

**DISTRICT OF COLUMBIA**  
**BOARD OF ZONING ADJUSTMENT**

**Applicant's Statement in Support of Special Exception Relief**

**2118 Leroy Place NW, N.W.; Square 2531, Lot 49**

**I. INTRODUCTION**

This Statement is submitted on behalf of The Federation of State Medical Boards of the United States Inc. (the "Applicant"), owner of the property located at 2118 Leroy Place, N.W. (Square 2531, Lot 49) (the "Property"). The Property is currently vacant, but was previously used as an embassy by the Republic of Columbia. The Applicant plans to use the existing building as an office for the Federation of State Medical Boards ("FSMB"). As the Property is located in the R-3 Zone, special exception relief is required to use it as an office for a non-profit organization. As discussed more fully below, the Application meets the test for special exception relief, pursuant to 11-U DCMR § 203.1(n). However, the special exception is conditioned upon the building to be converted containing at least 10,000 square feet of Gross Floor Area ("GFA"). While the existing Building has over 10,000 square feet, it only has 8,121.13 square feet of GFA, when not including the lower level "cellar" space. Accordingly, the Applicant is also requesting variance relief from the 10,000 square foot requirement of 11-U DCMR § 203.1(n)(2).<sup>1</sup>

**II. BACKGROUND**

The Property is located in the R-3 zone district. It is a large interior lot measuring 5,124 square feet. The Property is currently improved with a large three-story building (the

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<sup>1</sup>The OAG has previously confirmed that a variance from this requirement is considered an area variance, not a use variance. See BZA Case No. 19131, Exhibit 31 (Office of Planning report, noting "The Applicant has requested variance relief from this requirement and OAG has confirmed that an Applicant can get a variance from [this requirement].")

“Building”). Abutting the Property to the north, south, east, and west are single-family residences.

The Building was previously used as an embassy/chancery by the Republic of Columbia. The Applicant is proposing to use the Building as an office for the FSMB, a national nonprofit representing the 70 medical and osteopathic boards of the United States and its territories. Since its founding, the FSMB has grown in the range of services it provides – from assessment tools to policy documents, from credentialing to disciplinary alert services – while continuing to serve the interests of its member boards. The ultimate objective is to promote excellence in medical practice, licensure, and regulation as the national resource and voice on behalf of state medical boards in their protection of the public.

**III. THE APPLICATION SATISFIES SPECIAL EXCEPTION REQUIREMENTS OF 11-X DCMR § 901.2, 11-U DCMR § 203.1(N).**

A. Overview. Pursuant to 11-X DCMR § 901.2 of the Zoning Regulations, the Board is authorized to grant special exception relief where, in the judgment of the Board, 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 also, in this case, to the specific requirements for relief under 11-U DCMR § 203.1(n) of the Zoning Regulations. In reviewing applications for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites are satisfied, the Board ordinarily must grant the application. See, e.g., *Nat'l Cathedral Neighborhood Ass'n. v. D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000).

B. Requirements of 11-X DCMR § 901.2.

The granting of a special exception in this case “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 DCMR Subtitle X § 901.2). Given the nature of the relief, the proposed use will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Applicant is not proposing to expand the existing Building and is only proposing to utilize the Building as an office for a non-profit organization. The proposed office use will have no greater impact than the previous embassy use.

C. Requirements of 11-U DCMR § 203.1(n).

Use of existing residential buildings and the land on which they are located by a nonprofit organization for the purposes of the nonprofit organization:

- (1) *If the building is listed in the District of Columbia's Inventory of Historic Sites or, if the building is located within a district, site, area, or place listed on the District of Columbia's Inventory of Historic Sites;*

The Building is located within a district listed on the District of Columbia's Inventory of Historic Sites, specifically the Sheridan-Kalorama Historic District.

- (2) *If the gross floor area of the building in question, not including other buildings on the lot, is ten thousand square feet (10,000 sq. ft.) or greater;*

The gross floor area of the building in question, not including other buildings on the lot, is 8,121.13 square feet. The Applicant is requesting a variance from this provision.

- (3) *The use of existing residential buildings and land by a nonprofit organization shall not adversely affect the use of the neighboring properties;*

The use of existing residential buildings and land by a nonprofit organization shall not adversely affect the use of neighboring properties. The Property was most recently used as an embassy, and the use by the FSMB and will have no greater impact than the use of an embassy.

- (4) *The amount and arrangement of parking spaces shall be adequate and located to minimize traffic impact on the adjacent neighborhood;*

The amount and arrangement of parking spaces will be adequate and located to minimize traffic impact on the adjacent neighborhood. The proposed non-profit office use is a use that is inherently quiet and generates little traffic. There are currently two full-sized parking spaces on the Property and only eight full-time employees at the existing FSMB office in the District. The proposed use will generate no additional parking demand, and many office employees currently utilize public transportation.

- (5) *No goods, chattel, wares, or merchandise shall be commercially created, exchanged, or sold in the residential buildings or on the land by a nonprofit organization, except for the sale of publications, materials, or other items related to the purposes of the nonprofit organization; and*

No goods, chattel, wares, or merchandise shall be commercially created, exchanged or sold in the residential buildings or on the land by a nonprofit organization, except for the sale of publications, materials, or other items related to the purposes of the nonprofit organization.

- (6) *Any additions to the building or any major modifications to the exterior of the building or to the site shall require approval of the Board of Zoning Adjustment after review and recommendation by the Historic Preservation Review Board with comments about any possible detrimental consequences that the proposed addition or modification may have on the architectural or historical significance of the building or site or district in which the building is located;*

The Applicant is not planning to modify the exterior of the Building or the site.

#### **IV. THE APPLICATION SATISFIES THE STANDARD FOR VARIANCE RELIEF.**

The burden of proof for an area variance is well established. The Applicant must demonstrate three elements: (1) unique physical aspect or other extraordinary or exceptional situation or condition of the property; (2) practical difficulty from strict application of the Zoning Regulations; and (3) no harm to the public good or the zone plan. *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 to exempt the property from the requirement of having 10,000 square feet of gross floor area.

A. Unique Physical Aspect or Other Exceptional Situation/Condition.

In order to prove an extraordinary or exceptional condition, or uniqueness, the Applicant must show that the property has a peculiar physical aspect or other extraordinary situation or condition. *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1096 (D.C. 1979). The Court of Appeals held in *Clerics of St. Viator v. D.C. Bd. of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land; and that "...property generally includes the permanent structures existing on the land." *Id.* at 293-94. The Court held that the exceptional situation standard of the variance test may be met where the required hardship is inherent in the improvements on the land (*i.e.*, the building or structure) and not just the land itself.

In *Monaco v. D.C. Board of Zoning Adjustment*, the Court of Appeals held that the history of a property could be considered in making the determination of uniqueness. In that case, the Court affirmed the BZA's broad interpretation of the uniqueness test and the Board's ability to consider the history of the Applicant, its traditions, as well as the existing structure on the property.

The Property is unique because of the existing improvements on the Property. The Property is very large, measuring 11,253.04 total square feet. However, the Zoning Regulations state that "Gross Floor Area ("GFA") shall not include cellars, exterior balconies that do not exceed a projection of six feet (6 ft.) beyond the exterior walls of the building. . .". Because the existing lower level cannot be included in the GFA measurement, the Building is just shy of the 10,000 square feet requirement for special exception, despite being over 10,000 square feet total.

Additionally, the Board has previously disfavored the 10,000 square feet minimum requirement in granting special exceptions under U-203.1(n). In BZA Order No. 15555 of Ann Cullen (June 24, 1992), the Board found that “the 10,000 square-foot figure is arbitrary, and that its purpose was to establish a standard, not an inflexible rule,” when it granted a special exception to allow a non-profit use in a residential district.

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

The second prong of the variance test is whether a strict application of the Zoning Regulations would result in a practical difficulty. In reviewing the standard for practical difficulty, the 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. 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.2w 1362, 1365 (D.C. 1992) (citing *Gilmartin v. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990).

The Applicant would face a practical difficulty if the regulations were strictly applied. As demonstrated on the existing plans included with this Application, the existing Building is currently configured for office use. This configuration renders the Property less than ideal for a single-family use and makes it unlikely that the Property would be used as a single family residence.

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

Relief can be granted without substantial detriment to the public good. The Building was most recently used as an embassy and is configured for office use. The proposed non-profit office use will likely have less impact than embassy use. Relief can be granted without impairing the intent, purpose and integrity of the Zone Plan. While the cellar level cannot be included in the GFA measurement, the Building is over 10,000 square feet, meeting the spirit and intent of the zoning regulations.

**V. Conclusion.**

For the reasons outlined in this Applicant's Statement, the Applicant respectfully requests the special exception relief and variance as detailed above.

Respectfully Submitted,



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