

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Applicant's Statement on Behalf of Theological College, Inc.

401-415 Michigan Avenue NE
(Square, Suffix, Lot: PAR-0133-0130)

I. INTRODUCTION.

This Statement is submitted on behalf of Theological College, Inc. (referred to herein as the "Applicant" or "Owner"), the owner of the property located at 401-415 Michigan Avenue, NE (Square, Suffix, Lot: PAR-0133-0130 (the "Property"). The Property is improved with a five story, 139,188 square foot institutional building (the "Building"), with two separate addresses (401 Michigan Avenue, NE and 415 Michigan Avenue, NE) which has been used as a seminary and office space for years.

II. JURISDICTION OF THE BOARD.

The Board has jurisdiction to grant the use variance relief requested pursuant to Subtitle X § 1002.1(b) from the use requirements of Subtitle U § 201

III. BACKGROUND.

A. Description of the Property and Surrounding Area

The Property is located in the RA-1 Zone, which is the Residential Apartment Zone. The Purpose of the RA-1 Zone is primarily for residential use and some institutional and semi-public uses that would be compatible with adjoining residential uses and that are excluded from the more restrictive residential zones.

The Building on the Property was constructed in 1917. The Building is located on the east side of Fourth Street. The square in which the Property is located is bounded by Michigan Avenue, NE to the north, Seventh Street, NE to the east, Fourth Street, NE to the west and Franklin Street, NE to the south. The Building is adjacent to the United States Conference of Catholic Bishops at 3211 Forth Street, NE and the Dominican House of Studies at 487 Michigan Avenue, NE.

According to the Historic Data on DC Buildings, the Property has been used as a theological seminary since its existence, and according to the certificate of occupancy¹, the Property has been used as both a theological seminary and office space since at least 2003. The Applicant currently leases space in the Building for the offices of other non-profit organizations that are related to the other institutional, religious, and educational uses in the area. The portion of the Building that is leased sits off of 415 Michigan Avenue, NE, although that portion of the Building has a different location address, the Building is one contiguous structure located upon the same lot. The Applicant proposes to use the portion of the Building located at 415 Michigan Avenue NE for office use. The tenant under lease intends to use the Property for general office purposes necessary to manage its non-profit organization, which is a use similar to the other institutional and non-profit uses in the area. Office use is not permitted as a matter of right in the RA-1 Zone within which the Property is located; however, as stated above, the Building has been used as a seminary and office space for decades.

IV. USE VARIANCE.

The Applicant is requesting use variance relief from the from the use requirements of Subtitle U § 201 in order to use the portion of the Building located at 415 Michigan Avenue NE for office use. Per Chapter 1002 Variance Review Standards, Section 1002.1(b), “an applicant for a use variance must prove that, as a result of the attributes of a specific piece of property described in Subtitle X § 1000.1, the strict application of a zoning regulation would result in exceptional and undue hardship upon the owner of the property”. It is well settled that the D.C. Board of Zoning Adjustment (the “BZA”) is authorized to grant a use variance when an applicant has demonstrated that the following three elements exist with respect to a property: (1) the property is affected by an exceptional situation or condition; (2) the owner would encounter an undue hardship 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. As set forth below, the Applicant demonstrates that these three elements exist with respect to the Property

¹ The address shown on the certificate of occupancy is 401 Michigan Avenue, NE. The second address, 415 Michigan Avenue, NE does not appear on the certificate of occupancy.

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

A “confluence of factors” may be considered when an applicant seeks to demonstrate that an exceptional condition or situation exists with respect to the property. Furthermore, the presence of “other extraordinary or exceptional situations or conditions” may arise from the existence and configuration of a building, and not only the land upon which it sits. See *Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974); *Gilmartin v. D.C. Board of Zoning Adjustment*, 579A.2d 1164, 1168 (D.C. 1990).

As noted above, the Property is faced with an exceptional situation which arises from a confluence of factors, including its history of non-residential use, size, location, and the layout of the Building. The Property has existed for several years as an institutional building used as a seminary and as an office space. Although the Property is located in the RA-1 Zone, the directly abutting buildings are all used for non-residential purposes, including institutional religious uses and use as office space. Another factor that further demonstrates the uniqueness and exceptional situation of the Property is that the Building is situated on one lot but has existed with separate entrances, with each entrance having its own address, one at 401 Michigan Avenue, NE and the other at 415 Michigan Avenue, NE. Although a certificate of occupancy has been issued for the Building with an approved use as a seminary and office space, the address listed on the certificate of occupancy is the 401 Michigan Avenue, NE address, not the 415 Michigan Avenue, NE address. As discussed below, the strict application of the zoning regulations would result in undue hardship if the Owner is unable to use the Building consistently.

B. Strict Application of the Zoning Regulations Would Result in an Undue Hardship to the Owner.

These exceptional conditions will lead to an undue hardship to the Owner if the zoning regulations are strictly enforced because the other matter of right uses in the RA-1 zone are not feasible due to the Building’s historic use as a religious institution. Additionally, the Building is already configured for use as an office space and is currently being leased to other religious and non-profit organizations, including the Special Olympics (the “Tenant”), the tenant in the portion of the Building located at 415 Michigan Avenue. The Owner is generating revenue by leasing the additional space in the Building for office use and if the Owner is unable to continue to do so, this would have a negative financial impact on the Owner. This is particularly critical as the Owner is recovering from the devastating impacts of the Covid-19 pandemic. Moreover, the cost of

converting the Building to into a space suitable for other matter of right uses in the RA-1 Zone would further cause undue financial hardship on the Owner.

The Owner is a non-profit religious institution that supports the greater community not only through its religious mission, but also as an institution that provides support and resources to other non-profit organizations to help further the missions of those organizations as well. One way in which the Owner supports other non-profit organizations is by leasing the additional space in the Building to non-profits for use as general office space. For decades, the Building has been a safe and comfortable space for these organizations to occupy as an office to manage and carry out their non-profit duties. In this case, Tenant, is depending on the BZA to grant this variance in order to obtain a certificate of occupancy for the portion of the Building the Tenant leases at 415 Michigan Avenue. The certificate of occupancy is required for certain approvals that are necessary for the Tenant to maintain its grant funding. Obtaining grant funding is specifically important because the Tenant, like many non-profit organizations, is still recovering financially from the effects of the Covid-19 pandemic. Thus, the strict application of the zoning regulations would not only result in an undue hardship for the Owner, but would also create an undue hardship for the Tenant.

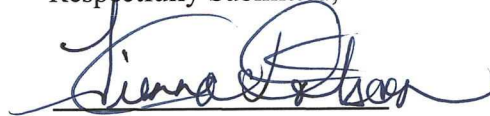
C. No Substantial Detriment to Public Good and No Harm to the Zone Plan.

Granting the relief will not result in a substantial detriment to the public good, nor will it harm the zone plan. The Building has been used for institutional purposes and office space for decades. As explained above, the Applicant is proposing to use the Building as the general office space for the Tenant. This use is consistent with the current use approved for the portion of the Building located at 401 Michigan Avenue, and is consistent with the other institutional and non-residential uses in the area by neighboring properties. Furthermore, the Applicant is not proposing any construction or external changes to the Building. Additionally, there will not be an increase in traffic, there is plenty of on-site parking available at the Property, and there will be no disruption to homeowners since the adjacent properties are not used for residential purposes.

V. CONCLUSION.

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

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Tierra L. Dotson". The signature is written in a cursive style with a large initial "T" and "D".

Tierra L. Dotson, Esq.
Gordon Feinblatt LLC
Date: September 14, 2022