

# 39<sup>th</sup> Street homes that share property line with church



Board of Zoning Adjustment  
District of Columbia  
CASE NO.19823  
EXHIBIT NO.124A2

**This massive building does not belong on an R-1-B lot with these homes. The 5 family homes that share a property line would be in the foreground and are about the same height as the trees.**



# Alton Place & 39<sup>th</sup> Street – shares property line with WABC



# How close.... to the baby.



**The building would be 52 feet high compared to 28 feet now.**



**Proposed building would be twice as high and continue across entire lot. Very close. So think trucks, noise and fumes.**



**Through patio fence – truck ramp goes here.**



# FLUM and Policy Maps

## Zoning Maps

- ▶ Future Land Use Map (FLUM): 3920 Alton Place is designated as Low Density Residential. R-1-B, single family detached.
- ▶ Generalized Policy Map: 3920 Alton Place is located in a Neighborhood Conservation Area.

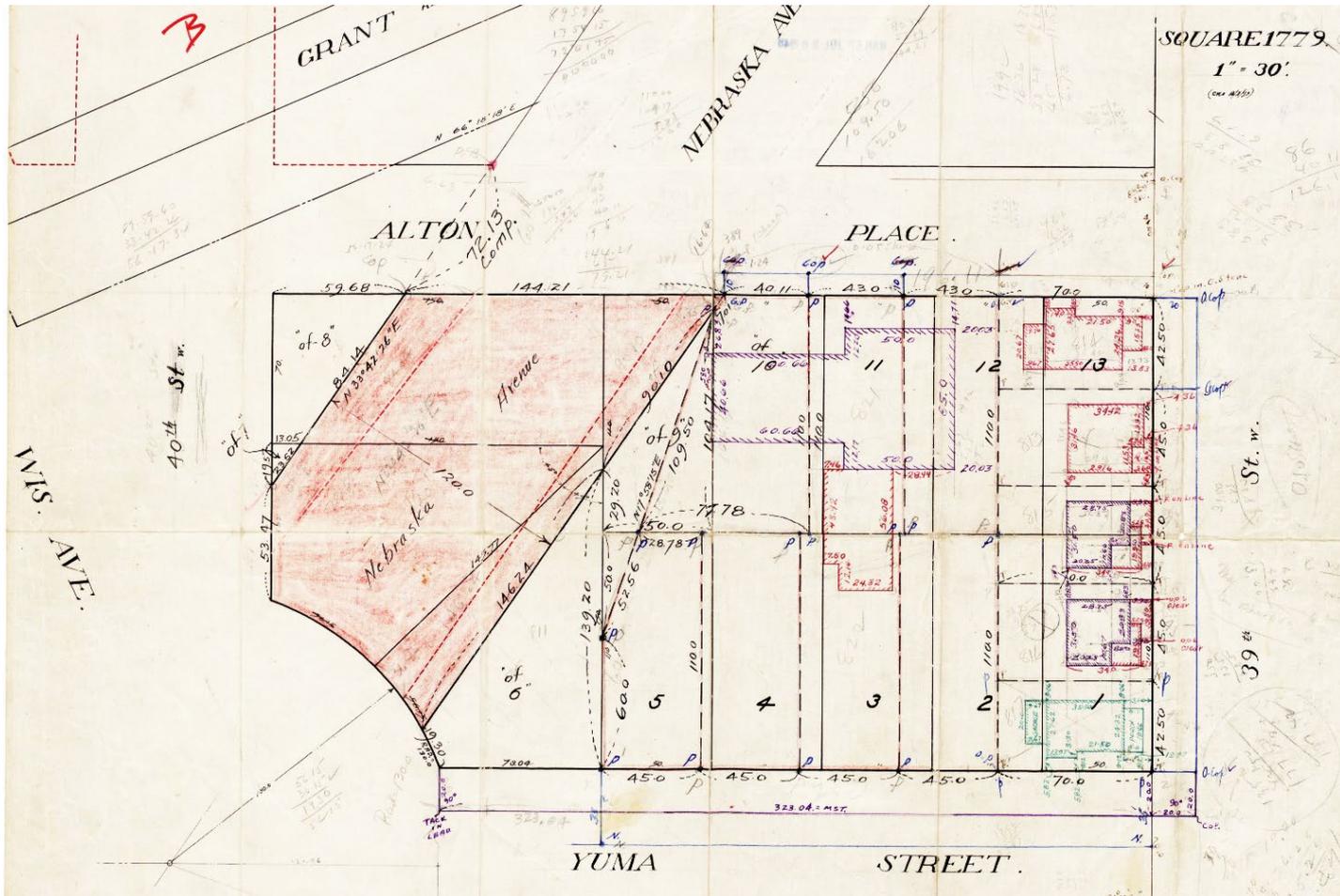
Not in a transit Zone: 3920 Alton is not located in a transit zone.

# **Volume of Use:**

## **Never foreseen in LOW density zone.**

- a. 200 people (121 residents plus 70 staff/FTE's). By comparison the site was 7 single family lots, which accommodates about 28 people or 172 fewer people than this proposal.
- b. Plus deliveries, guests, private hire aides, and the people visiting a 250-seat church.
- c. 20 trucks per week in a “no thru truck” zone. 35 staff drive.
- d. 30 Foot long trucks, 28 ton trucks, 7 ton shuttle multiple times a day

# 3920 Alton when it was 7 lots – see 5 houses to right



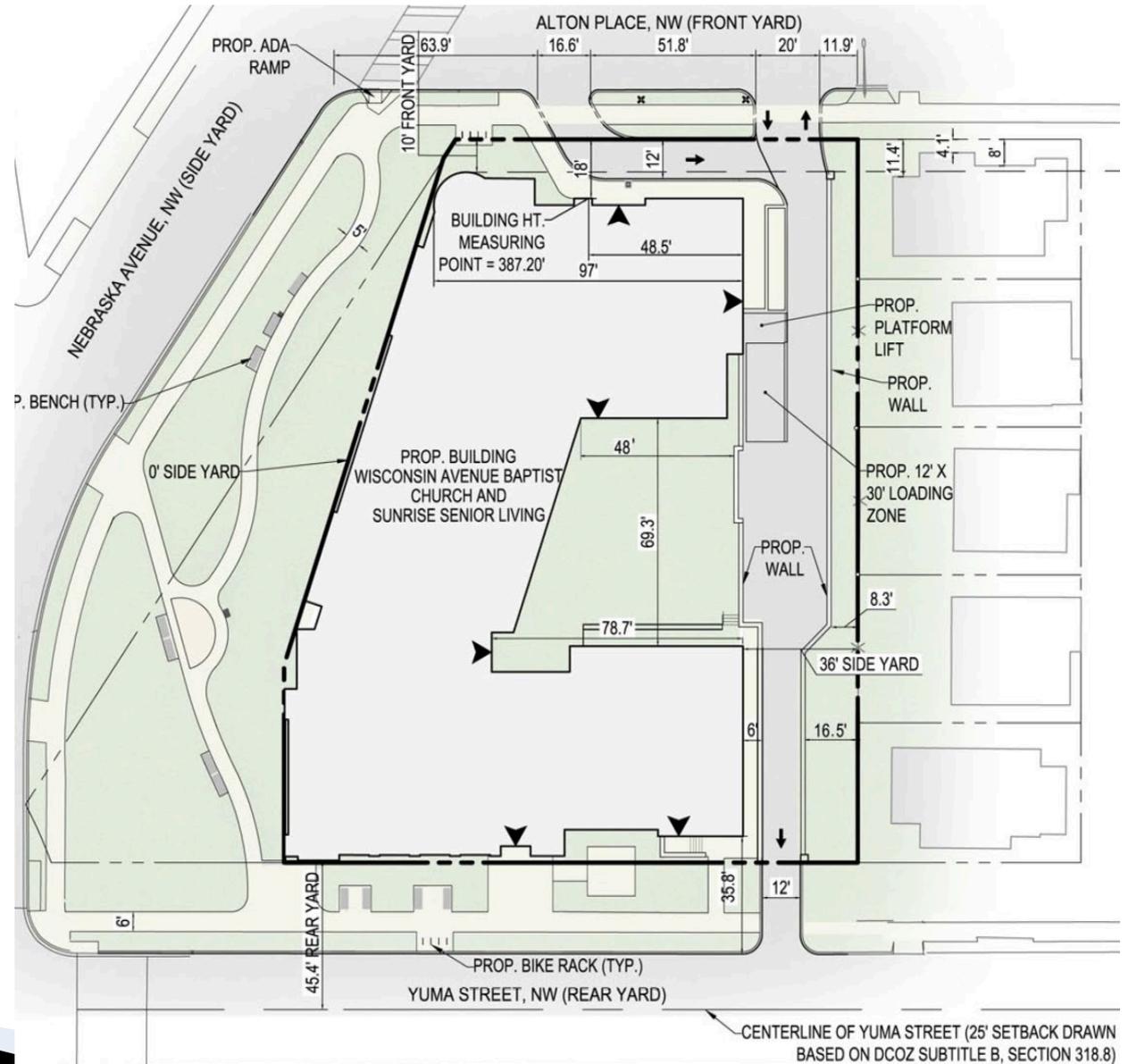
### **3 Variances requested: lot occupancy, number of stories, side yard elimination. Plus a 4<sup>th</sup> Variance – height of steeple.**

1. Variance to allow 58% lot occupancy instead of 40% lot occupancy,
2. Variance to allow 4 stories instead of 3 stories,
3. Variance to eliminate an 8-foot side yard setback,
4. Variance from height to have a 76-foot steeple instead of 60 feet – last not requested but appears needed.

# Lot Occupancy Variances

- ▶ Sunrise says they need 1.5 acres. The lot is less than half that. Sunrise does not belong on this site.
- ▶ In R-1-B, single family detached, a church is allowed 60% lot occupancy and a non-church only 40% lot occupancy.
- ▶ Sunrise asks for 58% lot occupancy. But note WABC occupies less than 13% of the building.
- ▶ 40% expanded to 58% lot occupancy is close to a 50% increase.
- ▶ If granted, this increase in lot occupancy would allow an additional 20,389 SF or, over 4 floors, 81,556 SF or an increase from 81 residents to 121 people living on the lot.

# Filling the Lot



# Filling the Entire Lot

- ▶ The 4 sides of the building would sit:
  - ▶ a. 4.8 inches from property line on Yuma St. side;
  - ▶ b. *on* the property line of National Park Service;
  - ▶ c. 10 feet from the Alton Place property line – and the 10 feet includes the drop-off-pick up and entrance to the truck ramp; and
  - ▶ d. on the fourth side, where property line is shared with 5 single family homes, a truck ramp dropping 13 feet for 20 trucks per week, loading and an open roll off trash container.

# Variance for extra story: 3 allowed not 4

Sunrise wants 4 stories when 3 stories are allowed.

If granted, the variance for a 4<sup>th</sup> story would mean 35-50 more people living on the lot (not included in these numbers are the affiliated staff and visitors).

If we assume 50 more people if this variance is allowed, that is almost doubling the number of people on the lot.

If 70 staff (FTEs) are required for 121 people, we could say that 30 of those staff relate to the extra 50 people this variance would allow. Thus, an extra story would allow 80 more on the lot.

## **Steeple allowed up to 60 feet. It appears to exceed at 76 feet. Variance needed?**

- ▶ The steeple appears to require a variance to exceed the 60 foot limit.
- ▶ The church occupies only a small part of the first floor and even less on the second floor. The steeple is separated from the church by two-floors of Sunrise residents.

Measurements for the steeple requested but never provided.

# Variance for side yard setback elimination

- ▶ Eliminating the side yard allows an approximate 10% increase in occupancy, density and volume of use in a R-1-B neighborhood.
- ▶ Thus, this elimination is not just about “sitting on federal park land,” it also adds about 11 more people plus attendant staff and visitors.
- ▶ The elimination of the 8 foot setback would be a loss of 1,832 SF of green space.
- ▶ Instead, if this relief is granted, it becomes 7,329 SF of occupied space over 4 floors.

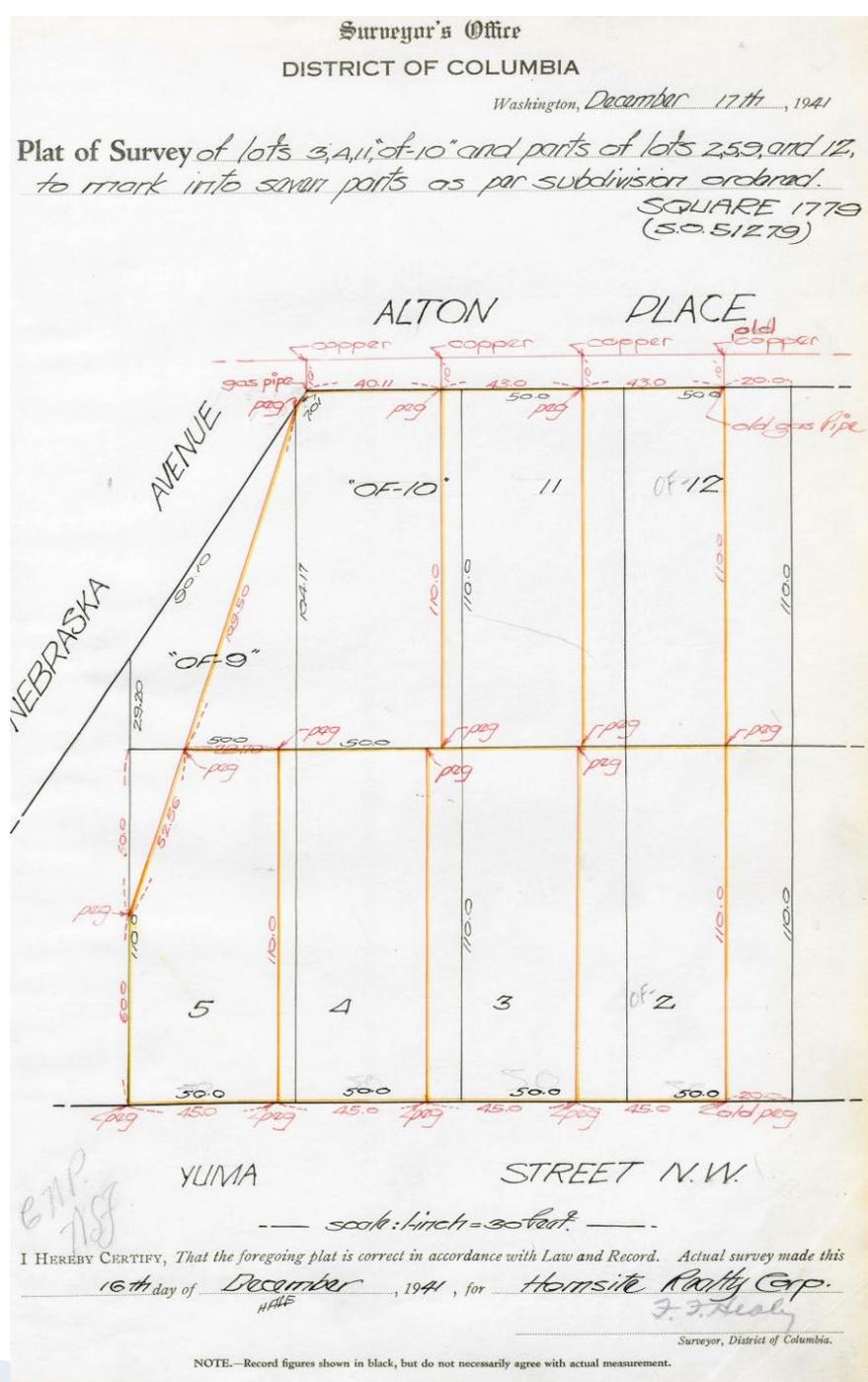
# Must be an owner to ask for a variance.

1. WABC and Sunrise collectively are “the applicant(s).” But they are separate legal entities. WABC is the current owner of the property. Sunrise is not the owner of the property and owns no property in Tenleytown.
2. Pursuant to the regulations and the court of appeals, only a property owner can request a variance for their own use, and in considering the request, the BZA may consider only the needs of the property owner. Any claimed practical difficulties or hardship must be to the owner. *Palmer*.
3. WABC, the owner, will occupy less than 13 percent of the building. WABC does not need these variances to operate as a church.
4. All the extensive zoning relief requested is based on the needs of a for-profit, Sunrise, wanting to operate a senior living facility that generates enough profit to satisfy its shareholders upon sale of the facility to Welltower.

# Three prong test for variances

- ▶ Regardless of the ownership issue, all requested variances must pass the three-pronged test imposed by the court in *Draude v. District of Columbia Board of Zoning Adjustment*, 527 A.2d 1242 (D.C.1987) at 1254, citing D.C. Code 5-424(g)(3) (1981) for granting of an area variance. “An area variance may be granted for improvement of a property if all of the following conditions are met:
  - (a) the property suffers from ‘exceptional narrowness, shallowness, or shape’ or from ‘exceptional topographical conditions or other extraordinary or exceptional situation or condition;’
  - (b) these exceptional circumstances ‘result in peculiar and exceptional practical difficulties’ to the owner unless he or she can obtain a variance; and
  - (c) variance relief will not create ‘substantial detriment to the public good’ or ‘substantially impair [...] the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map.’”

# WABC's property at 3920 Alton when it was 7 lots (1941)



# The Lot is Not Unique

The WABC property has NO exceptional narrowness, shallowness or shape, or exceptional topographical conditions or other extraordinary or exceptional situation or condition that would result in peculiar and exceptional practical difficulties to [or] undue hardship upon the owner of the property. Prongs 1 and 2 as interpreted by the court of appeals.

The lot is not on Wisconsin Avenue or Tenley Circle and is separated from them by federal park land.

This flat lot is close to rectangular. The lot is so flat that the intra-city baseball league used to play there. It is so close to rectangular that even Applicant describes the two sides of the lot as both being 220 feet. [Exhibit 69, page 23]

Size of the lot not unique and is ideal for subdividing in conformity with zoning.

Applicant has made no case that the property as zoned is not a viable site for a church. In fact, one option cited by WABC is that they could sell to another church.

# No “confluence of factors” - Prong 1.

WABC has no unique institutional or religious needs or mission requiring expansion.

WABC will no longer identify as Baptist and has little, if any, nexus to Tenleytown.

**Sunrise cannot substitute its “needs,” including financial viability of a multi-national corporation, for “needs” of WABC to constitute an “exceptional condition.”**

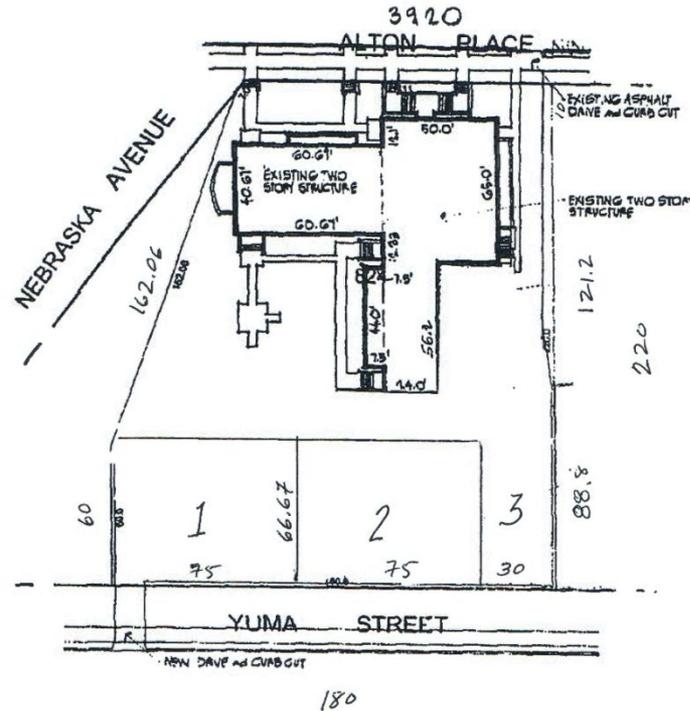
# No public service organization, no affordable units, no institutional necessity. Prong 1.

- ▶ Sunrise, a for-profit business, is not a public service organization. Also, no affordable units are provided.
- ▶ Sunrise's claimed need for variances is to produce a large enough profit to both satisfy its corporate board and to build a new church with a permanent endowment. See *Palmer*.
- ▶ Sunrise wants the variances to show a revenue stream sufficient to satisfy Welltower's shareholders since Welltower is the ultimate purchaser of the facility.
- ▶ Here the specific design does not constitute an institutional necessity and design features do not require variances sought. See *Draude*.
- ▶ All variances are for Sunrise; variances are not for WABC's end. See *Foxhall*.

# **No Practical Difficulties or Undue Hardship - Prong 2.**

- ▶ Sunrise's alleged difficulties are not unique to the property. Rather, the variances sought are to build a larger, more profitable enterprise by amending the zoning regulations.
- ▶ WABC does not need variances for its own end.
- ▶ WABC can sell lots in compliance with zoning and raise sufficient funds to update its church building, or sell to another church or place of worship.

**WIN. WIN. Zoning compliant alternative option to fund WABC facility modernization -- sell 2 lots to raise \$1.7 million for renovations. [DC government just approved the building for occupancy by a childcare center.]**



**KEY**

1. SINGLE FAMILY DETACHED LOT [75 X 66.67 = 5000.25 SF]
2. SINGLE FAMILY DETACHED LOT [75 X 66.67 = 5000.25 SF]
3. CHURCH DRIVEWAY AND PARKING -- MEETS REQUIRED 30-FOOT WIDTH

THIS OPTION IS ALLOWED WITHIN THE CURRENT R-1-B ZONING.

THIS OPTION MEETS ALL REQUIREMENTS OF THAT ZONE, INCLUDING 5000 SF LOTS FOR SINGLE FAMILIES.

# Severity of Variances and Self-Created Hardship. Prong 2.

- ▶ The variances sought are severe: 58% versus 40% lot occupancy; 4 versus 3 stories; elimination of an 8 foot side yard setback. These variances all serve to increase Sunrise occupancy resulting in a dramatic volume of use in a single family neighborhood.
- ▶ Sunrise knew the development standards and should be told to look for the 1.5 acres they desire rather than shoe horning into a .8 acre lot by rewriting zoning.
- ▶ WABC's lack of maintenance should not be used to violate R-1-B protection for family homes. Particularly in light of the loss of over \$200,000 due to management failures. See Exhibit 74.

# These Variances would harm the public good and zoning plan – Prong 3

- ▶ Harm to Public Good: harm to nearby homes; elimination of green space, interference with light and air.
- ▶ Homes on edge of R-1-B deserve same protection as homes in core. The Comp Plan recognizes this when it speaks to transition at edge of commercial in order to protect the edge of residential. *Policy LU-2.3.2 and 2.3.3.*
- ▶ At least 3 Variances and 2 Special Exceptions does not honor the Zoning Plan, Comprehensive Plan or Maps.
- ▶ Nothing left of Zoning: lot occupancy, stories, side yard, steeple height, CCRC definition, insufficient parking, likely to become objectionable, too close to another health facility, 13 foot retaining wall, slope dangerously steep. What is left of zoning?

# The Sunrise-WABC proposal is inconsistent with many provisions of the Comp Plan, which is the law.

## ▶ RELEVANT PROVISIONS OF THE COMPREHENSIVE PLAN

- ▶ Policy RCW-1.1.1: Neighborhood Conservation
- ▶ Policy RCW-1.1.8: Managing Institutional Land Uses ...
- ▶ Policy RCW-1.2.3: National Park Service Areas.
- ▶ *Policy LU-2.1.5: Conservation of Single Family Neighborhoods.*
- ▶ *Policy LU-2.2.1: Code Enforcement as a Tool for Neighborhood Conservation*
- ▶ *Policy LU-2.3.1: Managing Non-Residential Uses in Residential Areas Policy*
- ▶ *Policy LU-2.3.5: Institutional Uses*
- ▶ *Policy LU-2.3.7: Non-Conforming Institutional Uses*
  
- ▶ If this were in a Commercial Zone – showing concern for nearby residential
- ▶ *Policy LU-2.3.2: Mitigation of Commercial Development Impacts*
- ▶ *Policy LU-2.3.3: Buffering Requirements*

## To conclude, applicants fail the 3 prong test for variances

1. The property does not suffer from **exceptional narrowness, shallowness, or shape or from exceptional topographical conditions or other extraordinary or exceptional situation or condition**. It is flat, almost rectangular and its size is a positive not a detriment.
2. There are no **exceptional circumstances or situation resulting in peculiar and exceptional practical difficulties to the owner** if the variances are denied.
3. WABC can raise the funds to renovate the church by subdividing the lot in compliance with the existing R-1-B zoning. WABC is not expanding.
4. Sunrise is not an owner and cannot request variances. Also, if Sunrise were considered for a variance, it gets no flexibility because it is not a public service organization and they cannot argue “hardship” because it came to this lot knowing it needed a lot almost twice as large.
5. The severity and number of variances equate to a rewrite of zoning in a R-1-B single family detached, low density, neighborhood conservation area.
6. Variance relief would create substantial detriment to the public good or substantially impair [...] the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map.

## Why pick a lot half the size of what they say they need then ask the BZA to help them push 20 pounds of flour into a 5-pound bag.

	Allowed - Required	Proposal	Relief Requested	Percent change
WABC	MOR	294 seat church reduced to 250 seat church		Percent of building 13%
CCRC		86 units with 121 residents and 65-75 staff FTEs	Special exception	Percent of building: 87%
Truck Ramp Retaining Wall	4 feet (48 inches)	Over 13 feet	Special exception	Over 300%
Lot Occupancy non-church	40%	58% which allows an increase of in 6,380 SF on a lot of 35,443 SF	Variance	Almost 50% increase
Side Yard Setback	8 feet	Eliminate – allowing building to increase volume almost 10%	Variance	100%
Stories	3 stories	4 stories – with top 2 stories entirely occupied by Sunrise	Variance	25% increase