

Holland & Knight

800 17th Street, NW, Suite 1100 | Washington, DC 20006 | T 202 955 3000 | F 202 955 5564
Holland & Knight LLP | www.hklaw.com

Mary Carolyn Brown
(202) 862-5990
carolyn.brown@hklaw.com

February 18, 2014

VIA HAND DELIVERY

Board of Zoning Adjustment
441 4th Street, N W , Suite 200S
Washington, DC 20001

Re Application No 18638 – Applicant's Proposed Order

Honorable Members of the Board

On behalf of Gregg Busch and Rosebusch LLC, applicants in the above-referenced case, attached please find one original and ten copies of the Applicant's proposed findings of fact and conclusions of law.

Respectfully submitted,

HOLLAND & KNIGHT LLP



Mary Carolyn Brown

Enclosure

cc Stephen Gyor, Office of Planning (w/encl by email)

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18638
EXHIBIT NO. 49

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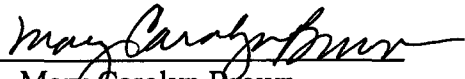
Board of Zoning Adjustment
District of Columbia
CASE NO.18638
EXHIBIT NO.49

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the Applicant's Proposed Order for BZA Application No 18638 (Square 209, Lots 65, 66, and 67) was delivered by email on **February 18, 2014**, to the following

Advisory Neighborhood Commission 2F
5 Thomas Circle, NW
Washington, DC 20005
anc2foffice@gmail.com

Martin L. Sullivan, Esq.,
Sullivan & Barros, LLP
1990 M Street, N W , Suite 200
Washington, D C. 20036
msullivan@sullivanbarros.com

By. 
Mary Carolyn Brown

APPLICANT'S PROPOSED ORDER

Application No. 18638 of Gregg Busch and Rosebusch, LLC, pursuant to 11 DCMR §§ 3103 2 and 3104 1, for a special exception from the roof structure requirements of sections 411 and 1902 1(a), and a variance from the off-street parking requirements under section 2101.1, to allow the construction of a new residential building in the ARTS/C-3-A District at premises 1456-1460 Church Street, N W (Square 209, Lot 65, 66 and 67) ¹

HEARING DATES: October 22, 2013
 December 10, 2013
 December 18, 2013
 January 7, 2014

DECISION DATE February 25, 2014

DECISION AND ORDER

Gregg Busch and Rosebusch LLC (“Applicant”), submitted this self-certified application on July 24, 2013, for the property located at 1456, 1458 and 1460 Church Street, N.W , at Lots 65, 66, and 67 in Square 209 (the “Property”). The Applicant requested special exception relief from the roof structure requirements of sections 411 and 1902 1(a), and a variance from the off-street parking requirements under section 2101 1, to allow the construction of a new residential building in the ARTS/C-3-A District. Based on revisions to the design of the building, the Applicant eliminated the need and withdrew its request for an area variance from the rear yard requirements under section 774 and the lot occupancy requirements of section 2604 2

Preliminary Matters

Notice of Application and Notice of Hearing By memoranda dated _____, the Office of Zoning sent notice of the filing of the application to the D C. Office of Planning (“OP”), the D C Department of Transportation (“DDOT”), Advisory Neighborhood Commission (“ANC”) 2F, the ANC within which the subject property is located, Single Member District 2B 05, and the Councilmember for Ward 2. A public hearing was scheduled for October 22, 2013. Pursuant to 11 DCMR § 3113.13, the Office of Zoning published notice of the hearing on the application in the *D C Register*, and on August 9, 2013, sent such notice to the Applicant, ANC 2F, and all owners of property within 200 feet of the subject property.

Board of Zoning Adjustment Hearings The Board of Zoning Adjustment (“BZA” or “Board”) convened a hearing on the application on October 22, 2013, but continued the hearing until December 10, 2013, due to the recusal of one Board member resulting in a lack of quorum. The District government was closed for a snow emergency on

¹ The Applicant amended its application to eliminate the need for relief from the rear yard and lot occupancy requirements

December 10, 2013 and the hearing was continued to December 18, 2013. At the request of the Applicant, the hearing was deferred until January 7, 2014, due to the unavailability of witnesses. Post-hearing submissions were filed with the record on February 4, 2014, and responses thereto were submitted on February 18, 2014, including proposed findings of fact and conclusions of law. The Board deliberated on the application on February 25, 2014, and voted 3-0-2 to grant the application.

Request for Party Status In addition to the Applicant, ANC 2F was automatically a party in this proceeding. The Metropole Condominium Association, located immediately west of the Property and represented by Martin Sullivan, Esq., was granted party status in opposition to the application.

Applicant's Case Carolyn Brown and Norman M. Glasgow, Jr., of Holland & Knight LLP, represented the Applicant. The Applicant presented four witnesses in support of the application: Brook Rose of Rosebusch, LLC, Steven E. Sher, Director of Zoning and Land Use Services at Holland & Knight, LLP, Peter Fillat of Peter Fillat Architects, and Erwin Andres, of Gorove/Slade Associates.

Government Reports OP filed a report with the Board on October 15, recommending approval of the application. The OP report set forth each of the provisions of 11 DCMR §§ 411, 1902.1(a) and 3104.1 and opined that each is met. The report also opined that the application met the standards of sections 2101.1 and 3103.2. DDOT also filed a report with the Board on October 16, 2013, stating that it had no objection to the requested relief. The Board waived its requirements in order to accept the report one day late.

ANC Report ANC 2F submitted a report to the Board dated June 19, 2013, recommending approval of the application.

Party in Opposition The party opponent objected to the proposed apartment building addition based on unacceptable parking impacts on the surrounding streets and traffic congestion in the alley. The party opponent also opposed the application with respect to its alleged adverse effect on the light, air and enjoyment of their property, and lack of communication by the Applicant.

Persons and Organizations in Support The Board received numerous letters in support of the application from a number of individuals and organizations. The letters commented favorably on the Applicant's proposal to renovate three historic buildings on the site into a new residential development that leverages the public infrastructure and transportation services in the area, and will add to the vibrancy, walkability, and diversity of the community. The condominium association of CITTA 50, a seven-story residential building to the east of the Property, also submitted a letter to the record stating it had no objection to the project or zoning relief requested by the Applicant.

Persons and Organization in Opposition The Board also received letters and petitions in opposition to the application. A number of individuals raised concerns regarding transportation issues, including parking, loading, and the enforceability of the Applicant's

proposal to restrict residents of the building from applying for residential parking permit stickers, the size and square footage of the proposed units, and construction impacts

FINDINGS OF FACT

The Property and the Surrounding Neighborhood

- 1 The Property is located at 1456-1460 Church Street, N W., at Lots 65, 66, and 67 in Square 209. The south half of Square 209 is bounded by Church Street to the north, 15th Street to the west, P Street to the south, and 14th Street to the east. The Property fronts on Church Street, which is 50 feet wide, a ten-foot wide alley is located at the rear of the Property. The Property contains approximately 3,420 square feet of land. It is zoned ARTS/C-3-A and is located within the 14th Street Historic District.
- 2 C-3-A Districts permit medium density development, including residential and mixed-use development (11 DCMR § 740.4). The C-3-A Districts are generally located on arterial streets, in uptown centers, and at rapid transit stops (11 DCMR § 740.5). Pursuant to §§ 741, 721, 701, and 350.4 of the Zoning Regulations, multiple dwellings as well as numerous commercial, retail, and service uses are permitted as a matter of right in C-3-A Districts.
- 3 The Arts Overlay permits a maximum height of 75 feet for buildings in the underlying C-3-A District, provided that no part of the building projects above a plane drawn at a 45-degree angle from a line located 50 feet directly above any property line adjacent to a residential district or any alley separating the property from a residential district (11 DCMR § 1902.1). However, because Church Street is only 50 feet in width, the maximum permitted height is 70 feet under the 1910 Height Act. D.C. Official Code § 6-601.05 (2012 Repl.).
- 4 The maximum permitted floor area ratio ("FAR") for a Property zoned ARTS/C-3-A that provides at least 3.0 FAR of residential use and meets the maximum Inclusionary Zoning ("IZ") requirements is 5.3 FAR, and the maximum lot occupancy is 75% for residential uses with 80% permitted under IZ (11 DCMR §§ 1904.3 and 1909.1(c)(1)).
- 5 The Applicant is not seeking any relief from the applicable FAR, height, or lot occupancy requirements. The project will satisfy the matter-of-right zoning requirements with respect to rear yard and side yard, and the project is not required to provide any loading berths, loading platforms, or service/delivery spaces, in accordance with section 2200.5. In addition, the proposed uses are consistent with the Property's ARTS/C-3-A zoning designation.
- 6 Three nineteenth century buildings occupy the site. The buildings at 1456 and 1458 Church Street are three-story flat-front brick rowhouses with bracketed wood cornices. These houses are extremely modest in size, measuring only 12-

feet, 6-inches wide by 28-feet deep The building at 1460 Church is a three-story, flat-front brick rowhouse, with a corbelled brick cornice This house is only slightly larger than the other two, originally measuring 13 feet wide by 34 feet deep, with a small ell-wing added later at the rear

- 7 The Property is located less than one block from 14th Street N W , and less than two blocks from Logan Circle The 14th Street corridor is continuing to be redeveloped with a wide variety of high-density commercial, residential, and mixed use buildings As some of the last remaining undeveloped parcels on the 1400 block of Church Street, Lots 65, 66, and 67 currently offer little to the surrounding neighborhood as the older buildings falling into disrepair Surrounded by new mixed use and residential high-rise buildings on both sides, the buildings on the site do not currently fit into the streetscape, which has artfully incorporated older structures into new urban spaces Revitalization of the site will be a positive addition to the neighborhood The proposed new building will be one of many new developments in the area, which has become a flourishing retail, residential, and transit corridor
- 8 The Property is easily accessible by public transportation It is located a half-mile from the U Street Metrorail Station, which serves the Green Line, and 0.6 miles from the Dupont Circle Metrorail Station, which serves the Red Line The site is also located along numerous Metrobus lines, including the G2, S1, S2, S4, S9, 52, 53, 54, 915, and DC 98 lines, and is within three blocks of two Capital Bikeshare stations
- 9 The Property abuts a seven-story residential building to the east that incorporates a modest 1920s apartment building (Citta 50), and a seven-story residential building, which steps down to four stories immediately adjacent to the site, that faces 15th Street to the west (Metropole Condominiums) Across Church Street to the north is a parking lot

The Applicant's Project

- 10 The Applicant proposes to redevelop the Property by incorporating the three existing nineteenth century buildings into a new eight-story apartment building with approximately 37 units The historic buildings will be saved to an average depth of 30 feet, which is consistent with their original footprint The proposed addition will be constructed to the rear, and will project over two of the three existing buildings The new building will have a height of 70 feet, with the highest portion of the roof structure rising another 14 feet, 3 inches, for an overall height above the measuring point of 84 feet, 3 inches
- 11 The design of the new building's façade is primarily metal paneled with aluminum windows, glass sliding doors, and aluminum fascia and break metal wrapped trim The proposed development will retain and incorporate the main masonry bocks of the three historic rowhouses to their original depth of approximately 28-32 feet

These facades will be cleaned, repaired, and repointed. The center rowhouse will serve as the entrance lobby to the larger project, while the entrances to the other two houses will provide access to individual ground floor units. A secondary entrance at the rear of the building is provided from the public alley.

- 12 The Applicant's initial proposal required relief from the rear yard and lot occupancy provisions, the roof structure setback requirements along Church Street, and 90 percent relief from the parking requirements based on a proposal to provide two compact spaces at the rear of the site. The Applicant revised its plans twice: first to eliminate the rear yard and lot occupancy relief, and then to eliminate the roof structure setback relief and reduce the degree of parking relief to 79 percent. As shown on the updated drawings dated February 4, 2014, the Applicant proposes to provide four parking spaces along the public alley at the rear of the building.
- 13 The D C Historic Preservation Review Board ("HPRB") reviewed the design of the addition and found the concept not incompatible with the historic district and consistent with the purposes of the Historic Preservation Act. The revised design, which eliminated the need for lot occupancy and rear yard relief, was reviewed and approved unanimously by HPRB staff under its delegated authority from HPRB.

The Special Exception Relief

Enclosure Walls of Unequal Height

- 14 Housing for mechanical equipment or a stairway or elevator penthouse on the roof of a building or structure must be placed in one enclosure, and the enclosing walls from the roof level must be of equal height. 11 DCMR §§ 411.3 and 411.5.
- 15 In order to maximize the light and air of the residential units and to minimize the size and visibility of the roof structures from the street, the Applicant proposes to build roof structures with walls of unequal height. The egress stairs are proposed to be located on the east and west sides of the building, and will each rise to a height of 8 feet, 8 inches. The elevator penthouse will be located slightly off-center on the roof, and will rise to a height of 14 feet, 3 inches.
- 16 Each roof structure is a necessary feature to the building, and each structure's location and height is driven by the layout and design of the residential units within the building. The stairs are separated due to the Building Code requirement to provide two means of egress for buildings, as well as the desire to break up massing on the roof. These deviations from the roof structure standards are necessary to provide access to the roof, including handicapped access. The unequal heights reduce the height and visibility of the structures to the greatest extent possible.

Height of Roof Structures

- 17 Under section 1902 1(a) of the Uptown Arts Overlay District, no roof structure may exceed a height of 83 5 feet above the measuring point used for the building. Here, the Applicant proposes that the portion of the roof structure, which will accommodate the elevator override equipment, will rise to a height of 14 feet, 3 inches on a building that is 70 feet in height, resulting in an overall height of approximately 84 feet, 3 inches, or nine inches taller than what is permitted in section 1902 1(a) of the Zoning Regulations. The additional height of the elevator penthouse will allow access, including handicap access, to the roof terrace. The rooftop terrace will further the purposes of the ARTS Overlay District to encourage residential development and strengthen the architectural character of the neighborhood. Furthermore, the elevator core has been pushed back to the center of the building to limit its view from the street. The penthouse will be integrated into the overall design of the new structure to ensure its compatibility with the 14th Street Historic District in which it is located.
- 18 The Applicant satisfies the applicable criteria of the ARTS Overlay under section 1906.1, as described below:
- a The proposed height of the roof structures will substantially advance the purposes of the ARTS Overlay District by allowing the necessary mechanical equipment for the building to be located on the roof and by providing access to a communal rooftop terrace. The rooftop terrace is a major amenity to this residential development and a significant design feature that strengthens the ARTS Overlay and the 14th Street corridor. It provides a safe recreational gathering space for residents of the building and fosters increased activity in the overlay district. 11 DCMR § 1906 1(a)
 - b The Property is affected by an exceptionally narrow width of only 38 feet, as well as an exceptionally small size of only 3,420 square feet of land area. In order to accommodate the inclusionary units required under Chapter 26 of the Zoning Regulations, the Applicant is availing itself of the bonus density and height designed to encourage construction of affordable housing. The bonus height permits the building to be constructed to a height of 70 feet, thereby leaving only 13 5 feet for mechanical equipment and an elevator override so that the maximum permitted height of 83 5 feet is not exceeded. The standard mechanical penthouse is 18 feet, 6 inches. Here, the Applicant has reduced that overall height to 14 feet, 3 inches, which is only 9 inches taller than what is otherwise permitted. 11 DCMR § 1906.1(b)

- c The Applicant has met with the Office of Planning and has received its support, and has received concept approval from the HPRB for the proposed project 11 DCMR § 1906 1(c)
- d The proposed roof structure height does not affect vehicular access to the site or traffic conditions at the site. Nevertheless, all vehicular access and egress occur via an existing public alley to the rear of the building. The access is designed to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions 11 DCMR § 1906 1(d)
- e The modest extension in roof structure height for the elevator penthouse will only be as tall as necessary to allow access to the roof. It will be set back significantly from adjacent property lines and public right-of-ways so that there will be limited visibility of it from the public space. The HPRB and staff have deemed the design to be compatible with the 14th Street Historic District 11 DCMR § 1906 1(e)

The Parking Variance Relief

The Parking Requirement

- 19 Section 2101.1 requires one parking space to be provided for every two units, or in this case, a total of 19 spaces. The Applicant proposes to provide four parking spaces that are 8 feet wide by 17 feet deep.

Exceptional and Extraordinary Conditions

- 20 The Property is affected by several exceptional and extraordinary conditions. First, the site is extremely small and narrow. It is only 38 feet wide and contains only 3,420 square feet of land area. Second, three historic buildings on the Property must be maintained, repaired, and renovated in accordance with the HPRB approvals specific to these historic resources. These existing structures must be incorporated into the design of the new building, which also limits and constrains the floor plate of the building. The floor and roof assemblies of the historic townhouses will be retained at 1456 Church Street, largely replaced at 1458 Church Street due to deterioration, and partially replaced at 1460 Church Street to slightly lower the floors. These buildings have been on the site since the late nineteenth century, and together these buildings' characteristics place substantial restrictions on potential building and parking configurations.

Practical Difficulties

- 21 Due to the extreme narrow width of the lot and the historic buildings on the Property, the Applicant cannot excavate the Property to provide below-grade parking, ramps for two-way circulation, or a turning radius sufficient for ingress

or egress to a parking garage. One compact space alone is 8 feet wide by 16 feet long. Minimum width dimensions to have ramp turning movement and a ramp going down to another level is approximately 60 feet, yet the site is less than two-thirds that width. At an average depth of 30 feet, the historic buildings retained on the Property will occupy approximately 1,140 square feet of the land. It is therefore virtually impossible for the Applicant to meet the parking requirements. Internal building functions, such as egress stairs, an elevator core, trash room and required bike spaces would further reduce space available for parking at the ground floor.

No Harm to Public Good or Zone Plan

- 22 The requested variance from the off-street parking provisions will not result in any substantial detriment to the public good, nor will it impair the purpose, intent, or integrity of the Zone Plan. The redevelopment of the existing historic rowhouses into an eight-story residential building will significantly contribute to the vibrancy of the neighborhood while supporting the District's housing goals for this area. The development will allow for the repair and renovation of contributing buildings to the historic district and will help to revitalize the block on which the Property is located.
- 23 The project benefits from a significant amount of favorable transit and pedestrian access to the Property, resulting in a decrease in the number of vehicle trips that would otherwise be generated, and a decrease in the number of off-street parking spaces that would be needed if the Property were not in such close proximity to a mix of uses and public transportation options.
- 24 DDOT reviewed the plans and development and had no objection to the reduction of off-street parking due to the proximity of the project to numerous transportation alternatives and the strength of the Applicant's TDM program.
- 25 The Board accepts the findings made in the Transportation Impact Analysis submitted by the Applicant that the proposed parking will adequately serve the demands of the Property due to a number of factors, including
 - The project is well served by all five Metrorail Lines via Dupont Circle station, U Street/African American Civil War Memorial/Cardozo station, and the McPherson Square station,
 - The Property is served by 10 bus routes within a quarter-mile walking distance including Metrobus, Metro Express and DC Circulator routes,
 - Capital Bikeshare has two existing bike share locations near the site, one of which is less than 500 feet from the site at the intersection of 15th and P Streets NW and another that is approximately 1,200 feet from the site at the intersection of Rhode Island Avenue and 14th Street N W ,

- The Applicant has worked with DDOT to incorporate 13 bicycle parking spaces within the building,
 - According to *2000 US Census* data, only 38 percent of the study area's residents residing in apartment buildings owned a private vehicle,
 - The means of transportation to work for residents in the census tract for the Property is as follows 22% car, 29% public transportation, 1% bike, 40% walk, and the remaining 8% either work from home or use another mode (see 2007-2011 American Community Survey 5-year estimates), and
 - The site area has a walkability score of 96 as calculated by WalkScore com, which is referred to as a "Walker's Paradise."
- 26 The Applicant will incorporate a number of transportation demand measures into operation of the building, as set forth in the Transportation Impact Analysis. DDOT had no objection to the reduction of off-street parking due in part to the strength of these TDM measures
- 27 The Applicant also agreed to include language in all documents related to the lease or sale of the residential units that prohibit residents of the building from applying or obtaining a residential permit parking permit ("RPP") from the District of Columbia, regardless of the building's ownership, and for the life of the building The Applicant will record a covenant on the Property ensuring that all future owners are similarly bound for the life of the project This will strongly discourage on-street parking by residents of the building, further limiting any negative impact on the neighborhood parking supply
- 28 The Applicant entered into an Agreement with the condominium building known as CITTA 50 to the east of the Property at 1450 Church Street, N W. Among other things, the Applicant agreed to lessen potential impacts of the proposed building and its construction by providing a construction management agreement and prohibiting the use of the roof deck past 10:00 p m Sunday through Thursday, or past midnight on Fridays and Saturdays Additionally, the Applicant would minimize trash removal congestion by using the same refuse company as another building in the square CITTA 50 submitted a letter to the record stating it had no objection to the project or zoning relief requested by the Applicant

Issues Raised by Parties in Opposition

- 29 The Metropole Condominium Association asserted that the Applicant had not demonstrated the existence of a practical difficulty in meeting the parking requirements While the Metropole conceded that the lot may be smaller than most of the properties on the block, it claimed that there were other small sites in the Logan Circle neighborhood It stated that the Applicant had not demonstrated that there was a connection between the unique condition and the alleged practical difficulty It noted that the historic status of the buildings was not unique to the property since all the surrounding properties were also located within the 14th

Street Historic District

- 30 The Metropole also argued that the need for the parking relief was solely a function of the Applicant creating too many units on the site without demonstrating a need for them. According to the Metropole, the Applicant was pursuing 38 units in order to get a higher rate of return when fewer units, and a lesser rate of return, would not generate such substantial degree of variance relief. It posited that the Applicant was in essence making an economic argument for the relief without providing any economic analysis to support the need for 38 units.
- 31 The Metropole claimed that when the Zoning Commission established the ratio of parking spaces to number of units in 1958, the Zoning Regulations already took into account the density of a particular zone district and the relative parking demands of that area.
- 32 The Metropole asserted that the Applicant could perhaps provide 10 parking spaces on one level underground or on just one side of the property, leaving 20 feet on the other side for ingress and egress. Alternatively, the Metropole suggested that the Applicant could just provide four spaces at the rear of the building, provide fewer units and drastically reduce the degree of variance relief it was requesting.
- 33 Regarding the third prong of the variance test, the Metropole stated that granting the parking relief would have a significant negative impact on the neighborhood. Even if the RPP restrictions proposed by the Applicant were enforceable, the Metropole asserted that residents would exhaust the remaining supply of leased parking spaces in the neighborhood and visitors to the site would exacerbate the on-street parking shortage. The Metropole urged the Board to deny the application.
- 34 Celia Davis, a resident of the Metropole, testified on behalf of the condominium association. She asserted that the Metropole had been given inadequate notice of the BZA applications and that she was unaware that the ANC had voted to support the applications in Summer 2013. She objected to the Applicant revising its design to eliminate the rear yard and lot occupancy relief because it would have greater impacts on her unit, which abuts the project to the west. Her testimony revealed that she and the Applicant had numerous discussions about the design of the building and the BZA application beginning in October 2013.
- 35 Based on the foregoing, the Board finds that the Applicant has met its burden of proof for a special exception from the roof structure requirements of sections 411 and 1902 1(a), and for an area variance from the off-street parking requirements under section 2101 1 of the regulations.

CONCLUSIONS OF LAW

Special Exception Relief

Pursuant to section 3104 of the Zoning Regulations, the Board is authorized to grant special exceptions where, in its judgment, the relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property. Additionally, certain special exceptions must meet the conditions enumerated in the particular sections pertaining to them. In this case, along with the general requirements of section 3104, the Applicant also had to meet the requirements of sections 411 and 1906 1 of the Zoning Regulations.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the Board's discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and "if the applicant meets its burden, the Board ordinarily must grant the application." *First Washington Baptist Church v D C Bd of Zoning Adjustment*, 423 A 2d 695, 701 (D C 1981) (quoting *Stewart v D C Bd of Zoning Adjustment*, 305 A 2d 516, 518 (D C 1973)).

The Applicant is seeking a special exception from the roof structure requirements pursuant to § 411 11, and a special exception from the roof structure height limitation of § 1902 1(a).

Under § 411 11, the Board may grant special exception relief from the strict requirements for a roof structure where full compliance is "impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area" and would be "unduly restrictive, prohibitively costly, or unreasonable." (11 DCMR § 411 11) The Board may approve deviations from the roof structure requirements provided the intent and purpose of Chapter 400 and the Zoning Regulations are not "materially impaired by the structure, and light and air of adjacent buildings shall not be affected adversely."

Here, the Applicant requests relief from section 411 5 of the Zoning Regulations, which requires the enclosing walls of roof structures to be of equal height. However, in order to reduce the height and massing for the majority of the proposed roof structure to the greatest extent possible, the proposed structure incorporates enclosing walls having heights of 8 feet, 8 inches, and 14 feet, 3 inches. The 8 feet, 8 inch portions enclose stairwells necessary to provide access to the roof. The 14 feet, 3 inch portion of the structure encloses the elevator and mechanical equipment. If the Applicant were to comply with the requirement for penthouse walls of equal height, it would need to increase the height of the proposed stair enclosure walls by another 5 feet, 7 inches. Such an action would unnecessarily increase the visibility of the roof structure from the street, thereby negatively affecting the surrounding historic community. The elevator is

required to go to the roof of the building and to provide access to the roof deck and ancillary amenity space to persons with disabilities. The Board concludes that the proposed roof structure complies with the spirit and intent of the roof structure provisions and the Zoning Regulations, by helping to ensure adequate light and air to adjacent property and abutting streets.

The Board further concludes that the step-downs in height help to reduce the visibility of the roof structure from the surrounding areas and that this special exception is requested in order to further minimize the bulk of the roof structure. Accordingly, the proposed penthouse is in harmony with the purpose and intent of the Zoning Regulations and meets the test for special exception relief under § 411.

The Arts Overlay limits any building, including roof structures, to a maximum height of 83.5 feet. Here, the Applicant proposes that a portion of the roof structure that will accommodate the elevator override equipment will rise to a height of 14 feet, 3 inches on a building that is 70 feet in height, resulting in an overall height of approximately 84 feet, 3 inches. Pursuant to § 1906.1 of the Zoning Regulations, the Board may grant relief from the requirements of the Arts Overlay as a special exception if the criteria stated in § 1901.6 (a) through (e) are met. However, the subsection also provides that the Board "shall apply criteria (c) and (d) only if relevant to the relief sought. Paragraph (d) concerns the design of vehicular access and egress and is clearly unrelated to the height of roof structures. The Board therefore will not address that factor.

The Board concludes that the Applicant meets the other standards as follows:

Section 1906.1(a) The uses, buildings, or features at the size, intensity, and locations proposed, will substantially advance the purposes of the ARTS Overlay District and will not adversely affect neighboring property or be detrimental to the health, safety, convenience, or general welfare of persons living, working, or visiting in the area.

The Board concludes that in this case, the proposed height of the roof structure will substantially advance the purposes of the Arts Overlay District by providing access to a communal rooftop terrace. The purposes of the Arts Overlay District include encouraging residential development, and strengthening the design character and identity of the area (11 DCMR § 1900.2(e), (f) and (h)). Here, the rooftop terrace is a major amenity to this residential development and a significant design feature that strengthens the Arts Overlay and 14th Street corridor. It provides a safe recreational gathering space for residents of the building and fosters increased activity in the overlay district. Without relief from the penthouse height restrictions, this important feature of the building and the design character of the Arts Overlay District would be significantly impacted.

Moreover, the Board further concludes that the height of the roof structure 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. The portion of the roof structure that requires the nine-inch deviation is slightly off-centered in the roof and any resulting additional shadow would fall on the roof itself. It is set back 8 feet, 4 inches

from the east property line, 20 feet, 11 inches from the west property line, more than 48 feet from the northern exterior wall of the building, and more than 30 feet from the southern exterior wall of the building. Thus, the Board concludes that this portion of the roof structure above 83.5 feet constitutes a *de minimus* increase of nine inches that will not have any adverse visual impacts. The penthouse will be clad in complementary materials to ensure its successful integration into the overall design of the building, and its design and massing have been approved in concept by HBRB.

Section 1906 l(b) Exceptional circumstances affecting the property make compliance with the requirements of this chapter difficult or impossible, or the development provides alternative public benefits in lieu of the excepted uses or features that are of comparable value to the public in achieving the purposes of this chapter and of the Comprehensive Plan

The Board concludes that in this case, the Property is affected by the combination of several exceptional circumstances, including (i) a narrow width of only 38 feet, (ii) an exceptionally small lot size of only 3,420 square feet of land area; (iii) the configuration of the existing structures on the site, a significant portion of which must be retained due to their historic status, and (iv) the specific HPRB design approvals that reflect the particular historic constraints of these specific buildings. All these factors have a direct impact on the design and layout of the proposed development on the Property.

Section 1906 l(c) The architectural design concept of the project will enhance the urban design features of the immediate vicinity in which it is located, provided, if a historic district or historic landmark is involved, the Board shall refer the application to the State Historic Preservation Officer for review and report

The Board concludes that in this case, the proposed roof terrace -- and the elevator providing access to this amenity -- are exceptional urban design features for a building on Church Street, which enhance the quality of life in the Arts Overlay. The elevator penthouse has been located to protect the street views of the building, surrounding properties and the historic district. The project has been reviewed by the staff of HPO and approved in concept by HPRB.

Section 1906 l(e) The Board may impose requirements pertaining to design, appearance, signs, size, landscaping, and other such requirements as it deems necessary to protect neighboring property and to achieve the purposes of the Arts Overlay District

The Board concludes that in this case, the proposed extension in the roof structure height and at a limited and discreet location will only be as tall as necessary to allow elevator access to the roof. This portion of the roof structure will be significantly set back from adjacent property lines and public ways, so that there will only be limited visibility of it from public space. Additionally, the roof deck will be closed after 10:00 p.m. Sunday through Thursday, and after midnight on Friday and Saturday. Thus, the Board determines that it does not need to impose any additional requirements or conditions. As designed, the proposed roof structure protects the integrity of the contributing buildings,

encourages their adaptive reuse in an attractive combination of new and old buildings, expands the area's housing supply in a variety of rent and price ranges, all in conformance with the purposes of the ARTS Overlay 11 DCMR § 1900.2

Variance Relief

Standard of Review

The Applicant seeks an area variance from the minimum number of required parking spaces under section 2101.1 to allow construction of a multi-unit residential building at 1456-60 Church Street, N.W. (Square 209, Lot 65, 66 and 67). Under section 8 of the Zoning Act (D.C. Code § 6-641.07(g)(3) (2012 Repl.)), the Board is authorized to grant an area variance where it finds that three conditions exist: “(1) the property is unique because, *inter alia*, of its size, shape or topography, (2) the owner would encounter practical difficulties if the zoning regulations were strictly applied, and (3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zoning plan.” *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995), quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980). See, also, *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). Applicants for an area variance need to demonstrate that they will encounter “practical difficulties” in the development of the property if the variance is not granted. See *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 540-41 (D.C. 1972) (noting that “area variances have been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden”). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be “unnecessarily burdensome.” See *Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990).

As discussed below, the Board concludes that the Applicant has met its burden of proof for an area variance from the parking requirements of section 2101.1 of the regulations.

Exceptional and Extraordinary Conditions

The Board concludes that the subject property is affected by a confluence of several exceptional and extraordinary conditions. First, the property is already improved with existing historic buildings, which have been deemed to contribute to the character of the 16th Street Historic District. See *Clerics of St. Viator v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974); *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990) (an exceptional or extraordinary situation or condition may encompass the buildings on a property, not merely the land itself, and may arise from a “confluence of factors”). Second, HPRB has required the Applicant to incorporate significant portions of these historic structures into the design of the new building, thereby severely limiting the location of the elevators, egress stairs and unit layout. The Property, at only 38 feet wide, is exceptionally narrow and significantly smaller in size in comparison to other multi-family redevelopments within Square 209,

and the surrounding community, as evidenced by the plats and maps submitted to the record. Additionally, the Property fronts on one of the narrowest streets in the neighborhood.

Based on the foregoing, and as discussed below, the confluence of factors is more than sufficient to create exceptional or extraordinary conditions affecting the Property. The historic status of the existing buildings is not in and of itself an extraordinary condition because it is a characteristic shared by other buildings in the historic district. However, as the Board has concluded in other cases, it is not so much the buildings' historic status that creates the exceptional condition, but the specific design constraints imposed by HPRB based on the particular historical and architectural significance of these specific individual buildings. When taken as a whole, the Board concludes that these "confluence of factors" create exceptional and extraordinary conditions for the subject Property.

Practical Difficulties

The Board further concludes that these exceptional and extraordinary conditions, in turn, create practical difficulties for the Applicant in complying with the parking requirements of the Zoning Regulations. If the Applicant were forced to provide 19 compliant parking spaces, it would need to excavate the site. The portion of the lot not occupied by the historic structures is physically not large enough to accommodate all nineteen spaces plus the drive aisle, elevator core, egress stairs, trash room and bike parking.

Thus, as noted by the Applicant's witness at the hearing, it would require excavating down nine to ten levels to provide the required 19 compact spaces. This is neither practical nor reasonable. Even if the number of units were reduced, the practical difficulties would still exist, since providing any more than eight units would require an area variance. Any excavation would encounter significant obstacles in providing not just the required parking, but the required building services, as well. The Zoning Regulations were never intended to have the required number of parking spaces control the number of units in a building. In effect, that would be the tail wagging the dog. Rather, the density in a particular zone district is controlled by FAR limitations, which in this case is 5.3 using the bonus density permitted under the ARTS Overlay and the IZ regulations. The Building Code limits the area of dwelling units. Using parking requirements as the determinant of building density would eviscerate the FAR provisions of the regulations, incentives for inclusionary housing under Chapter 26, and the express purposes of the ARTS Overlay to expand the housing supply. See 11 DCMR § 1900.2 (d). Furthermore, given that the only vehicular access into the building is from the rear alley, combined with the inherent constraints of the site, only four parking spaces can be accommodated at the rear of the Property without encountering practical difficulties. Thus, the Board concludes that the proposed number and location of parking spaces is reasonable and appropriate in light of the lack of substantial harm to the public good or zone plan discussed below.

No Substantial Detriment to Public Good or Substantial Impairment of the Zone Plan

The requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map, including the ARTS Overlay. The Applicant submitted a Transportation Impact Analysis that demonstrates that even a 100% waiver of the parking requirements would not create any adverse effects provided the proposed TDM measures and RPP restrictions are in place, as set forth in Finding of Facts DDOT had no objection to the application and the reduction in parking for the transit-oriented development, in light of the TDM measures and RPP restrictions.

Thus, the Board concludes that there will be a significant amount of transit and pedestrian access to the Property, resulting in a decrease in the number of vehicle trips that would otherwise be generated, and a decrease in the number of off street parking spaces that would be needed if the Property were not in such close proximity to public transportation. The requested parking relief is appropriate considering the wealth of mass transit options for residents and visitors. The provision of four parking spaces at the site will also help satisfy whatever parking demand may be generated by the building.

In addition, the Applicant has agreed to include language in all documents related to the lease or sale of the residential units that residents of the building are prohibited from applying for a RPP from the District of Columbia, regardless of the building's ownership, and for the life of the building. In addition, the Board is requiring the Applicant to record a covenant running with the land so that all future owners of the Property will be bound by this obligation.

The integrity of the zone plan would not be impaired by the granting of the variance. The ARTS Overlay zoning "incentivizes" residential development. The proposed project's size and scale would be consistent with nearby residential development.

Great Weight to ANC

Section 13(b)(d) of the Advisory Neighborhood Commission Act of 1975, effective March 26, 1976 (D.C. Law 1-21, D.C. Code § 1-309.10(d)(A)), requires that the Board's written orders give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. In this case, ANC 2F recommended approval of the requested relief. The Board accords the ANC recommendation the great weight to which it is entitled and concurs in its recommendation.

The Board is required under section 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Code § 6-623.04) to give great weight to OP recommendations. The Board also concurs with OP's recommendation that the zoning relief should be granted.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden

of proof pursuant to 11 DCMR § 3103.2 for an area variance under sections 2120.1, that there exists an exceptional or extraordinary situation or condition related to the Property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. The Board also concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1 and 1902.1(a), and that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

It is therefore **ORDERED** that the application is hereby **GRANTED, with the following conditions:**

- 1 The Applicant shall include in its residential leases a provision that prohibits tenants from obtaining a Residential Parking Permit ("RPP") for the Property from the D C Department of Motor Vehicles ("DMV"), under penalty of lease termination
- 2 The Applicant shall obtain written authorization from each tenant, either through a lease provision or another written document, that allows the DMV to release to the Applicant any and all records of that tenant requesting or receiving an RPP for the Property
- 3 The Applicant shall monitor tenant compliance with the RPP lease restriction by requesting from the DMV, every six months, any and all records of residential tenants requesting or receiving RPPs for the Subject Property, and shall provide annually to the Metropole Condominium Board the results of its inquiries
- 4 The Applicant shall record a covenant against the Property among the Land Records of the District of Columbia prohibiting any lessee or owner of the Property from obtaining an RPP for the building approved in this BZA Order
5. For a period of five years, the Applicant shall provide a one-year membership to either a car-share or bike-share organization to each residential leaseholder. The time period will begin upon the issuance of the certificate of occupancy for the building
- 6 The Applicant shall designate a Transportation Management Coordinator to implement and manage TDM strategies. The strategies are: (i) the development and distribution of information and promotional brochures to residents, visitors, patrons and employees regarding transit facilities and services, pedestrian and bicycle facilities and linkages, ridesharing (carpool and vanpool) and car sharing, and (ii) ensuring that loading activities are properly coordinated and do not impede the pedestrian, bicycle, or vehicular lanes adjacent to the development

- 7 The Applicant shall prohibit residents from using the roof deck after 10 00 p m Sunday through Thursday and after midnight on Friday and Saturday
- 8 The Applicant shall provide an indoor, temperature-controlled and ventilated trash facility and shall utilize the same trash removal company as another residential building in the block to help minimize trash removal congestion

VOTE: _____ (Lloyd L Jordan, Peter May, and S. Kathryn Allen; Jeffrey L Hinkle recused, third Mayoral seat vacant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order

ATTESTED BY:

Sara Bardin
Director, Office of Zoning

FINAL DATE OF ORDER: _____

UNDER 11 DCMR § 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL BECOME EFFECTIVE UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT "

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C HUMAN RIGHTS ACT OF 1977, AS AMENDED, D C OFFICIAL CODE § 2-1401.01 ET SEQ., (THE "ACT"), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

BZA APPLICATION NO. 18638

As Director of the Office of Zoning, I hereby certify and attest that on _____, 2014, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

Mary Carolyn Brown, Esq
Norman M Glasgow, Jr
Holland & Knight LLP
800 17th Street, N W , Suite 100
Washington, D C 20006

Matthew LeGrant
Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
1100 4th Street, S W , Room 3100
Washington, DC 20024

Martin L Sullivan, Esq
Sullivan & Barros LLP
1990 M Street, N W , Suite 200
Washington, D C 20036

_____, Acting Director
D C Office of Planning
2000 14th St , N W
Washington, D C 20002

Chairperson
Advisory Neighborhood Commission 2F
5 Thomas Circle, N W.
Washington, D C 20005

Melinda Bolling, Esq
General Counsel
Department of Consumer and Regulatory Affairs
1100 4th Street, S W , 5th Floor
Washington, D C 20024

The Honorable Jack Evans
Councilmember – Ward 2
1350 Pennsylvania Avenue, N W , Suite 106
Washington, D C 20004

ATTESTED BY:

Sara Benjamin Bardin
Director, Office of Zoning