

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

**Revised Applicant's Statement of Euclid Flats LLC**  
**733 Euclid Street, NW (Square 2884, Lot 836)**

**I. INTRODUCTION.**

This Statement is submitted on behalf of Euclid Flats LLC (the “**Applicant**”), owner of the property located at 733 Euclid Street, NW (Square 2884, Lot 836) (the “**Property**”). Since the original application was filed,<sup>1</sup> a landmark application was filed against the Property. The Property is now a Historic Landmark, site of the National Association for the Relief of Destitute Colored Women and Children and is therefore subject to HPRB restrictions. The Applicant has worked closely with HPO staff over the last several months to provide a design and compatible additions which HPRB would approve. The revised plan now includes converting the tax lot into a record lot (by-right), constructing two additions, one on each side of the existing building (the “**Building**”) as well as a fourth story addition on the rear of the Building, and converting the existing non-residential building into a residential apartment building with 12 units—approximately 2,000 sq. ft. of which would be set aside for Inclusionary Zoning. Due to the existing conditions of the Building and HPRB restrictions, the Applicant must seek the following relief in order to complete the project consistent with the HPRB-approved plan set:

1. Special exception relief (E-5201) from the Ten Foot Rule – only on the west side. HPRB requires that the respective additions be set back from the original Building. The addition on the west side will go 42 feet past the building to the west. The Building to the east will still be further back than the proposed east addition.
2. Special exception relief (U-320.3) for a conversion from a non-residential building not meeting the matter-of-right conversion requirements of U-301.2(b) which limits height to only 35 feet.
3. Special exception relief (E-5207) from the RF-1 height restrictions of E-303.1. The proposed 4<sup>th</sup> story addition at the rear will match the existing building height of 37 feet. The side additions are limited to 36.5 feet but still require relief.
4. Variance Relief from the stories limitation (E-303.1). While the overall height is permitted via special exception, the existing lowest level is more than 5 feet above grade and is considered a basement. Accordingly, in order to match the existing Building’s story and height, as required by HPRB for compatibility, the Applicant seeks relief for a basement

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<sup>1</sup> The Applicant originally intended to raze the existing building and subdivide the Subject Property into four new record lots. The subdivision and proposed use (flat) of each lot would have been permitted as a matter-of-right. The Applicant requested special exception relief from the 10-foot rule in the original application.

level instead of a cellar level for the new side additions. These additions therefore extend an existing non-conforming aspect (4<sup>th</sup> story) and require variance relief.

**II. JURISDICTION OF THE BOARD.**

The Board has jurisdiction to grant the special exception relief requested pursuant to DCMR X § 901.2, E § 5201, E § 5207, and U § 320.3; and variance relief pursuant to X-1000.1.

**III. BACKGROUND.**

**A. Description of the Subject Property and Surrounding Area.**

The Property is located in the RF-1 Zone District, one half-block from Georgia Avenue. Abutting the Property to the north is a public alley. Abutting the Property to the south is Euclid Street, NW. Abutting the Property to the west is a single-family row dwelling. To the east of the Property is a row building being used as a flat. The area is characterized by a variety of residential uses, including single-family dwellings, flats, condos, and commercial uses along Georgia Avenue.

**B. Proposed Project.**

The Applicant is proposing to maintain the existing Building and construct an addition on top of the existing Building at the rear (the “**Rear Addition**”). This Addition will be considered an extension of the existing fourth story and is part of the requested variance relief and special exception height relief. The Applicant is also proposing to construct two side additions, the east addition (the “**East Addition**”) and west addition (the “**West Addition**”), respectively. The existing Building is 37 feet in height with four stories—the lower level is considered a basement and not a cellar, as it is more than 5 feet above grade. HPO staff requested that the side additions to be significantly set back from the front façade – 16 feet on the west side and 16 feet on the east side. Further, they requested that the East and West Additions match the existing floor levels of the existing Building for a more cohesive look that preserved the integrity of the now-landmarked Building. As discussed more below, in the variance section, these requests informed the overall design and requests for height relief, as well as the ten-foot rule relief. For example, the West Addition is set back 16 feet from the front façade, pushing it to the rear of the Property. This creates a situation in which there is only about a relatively small overlap between the building to the west and the West Addition. There is a substantial amount of open space in front of each addition, and the project complies with all other RF-1 standards governing open spaces, such as rear yard, front yard, and lot occupancy.

In terms of the use, the Building was most recently used for a non-profit office—the Emergence Community Art Collective; therefore, it is considered a non-residential building. Conversions of non-residential buildings to residential apartment buildings are ordinarily permitted by right pursuant to U-301.2, and the number of units is governed by the 900 square foot rule. In this case, the proposal does not meet U-301.2(b), as it is over the 35-foot height limit; therefore, a special exception is required for the conversion. The Applicant is proposing 3 units in the West Addition, 3 units in the East Addition, and 6 units in the main Building. The proposal includes five 2-BR units, three 2-BR + 1 den units, four 4-BR + 2 Den units. The project will include at least one 2BR IZ unit.

**IV. THE APPLICATION MEETS THE REQUIREMENTS FOR SPECIAL EXCEPTION RELIEF FROM THE 10 FOOT RULE, HEIGHT, AND CONVERSION REQUIREMENTS.**

**A. Overview.**

Pursuant to Subtitle X § 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.

The Project and requested relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Subject Property is located in the RF-1 Zone which permits the conversion of non-residential buildings to residential use with multiple dwellings, subject to the 900-foot rule. The proposal meets the 900-foot rule and would otherwise be matter-of-right, with respect to the use, but for the height limitation. In terms of the height limit, the proposal is only two feet above the height limit for the RF-1 zone, and still below the height of the existing Building. In terms of the 10-foot rule, the HPO restrictions require the West Addition to be significantly set back. The proposed Addition still meets the lot occupancy and rear yard requirements and still provides ample open space, albeit in the front of the building rather than at the rear. Accordingly, the proposed Project and use 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.

**B. The Application meets the Specific Requirements of Subtitle E § 5201/5207 and U-320.3.**

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).

Subtitle E § 5201(b) permits special exception relief from "yards" subject to the criteria of E § 5201.4-6. The Applicant is requesting relief because the West Addition will extend 42 feet past the rear wall of the adjoining building to the west. The requirements for height relief (E-5207) are identical to the requirements of E-5201.4-6. Further, the requirements of U-320.3 are also identical (light, air, and privacy). The request meets the relevant criteria for special exception relief as follows:

**Section E-5207.1(a)/E-5201.4(a)/U-320.3(a)(1): "The light and air available to neighboring properties shall not be unduly affected;**

With respect to the ten-foot rule, the additional 32 feet of building length will not unduly affect light and air available to the neighboring property to the west. The Applicant will provide shadow studies demonstrating that the light and air available to the building to the west shall not be unduly affected. The proposed Addition still meets the lot occupancy and rear yard requirements and still provides ample open space, albeit in the front of the building rather than at the rear.

With respect to the height relief, the additional 2 feet of height at the rear of the existing Building will be negligible in terms of impact to light and air, as it will match the existing Building height. The additional 1.5 feet of height for the respective side additions will also be negligible as it is only 18 inches higher than what would be permitted by right.

**Section E-5207.1(b)/E-5201.4(b)/U-320.3(a)(2): "The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;**

The privacy of use and enjoyment of the property to the west will not be unduly compromised by the proposed Addition. There are no proposed windows on the side of the proposed West Addition. In terms of height relief, the additional 18 inches of relief on the additions, and extension of the existing building at the rear, will not have any privacy impacts as it does not allow for additional views or windows.

**Section E-5207.1(c)/E-5201.4(c)/U-320.3(a)(3): “The [conversion] and any associated addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage;**

The Project, as viewed from the street, shall not substantially visually intrude upon the character, scale, and pattern of houses along Euclid Street. As demonstrated by the photographs included with this Application, there is a steep topography which makes it difficult to view a number of the Buildings on this side of Euclid Street. Furthermore, the Additions will be significantly set back from Euclid and not be visible from the street, as desired by HPRB. The pattern along the alley includes a variety of setbacks and the proposed Project will not substantially visually intrude upon the character scale and pattern of houses along the subject street frontage or alley.

#### **V. AREA VARIANCE FOR NUMBER OF STORIES**

The burden of proof for an area variance is well established. The Board of Zoning Adjustment may grant an area variance if it finds that “(1) there is an extraordinary or exceptional condition affecting the property; (2) practical difficulties will occur if the zoning regulations are strictly enforced; and (3) the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan.” *Dupont Circle Citizens Ass'n v. D.C. Bd. of Zoning Adjustment*, No. 16-AA-932, 2018 WL 1748313, at \*2 (D.C. Apr. 12, 2018); *Ait-Ghezala v. District of Columbia Bd. of Zoning Adjustment*, 148 A.3d 1211, 1216 (D.C. 2016) (quoting *Washington Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 1000 (D.C. 2005)) (internal quotation marks omitted). As set forth below, the Applicant meets the three-part test for the requested variance from the stories requirement.

**A. (i) Extraordinary or Exceptional Condition affecting the Subject Property and (ii) the Applicant will face a Practical Difficulty if the Regulations are strictly enforced.**

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.25 1091, 1096 (D.C. 1979). Moreover, the unique or exceptional situation or condition may arise from a confluence of

factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579A.2<sup>nd</sup> 1164, 1168 (D.C. 1990). The landmark status of a single building is legally predicated on the unique attributes of that building. *United Unions, Inc. v. D.C. Bd. of Zoning Adjustment*, 554 A.2d 313, 317 (D.C. 1989)

The second prong of the variance test is whether a strict application of the Zoning Regulations would result in a practical difficulty. 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 an applicant for a variance are among the factors for the BZA’s consideration.” *Gilmartin*, 579 A.2d at 1711. 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.” Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome, not impossible.

The Zoning Regulations categorize a building’s lower level as either a cellar or a basement. A cellar is defined as “that portion of a story partly below grade where the finished floor of the ground floor is less than five feet (5 ft.) above the adjacent natural or finished grade, whichever is the lower elevation.” A basement is defined as “that portion of a story partly below grade where the finished floor of the ground floor is five feet (5 ft.) or more above the adjacent natural or finished grade, whichever is the lower in elevation.” The Zoning Regulations further state: For the purpose of determining the maximum number of permitted stories, the term "story" shall not include cellars, penthouses, or rooftop structures. Accordingly, a cellar does not count as a story whereas a basement does count as a story. The existing lowest level of the Building is six feet and six inches above grade; therefore, the Building is already nonconforming with respect to the number of stories.

The request for a “fourth story” is in essence a request to allow the lowest levels of the respective East and West additions to match the existing height above grade of the existing Building’s lowest level. Instead of having the lowest levels be 4.99 feet above grade, this would permit them to be 6 feet and 6 inches above grade—or approximately a foot and a half of additional height above grade than would otherwise be permitted. This is consistent with the additional height requested, which is permitted via special exception. As described above, the landmark status of the property is driving these restrictions. This is not a historic district and no

other properties in the area are subject to these specific restricts and HPRB oversight. The Applicant has provided a sample of what the building would look like with a by-right stories limit. There was significant push back and from HPO staff and they indicated this was not preferable and would likely not be approved because the Additions are not cohesive with the existing Building if the levels do not line up. From a physical standpoint and construction standpoint, it also makes sense to have the added floor joists and levels on the same level as the existing Building because the Applicant plans to structurally tie in the respective Additions to the existing building. Further, the stairs and deck, and common elements at the rear can be on the same level on each floor. The relief also applies to the proposed rear addition on the existing building, which simply extends the existing fourth story.

The history of the Property and existing Building type is also unique. The Property is currently improved with the only detached dwelling on the block. All other buildings are already attached to another building. Originally, the Applicant proposed to subdivide into four lots as a matter of right, and construct four flats; however, a landmark application was filed, and the Applicant had to entirely redesign the project. The Applicant contacted HPRB and has worked closely with HPO staff to provide a design that would satisfy everyone involved. If the Zoning Regulations were strictly enforced, the Applicant would not be permitted to do the HPRB-approved project and would likely not obtain approval from HPRB to do the alternative, so it would lose a story from each wing, resulting in fewer units than would otherwise be permitted by-right. The landmark delays have significantly impacted the original Application and this zoning history plays a role in the project too, so the elimination of the East, West, and Rear Additions would ultimately make the project unfeasible as it would result in a reduction of units from about 12 units to 8 or 9 units. The original project contemplated 8 units on this site to be viable, but that was well before the project was landmarked and delayed and required preservation of an existing building that was constructed in the late 1800s. The fact that the building has to be preserved and any additions have to be compatible and cohesive with the existing Building as approved by HPRB has naturally increased the cost and complexity of the project. Accordingly, without the relief, the Applicant will not be permitted to construct the Rear, West, and Side Additions and the Project will not be feasible, resulting in a practical difficulty to the Applicant.

**B. 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 and without impairing the intent, purpose, and integrity of the Zone Plan. The requested relief will allow the additions to match the existing number of stories of the Building, not increase it, and the overall height is limited to only 37 feet, which is within the special exception limit. The relief essentially permits another foot and a half of height to be above grade. The difference between 4.99 feet above grade vs. 6 feet and 6 inches above grade is negligible considering that it will not be visible from Euclid Street due to the steep topography at the front of the Property.

**VI. CONCLUSION.**

For the reasons stated above, this application meets the requirements for special exception relief and variance by the Board, and the Applicant respectfully requests that the Board grant the requested relief.

Respectfully submitted,

*Alexandra Wilson*

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