

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



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 §§ 411 and 1902.1(a), and a variance from the off-street parking requirements under § 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, Lots 65, 66 and 67).¹

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

DECISION DATES: February 25, 2014 and April 8, 2014

DECISION ON MOTION TO REOPEN

RECORD / LIMITED REHEARING: April 15, 2014

LIMITED REHEARING DATE: May 20, 2014

DECISION DATE: June 17, 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 §§ 411 and 1902.1(a), and a variance from the off-street parking requirements under § 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 § 774 and the lot occupancy requirements of § 2604.2.

Preliminary Matters

Notice of Application and Notice of Hearing. By memoranda dated July 30, 2014, 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 2F-02, and the

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

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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 the Board member representing the National Capital Planning Commission (“NCPC”), resulting in a lack of quorum. The District government was closed for a snow emergency on 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 originally scheduled the case for deliberation on February 25, 2014, but due to lack of a quorum it was rescheduled to April 1, 2014. Because of the primary elections, the Board rescheduled deliberations for April 8, 2014. By a vote of 2-1-2, the Board was unable to reach a decision on a motion to grant the parking variance and special exception on the roof structure height. A second motion passed by a vote of 3-0-2 to grant just the special exception on the roof structure height. By a vote of 2-1-2, the Board was unable to reach a decision on a third motion to grant just the parking variance. The Board continued the decision on the parking variance to April 15, 2014, to allow the absent Board member who participated in the hearing to cast a vote.

On April 11, 2014, the Applicant filed a motion to reopen the record and hold a limited hearing on the parking variance request. On April 15, the fourth participating Board member cast her vote to deny the parking variance so that the vote was 2-2-1, resulting in no decision. As a result, the Board requested NCPC to assign another representative to review the record and vote on the application. The Board granted the Applicant's motion to reopen the record and set the case for limited rehearing on May 20, 2014. Post-hearing submissions were filed with the record on June 3 and 10, 2014, including revised proposed findings of fact and conclusions of law. The Board scheduled the application for further deliberations on June 17, 2014, and voted 3-2 to approve the parking relief variance.

Request for Party Status. In addition to the Applicant, ANC 2F was automatically a party in this proceeding. The Metropole Condominium Association (“Metropole”), 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 at the February hearing: Brook Rose of Rosebusch, LLC; Steven E. Sher, Director of Zoning and Land Use Services at Holland & Knight, LLP, recognized by the Board as an expert in land use and zoning; Peter Fillat of Peter Fillat Architects; and Erwin Andres, Gorove/Slade

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Associates, recognized by the Board as an expert in transportation engineering. At the limited rehearing on May 20 2014, the Applicant presented testimony from Brook Rose; Gregg M. Busch; Michael Hines, a real estate broker with TTR Sotheby's specializing in sales in the 14th Street and U Street corridors; Andrew MacAllister, a real estate professional specializing in debt and equity financing for residential properties in the 14th Street and U Street corridors; and Erwin Andres.

Government Reports. The Office of Planning 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 §§ 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 Metropole objected to the proposed apartment building addition based on unacceptable parking impacts on the surrounding streets and traffic congestion in the alley. It argued that the Applicant could lower the degree of parking relief needed by constructing a building with fewer units, and that the Applicant had failed to demonstrate a financial practical difficulty for anything less than a 37-unit building. 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 Organizations 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

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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 10-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 that utilizes the maximum bonus density available under the Inclusionary Zoning ("IZ") regulations 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, building height, or lot occupancy requirements. Three 19th 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 modest in size, measuring 12-feet, six-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 are 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. There are three Metrorail Stations within walking distance of the redevelopment site. The nearest is the Dupont Circle station, which is approximate 0.6 miles from the site, with service on the Red Line. The site also has access to the U Street/African American Civil War Memorial/Cardozo Station, which is approximately 0.7 miles away and which services the Green and Yellow Lines. The McPherson Square Station, which serves the Blue and Orange Lines, is located approximately 0.65 miles away. 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). To the west is the seven-story Metropole Condominium, which fronts on 15th Street, Church Street, and P Street. The Metropole building steps down to four stories immediately adjacent to the site on Church Street. 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, three inches, for an overall height above the measuring point of 84 feet, three 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% 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%. 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 instead of the required 19 spaces.²

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 eight feet, eight inches. The elevator penthouse will be located slightly off-center on the roof, and will rise to a height of 14 feet, three 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 access for persons with disabilities. The unequal heights reduce the height and visibility of the structures to the greatest extent possible.

Height of Roof Structures

17. Under § 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

²The Applicant asserted that under the parking standards for additions to historic resources as stated in § 2120.3, the Applicant would be required to provide only the 15 spaces attributable to the addition, thereby further reducing the degree of parking relief to 73%. Since the Board believes that variance relief is appropriate whether the requirement is 15 or 19 spaces, it will use the higher figure for the purposes of its analysis.

override equipment, will rise to a height of 14 feet, three 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 § 1902.1(a) of the Zoning Regulations. The additional height of the elevator penthouse will allow access, including disabled 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 § 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 Zoning Regulations permit a maximum height for a mechanical penthouse of 18 feet, six inches. Here, the Applicant has reduced the roof structure height to 14 feet, three inches, so that the overall height of 84 feet, three inches, is only nine 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. Subsection 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 eight 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 19th 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. Parking access to the site can only be achieved from the 10-foot wide rear alley because the historic buildings that span the full width of the site on Church Street must be retained. Those buildings must also be saved to a depth of approximately 30 feet, eight inches, as measured from Church Street, including the demising walls that separate them below grade. The site cannot be excavated below the historic buildings due to those demising walls. After accounting for the elevator and mechanical core to be located at

the rear of the historic buildings, the remaining depth of the lot is approximately 42 feet, four inches. It is physically impossible to provide a garage ramp from the alley to a below grade parking garage in that distance. It would result in a 22.8% ramp grade where maximum manageable grade is 12 to 14%. Even if an appropriate grade could be accomplished, the 38-foot wide site is still too narrow to accommodate the width of the ramp and drive aisle, both of which need 20 feet.

22. Based on a *pro forma* prepared by the Applicant and other evidence, a building with fewer units does not generate the necessary value to obtain financing. Given the high fixed costs associated with retention and rehabilitation of the historic buildings, and the superstructure addition, the 37-unit configuration is necessary to generate the minimum six percent equity return required by lenders.

No Harm to Public Good or Zone Plan

23. 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.
24. 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.
25. 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.
26. 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, N.W. 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% 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."
27. The Applicant will incorporate a number of transportation demand measures into operation of the building, as set forth in the Transportation Impact Analysis.
28. 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.
29. 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.

CONCLUSIONS OF LAW

Special Exception Relief

Pursuant to § 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

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requirements of § 3104, the Applicant also had to meet the requirements of §§ 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 special exceptions from the roof structure requirements pursuant to § 411.11 and the roof structure height limitation of § 1902.1(a).

Roof Structure Configuration

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 § 411.5 of the Zoning Regulations, which requires the enclosing walls of roof structures to be of equal height. The proposed roof structure incorporates enclosing walls having heights of eight feet, eight inches, and 14 feet, three inches. The eight feet, eight inch portions enclose stairwells necessary to provide access to the roof. The 14 feet, three inch portion of the structure encloses the elevator and mechanical equipment. 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. 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 five feet, seven inches.

The Board considers the requirement for there to be access stairwells, an elevator penthouse, and a penthouse housing mechanical equipment to be "conditions related to the building" within the meaning of § 411.11. The Board further finds that it is impractical due to these conditions to fully comply with the uniform height requirement because it would unnecessarily require that the eight-foot portions be increased to 14 feet three inches simply to match the other wall portion. To do so would unreasonably increase the visibility of the roof structure from the street, thereby negatively affecting the surrounding historic community. In these circumstances, denying the zoning relief would actually cause the type of adverse impacts that special exceptions are supposed to avoid.

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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.

Roof Structure Height

The Arts Overlay limits any building, including its roof structures, to a maximum height of 83.5 feet. Here, the Applicant proposes that a portion of the roof structure housing the elevator override equipment will rise to a height of 14 feet, three inches, resulting in an overall height of approximately 84 feet, three 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 roof structures. The Board therefore will not address that factor.

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

Subsection 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 eight feet, four 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*

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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.

Subsection 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.

Subsection 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.

Subsection 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 § 2101.1 to allow construction of a multi-unit residential building at 1456-60 Church Street, N.W. (Square 209, Lots 65, 66 and 67). Under § 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 § 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 19 spaces plus the drive aisle, elevator core, egress stairs, trash room and bike parking. The remaining 42 feet of the site that is available for excavation is simply too shallow and too narrow to accommodate a parking garage with a maneuverable ramp and the requisite drive aisle.

Even if the number of units were reduced, the Applicant would encounter financial practical difficulties. The Applicant's pro forma demonstrated that the 37-unit scenario yielded an equity return rate of 6.15%, which is the minimum required by lenders to finance projects. However, if the number of units were reduced to a point that the degree of parking relief would be significantly lessened, it resulted in a project that could not be financed. The party opponent challenged the validity of the pro forma because it assigned the same fixed costs to the 18-unit scenario as it did for the 37-unit project. According to the opponent, a smaller project would cut the costs by half. Yet the Applicant's testimony and submissions to the record demonstrated that the high fixed costs for each scenario were due to the preservation of the historic structures and construction of the new superstructure, which were constant values in either model. The reduced costs associated with fewer bathrooms or kitchens were not significant enough to change the negative return of the 18-unit alternative. The party opponent also questioned how the pro forma could show the same expense for real property taxes in either scenario, reasoning that if the taxes were the same, the value of each alternative was the same. The potential error, however, is still too insignificant to affect the value of the project. For an \$8 million project, the \$34,000 attributed to property taxes is less than one-half of one percent.

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

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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, in addition to two spaces in the Metropole Building immediately adjacent to the site and accessible from the same alley, 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 § 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 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

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tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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 § 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**, subject to the Revised Plans at Exhibit 53A, and **SUBJECT to the following CONDITIONS:**

1. The Applicant shall provide four compact spaces at the rear of the property, as shown on the plans. In addition to the four on-site parking spaces, the Applicant shall lease two parking spaces within two blocks of the site for use by residents or visitors of the building.
2. 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.
3. 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.
4. 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.
5. 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.

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6. For the life of the project, 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.
7. 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.
8. 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.
9. 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.

Votes³ taken on April 8, 2014:

VOTE: **3-0-2** (Peter G. May, Marnique Y. Heath, and Lloyd J. Jordan to Approve the roof structure special exception relief; S. Kathryn Allen not present, not voting; Jeffrey L. Hinkle recused.)

Vote taken on June 17, 2014:

VOTE: **3-2** (Peter G. May, Shane L. Dettman, and Marnique Y. Heath to Approve the parking variance; Lloyd J. Jordan and S. Kathryn Allen to deny.)

³ The Board did not have a majority when voting on the parking variance relief on April 8th and April 15th. Below are the relevant votes taken on those dates:

Vote taken on April 8, 2014:

VOTE: 2-1-2 (Peter G. May and Marnique Y. Heath to approve the parking variance; Lloyd J. Jordan to deny the parking variance; S. Kathryn Allen not present, not voting; Jeffrey L. Hinkle recused.)

Votes taken on April 15, 2014:

VOTE: 2-2-1 (Peter G. May and Marnique Y. Heath to Approve the parking variance; Lloyd J. Jordan and S. Kathryn Allen (by absentee ballot) to deny the parking variance; Jeffrey L. Hinkle recused.)

VOTE: 3-0-2 (Peter G. May, Marnique Y. Heath, and Lloyd J. Jordan to reopen the record, schedule a limited hearing on the parking variance, and request an NCPC representative to participate; S. Kathryn Allen not present, not voting; Jeffrey L. Hinkle recused.)

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

The majority of the Board members approved the issuance of this order.

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: September 3, 2014

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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 PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

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. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (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, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.