

October 17, 2013

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Dear Chairman Jordan and Members of the Board of Zoning Adjustment:

I am a resident of 1515 15th Street, NW (The Metropole) and I will be directly impacted by the proposed development at 1456-1460 Church Street, NW, as my residence looks directly across the alley to the building site. I am submitting this letter because I will be unable to attend the hearing for this case scheduled for October 22, 2012, as I will be out of town for medical purposes. This letter will present my concerns and will attempt to highlight some of the reasons why the variances and special exceptions requested by the developer should not be granted.

To highlight and summarize the significant issues below:

- The proposed building does not meet the requirements of the Act to Regulate the Height of Buildings in the District of Columbia;
- The developers do not meet the first, second or third prongs of the "three-prong" test for both area adjustments (lot occupancy and parking);
- There are additional variances that must be addressed and no relief has been requested;
- There are significant additional parking and transportation issues regarding the proposed development (and no transportation plan included in package);
- The proposed building does not meet the correct Floor Area Ratio (FAR); and
- There are many negative impacts to quality of life and regular enjoyment of existing residences.

I am a strong believer in re-development efforts and believe that smart, effective reuse of existing spaces has greatly improved the character quality of life within the city, especially in this specific area. However, the proposed building, as it requires significant exceptions and adjustments from established zoning regulation, is not the solution to the existing space. The multitude of options available for development with regard to this space, as well as the lack of outreach and communication by the developers with the local residents and neighborhood, indicate to me that this proposal has not been thoroughly vetted and would ultimately cause undue hardship and negatively impact local residents if it is approved and constructed as proposed.

Before I begin presenting my concerns in detail, I want to stress the significant lack of outreach and request for involvement or comment by the developers on this project. It is my understanding that a building like this is normally accompanied by a notification and presentation by the developer to all neighbors that may have an interest, much less are significantly impacted by the proposed development, early in the development process. In this instance, there was little if any outreach that I am aware of that was done in advance of presentation to the local ANC, or in preparation for the BZA hearing. Given the multiple requests for relief, as well as the substantial impact these would have on the immediate neighbors, a lack of outreach would indicate a lack of good faith by the developer. It is my perception that the developer hoped to avoid causing apprehension, and the resulting resistance, so that they could receive approvals from the ANC and BZA before anyone was the wiser.

I. Lack of complete plans and potentially incorrect information in BZA Application

Further reinforcement of this belief stems from the lack of detail, incomplete documentation, and from my perspective, inadequate arguments in support of their request for adjustment and exception in the

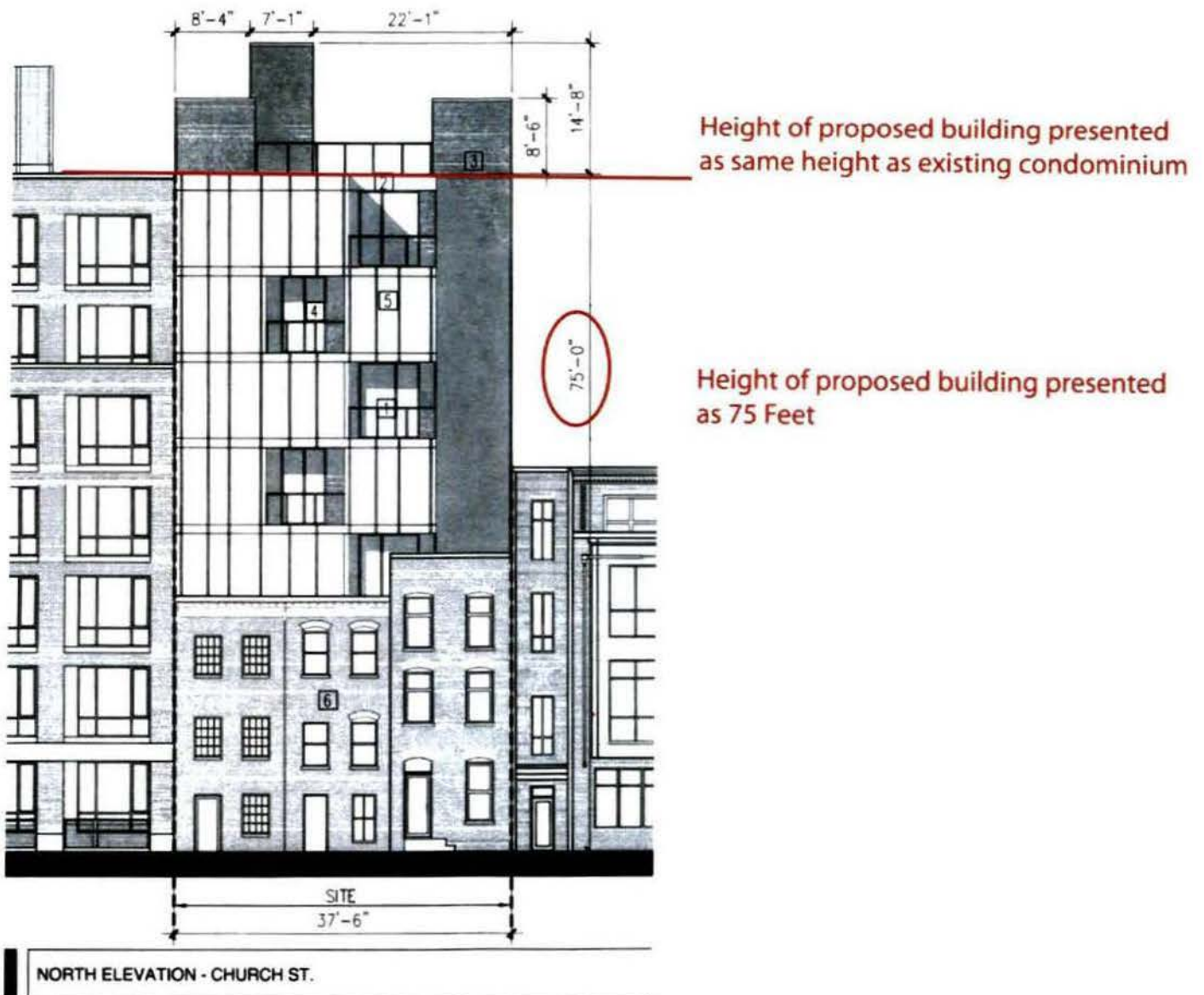
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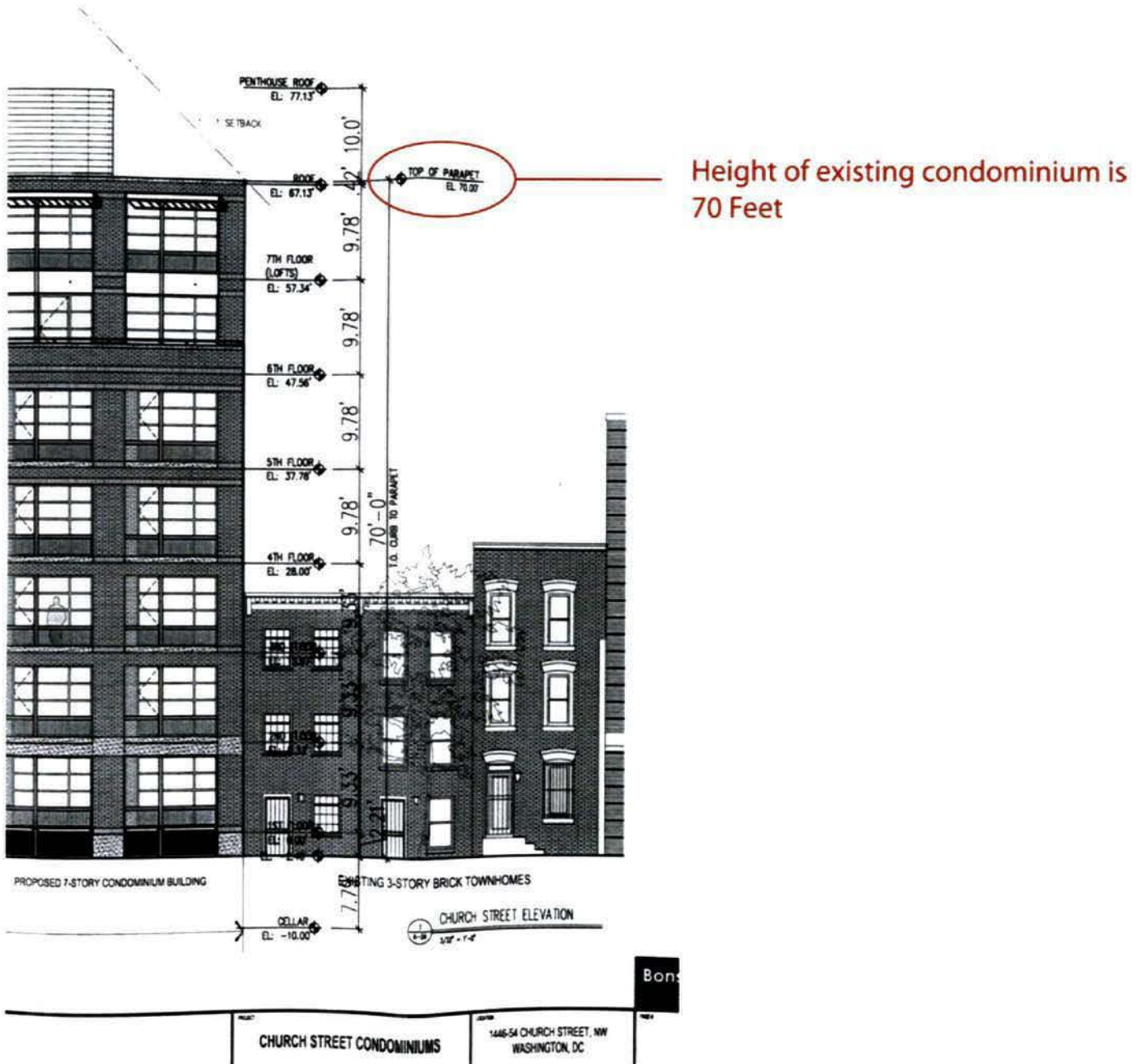
BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18638
EXHIBIT NO. 30

application materials dated July 24, 2013 that are on file with the zoning board for the BZA case. (I am aware that the developer submitted a pre-hearing package on October 8, although there are still many missing pieces to the proposal). I took it upon myself to go to the Office of Zoning to make copies of what was presented by the developer when I became aware of the proposed development in late summer simply because they did not present this material to any of the neighbors as far as I am aware of. This original application has five pages of floor plans that are cut-off mid-paper, making comprehensive review at the time challenging at best, and the renderings downplay the real impact such a building would have on the existing neighborhood and adjoining structures. Given that the application is further lacking expected documentation, such as a transportation study, it is difficult if not impossible to adequately review or understand the impact such a significantly different structure would have. At the very least, the BZA and/or the ANC should require the developer to present these to the neighborhood so there is an opportunity to understand and if necessary, challenge the assumptions and outcomes.

Likewise, the graphics that show the measured height of the building at 75' also show the building to be the exact same height as (from the top of the parapet) the building immediately east on Church Street. **(See Picture 1)** However, according to documents in BZA case 17459 for 1446-1454 Church Street, this building is only 70' in height. **(See Picture 2)** Either the height in the current proposal is inaccurately represented in the drawings, or the height of the existing building at 1446-1454 Church Street is not in conformance with the plans submitted to the BZA back in 2006 (and exceeds the allowable height of 70' within the Height Act – see next section on height concerns). Given that other pages of the submission have proposed floor heights that equal to 75', I am making the assumption that the applicant is proposing a building height of 75' instead of 70'. **(See Picture 3)**

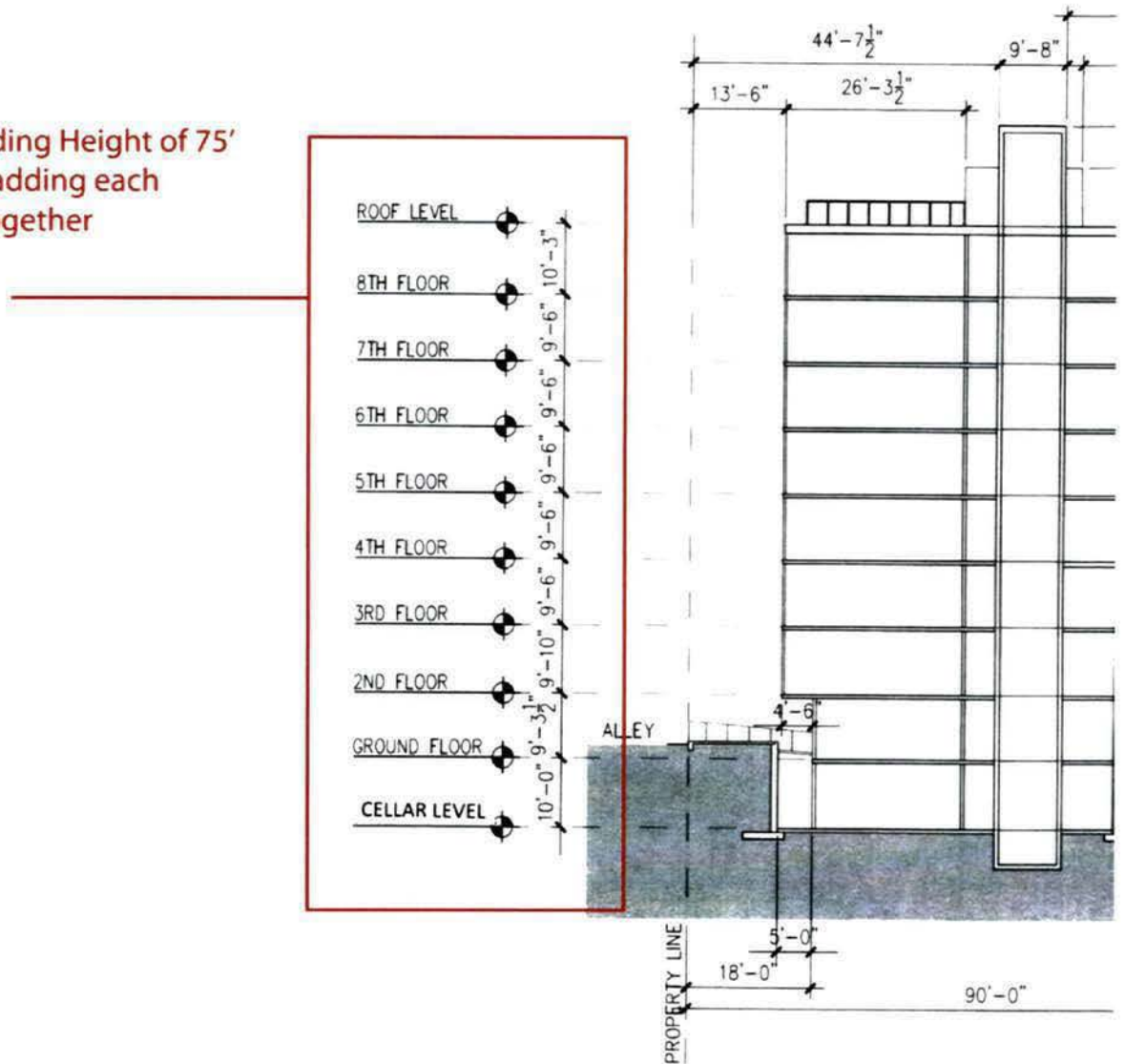


Picture 1. Elevation from Applicant's Elevation Plans showing Seventy-Five (75) Feet Height of Building as well as implication that it is the same height as the existing adjacent condominium on Church Street



Picture 2. Elevation of existing condominium on Church Street adjacent to proposed building showing a height of seventy (70) feet. (Graphic from BZA case 17459)

Proposed Building Height of 75' confirmed by adding each story height together



Picture 3. Proposed building height of seventy-five (75) feet confirmed by adding heights of building stories.

Because the proposed plans have either inaccuracies or discrepancies, it begs the question of what else is not correct in the proposed plans. While I do not expect to see construction-ready architectural blueprints presented to the BZA, the very nature of the building, and the type of relief sought, are directly related to these documents, and were these plans to be approved by the BZA without proper vetting, a building that violates a number of legal and regulatory zoning requirements could be built.

II. Building Height Concerns

A significant issue regarding the proposed building is the final height. According to the June 15 and October 8 plans presented in the BZA application, the height of the proposed building is 75 feet.

All buildings within the District must conform to the Act to Regulate the Height of Buildings in the District of Columbia (DC code 6-601.01 to 6-601.09 and US 36 Stat. 452, as amended) (hereby referenced as the Height Act). Most importantly, and relevant to this proposed development, Section 5 of the Height Act allows buildings on commercial streets to be **no more than twenty (20) feet taller than the width of the adjacent street.**

It appears that Church Street has a 50' wide right-of-way. If so, how can the applicant exceed the Height Act, which would **limit the building to 70'** (plus an allowable 18'6" for the mechanical penthouse)? It appears to me that the applicant is basing the 75' height on what is allowed under Section 1902.1 of the Zoning Code – however, while the zoning code height limitations may exceed the height allowed within the Height Act based on a certain widths of rights-of-way, that does mean that an applicant may exceed the limitations set within the Height Act. It is my understanding that there is no relief for this type of development allowed under Federal and District law to exceed the Height Act.

Apart from the project's apparent non-conformance with the Height Act, the applicant appears to propose a height of 75' with a penthouse at 14'8", for a total height of 89'8", and is asking for special exception relief from Section 1902.1. Section 1902.1 allows a bonus height of 10' above the C-3-A matter-of-right height of 65' in the ARTS overlay district, allowing for a maximum height of 75'. However, with this bonus, Section 1902.1 also limits the penthouse to 8'6", for a total height of 83'6". This 83'6" is the same total height that would result with the matter-of-right height of 65' in the C-3-A and allowable 18'6" penthouse. It appears that the intent of the bonus is to allow additional allowable uses within the top 10' of a structure within the ARTS overlay district—not to allow a higher height than what is already allowed as a matter-of-right. The applicant's proposed 89'8" structure requires relief for 6'2". That's 6'2" above a bonus height that the applicant is choosing to take, and 6'2" above the penthouse of the condominium immediately to the east. A deviation from the height limits within the ARTS overlay district does not appear to be intent of the bonus of 10' in height allowed under 1902.1 and, within such a constrained and highly developed area, will adversely impact the availability of light and air, and thus the general welfare of neighboring properties.

Why is the applicant seeking significant relief from a height bonus (6'2" greater than the bonus allowance of 8'6" for a penthouse)? It appears that the applicant proposes to have a rooftop deck as a building amenity and is requesting the additional height to accommodate the elevator housing to access the rooftop. Is a building amenity an appropriate reason to request additional height from a bonus height? Why not construct the building amenity within the allowed bonus height? There is no requirement that the applicant construct the number of floors/units that is proposed for this structure. Apart from the fact that there is no obvious or inherent public good coming from the proposed rooftop deck, and in fact the rooftop deck may negatively impact the public good—which I will discuss further in my letter—why can't the applicant construct a structure that conforms to the Height Act and the allowable height bonuses?

III. Variance Rules and Requested Relief

From my understanding of the zoning code, an applicant requesting an area variance has an **affirmative responsibility in their request for relief**. The BZA refers to this as a "three-prong" test, and applicants have to prove the first prong before getting to the second, then they have to prove the second to get to the third; then, of course, they have to prove the third prong. From Sec. 3103.2:

First prong—does the property have exceptional narrowness, shallowness, or shape or an exceptional topographical condition or other extraordinary or exceptional situation or condition?

Second prong—does the property's exceptional situation or condition result in a practical difficulty?

Third prong—would granting the variance have a substantial detriment to the public good and/or impair the intent, purpose, and integrity of the zone plan?

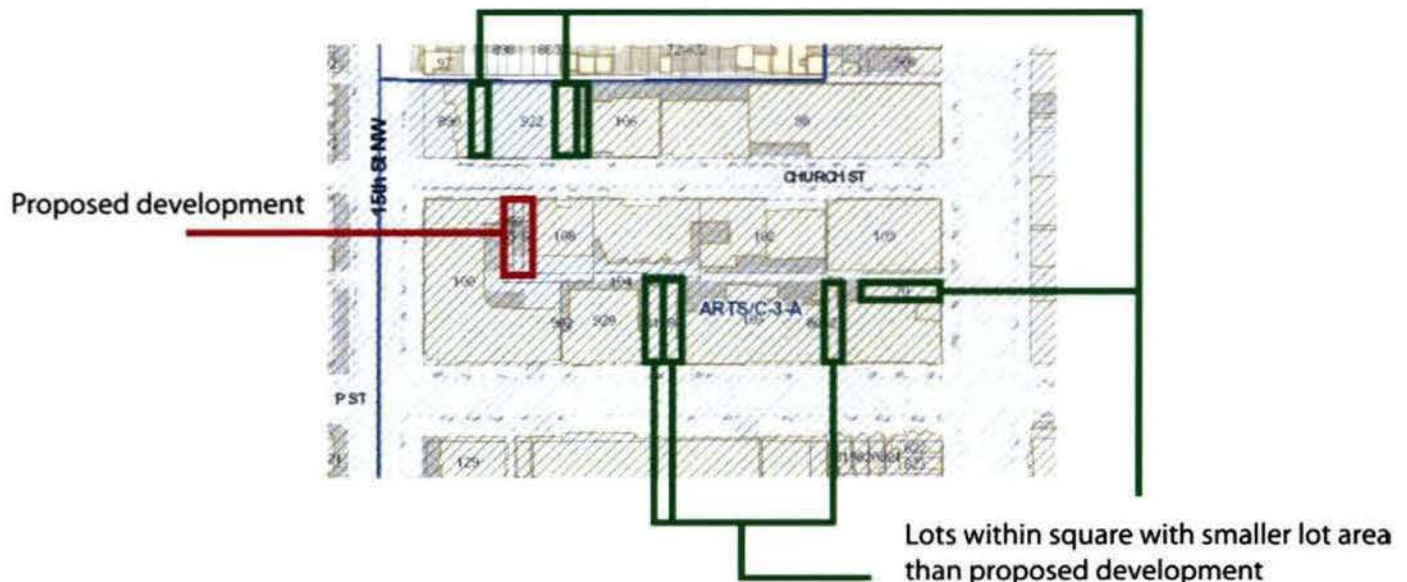
From the BZA application, the applicant is seeking two (and only two) area variances. I will discuss below how the applicant has not met the test for these variances below.

III.A. First Prong

First prong—does the property have exceptional narrowness, shallowness, or shape or an exceptional topographical condition or other extraordinary or exceptional situation or condition?

The applicant, on page 14 of its October 8 statement, states that the site is affected by several exceptional conditions including a narrow width of 38 feet and a small lot size of 3,420 square feet.

From my reading of cases, an exceptional condition of size/shape is often determined through a comparison of other lots on the same square. In this case, considering the three lots separately, while small, they do not have any exceptional condition. These are regular, rectangular, level lots. Separately they are one of three adjacent lots that are near the same size; the square, however, has four other small lots (for a total of seven) among other larger lots. When the three lots are combined as proposed by the Applicant, the resulting lot would be larger in square footage than these four other smaller lots on the square. Likewise, the resulting lot will be larger than three other lots on the square directly to the north, which front on Church Street, and are across from the subject lots. **(See Picture 4)** The subject lots also have both sufficient street frontage and alley access, as do all the other lots on the square.



Picture 4.

Recent BZA cases have confirmed that the **small size of a lot and structure is not an exceptional condition**. In 18566, the BZA agreed with the Office of Planning report that states

"(T)he applicant has not demonstrated that there is an exceptional situation related to the property that results in a practical difficulty. The lot measures 13.94 feet by 50.08 feet and has an area of 698 square feet. The property is in a group of ten two-story row dwellings located on 5th Street that all have a similar frontage and lot area. These dwellings have a floor area of approximately 1,000 square feet. The floor plan provided in the application demonstrates that while the dwelling is small it is functional and appropriately sized for the lot on which it is located."

Likewise, in 18556, the BZA agreed with the Office of Planning report that stated:

“(T)he applicant has not demonstrated that there is an exceptional situation related to the property that results in a practical difficulty. The lot measures 20 feet by approximately 41 feet and has an area of 818 square feet. While the property is small, it is not unique in that regard, as 73% of the lots in this square are nonconforming for lot area.”

Per the applicant’s drawings, the three subject lots appear to be 12’5” by 90’, 11’9” by 90’, and 13’10” by 90’. These lots, individually, are nearly twice as large as the sizes of the lots in the above-cited BZA cases—where the Office of Planning and the BZA found no exceptional condition based on lot size. Further, and as stated above, as the proposal is to combine the three lots into one larger lot, any potential argument for uniqueness related to lot size should be moot, as the resultant lot will be significantly larger than other lots on the same square.

The deteriorated condition of the houses should also not be considered exceptional. 1456 and 1458 Church Street have only recently been vacated following their apparent sale in the spring of 2013. (From my observations, including a recent backyard party, the use of the garage, and lights on every night, it appears 1460 remains lived in.) Neighbors, including myself, have observed that following the move-out of the residents at 1456 and 1458 Church Street, multiple windows have been left open to the elements allowing the structures to deteriorate. But apart from that issue, recent BZA cases have confirmed that **the deteriorated condition of structures is not an exceptional condition**. In 18560, the BZA agreed with the Office of Planning report that states:

“The property is rectangular in shape and one of several similarly-sized and shaped lots on the subject square. The existing building was originally constructed in 1910 and meets the current lot occupancy, lot width and area requirements for the R-4 zone; measuring 20.25 feet wide by 145 feet deep, at 2,936.25 square feet in area.... The applicant intends to renovate the existing structure due to the existing layout, prior uses, noncompliance with the building code and the deteriorated condition of the property. The applicant cites a financial hardship as the justification for the additional dwelling unit due to construction costs and the building’s current condition. However, the current state of the property does not constitute a unique physical characteristic of the property, and is the condition that the property was in when purchased by the current owner in February of 2013, as reflected in the purchase price (almost 20% below the list price). There are no apparent unique characteristics or circumstances affecting the property that directly relate to the financial hardship described. The applicant would be improving a "shell structure" to meet current code requirements, and is proposing to undertake extensive additions to the existing building to further facilitate the additional units. The current physical configuration of the existing building does not preclude its use for a flat, or three units, which would be permitted as a matter-of-right, and eliminate the need for the zoning relief.”

The current state of the subject properties also does not constitute a unique physical characteristic of the property. Similar to BZA case 18560 cited above, and in accordance with the applicant’s submitted plans, the applicant plans to **improve only the shell of the exiting structures of the townhouses to meet current code requirements**, and is proposing to undertake an extensive addition (essentially a new building) to further facilitate a larger multi-unit structure. However, the current physical configuration of the existing buildings do not preclude them from continuing to be used as single family residences or for a multitude of other uses permitted as a matter-of-right within the C-3-A/ARTS overlay district with no need for zoning relief.

Further, the Office of Planning made a similar argument in 2006 for the now-built condominium building immediately to the east of the subject property on Church Street (1446-1454 Church Street). In its report for BZA case number 17459, the Office of Planning found that where “(t)he applicant is requesting parking relief based on the presence and location of the existing historic building on the site. The preservation of a historic structure does not make this this property unique however.” (ATTACHMENT A)

As there is no extraordinary or exceptional condition of the properties, then there is also no confluence of factors that make the properties meet the first prong of the variance test.

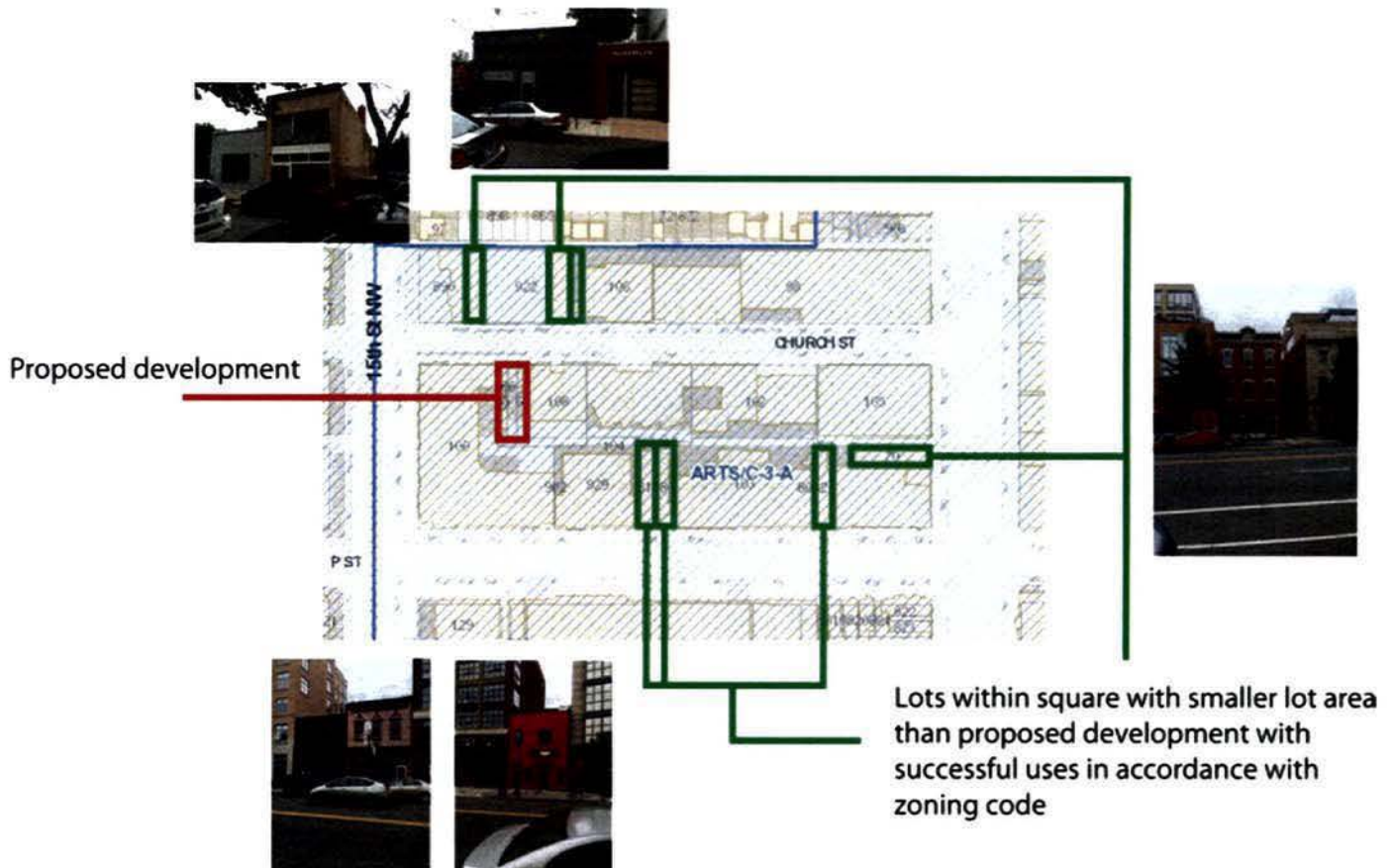
III.B. Second Prong

Second prong—does the property’s exceptional situation or condition result in a practical difficulty?

If the Board were to find that the subject property does meet the first prong of the variance test due to some exceptional narrowness, shallowness, or shape or an exceptional topographical condition or other extraordinary or exceptional situation or condition, then the applicant must prove that this exceptional condition results in a practical difficulty.

The applicant appears to be purchasing the subject lots with the sole intent of developing the proposed building—which requires significant relief from the zoning code. As discussed above, however, there is no exceptional situation or condition of the property that results in a practical difficulty for the applicant to redevelop the properties outside of the requirements of the zoning code. The existing single-family row houses have been occupied since they were constructed approximately 120 years ago (as noted above, one appears to still be inhabited, and the other two were recently vacated). From my research, under existing zoning (C-3-A/ARTS overlay) they can still be used as single-family homes, or flats, or multi-residential unit structures, or for multiple commercial uses without the need for any zoning relief. As there are many options to develop the lots under existing zoning requirements; there is no practical difficulty. For example, with the lots combined, as proposed by the applicant, the resultant 38-foot wide lot could accommodate four legal parking spaces off the alley which would allow for an 8-unit residential structure that would not need any relief from zoning. It is the applicant’s burden to show that there is a practical difficulty, but with the many options to redevelop the property under what is allowed as a matter-of-right, the applicant has failed to do so. **The applicant has provided no analysis to show any practical difficulty in developing the property within the generous matter-of-right allowances provided within the C-3-A/Arts overlay.**

As a matter of fact, the four lots on the square that will be smaller than the applicant’s combined lot have very successful commercial businesses (a national food chain is currently in build-out of the first floor of one of them). In addition, the three small lots across from the applicant’s site also have successful commercial enterprises. All of these properties have matter-of-right uses in conformance with the C-3-A/ARTS overlay. (See Picture 5)



Picture 5. Block with other similar smaller sites with successful use

III.B.1. Practical Difficulty in relation to the requested Lot Occupancy Variance

The applicant is asking for variance relief from Sec. 2604.2, Lot Occupancy, which allows for 80% lot occupancy if they avail themselves of inclusionary zoning bonus under Sec. 2601 (that is, if they provide affordable housing, they are allowed an extra 5% lot occupancy over the matter-of-right 75% lot occupancy in the C-3-A zone). **The applicant is asking for 85% lot occupancy, or an extra 5% after availing themselves of the bonus 5% lot occupancy allowed for providing inclusionary zoning units. This is 10% greater than the matter-of-right lot occupancy allowed for the C-3-A zone.** Why does the applicant need additional lot occupancy relief above a bonus to lot occupancy that they choose to take? This appears to be a created circumstance resulting from the number of residential units proposed from the project—not from any exceptional situation or condition. The applicant may do a multi-family development at the site that is under 10 units and not be required to include inclusionary zoning. The applicant is choosing to include inclusionary zoning, taking advantage of the bonus lot occupancy, and then is asking for additional lot occupancy.

In addition, and as further discussed below in Section VI (Floor Area Ratio Issues), can the applicant get 85% lot occupancy variance relief from Sec. 2604.2 without also getting special exception relief from Sec. 1909.1, which also limits lot occupancy to 80% in the C-3-A/ARTS zone when the inclusionary zoning bonuses are taken?

It would seem to me that the applicant should have **a significant burden** to prove why area variance relief is needed for extra lot occupancy that is limited in **both the inclusionary zoning** (Sec. 2604.2) **and**

ARTS overlay inclusionary zoning sections (Sec. 1909.1) to 80%. Sec. 2600.3 notes that the most important general purposes of the inclusionary zoning program include:

(b) To leverage private development, *combined where appropriate with zoning density increases*, to produce affordable housing throughout the District of Columbia.

As this is a tight site that is overlooked and surrounded by many other residential units, this does not seem to be an appropriate location to increase density, as this additional requested lot occupancy may severely impact the light and air available to adjacent properties (including mine) as well as the general welfare of the residents of these properties.

The only practical difficulty argument the applicant makes for requiring additional lot occupancy above that allowed as a bonus is a sentence on page 14 of its October 8 statement that the “existing structures must be incorporated into the design of the new building, which also limits and constrains the floor plate of the building.” However, the existing structures can be incorporated into any multiple matter-of-right redevelopment schemes and should not be considered a driver for required relief from lot occupancy. As the applicant notes on page 2 of their October 8 statement, “These houses are extremely modest in size.” One can surmise that these houses currently do meet lot occupancy requirements for the C-3-A/ARTS overlay zone. Again, the request for additional lot occupancy above the bonus provided under the inclusionary zoning regulations appears to be a created circumstance resulting from the number of residential units proposed from the project—not from any exceptional situation or condition. The claim on page 14 of the applicant’s October 8 statement that preservation of the characteristics of the existing structures “place substantial restrictions on potential building and parking configurations” **is not substantiated with any analysis** nor supported by the fact that, according to the applicant’s plans, a substantial portion of the building addition is actually built above the existing townhouse structures (having a setback of only 16’2” from their Church Street facades).

III.B.2 Practical Difficulty in relation to the requested Parking Variance

The applicant is asking for variance relief from Sec. 2101.1, which requires one off-street parking space for every two units in multiple dwelling units within the C-3-A zone. With a proposed 38 units the applicant is required to provide 19 parking spaces. The applicant proposes to only provide two parking spaces and is asking for relief to not provide the remaining 17 parking spaces. Similar to the applicant’s request for relief from the lot occupancy requirements, this appears to be a created circumstance resulting from the number of residential units proposed from the project—not from any exceptional situation or condition.

The applicant, on page 15 of its October 8 statement, states that due to the extreme narrow width of the lot and the historic buildings on the site, the applicant cannot excavate the site to provide below-grade parking, ramps for two-way circulation, or a turning radius sufficient to ingress or egress a parking garage.” However, the Office of Planning, in its 2006 review of a similar request for relief from the parking requirements for the now built condominium building immediately to the east of the subject property on Church Street (1446-1454 Church Street) did not find that these arguments amounted to any practical difficulty. In its report for BZA case number 17459, the Office of Planning specifically stated that it “views the need for a parking variance as a created circumstance resulting from the number of residential units (27) proposed for the project, not from any exceptional situation or condition. The number of units creates the non-conformity.” **(ATTACHMENT A)**

It is the applicant's burden to show that there is a practical difficulty, but with the many options to redevelop the property under what is allowed as a matter-of-right, the applicant has failed to do so. **The applicant has provided no analysis to show any practical difficulty in providing required parking for any development that is within the generous matter-of-right allowances provided within the C-3-A/Arts overlay. The applicant has also not provided any analysis that shows any practical difficulty for providing the required parking spaces for its proposed development** by, for example, further excavation beyond the planned basement excavation and the provision of a car elevator or other means. This is further addressed below in my discussion on additional parking issues and concerns, but is noted here as the applicant plans to excavate below and behind the townhouse structures to create additional dwelling units that further contribute towards the need for parking relief, but claims that excavation to provide for below-grade parking is a practical difficulty.

Third prong—would granting the variance have a substantial detriment to the public good and/or impair the intent, purpose, and integrity of the zone plan?

As a neighbor to the project site, I have significant concerns that the project will have a substantial detriment to the public good. Because these are also issues that should also be considered by the Board in their evaluation of the special exception requests, I consolidated my concern below in section VII (Negatively Affecting Quality of Life).

IV. Special Exceptions

The applicant is requesting special exception relief for the penthouse structures under Section 411 and Section 1902.1, as well as special exception relief from the rear yard setback requirements under Section 744. The applicant has the burden to address each special exception requirement separately; however, many of these requirements involve the same negative impacts to adjacent properties. For example, Section 411 allows the Board to grant the special exception if "the light and air of adjacent buildings shall not be affected adversely." Section 1902.2 allows the Board to grant the special exception if the proposal "will not adversely affect neighboring property or be detrimental to the health, safety, convenience, or general welfare of persons living, working, or visiting the area." Section 744 allows the Board to grant the special exception if the proposal provides "light and air and to protect the privacy of building occupants."

As a neighbor to the project site, I have significant concerns that the project will have a substantial detriment to my access to light and air and my general welfare. Because these are issues that should also be considered by the Board in their evaluation of the third prong of the tests for the variances, which are also requested by the applicant, I consolidated my concerns below in section VII (Negatively Affecting Quality of Life).

V. Parking Issues and Concerns

In my research, I determined that there were numerous recent BZA cases within the C-3-A/ARTS zone whereby the BZA has granted some parking relief from the parking requirements. Understanding that the 1 space per 2 residential units parking requirement within the code already considers the availability of transit (rail, bus, etc.), car share rentals, bike use, etc., some of the applicants in the recent BZA cases have noted that recent census data show that approximately 40% of residents in the mid-city area of DC own cars or alternately that approximately 25% of those in the area that rent small units own cars. As such, the BZA relief on parking has generally been for a reduction from **20-50%** of the parking requirement. The applicant, with **38 proposed units**, has a **parking requirement of 19 spaces. They are proposing 2 spaces, and requesting relief for 17** (a nearly 90% reduction in required parking). Assuming that only 25% of those in the area that rent small units own a car would still result in a demand of 9.5 parking

spaces, significantly greater than the 2 spaces proposed. Are we to assume that only 2 residents out of the 38 proposed units (or 5%) will own cars? Where does this assumption come from when other nearby recently approved residential projects within the same zoning provide parking for 25%-40% of their residential units? **It is the applicant's burden to show that there will be no negative neighborhood impact from providing such limited parking, and the applicant has failed to provide any proof of no negative neighborhood impact within its application.**

In order to convince the BZA that it should not have to provide the required 17 additional spaces, the applicant is proposing a restriction through a future lease to ensure that apartment tenants will not be able to acquire resident parking permits, which would normally be allowed for residents at the proposed development site. **However, this 'solution' begs many questions, the least of which is how exactly this would work and how it would be enforced.** From what has been presented, the developer proposes to write into the lease that a tenant will have their lease terminated should it be discovered that they have gotten a legitimately deserved parking permit with the city. I am not aware of any existing DDOT process that would take a BZA order and ensure that no tenant would be able to acquire a residential parking permit. Without an existing, uniform process overseen and developed by the city, with DC government authority and oversight, this would put complete control of policing with a party with a fiduciary interest in maintaining a lease.

I believe the BZA should require the applicant, the Department of Transportation and the ANC to explain exactly how the process would work and to answer the following questions:

- How would a third party, such as a neighbor or the ANC ensure that this process is being followed, given that they would not be in privity to the lease agreement? What would their recourse be if there is non-compliance? Lessors are not usually happy to end a lease with a paying tenant prematurely, as it generally means a loss in revenue/income. What is the likelihood that a lessor will in fact terminate the lease agreement over this one issue?
- What about a future sale of the property by the developer to another owner? Would they be required to follow these provisions? How would it be enforced?
- What is the legal sufficiency of the lease statement restricting tenants from acquiring a permit? Could a lessee challenge the lease provision, given that the permit is allowed by the city?

I am aware that this proposal mirrors other proposals from other developers who also are attempting to obtain relief from required parking. However, given that there doesn't seem to be a mechanism to enforce this process, especially one that is available to concerned neighbors and third parties, the BZA is being asked to take much on faith without any recourse or assurance that the process would in fact be workable.

Assuming that the permit limitation was enforceable and workable, the likelihood that tenants in this proposed building would not have need of a vehicle, or wouldn't avail themselves of public on street parking, is difficult to believe. This neighborhood is already extremely challenged with available public parking. It is very likely that anyone leasing a unit in this building who owns a vehicle would add to the already crowded parking conditions. This doesn't even begin to address the parking by guests of tenants or delivery vehicles that would need access to the building.

I am not sure how others within the neighborhood or building currently feel about the parking issue, but I am attaching a letter written in 2006 to the BZA (case 17459) from nearby condominium associations regarding the lack of off-street parking proposed for the now built condominium building immediately to the east of the subject property on Church Street (1446-1454 Church Street). The letter notes the difficult parking situation within the neighborhood, especially on Church Street, and states that new

multi-unit residential dwelling without adequate parking will only make the situation worse.
(ATTACHMENT B)

Further, at the time of its 2006 review of the 1446-1454 Church Street project (BZA case 17459), the ANC advised the Board to deny the requested variance from off-street parking requirements. In its letter **(ATTACHMENT C)** the ANC notes that the applicant was requesting a variance to achieve a 1 parking space per 4 unit ratio (significantly less than the required the 1 to 2 ratio) and found that the variance was not justified and would cause “substantial detriment to the public good and or substantially [sic] impairment to the intent, purpose, and integrity of the zone plan”. I am unsure as to why the ANC position has changed so drastically for this project—but perhaps it is because there was limited knowledge by the community of the project, and then limited community discussion, when it was reviewed by the ANC.



Picture 6. A typical day on Church Street regarding parking.

V.A. Zoning Regulation Intention for Use of Space

From my understanding of the zoning code, the parking requirements are meant to compliment and help enforce the intent of the zoning uses for the space. The request for relief of such a significant number of spaces for this building would imply that such a high-density building for a relatively small site (which is

argued by the developer as one of the reasons it cannot build the parking that is required) is not the best or appropriate kind of development for the site. There is nothing in the application that indicates why building the required parking couldn't be done, other than the challenge of doing so in a small space. Other spaces in the city have found creative ways to build the necessary parking, such as car elevators. **Nothing other than a statement of difficulty is being used to request such a significant relief of the required spaces.**

Were the developer to build a similar or smaller space to accommodate the available footage that would allow for three spaces (as currently exists), this would not be an issue that would need to be addressed by the BZA. **It is only because the developer is attempting to build something that is completely at odds with the zoning code and what it anticipates for this space that these requests are even before the Board.**

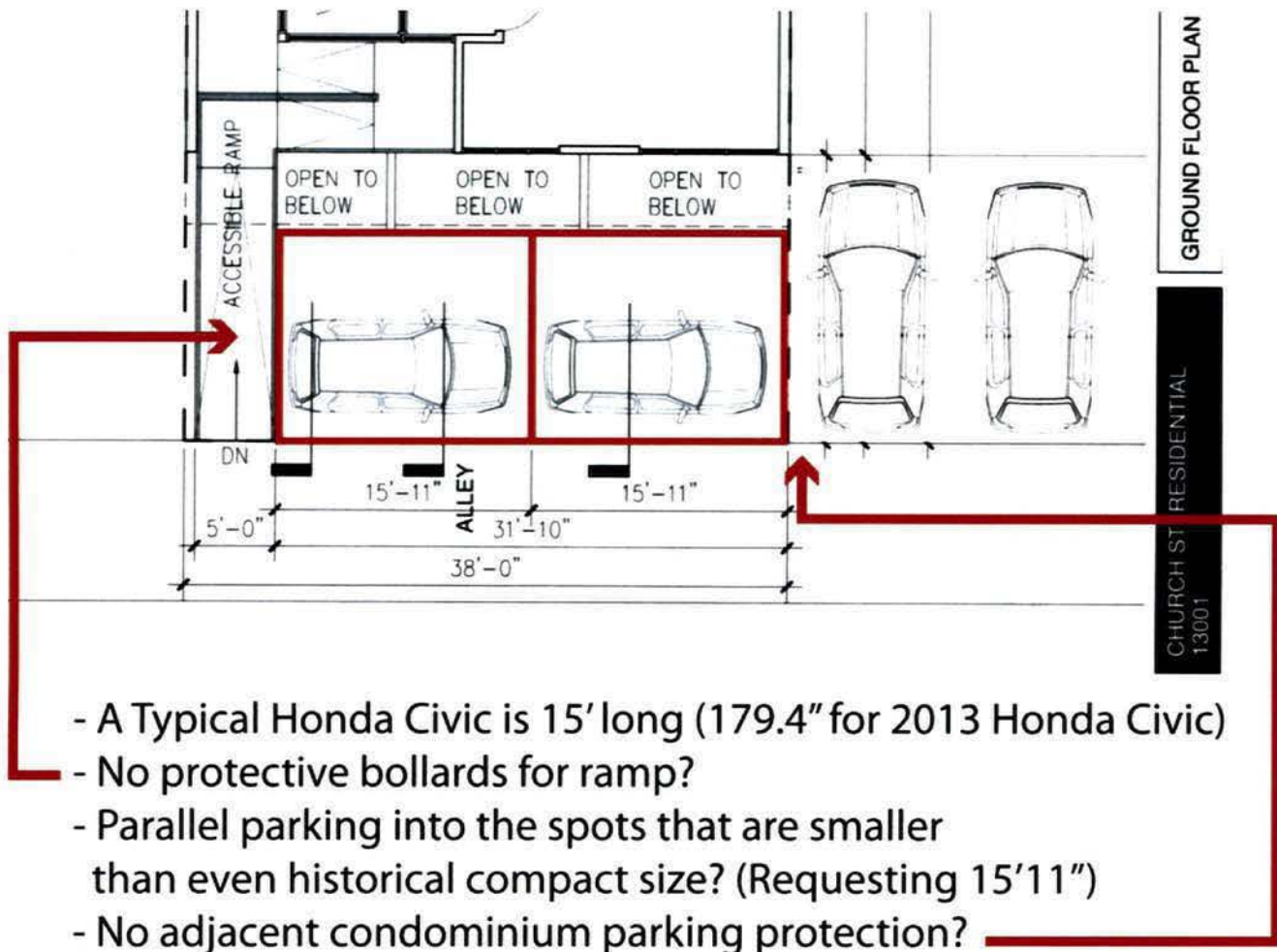
Apart from the variance relief requested from the required number of parking spaces, the applicant's October 8 2013 statement, on page 12, also notes that the two parking spaces that are proposed will be sub-standard in their length; that is, they will be only 15 feet, 11 inches in length—less than the 19 feet required under 2115.1. It does not appear that the applicant has requested required relief for the size of these spaces. The applicant does note that the proposed spaces will be 1 inch less than the 16-foot long spaces allowed for historic resources, and cites section 2115.3. However, section 2115.3 only notes the size required for compact spaces.

2115.3 A compact car parking space shall be a minimum of eight feet (8 ft.) in width and sixteen feet (16 ft.) in length exclusive of access drives, aisles, ramps, columns, and office and work areas and shall be striped according to the requirements of § 2117.3.

As a result of this I also believe that the **applicant would actually need to request an additional variance for the size of the proposed two parking spaces**, even if the parking variance under section 2101.1 were to be approved, as the parking spaces that they are proposing do not meet the required size per zoning code.

Furthermore, I question whether the two parking spots would actually even work for this space, given their small size and the requirement for parallel parking, as well as no indication of any protective equipment to prevent damage to the proposed ramp or adjacent condominium parking. **(see Picture 7)** When such protective structures are included, they would reduce the size of the parking spaces even further. This would seem reduce the parking spots from two to one to accommodate such a limitation in space.

In addition, if these parking spots were built, I am not sure how they would accommodate most modern cars and still be usable. For instance, a Honda Civic (a small to mid-sized car) is 179.4" in length, or nearly 15 feet long. A Toyota Prius is 175.3" in length, or just over 14 and one-half feet long. How would these cars actually be able to park in these spots, without hitting each other or the wall separating the ramp?

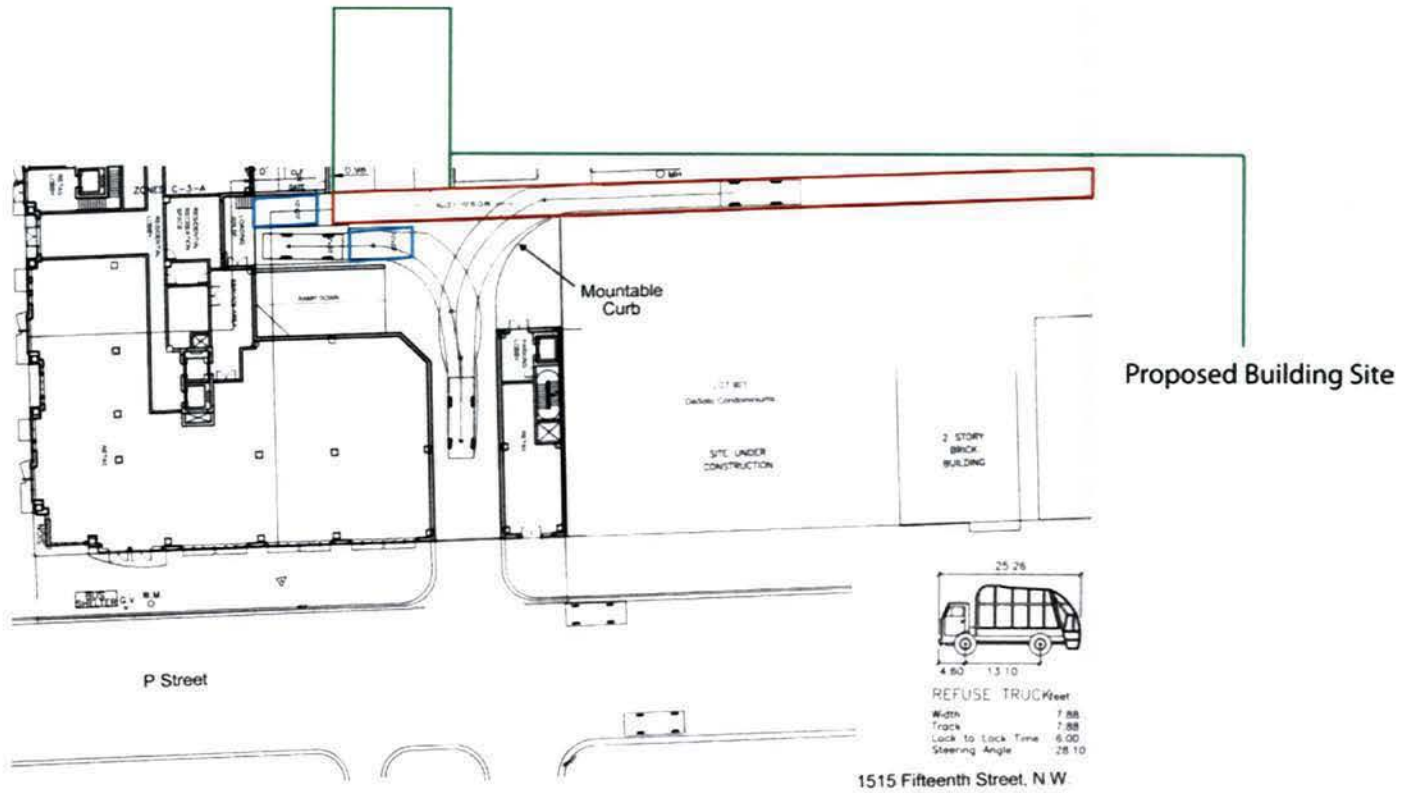


Picture 7. Proposed Development parking space size challenges

V.B. Transportation Impact Study – or Lack Thereof

The Applicant has not provided any type of transportation impact study in the application. It is my understanding that the Board would normally require such a plan, or at least be highly desirable one, in order to appreciate how the developers will handle the regular transportation issues for the site. This is inexorably related to the issue of parking, as there doesn't seem to be anything in the application to address how the developer intends to handle issues such as deliveries, trash pickup, trade and utility work, or the movement of tenant furniture in and out of the building. Furthermore, given the limited space within the alleyway and the proximity to existing structures and easements, the applicant should be required to explain to the Board how they will not negatively impact adjacent buildings and their regular use.

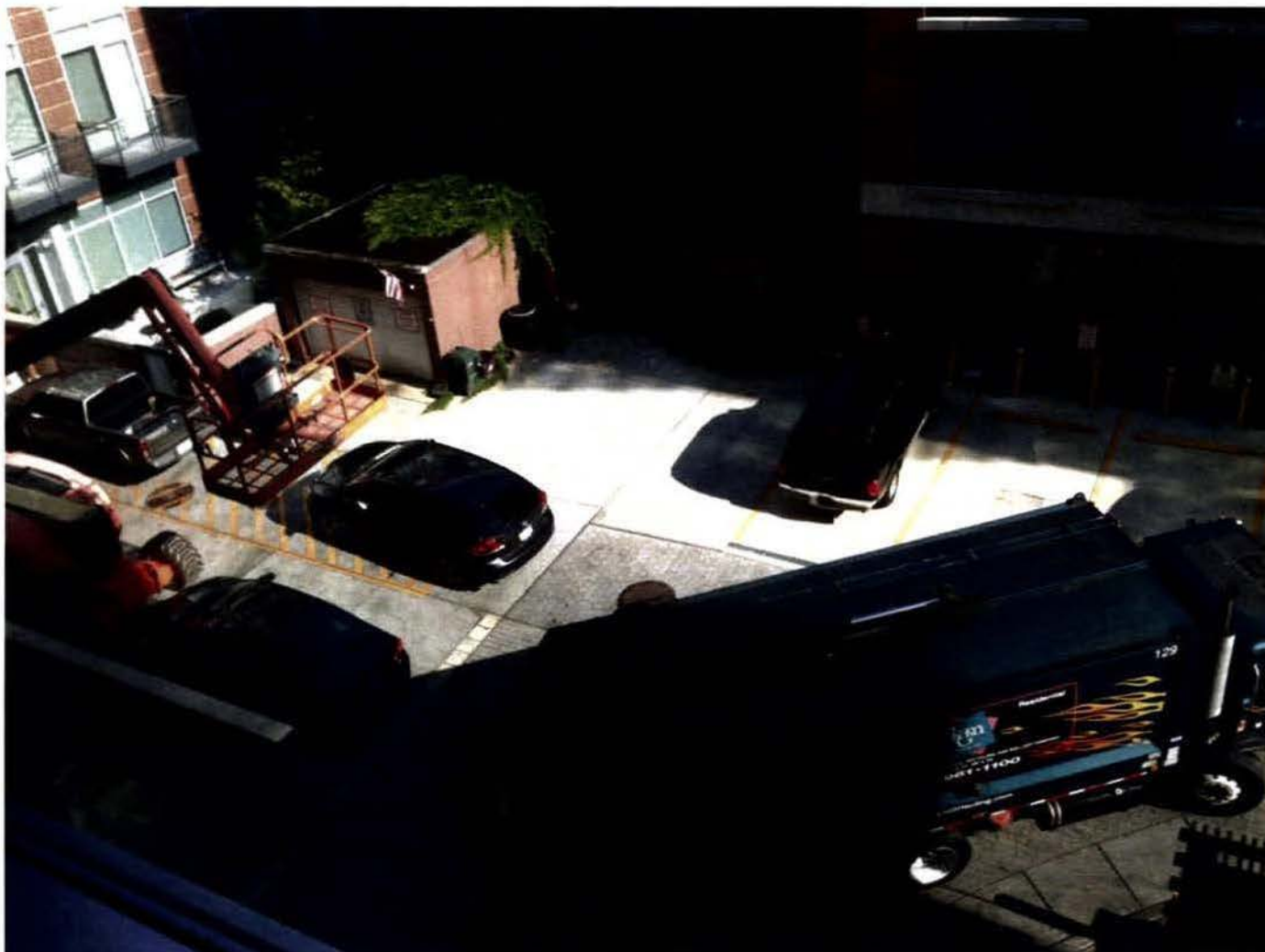
The proposed two parking spaces for the building would mean that any use of the alley for trash pickup, deliveries, moving trucks, etc. would result in the blocking of an existing easement or currently owned space by the adjacent structures.



Picture 8. Transportation Plan by The Metropole, which shows existing easement and privately owned space that would be potentially blocked.



Picture 9. Example of typical usage of the alleyway with existing structures.



Picture 10. Another example.



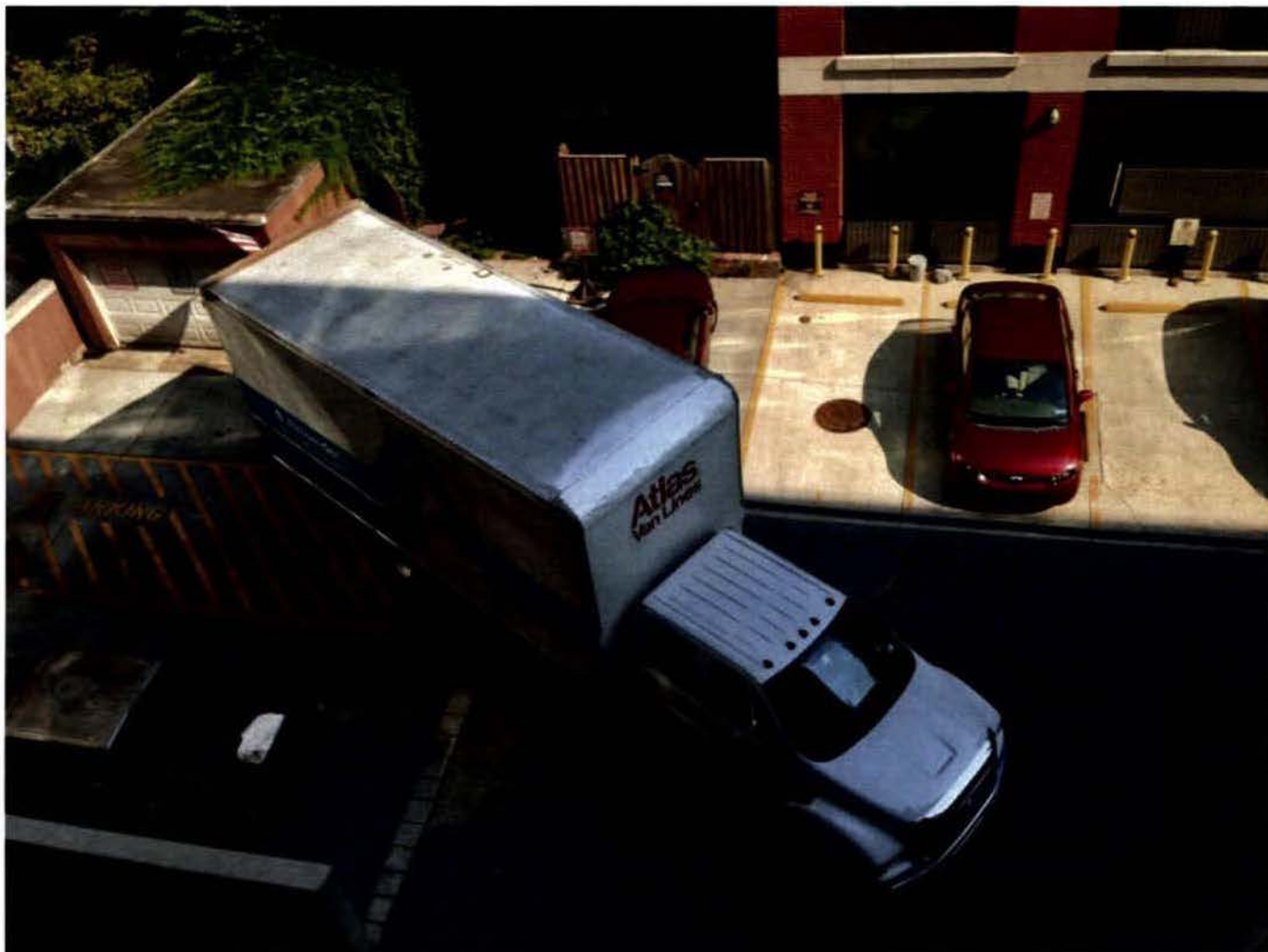
Picture 11. Another example.



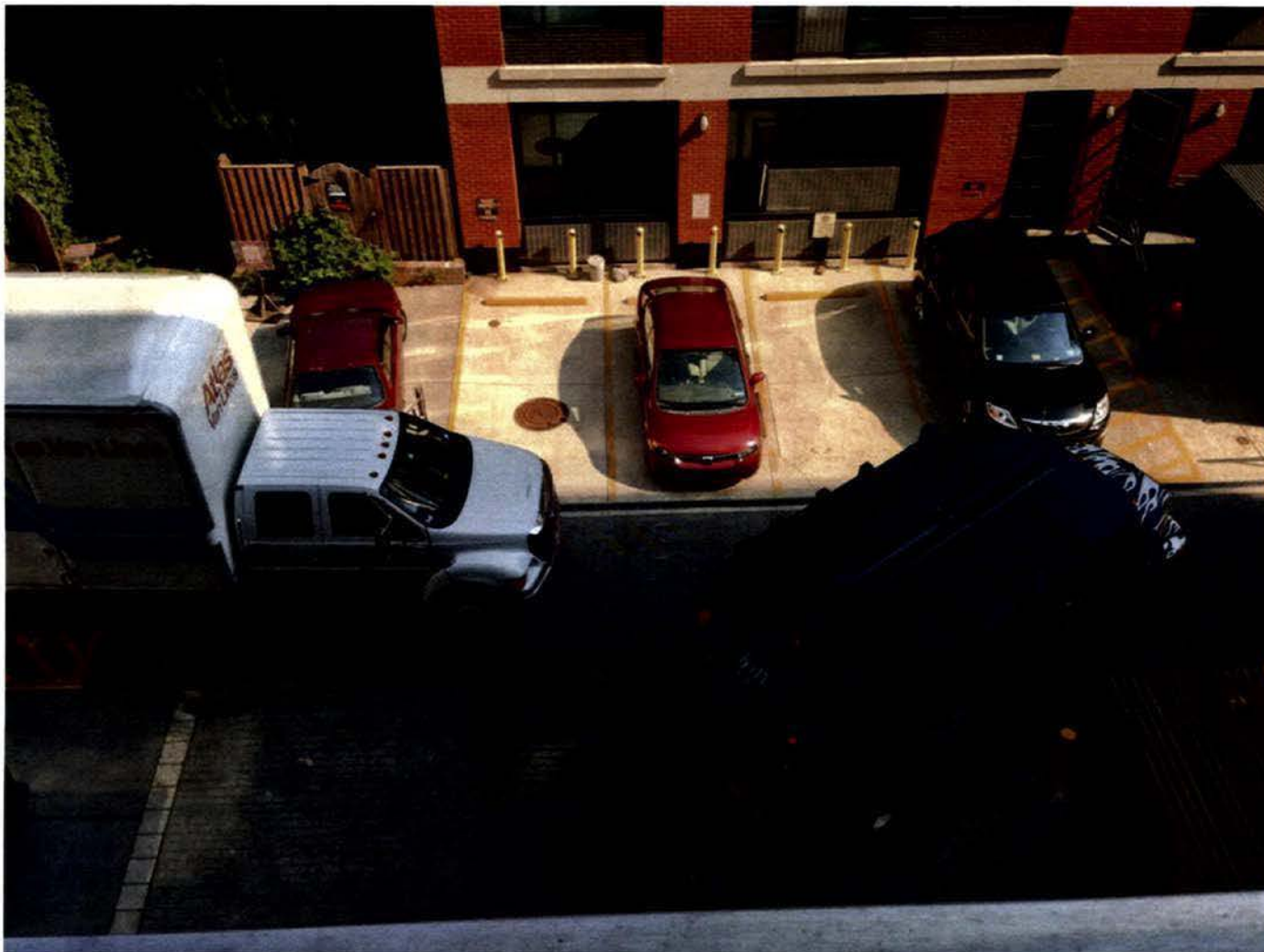
Picture 12. Another example.



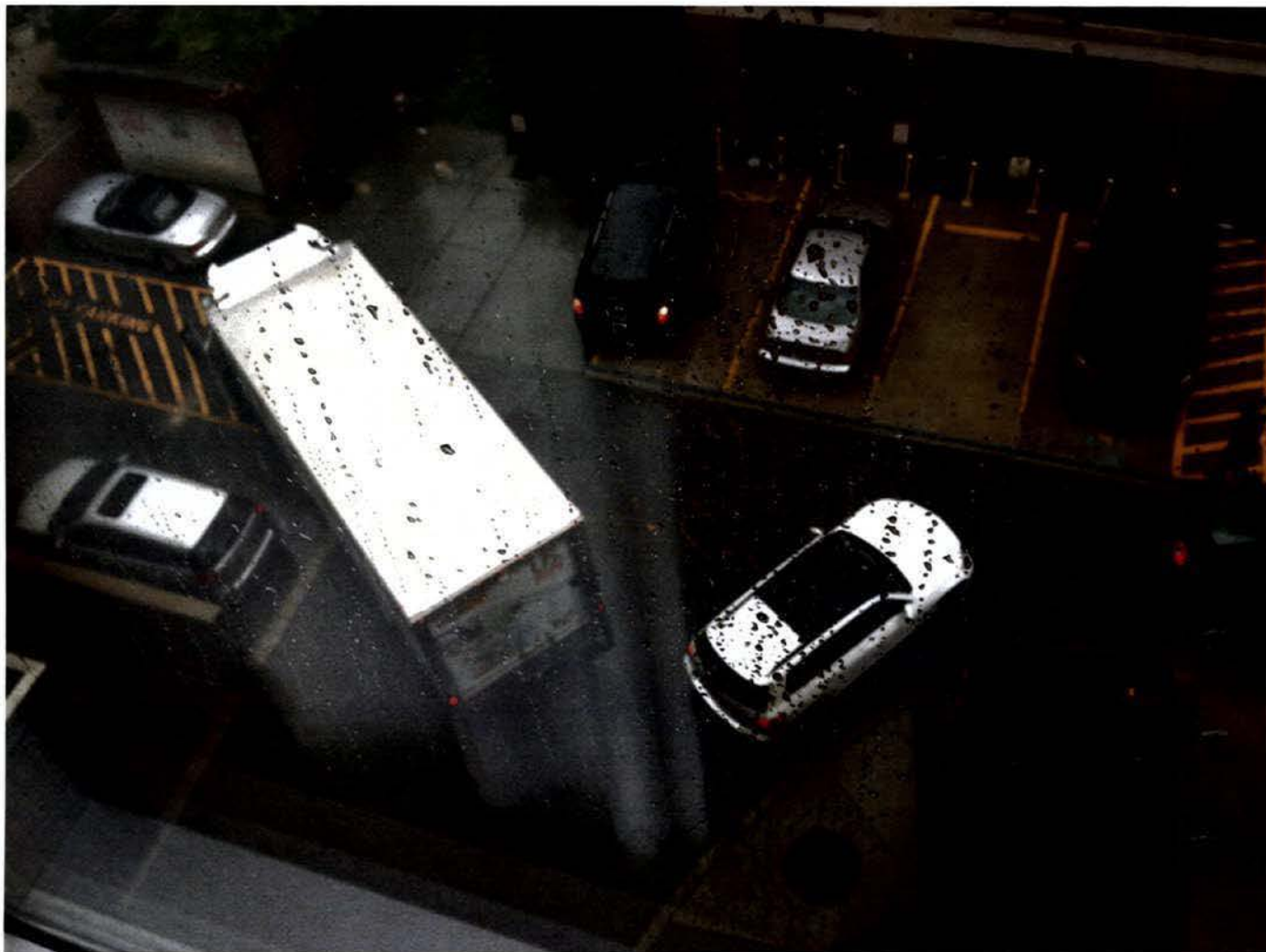
Picture 13. Another example.



Picture 14. Another example.



Picture 15. Another example.



Picture 16. Another example.

Furthermore, anecdotal evidence suggests that people that are living without cars in cities require increased deliveries. As such, the Transportation Impact Study should sufficiently address expected deliveries and show how these deliveries are to be managed (both on Church Street and within the alley). Who will manage and oversee them? Will there be dedicated space in front of the proposed building that will be permanently blocked off from regular parking to allow for deliveries? There is nothing in the application that would indicate whether the developer has requested this by DDOT (or whether it would even be allowed). If this does happen, how many spaces would be lost that are currently used for street parking, and how does that even further negatively impact parking within the neighborhood?

As the building ages, and requires renovation and repair, where will the trade and maintenance trucks locate themselves? When significant, long-term delivery of material and equipment occurs, where will they park?

I also have not been able to determine how the removal of trash and recyclables will be addressed by the applicant. There is no dedicated trash space outside the building, given the two parking spots and ramp to the rear door. I am not sure how they expect trash to be handled without significantly impacting the use of the alleyway.

VI. Floor Area Ratio (FAR) Issues

What is the allowable Floor Area Ratio (FAR) at the site? My understanding is that the FAR is a ratio between the size of the lot and the square footage of the floor space of the structure. Per the applicant's self-certification sheet (form 135), the allowable FAR at the site is 5.3 and the applicant is proposing an FAR of 5.25. I also understand that by choosing to construct a project with more than 10 units, the applicant is required to include additional units under the inclusionary zoning requirements under Sec. 2600, and that Sec. 2604.1 allows for an FAR bonus of up to 20%. However, by adding together the allowable FAR of 4.0 in the C-3-A zone (Sec. 771.2) with the allowable 20% bonus FAR, or 0.8 FAR, for inclusion of inclusionary zoning units under Sec. 2604.1, an FAR of 4.8 is the result. Furthermore, Sec. 1909.1(c) (cited below) of the zoning regulations states that with inclusionary zoning in the ARTS overlay within the C-3-A/ARTS zone the FAR **shall not exceed 4.8**. So why does the applicant state that allowable FAR at the site is 5.3?

1909.1 ARTS Overlay developments subject to the affordability requirements of Chapter 26 Inclusionary Zoning may use the following modifications to height and lot occupancy in order to achieve the bonus density permitted by § 2604.1:

(c) In the ARTS/C-3-A Overlay District:

- (1) The floor area ratio shall not exceed 4.8 FAR;
- (2) The residential lot occupancy shall not exceed eighty percent (80%); and
- (3) The maximum building height shall not exceed seventy-five (75) feet and shall be subject to the setback requirements of § 1902.1 (b); and...

While the applicant may argue that this FAR discussion is not before the BZA, because the applicant is requesting relief from the lot occupancy bonus allowed with inclusionary zoning (the applicant is requesting to increase lot occupancy beyond that allowed under the bonus), it seems that the FAR bonus for which the lot occupancy bonus is designed to accommodate within the inclusionary zoning regulations is also up for discussion.

This further gets to the issue that not only does Sec. 1909.1(c) limit the FAR for lots within the C-3-A/ARTS overlay zone, but it also limits the allowable lot occupancy—and these limits equate to those limits specific to the bonus allowances within the inclusionary zoning regulations. It appears that the proposal violates both of these limits under 1909.1(c), and that at a minimum, **the applicant should also be requesting special exception relief allowed under Sec. 1906 from the FAR and lot occupancy limits of 1909.1(c)** and cite how these requests meet the special exception criteria outlined under Sec. 1906.1. Otherwise, what is the intent of Sec. 1909.1? Why have Sec. 1909.1, if not to limit within the ARTS overlay additional FAR, lot occupancy, and height above that allowed under the inclusionary zoning regulations 2604.1?

In addition, it appears the lot occupancy and height bonuses allowed under Sec. 2604.1 were specifically developed for each base zone to meet the allowable “up to twenty percent (20%) more gross floor area than permitted as a matter of right” within each individual base zone. It could reasonably be surmised that to obtain additional FAR for a zone above the allowable bonus under exclusionary zoning would require additional relief in lot occupancy, height, or other physical development restrictions contained in the zoning regulations. This appears to be the case in this development. That is, to achieve an FAR of 5.25 (0.45 FAR above the 4.8 FAR limitation set forth in Sec. 2604.1 and Sec. 1909.1(c)), the applicant is

requesting relief for additional height, lot occupancy, and rear yard setback, **which appears to be in direct conflict with the intent of the zoning code.**

When you add this FAR issue to ALL of the other requests for relief, and given the significant number of bonuses and other regulatory allowances the applicant is hoping to avail himself of, it begs the question of whether this really is an appropriate structure for the site.

VI. Construction Issues

I have not seen anything within the application that addresses how the building will be constructed, and what impact this will have on accessibility to the alleyway and Church Street. A building of this size, especially if they will have historical preservation requirements, would likely take about a year and a half to construct. Without presenting a plan that addresses these issues, there is no way to review and raise issues until after BZA approval, at which point the issues are moot.

A building of this size will require a construction crane, significant material delivery, and will necessitate the constant presence of construction vehicles. Furthermore, at least one garbage bin (and perhaps several) will be required either on Church Street or in the back alleyway throughout the construction phase. While it may not necessarily be the role of the BZA to address this issue, given that this is intrinsically linked to the variances that are being requested, it is appropriate for the Board to raise these questions.

I am frankly concerned about regular access to either The Metropole's loading dock or the parking ramp while these construction vehicles are to be in place. Because of the size and scale of this proposed structure, at the very least the current residents (and the ANC) should have been involved in understanding how this building's construction would impact usability and quality of life.

VII. Negatively Affecting Quality of Life

From my own count, there will be at least 40 condominiums within The Metropole building alone that will be directly impacted by the development of this structure. This doesn't even include the adjacent condominium and other residences on Church Street. The proposed development is for thirty-nine (39) "micro-units" of around 300-350 square feet. This means that this proposed building will impact more residences than the number they are proposing to build.

I am also concerned about turnover within the apartment complex. The Metropole building and the adjacent building next to the proposed development are condominiums. There is generally limited turnover within a condominium versus an apartment complex. This leads to a neighborhood that is generally concerned about the value of their real estate investment, and the importance of maintaining a certain standard of livability and quality of life. Condominium owners by the very nature of owning property are less likely to be mobile and are more likely to be negatively impacted financially should they need to relocate. Conversely, it is possible that there will be up to 39 units turning over within a year, or more should tenants terminate leases earlier than a standard one-year period.

It is difficult to know what a high-density apartment will have on the existing properties and the inherent value of these properties. Certainly, in my case, my condominium is the most important financial asset that I have. Anything that would negatively impact that value has significant impact to me directly. I do not mean to imply that others should not enjoy or benefit from the substantial amenities that this location offers. I would actually be less concerned were these to be condominium or townhouses being developed with the same level of density, because I believe there would be a greater investment in the occupants to the quality of life and value of the property in this location.

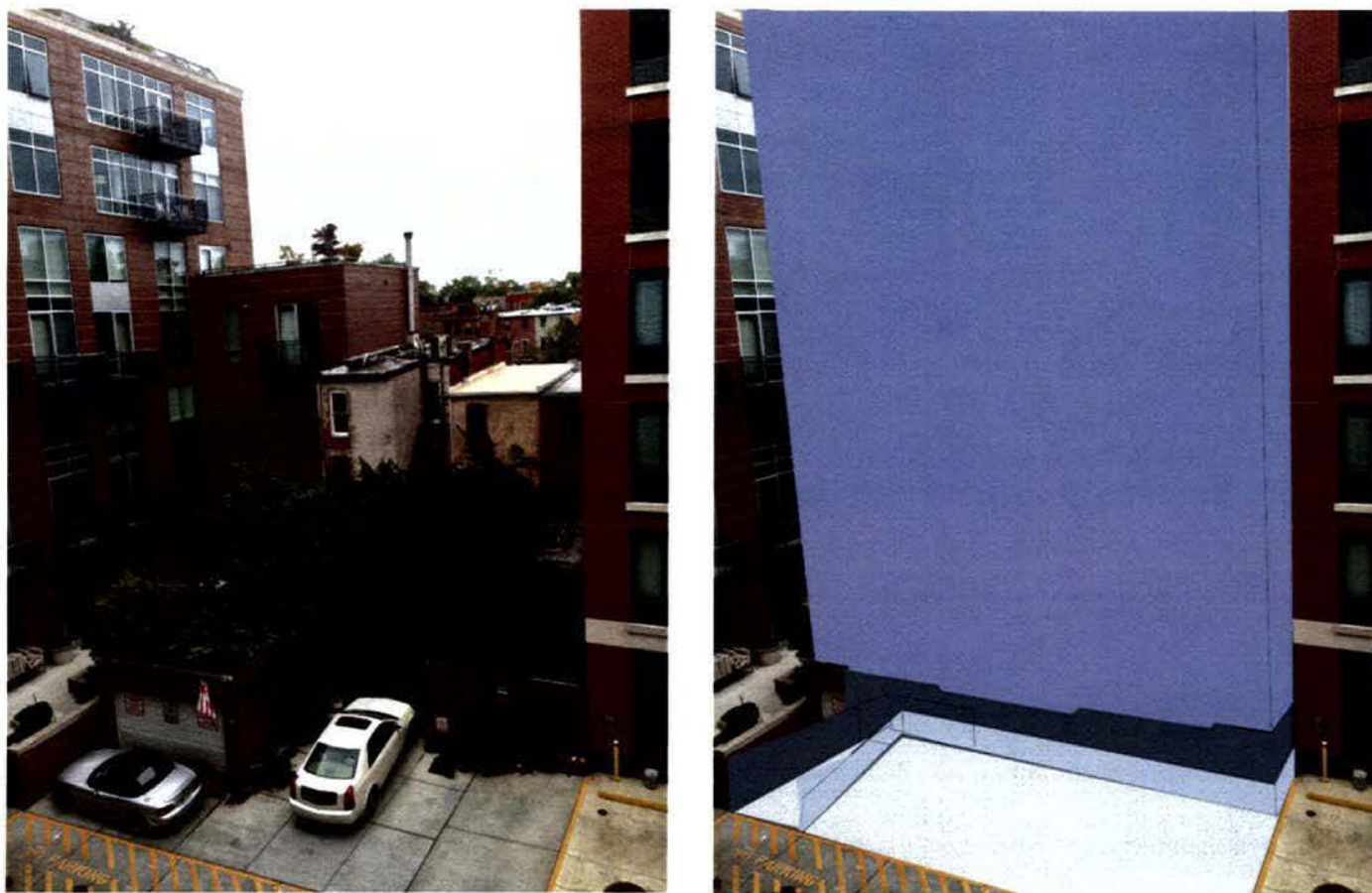
I am also troubled over issues of privacy. I count at least twenty (20) units with mostly glass sides and balconies facing my residence. In fact, the majority of the building's units will be facing existing residences at The Metropole, and it could potentially look like the metaphorical "giant fish bowl." Will there be some kind of consistent window covering that will address this issue for all units? Also, I am concerned over issues of light reflection and heat, especially in the summertime. These glass sides will be southern facing, and I expect the existing residences will be dealing with considerable sun reflection in what is already a hot and humid environment during Spring, Summer and Fall months. From my standpoint, it appears that this building will act as a giant mirror. I am not aware of any measures that are being proposed to limit this effect. At the very least, a mix of other materials to break up the "wall of glass" should be investigated. I have these concerns because currently, I often have to close my drapes during a bright day in order to reduce ambient heat and to watch television in my living room. I imagine this "wall of glass" will exacerbate the situation.

Noise is a significant concern as well. How will 21 new units, as well as a rooftop deck, add to what is currently a relatively quiet and sound-isolated environment? My last residence was at an apartment complex within the city with a rooftop terrace/patio, and I am very aware of the substantial noise a group of people will make, especially if there is amplified sound in any way. I expect that any noise will reverberate through the existing alleyway should this terrace/patio be allowed. What restrictions are being proposed to limit noise pollution or impact to existing residences? How will they be enforced? **There does not seem to be a permanent management office on-site. Who will enforce the rules?** How would a person like myself do anything about it? Who would I contact? How would I be able to lodge a concern or complaint? Would I have to call the District Police?

If this rooftop terrace/patio were to be constructed, the Board should consider a condition that explicitly limits its use from 10pm to 8am as well as limiting any amplified music or sound.

These are just some of the quality of life concerns that this development will impact.

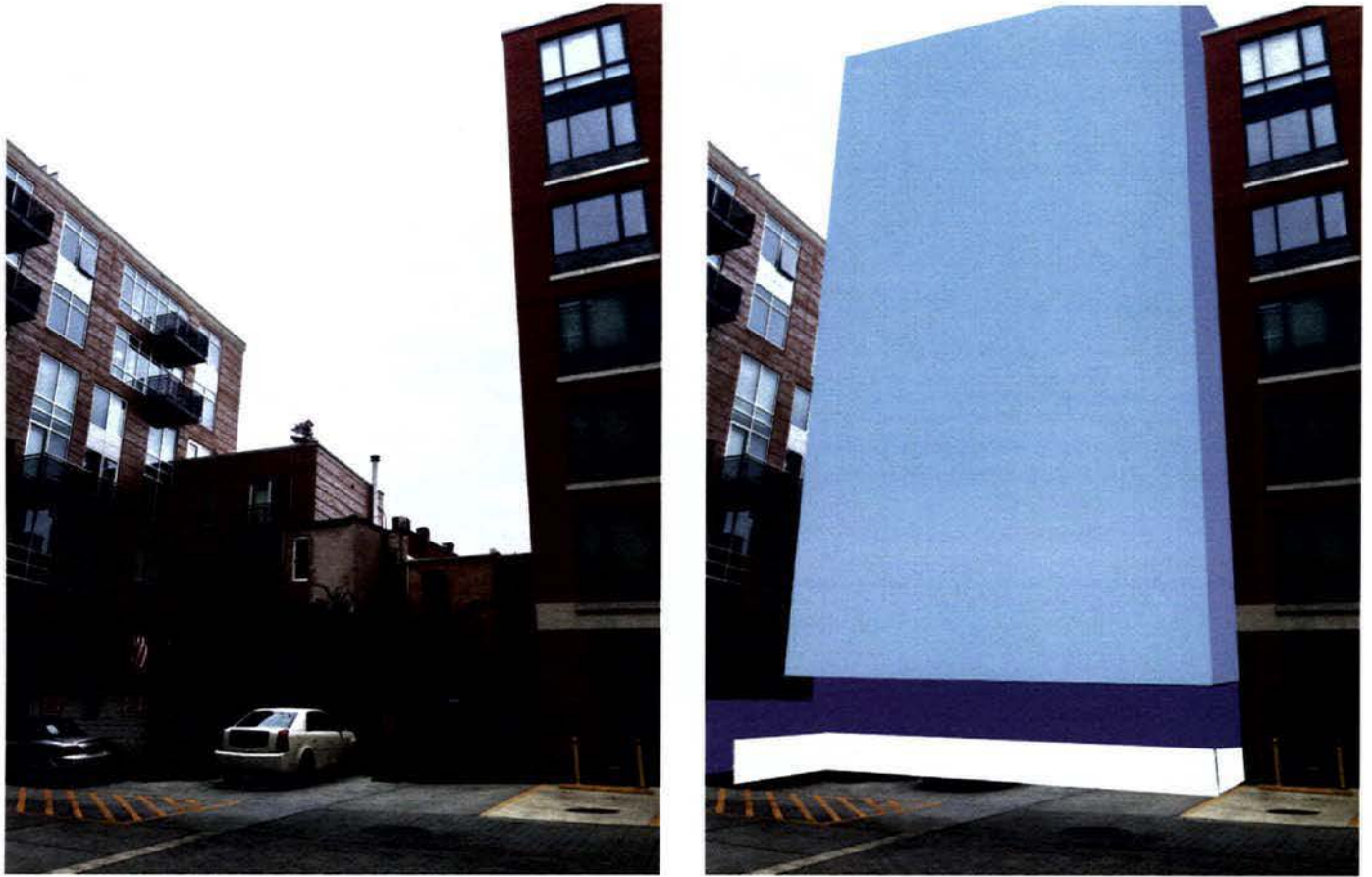
I made the following pictures based off of the applicant's proposed designs and how they would impact the adjacent properties (including my residence).



Picture 17.



Picture 18.



Picture 19.

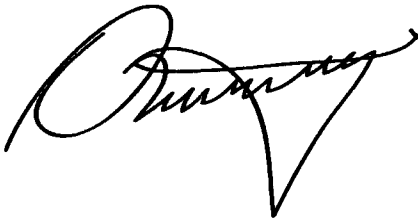


Picture 20.

VIII. Conclusion

I want to wrap up this letter by restating that I am not opposed to development on this site. I just believe that the proposed structure, with all of the issues and questions that I have raised in this letter, is the wrong type of development for this space. So much is being presented without support and as such, the Board is being asked to take this on faith. At the very least, I hope that the Board has as many questions about the proposed building as I do. Given that there are so many other options that could have been presented, each not requiring so many exceptions and relief from existing zoning code, I believe that the Board should not approve the developer's requests for relief.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul M. Mesterhazy", with a large, stylized initial "P" and a long, sweeping underline.

Paul M. Mesterhazy, Esq.

1515 15th Street NW, #430

ATTACHMENT A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

★ ★ ★



DC
2006
APR 25 5:53

Memorandum

TO: District of Columbia
Board of Zoning Adjustment

FROM: *EM* Ellen McCarthy, Director
Office of Planning

DATE: April 25, 2006

SUBJECT: BZA Application #17459 – DC Hampton LLC 1446-1454 Church Street, N.W.

RELIEF REQUEST:

DC Hampton LLC is requesting an area variance pursuant to 11 DCMR §3103.2, from the residential recreation space requirements of §773 and a variance from the parking requirements under §2101.1, to allow the construction of a new twenty-seven unit multiple dwelling building on a site improved with a three story contributing historic structure, pursuant to §3103

SUMMARY RECOMMENDATION

The Office of Planning (OP) recommends approval of the requested variance from the residential recreation space requirements of §773. OP does not support a variance from the parking requirements under §2101.1, as the applicant has not demonstrated an extraordinary or exceptional situation /condition that is unique to the proposed project, and because the variance would be contrary to the intent of the zoning regulations and public good.

PROJECT SNAP SHOT

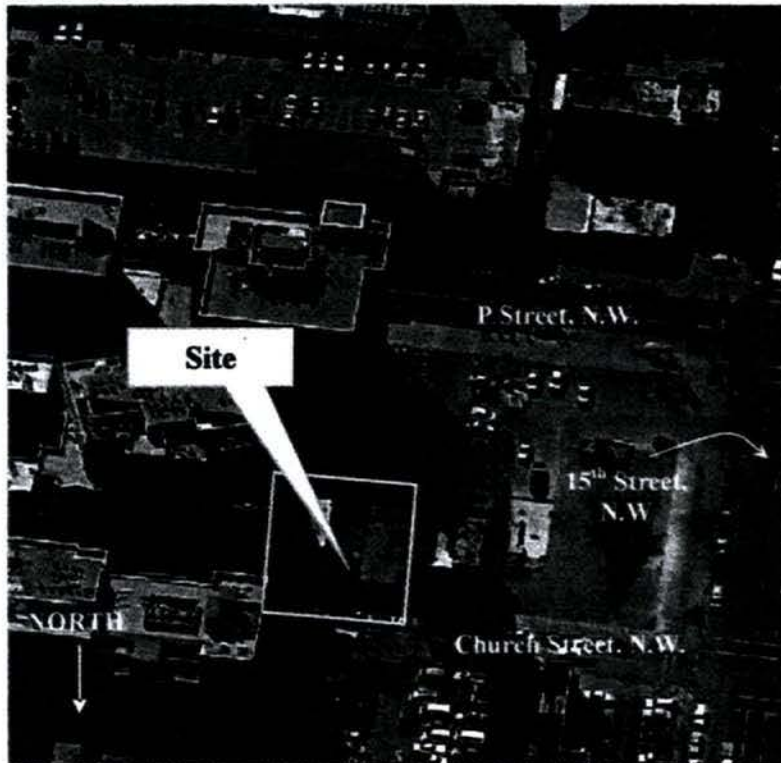
<u>PROPOSED ADDRESS</u>	27 unit Condominium improved w/ Historic building 1446-1454 Church Street N.W.
<u>ZONE</u>	ARTS/C-3-A
<u>SQUARE /LOTS</u>	209/ 911 and 917
<u>HISTORIC DISTRICT</u>	Greater 14 th Street Historic District
<u>VARIANCES</u>	Residential Recreational: 15% required - 0% provided Parking: 11 required (1 per 2 units) – 6 provide

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17459

EXHIBIT NO. 28

SITE AND AREA DESCRIPTION



The subject property is located at 1446-1454 Church Street, N.W. in the Logan Circle / Shaw neighborhood of Ward 2. The site fronts unto Church Street to the north, and backs unto a ten foot wide public alley to its south. Church Street is a narrow street, 50-feet, and generally has buildings that are residential and industrial in character while P Street, to its south is developed with many retail uses.

The site abuts a row of modest two and three-story row houses to the west and a seven story apartment building to the east. The site includes a 1920s contributing historic three-story apartment building, and a non-contributing one-story garage building from the 1950s all facing Church Street, and a one-story brick garage at the rear of the property fronting the alley. Only

the contributing three-story apartment building will be preserved in this project.

PROPOSAL

The applicant proposes to develop a seven-story residential condominium building. The building will include twenty-seven residential units and will retain the existing contributing historic three-story apartment structure. The proposed conceptual approach was granted by HPRB, which will incorporate the new additional units with the overall height and massing broken down into smaller, vertical building elements within a common industrial-inspired character of the Church Street area. The current proposal includes six grade-level parking spaces along the alley. The applicant originally requested an area variance from the residential recreation space requirements of §773 of the Zoning Regulations. On March 16, 2006, the applicant amended the application to also include an area variance from the parking requirement under § 2101.1 of the Zoning Regulations.

ZONING DESCRIPTION

The subject site is zoned C-3-A and is within the Uptown Arts Overlay District. The C-3-A District permits medium density development within a general pattern of mixed-use development. The ARTS overlay encourages housing, arts and retail uses on 14th and U Streets.

HISTORIC PRESERVATION

The subject property is located within the Greater 14th Street Historic District and is improved with a vacant historic three-story apartment structure in the northeast quadrant of the property. The applicant notes that the apartment building was originally constructed as a two-story office and garage for a coal

yard in 1921, designed by John Lankford, Washington's first registered African-American architect. At some point, probably around 1928, an additional third-story was added. The building was refaced with the current facade, and was converted to apartments. The Historic Preservation Office staff reviewed the final conceptual design of the proposed project and it was approved by the Historic Preservation Review Board on January 27, 2005 (see H.P.A Number: 05-082).

Variance pursuant to §773: Residential Recreational Space

For apartment houses, §773 sets forth the minimum residential recreation space required within the C-3-A District as fifteen percent, half of which must be located outdoors. The proposed building includes 29,362 square feet of gross floor area devoted to residential uses. Therefore, 4,404 square feet of residential recreation space would be required under the current regulations, of which at least 2,202 square feet must be located outdoors. The applicant is proposing to provide no common recreation space. The standard by which the BZA should approve variances is set forth in §3103.2 of the Zoning Regulations, as follows:

The property is unique by reason of its exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situation or condition;

The property is flat and not exceptionally narrow, but is relatively small, with a land area of 6,525 square feet. The northeast quadrant of the site is improved with a three-story, historic multi-unit structure, which is currently vacant.

By reason of the aforementioned unique or exceptional condition of the property, the strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulties or to exceptional and undue hardship upon the owner of the property.

According to the application, to provide the required 2,202 square feet of indoor recreation space, the applicant would need to devote the equivalent of two residential units or more than one half of one floor to recreation space, an additional variance for outdoor recreation space would still be necessary. Section 773.9 states, "Residential recreation space shall be physically accessible to all residents of the building served by that space". Multi-unit projects often designate roof space for recreation space, which is commonly accessible to all residents. However, to respect the existing historic building, design components such as multiple set backs break up the massing of the building prevent common accessibility to the main roof, and make the provision of roof-top recreation space difficult.

The variance will not cause substantial detriment to the public good and will not impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations Map.

The proposed project is located within blocks of public accessible recreation space, such as Logan Circle, The Stead Recreation Center, the Studio Theatre and several retail, restaurants and commercial establishments. As part of past variance requests for projects on this street, expert testimony has been received indicating tenants likely do not value most forms of recreation space in the building, but are attracted to the area for its variety of social and recreation opportunities. Further, the proposed project

includes some outdoor private recreation space; which could be considered to lessen somewhat the demand for outdoor recreation space. As such, this variance can be granted without substantial detriment to the public good. OP further notes that the Zoning Commission is currently in the process of either amending or repealing the residential recreation space regulations.

Variance pursuant to § 2100 Parking Spaces

The C-3-A District requires one parking space for every two dwelling units for apartment houses. As 27 units are proposed, this translates to 14 parking spaces. However, §2100.4 of the Zoning Regulations states:

...when the use of a building or structure is changed to another use that requires more parking spaces than required for the use existing immediately prior to the change or, if the building or structure is vacant, the use that existed immediately prior to the vacancy, parking spaces shall be provided for the addition requirement in the amount necessary to conform to §2101.

Since the current vacant historic structure was last used as a five unit apartment building, the applicant is only required to provide parking for the net twenty-two units; which is eleven off street parking spaces. Currently, six parking spaces are included in the proposal, and relief is requested for the remaining five required spaces. The standard by which the BZA should approve variances is set forth in §3103.2 of the Zoning Regulations, as follows:

The property is unique by reason of its exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situation or condition;

The purpose of a variance is to modify the Zoning Regulations where, because of an exceptional situation, the strict application of the Zoning Regulations result in exceptional practical difficulties upon the applicant; such as physical characteristics which makes the property unique or difficult to use.

The applicant is requesting parking relief based on the presence and location of the existing historic building on the site. The preservation of a historic structure does not make this property unique however. Recent similar apartment projects in the near vicinity incorporated historic structures and included appropriate parking (see Saxon Court, Lofts 14 One, and Lofts 14 Two). OP views the need for a parking variance as a created circumstance resulting from the number of residential units (27) proposed for the project, not from any exceptional situation or condition. The number of units creates the non-conformity.

By reason of the aforementioned unique or exceptional condition of the property, the strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulties or to exceptional and undue hardship upon the owner of the property.

The Office of Planning recognizes the parking problems of the area and is concerned that the proposed variance would pose substantial detriment to the public good and impair the intent of the zoning regulations. Current zoning standards require new multi-unit developments to provide adequate parking; even projects with integrated historic structures. The current lack of adequate street parking is one of the major irritations of current residents, small business owners and consumers in this area. Increasing the number of new residents without increasing corresponding required parking will inevitably enhance this street parking problem. Community organizations such as Metro Condominium Association, Saxon Court Condominium Association, and Q Street Association have indicated opposition to a parking

variance request, citing their parking concerns in the area (see community comments below and attached).

There is no exceptional condition on this site which results in a practical difficulty associated with the provision of parking. The current plans indicate an extensive amount of new excavation that will occur behind and around the existing contributing structure. The applicant has made a valid case to OP establishing the practical and economical infeasibility of constructing below-grade parking. However, the planned excavation is proposed to be used to create space for additional dwelling units which contribute towards the need for parking variance relief.

OP questions the excavation behind and around the historic structure to create more dwelling units, which ultimately increases the need for a parking variance. OP also has apprehensions with the livability and safety of the subterranean units being created in the proposed cellar level, with only very narrow window wells (partially covered) providing air and light access and emergency egress. In addition, OP does not find a practical difficulty associated with providing additional parking on the ground floor, and/or reducing the number of units to further reduce the required parking.

A reconfigured design of the first floor plan that incorporates grade-level parking could alleviate the need to excavate and provide sufficient parking spaces for its residents (five additional spaces needed) while preserving the integrity of the existing historic structure. Such a reconfiguration, combined with a reduction in the number of dwelling units, would reduce or eliminate this variance and eliminate legitimate neighborhood concerns.

AGENCY REVIEWS

On December 16, 2004, the Historic Preservation Review Board reviewed the project's conceptual approach in which the overall height, massing and materials would relate to the common industrial-inspired character of the Church Street area. The Board recommended revisions and the project received conceptual review approval at the January 27, 2005 meeting (see H.P.A number: 05-082).

COMMUNITY COMMENTS

OP has received a letter from The Metro Condominium Association, Saxon Court Condominium Association, and the Q Street Association in opposition to the applicant's parking variance request. The letter addressed parking problems in Logan and Dupont Circles, particularly on Church Street and the immediate surrounding areas. The letter was presented to ANC 2F at its April 5, 2006 meeting to urge the ANC to oppose the parking variance and to encourage the applicant to reconsider the proposed plans to at least provide the required parking for the residences of the building. The Office of Planning has not received comments from ANC 2F.

SUMMARY AND RECOMMENDATION

The application satisfactorily meets the requirements specified pursuant to §773, residential recreation space. With regards to the proposal to vary the required parking spaces, the applicant has not met the test for approval of the variance, as the applicant has not convincingly demonstrated an exceptional situation unique to the property. OP views the need for a parking variance as a created circumstance resulting from the number of residential units (27) proposed for the project. As such, the proposed variance is contrary to the intent of the zoning regulations and contrary to the public good. The Office of Planning therefore does not support the variance request from parking requirements.

EM/sr

See Attachment -1

ATTACHMENT B

April 25, 2006

Chairman Geoffrey Griffis
Board of Zoning Adjustments
District of Columbia Office of Zoning
441 4th Street, NW
Suite 210 South
Washington, DC 20001

RE: Board of Zoning Adjustment Application No. 17459

Dear Chairman Griffis:

The residents of Church Street and Q Street thank you for the opportunity to address the Commission on the parking and recreation space variances requested by DC Hampton LLC for the property located at 1446-54 Church Street.

Introduction

The residents of Church Street and Q Street welcome and encourage the development of the 1446-54 Church Street property. At present, the site is an eyesore marring a streetscape that has been largely transformed into a desirable and valuable place to live. We would like to see the trend toward improvement continue with responsible development that considers the impact of building multi-unit residential buildings on the entire neighborhood. We applaud those developers who promoted a high quality of life in our neighborhood by erecting first-rate multi-unit residential projects that included adequate parking and recreation space.

Parking

Parking is a problem in Logan Circle and is getting worse. Perhaps one of the primary contributing factors to the problem is the number of multi-unit residential buildings that have been and continue to be added to the neighborhood landscape. These residential projects dramatically increase the population density and therefore increase the strain on parking in our neighborhood.

Current zoning laws require new buildings to provide adequate parking. Indeed, most developers have made efforts to provide adequate parking for their residences. Even buildings that incorporated historic structures on Church Street provided ample parking beyond the regulatory requirement. The foresight of these developers has slowed the growth of the parking problem and helped to improve the value and enjoyment of our neighborhood.

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17459

EXHIBIT NO. 27

Recreational space

Logan Circle claims very little public recreation space. The few public green spaces that exist in our neighborhood are overloaded and inadequate for the current number of residents. The addition of hundreds of new residents into the neighborhood increases the strain on the public green spaces and calls for new recreation space that can be provided by new building projects.

Current regulations require new buildings in our zoning district to provide a certain amount of recreation space that is available to all residents of the building. This requirement helps alleviate the need for public recreation space. Every multi-unit building on Church Street provides recreation space for the use of its residents. This densely populated street is well-served by the recreation spaces provided by each of these buildings.

We urge the BZA to deny the variances

For those building projects that do not provide adequate parking for their own residences and that do not provide residential recreation space, the residents of Church Street and Q Street urge the Board of Zoning Adjustments (BZA) to deny requests for parking and recreation space variances. In deciding whether to grant variances, we respectfully request the BZA to consider the long-term, adverse impact that the lack of parking and recreation space can have on the quality of life in our city's neighborhoods. DC Hampton LLC has displayed disregard for the well-being of our neighborhood by not making a good-faith effort to comply with zoning requirements for minimally adequate parking and recreation space. Therefore, we urge the Board of Zoning Adjustments to deny the parking and residential recreation space variances they have requested.

Background

Parking

DC Hampton LLC intends to develop a multi-unit residential building project at 1446-54 Church Street. The developer has requested a variance from the parking requirement under 11 DCMR 2101.1, which requires one parking space per two dwelling units. Section 2100.5 of the code provides an exception to this requirement and states that no additional parking spaces shall be required for a historic landmark in a historic district. However, this provision has been interpreted to apply only to that portion of the building that is considered historic; the additional structure can be required to comply with Section 2101.1 so long as there is little or no impact on the integrity of the existing structure.

The 1446-54 Church Street will consist of 28 units and will incorporate a small historic structure that would house three residential units. The current design allows seven parking spaces. A calculation under the current interpretation would require 13 parking spaces. The building's current design provides only half of what is required and the developer has properly requested a variance.

Recreation space

The developer has also requested a variance from the residential recreation space requirement under section 773, which requires the building to provide recreation space that equals 15% of the building's gross floor area and that is accessible to all residents of the building. Fifty percent of the total residential recreation space must be outdoors. Therefore the developer is required to provide 2,200 square feet of outdoor recreation space.

The current design provides 255 square feet of outdoor recreation space and no indoor recreation space. This area constitutes less than 1% of the gross floor area and only one-seventeenth of the recreation space required for a building of this size. Therefore, the developer has properly requested a variance from the requirement for residential recreation space.

Applicant's Burden of Proof

In order for the BZA to grant the variance, 11 DCMR § 3103.2 outlines a three-prong test that the requestor must satisfy.

1. The property is affected by an exceptional or extraordinary topographical condition that prevents compliance with the regulations.
2. The strict application of the regulation would result in peculiar and exceptional practical difficulties or hardship on the owner of the property.
3. Relief can be granted without substantial detriment to the public good.

We do not believe DC Hampton LLC can satisfy any of the three prongs with regard to either the parking or the recreation space variance request, as outlined below.

1. The property does not present an exceptional or extraordinary topographical condition.

Parking

We respectfully remind the BZA that numerous building projects around the city have provided adequate parking while overcoming great physical obstacles, including small lot size and the necessity of preserving historic structures. Of the five multi-residential buildings that have been completed on Church Street since 2002, four have preserved significant existing historic structures.¹ Three of those four (Lofts 14 One, Lofts 14 Two, and Saxon Court) dug extensive underground parking garages beneath the historic structures and provided nearly one space for every residential unit. The fourth building, called Rainbow Lofts, incorporated a historic structure that enclosed 13 of its 21

¹ The fifth building, The Metro, is a new 53-unit condominium building that did not incorporate any historic structure and provides 51 parking spaces.

residential units.² Had Rainbow Lofts been subject to the current interpretation of the regulation, they would have been required to provide four parking spaces and they provided eight.

Another example of a nearby building project that overcame a great physical obstacle in order to dig a large underground parking garage is The Metropole, located on 15th Street, between Church Street and P Street. The Metropole did not incorporate a historic structure, however, the builder had to reroute an underground stream in order to provide ample underground parking for its residents.

The topography of 1446-54 Church Street also does not restrict the placement of a parking garage entrance. Lofts 14 One and Lofts 14 Two provide access to their parking garages from Church Street. The Cooper-Lewis building at the corner of 14th Street and P Street provides access to its parking garage from the same alley that backs 1446-54 Church Street. A curb cut on the Church Street side of the lot already exists where the entrance to Raygada's garage once was. Finally, installing a garage entrance on Church Street would not deviate from the historic character of the street as a place where car garages once flourished. The proposed plan already recreates the look of the garage door openings of the original building.³ Therefore, both the front and rear of the lot appear to be available for a garage entrance.

Other nearby development projects have faced and overcome equal or greater topographic challenges to satisfy and even exceed regulatory requirements. The topography of this site does not suggest any exceptional or extraordinary condition that would prevent the developers from finding a way to satisfy the regulatory requirement.

Recreational space

Five multi-unit residences have been built on Church Street and each provides outdoor recreation space for the use of all their respective residents. Four of the five existing buildings incorporated historic structures, as well. Therefore, it seems unreasonable to claim that the requirement to preserve the historic structure of the building would uniquely restrict the developer's ability to provide recreation space.

The developers of 1446-54 Church Street propose essentially no recreation space that can be used by all residents of the proposed building. The proposed plan allows for a mere 255 square feet of public space, which appears to be an entryway and not recreation space at all, and comprises less than 1% of the gross floor area. Although the 923 square feet of private balcony space may contribute to satisfying the requirement, that amount of recreation space would equal only 3% of the gross floor area.

Because the current design essentially makes no allowance for space that can be enjoyed recreationally by all the residents of the building, the variance should not be granted.

² The Rainbow Lofts incorporated an historic structure that comprised approximately 75% of its lot size. The historic structure at 1446-54 Church Street comprises approximately 25% of its lot size.

³ See also Historic Preservation Review Board, Staff Report and Recommendation (December 16, 2004).

2. Strict application of the regulation would not result in peculiar and exceptional practical difficulty or hardship on the property owner.

Parking

In order to prove “practical difficulties,” the developer must prove that compliance would be unnecessarily burdensome and that the practical difficulties are unique to the property.⁴ As demonstrated above, an exceptional topographic obstacle to providing adequate parking at 1446-54 Church Street is not obvious. Therefore the physical characteristics of the site do not present a unique practical difficulty to providing parking.

Nonetheless, the developer’s Preliminary Statement of Compliance claims that it is not “physically feasible to excavate below the existing building in order to provide parking or indoor recreation.”⁵ However, the developer submitted and obtained approval from the Historic Preservation Review Board for a conceptual design that indicates a cellar level nearly eight feet below street level. The cellar level consists of four residential units, one of which rests beneath the historic structure. According to the proposed design, the historic structure would not prevent excavation below it.

The developer claims that the lot is not large enough for a drive ramp, parking spaces, and aisles of zoning-stipulated size. We respectfully request that the developer substantiate this claim. We do not claim to have expertise in architectural design, however we have consulted with an architect who sketched out an alternative design that would accommodate an underground garage consisting of ten parking spaces (Attachment A). With a garage entrance from the front, the additional spaces would provide a total of seventeen spaces and therefore exceed the regulatory requirement. We provide this example simply to show that we do not believe that all design alternatives have yet been considered. We respectfully request the developer make a good-faith effort to look for alternative design options that would satisfy the regulatory requirements.

As regards the sketched design, we note the underground parking would be provided in lieu of three of the four cellar level units and two of the first floor units. Under this scheme, the parking ratio improves dramatically: 17 spaces for 23 units. On the face of it, one would have to assume that the loss of four units would be difficult for the project budget. However, in the current condo market, marginal units, such as the proposed subterranean units, sell only at deep discount and upper floor units without parking cannot sell at premium prices. Ground floor units are also relatively undesirable, at least for residential use. The added parking could allow commercial uses in ground floor units, which would increase their salability while livening the street as a very positive byproduct. Further, loss of these units would be offset by three things. First, the parking garage space is much cheaper to build than apartment units. Second, the improved

⁴ See *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990).

⁵ Preliminary Statement of Compliance with Burden of Proof, filed by DC Hampton LLC (November 17, 2005).

parking ratio will increase the value of upper-floor units. Third, the parking spaces themselves have a sales value of about \$60,000 each. It is entirely possible that adding the required parking will not have a significant impact on the budget. Furthermore, compliance with regulations of every sort routinely involves profit reduction. In short, it is hard to see how the "practical difficulty" threshold is reached.

The Preliminary Statement also asserts that excavation to provide underground parking would not be financially feasible. Although economic harm may be considered in the practical difficulty test,⁶ the BZA has "no authority to grant a variance in order to assure ... a profit."⁷ Further, the owner of a property ought to be aware of the possibility that new regulations might even render his property economically worthless.⁸ We respectfully request the developer to substantiate claims of financial harm, particularly given the increasing value of property in the Logan Circle neighborhood.⁹ We also note that a multi-unit residential building is not the only use of the lot that would satisfy Zoning Regulations and still provide a financially feasible option.

The developer cannot show a practical difficulty that would prevent developing this property in a way that would satisfy the regulatory requirements. It does not seem unreasonable at this time to ask the building architects to consider alternative design and/or use options that are both physically and financially practicable.

Recreational space

Each building on Church Street provides outdoor recreation space that is available to all the residents of each respective building. Although each building sought and received a variance from the 15% regulatory requirement, all were able to employ some amount of rooftop space for recreational use, despite height restrictions that may have impeded the installation of an elevator or other limitations that may have forced designers to think of creative solutions to providing outdoor recreation space for their residents.

The developers of 1446-54 Church Street propose 255 square feet of outdoor recreation space, which is less than 1% of the gross floor area and about one-seventeenth of the overall amount the regulation requires for this development. It may be a practical difficulty to satisfy the 15% requirement, however, it should not be a practical difficulty to provide more than 1% of actual outdoor recreation space that is available to all residents of the building and that is not merely an entryway to the building.

⁶ *Accord*, *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*; *Barbour v. District of Columbia*, 358 A.2d 326 (D.C. 1976).

⁷ *Taylor v. District of Columbia Bd. of Zoning Adjustment*, 308 A.2d 230, 236 (D.C. 1973), *Citing*, *Anderson's Law of Zoning* § 14.23; 3 § 14.48.

⁸ *Lucas v. South Carolina Coastal Council*, 112 S.Ct. 2886 (June 29, 1992).

⁹ In Logan Circle, condominiums sell for between \$600 and \$650 per square foot and parking spaces sell for between \$55,000 and \$75,000 per space.

3. Relief from the variances would result in a substantial detriment to the public good.

Parking

Parking on Church Street is far from sufficient for current residents, their guests, and consumers of the small businesses operating on the street and nearby streets. The extreme difficulty of parking in Logan Circle is clearly highlighted by the controversy over church parking on Sundays. Building a multi-unit residential dwelling without adequate parking will only make the situation worse. Other developers have made effective efforts to curb the growing parking problem in our neighborhood by providing enough parking in their buildings. If permitted to build a 28-unit facility without providing the minimum 13 parking spaces required by law, DC Hampton would diminish the progress that has already been achieved in our neighborhood. The requested parking variance should be denied pending consideration of design alternatives for the proposed structure at 1446-54 Church Street.

Recreation Space

The DC Department of Parks and Recreation reports that Wards 1 and 2 enjoy the least amount of green space of any wards in the city.¹⁰ The few parks that exist in Logan Circle are small and becoming overloaded by the hundreds of new residents moving to the neighborhood. Maintaining a reasonable quality of life in an urban setting requires outdoor recreation space, which currently cannot be satisfied by the public park system. Therefore, DC zoning regulations correctly require new buildings to provide a certain amount of outdoor recreation space for its residents to relieve the pressure on public recreation spaces. Buildings, such as the one proposed for 1446-54 Church Street, that provide no outdoor recreation space for the use of all its residents reduce our neighborhood's quality of life and should be denied variances from the regulatory requirements.

Conclusion

The addition of hundreds of new residents to Church Street and Logan Circle has had a significant impact on the neighborhood, particularly on parking and outdoor recreation space. As the neighborhood becomes even more densely populated, every effort must be made to provide adequate parking and additional outdoor recreation spaces, whenever possible. Therefore, variances from zoning regulations should be allowed only when an applicant has fully satisfied the three-prong test for obtaining variances. DC Hampton LLC has not done so. Instead, the developer has shown disregard for the impact of its proposed building on the neighborhood. As strong proponents of neighborhood improvement, we do not wish to thwart DC Hampton's development of the 1446-54 Church Street property. We simply wish to see the property developed in a responsible manner that contributes to the character and quality of the neighborhood.

¹⁰ Property and Facility Locator, District of Columbia, Department of Parks and Recreation, Office of Planning, October 2005.

We respectfully urge the BZA to deny the parking and recreation space variances that have been requested for the development of 1446-54 Church Street and to encourage the designer to consider alternative options for satisfying the parking requirement and to provide a nominal amount of true outdoor recreation space that can be enjoyed by all the residents of the building

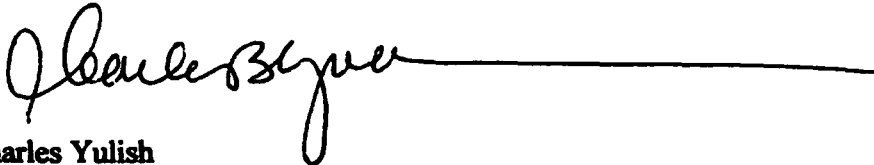
Sincerely,



Philippa Hughes
The Metro Condominium Association
(representing 53 unit owners)



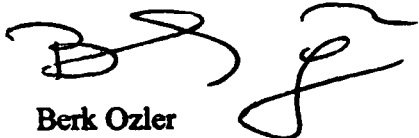
Michael Clayman
Saxon Court Condominium Association
(representing 45 unit owners)



Charles Yulish
Q Street Association



Pierre Pozzo di Borgo
Lofts 14 One Condominium Association
(representing 81 unit owners)

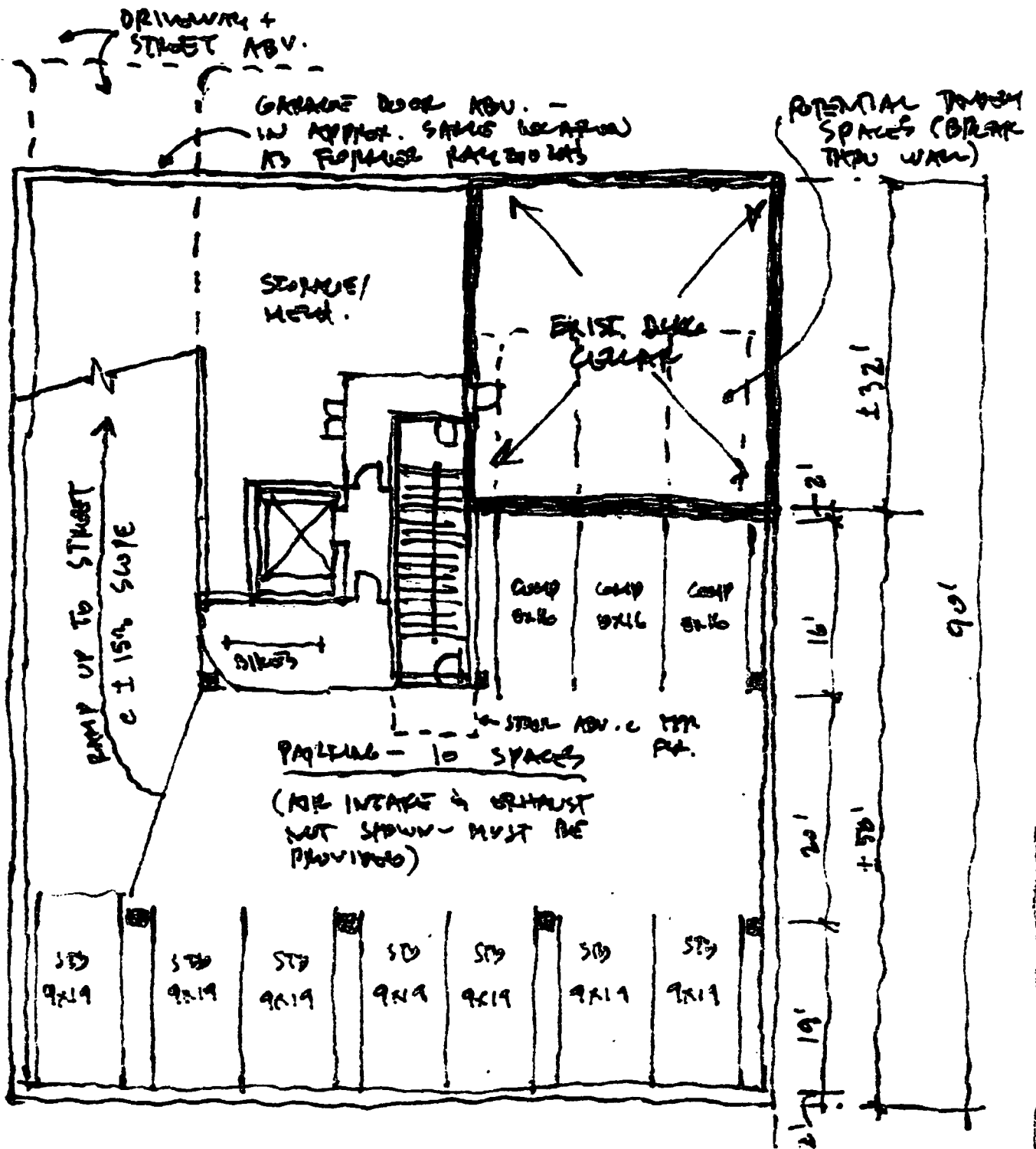


Berk Ozler
1460 Church Street, NW



Buffy Mims
Rainbow Lofts Condominium
(representing 21 units)

Attachment A



ATTACHMENT C



ADVISORY NEIGHBORHOOD COMMISSION 2F
Government of the District of Columbia
5 Thomas Circle, NW, Washington, D.C. 20005
Telephone: (202) 667-0052 Fax: (202) 667-0053 www.anc2f.org

Rec'd.
5.2.06

Commissioners

2F01 Charles Reed, *Chairman*
2F02 Jim Brandon, *Vice Chairman*
2F03 Christopher Dyer
2F04 Bob Ellison, *Secretary*
2F05 Sandra Blasillo, *Treasurer*
2F06 Michael Nelson
Chris Kohatsu, *Executive Director*

May 1, 2006

(Via Email and First Class Mail)

Geoffrey H. Griffis

Chair

Board of Zoning Adjustment
441 4th Street, NW, Suite 210
Washington, DC 20001

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17459
EXHIBIT NO. 31

**Re: Variance requests 1446-54 Church Street, NW Washington, DC
BZA Application No. 17549.**

Dear Chairman Griffis and Members of the Board:

In accordance with 11 CDCR § 3115, Advisory Neighborhood Commission 2F (hereinafter "ANC2F" or "Commission") submits its report with respect to the above application for zoning variance. *ANC2F advises the Board to deny the requested variance from off-street parking requirements, but to grant the application as to the variance from the recreational space requirements.*

As required by 11 CDCR § 3115.1, ANC2F provides the following information (paragraph numbers correspond to those in the quoted regulation):

- (a) *Identification of the appeal or application:* See reference above.
- (b) *ANC meeting date:* April 5, 2006
- (c) *Notice:* Proper notice of the meeting was provided in accordance with law and the bylaws of ANC2F. Copies of such notice are contained in the minutes of the meeting, and are posted on the ANC's website, <http://www.anc2f.org>.
- (d) *Quorum and attendance:* Under ANC2F bylaws, a quorum requires the attendance of at least four of the six elected and acting commissioners. All six were present. A quorum was present and acting throughout the meeting.
- (e) *Issues and ANC concerns:* The Applicant, DC Hampton LLC, seeks pursuant to 11 DCMR § 3103.2, seeks two variances. One is a variance from the residential recreation space

requirements under section 773, to allow the construction of a 28 unit multiple dwelling in the Arts/C-3-A District at the above premises (Square 209, Lots 911 and 917). As to such residential recreation space variance, the ANC, by a vote of 4 to 2 advises the BZA to grant the application.

The applicant also seeks a variance with respect to parking requirements for the same premises. Applicant represents to this ANC that by virtue of the fact that the premises are within a historic district it is entitled, as a matter of right, to provide no parking; notwithstanding, it seeks to have our Commission advise the BZA to grant a variance to provide only 7 off-street parking spaces.

We presume, but do not know, that the applicant relies on Code of District Of Columbia Municipal Regulation, (hereinafter, "DCMR") Title 11, §2100.5 for its position that no additional off-street parking is required as to a building in a historic district. On the other hand, DCMR §2100.6 states:

When the intensity of use of a building or structure existing before May 12, 1958 is increased by an addition of employees, dwelling units, gross floor area, seating capacity, or other unit of measurement specified in § 2101, parking spaces shall be provided for the addition, subject to §§ 2100.7 through 2100.9. [The last cited sections do not involve historic properties].

Our commission reads §2100.6 as not being trumped by §2100.5. In fact, just the opposite effect should be given. The clear language of the provisions of §2100.6 offer no exception as to historic properties and, thus, trumps §2100.5.

We note that §2100.6 is clearly invoked; the intensity of use for these premises sought by the applicant greatly increases the intensity that existed when §2100.6 was promulgated. Moreover, the premises are located in the 1400 block of Church Street, where parking is already severely impacted by the construction of hundreds of new condominium units over the past 5 years. Indeed, throughout the Logan Circle area, which is a part of a historic district, parking has become an immense community problem. A public demonstration by local churches was held Sunday, April 23, 2006, contesting the City's right to impose parking enforcement of existing regulations, contending that such laws are Constitutionally impermissible burdens on the Free Exercise clause of the First Amendment. Tensions are extremely high as residents inundated with massive parking demands on public spaces find themselves blocked by illegal double parking and subjected to health and safety hazards from scofflaws. Thus, ANC2F sees that the interpretation it gives to the §2100.6 is entirely consistent with the essential reason for the off-street parking provisions of the Zoning Code, which is to provide adequate parking facilities to avoid just the sort of impact our area is experiencing.

The applicant was heard in a full presentation before the ANC, despite the fact that the applicant failed to appear at the scheduled time of this matter on the ANC's duly published agenda. The applicant was represented at the meeting by its counsel, Chris Collins, Esq. (Holland & Knight LLP), its architect, William Bonstra (Bonstra Haresign Architects) and Luigi Canali, whom we understand to be a principal of the applicant.

The applicant's representatives were specifically asked to address the requirements which one seeking a zoning variance has the burden of proving under DCMR §3103.2. We understand these to be to the effect that:

a variance is available only on a showing that (1) the variance request is due to exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or (2) by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property that the strict application of zoning regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property; and (3) the grant of the variance would not result in substantial detriment to the public good and or substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

The applicant's response to this request was unavailing, confused and without substantive content. No reference was made to any condition of narrowness, shallowness, or shape of the property, much less that it was exceptional. Similarly, no evidence was provided in support of any exceptional topographical condition or other situation or condition of the property. The architect did state that the property is within the historic district and represented to the Commission that no curb cut is available to the project. We view this as hardly exceptional. Moreover, the only references to hardship offered by the applicant was that it would be expensive to add the additional 7 spaces to its off street parking, by virtue of the steep ramps and small footprint of the property. The mechanical/structural details of this were urged upon the commission. Yet, when the applicant was specifically asked what the additional cost would be for installing the additional level assertedly needed to accommodate the additional parking, no figure could be given, not even in approximate or rounded terms, and no showing whatever was made of the per square ft. increase such additional provisions would entail.

Finally, the applicant also failed even to offer any support for the third prong of the applicant's burden of proof. On the other hand, the community members present at the meeting provided substantial evidence to refute any claim that the public would not be harmed by a grant of this variance. Spokespersons for three of the condominium associations located on this block uniformly opposed the variance, pointing out that the ratio of off-street parking spaces per dwelling unit will be approximately 1 to 1, when the currently under-construction projects are completed, whereas this project proposes only a 1 to 4 ratio. Not one community resident offered any reasoned support in favor of the grant of this variance. The community appears to be solidly in opposition to it.

Accordingly, the ANC determined by a vote of 5 to 1, that the applicant failed to carry its burden of showing that the variance is justified under any one of the three requirements of DCMR § 3103.2. Indeed, in so far as concerns substantial detriment to the public good and or substantial impairment to the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map, the ANC affirmatively determined that such detriment and impairment would in fact result from a grant of this variance.

(f) *ANC recommendation:*

As to the requested variance from recreational space requirement: That the Board approve the application. Vote: 4 to 2 for approval.

As to the requested variance from off-street parking requirements: That the Board deny the application. Vote: 5 to 1 for denial.

(g) *ANC resolution vote:* See above, section (f).

(h) *Authorized persons:* ANC2F authorizes its Charles D. Reed, its Chairman, to present this report.

We request that the Board give great weight to our advice herein expressed, as provided by § 1-309.10 of the District of Columbia Code, and 11 CDCR § 3115.2 of the Board's regulations.

Sincerely yours,



Charles D. Reed
Chairman, ANC 2F

cc: *(Via Email)*

Bill Bonstra
Chris Collins