discussed below, and as will be further explained at the public hearing, the Applicant meets the three-prong test.

C. The Applicant Meets the Variance Test Pursuant to 11-X DCMR § 1000.1

1. Exceptional Situation and Condition

The phrase “exceptional situation or condition” in the above-quoted variance test may arise from a confluence of factors which affect a single property. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). There is no requirement that the uniqueness “inheres in the land at issue.” *Gilmartin*, 579 A.2d at 1168, citing *Capitol Hill Restoration Society v. D.C. Bd. of Zoning Adjustment*, 534 A.2d 939, 942 (D.C. 1987). To the contrary, a “difficulty which sets a property apart from its neighbors need not be physical but can stem from the zoning history of the case.” *Monaco v. D.C. Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979).¹ Ultimately, the term “extraordinary or exceptional condition” was

¹ For example, private restrictive covenants “may be considered in their own right as an extraordinary condition of a particular piece of property, since they effectively restrict design, height, and use” (*Monaco v. D.C. Bd. of Zoning Adjustment*, 407 A.2d 1091, 1099 (D.C. 1979)), and “historical factors, a relationship with Congress, and past actions of the BZA and Zoning Commission create an extraordinary or exceptional situation or condition so as to fulfill the statutory variance requirement.” *Monaco*, 407 A.2d at 1095-96.

“designed to serve as an additional source of authority enabling the Board to temper the strict application of the zoning regulations in appropriate cases.” *DeAzcarate v. D.C. Bd. of Zoning Adjustment*, 388 A.2d 1233, 1237 (1978).

Courts have recognized that the “public need for the use is an important factor in granting or denying a variance and the apparently objective standards of the enabling acts are applied differently to the several kinds of uses.” *Monaco*, 407 A.2d at 1098. In *Monaco*, the D.C. Court of Appeals “permitted the BZA to apply a more flexible standard for determining hardship when a ‘public service’ or nonprofit entity is the applicant.” *National Black Child Dev. Inst. v. D.C. Bd. of Zoning Adjustment*, 483 A.2d 687, 690 (D.C. 1984). Similarly, in BZA Order No. 17316, the Board approved an application from Randle Highlands Manor LP and the Anacostia Economic Development Corporation, stating that “the area variances are not sought to ensure any profit, but rather to enable the development of affordable housing at a site designated by the District of Columbia government for that purpose.” BZA Order No. 17316 p. 12; *see also* BZA Order No. 18272, p. 8 (“the burden of proof for variance relief as to the first two elements is lessened for non-profits or public service organizations”).

The case law and BZA precedent referenced above is directly applicable to the present application. In collaboration with the Interagency Council on Homelessness, the District determined that DC General needs to be replaced by smaller short-term family housing facilities in Wards 3 through 8, with up to 50 units each, in order to provide the kind of services that help families transition from shelter living to independent living as quickly as possible. These types of facilities will create an overall healthier, more effective homelessness system, and will make the best possible use of taxpayer dollars by more quickly and effectively lifting families out of homelessness. *See Ending Homelessness in the District – A Plan to Close DC General*. As stated in Section 2(4) of the Homeless Shelter Act, “children and families do best when short-term housing is provided in smaller-scale, service-enriched, community-based settings, and it is therefore in the best interest of the District to replace the DC General Family Shelter with a series of facilities throughout the District.”

There are several exceptional situations or conditions affecting the Site. The Council selected the Site as the short-term family housing location for Ward 6. *See* Homeless Shelter Act, Sec. 3(a)(5) authorizing construction of “a facility to provide temporary shelter for families experiencing homelessness containing 50 DC General Family Shelter replacement units on District-owned land at 850 Delaware Avenue, SW.” The District’s goal to spread the facilities throughout the Wards, each containing up to 50 family-sized units, greatly limits the available, affordable, and appropriately-sized properties on which to locate the facilities. Given the current market conditions, properties within Ward 6 are expensive, and large vacant lots are difficult to find. The Mayor and Council have agreed that the Site is to be the Ward 6 location. The Ward 6 community was particularly vocal in the site selection process, and has expressed its general support for the Ward 6 shelter being located at the Site.

Additionally, specific conditions have been imposed on the proposed development. For example, the emergency shelter is required to have 50 units to house homeless families, in addition to recreation space, a computer lab, and space for ongoing support services and programming. *See Ending Homelessness in the District, Short-Term Family Housing in Ward 6*. Other required uses

include community rooms, private and family bathrooms, on-site dining and serving areas, offices for case management and training, an exam room, and laundry and storage facilities. The Council also specifically referenced the need for “a health-services facility serving families experiencing homelessness” at the Site. The District’s requirement to include these support spaces creates an exceptional situation and condition that further limits the size, program, and design of the building and directly impacts the Applicant’s ability to provide a fully zoning-compliant project.

The Site is partially overlaid by Reservation 220, which was transferred from the National Park Service to the District of Columbia for highway purposes. Reservation 220 occupies approximately 4,878 square feet of the Site’s northwest corner and is incorporated into Lot 800. The Transfer of Jurisdiction precludes any development of the Site in this location. This exceptional condition severely limits the area of the Site on which the emergency shelter can be constructed, which requires the Applicant to construct the building up (taller height and number of stories) rather than out (bigger footprint), which would result in a greater amount of interior space with no windows, and unsuitable for residential use, thus creating the need for zoning relief.

2. Resulting Practical Difficulty

The Applicant will demonstrate that the exceptional situations and conditions described above make it practically difficult to comply with the strict requirements for building height and number of stories.

To meet the standard for practical difficulty, “[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.” *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A. 2d 535, 542 (D.C. 1972). In area variances, such as those requested in this case, 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 v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990). 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’...” *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 v. D.C. Bd. of Zoning Adjustment*, 606 A.2d 1362, 1367 (D.C. 1992). Thus, to demonstrate practical difficulty, the Applicant must show that strict compliance with the regulations is burdensome, not impossible.

The Applicant requests a variance to provide a building height of 88’-6”, as measured from the existing grade at the mid-point of the building façade on Delaware Avenue. The building will be comprised of seven stories plus a cellar. It is practically difficult to reduce the building’s height or number of stories and still provide the required 50 short-term family housing units and the medical clinic, and adequate space for the support services described above, all as mandated by the Council for location at the Site. Reducing the building’s height or number of stories would eliminate some or all of these uses, which would contradict the District’s goals and objectives for distributing the 280 units at DC General throughout Wards 3 through 8. The Applicant also cannot redistribute the building’s uses to up to 12 separate facilities within Ward 6 that meet the height and number of stories requirement, because the delivery of comprehensive wrap-around services

for residents could not be efficiently or effectively replicated on numerous different smaller facilities throughout the Ward. Thus, the District's requirement to compile these uses into a single building creates an exceptional situation and condition that directly impacts the Applicant's ability to provide a fully zoning-compliant project.

The Applicant cannot reduce the building height or number of stories by distributing the building's footprint horizontally across the Site. The building's footprint cannot be extended to the south or west because the building is already built up to the south and west property lines. The building's footprint cannot be extended to the north because the building's north exterior wall already abuts Reservation 220, which precludes development farther north than already proposed. The building's footprint also cannot be extended to the east because that is the location of the required on-site parking and loading facilities.

As described above, the Applicant cannot locate the parking or loading facilities within the building and then extend the building footprint to the east because doing so would simply substitute the emergency shelter and medical care uses for parking and loading, which contradicts the District's goal of developing 50 emergency shelter units and support services in a single building in each Ward. Although theoretically the Applicant could extend floors 2-7 to be cantilevered over the parking and loading area, doing so would make the rear yard depth non-compliant with 11-E DCMR § 306.1. Moreover, spreading out the floor area would result in large internal areas without windows that would be unsuitable for residential units. Spreading out the footprint of the building in this manner would also require multiple corridors, which would not allow for internal direct lines of sight for the safety and security of the families and staff. Alternatively, if the Applicant was restricted to a maximum building height of 35 feet, it would have to construct multiple below-grade levels in order to accommodate all 50 units, support services, and the medical care use on the Site. Doing so is not an option because residential units are required to have windows, which would not be possible with multiple below-grade levels of residential use.

Therefore, due to (i) the Council's action mandating the use of the Site as the Ward 6 emergency shelter location, (ii) the use requirements for the Site that dictate a minimum building square footage, and (iii) the physical and regulatory restrictions that limit the Site's buildable land area, it is practically difficult for the Applicant to comply with the requirements that dictate building height and number of stories. The program goals and objectives of the District simply cannot be achieved by a facility of a smaller size or different configuration at the Site, and there is no other reasonable alternative design or location to meet the program needs of Ward 6.

3. No Substantial Detriment to the Public Good or Substantial Impairment to the Intent, Purpose, or Integrity of the Zone Plan

The requested relief can be granted without substantial detriment to the public good and without substantial impairment to the intent, purpose, or integrity of the zone plan. The construction of a new emergency shelter with safe and secure accommodations for up to 166 individuals is consistent with the law and policies of the District, and will be a great benefit to the District's homeless population. The Site will offer temporary accommodations to families in private rooms, and will provide much-needed support services necessary to assist families transitioning to sustainable, permanent housing. Moreover, the building has been thoughtfully

designed to be consistent with the architecture of the surrounding area, and to create a sense of space and massing that respects the neighborhood context and emits value to its residents. Indeed, the proposed project at 88 feet, 6 inches will allow for the creation of a “service-enriched, community-based setting” and a provide a new “dignified space for families experiencing homelessness.” *See* Homeless Shelter Act, Sec. 2(4) and (6).

The Applicant notes that 90-foot tall buildings are permitted as a matter-of-right in the RF-1 District, so long as the building is removed from all lot lines for a distance equal to the height of the building above the natural grade. See 11-E DCMR §§ 303.5. Thus, the Zoning Regulations specifically acknowledge the potential for 90-foot tall buildings to be located in the RF-1 District. In this case, the building is set back at least 90 feet from the adjacent properties to the north, west, and south, but not from its own lot lines. Nor is the building set back 90 feet from the neighboring property to the east. However, the site to the east was approved as a PUD and rezoning to allow a 90-foot building. The Applicant understands that the approval has expired, and that the owner in that case intends to refile the application. The property directly to the west of the Site is zoned RA-3 and is improved with a nine-story apartment building.

Thus, based on the foregoing, the building’s proposed height and number of stories will not create a substantial detriment to the public good and will not substantially impair the intent, purpose, or integrity of the zone plan.