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February 25, 2014

BY MESSENGER

Board of Zoning Adjustment
441 4th Street, N W , Suite 210S
Washington, DC 20001

Re Application No 18724- Prehearing Statement of the Applicant
819 D Street, N E (Square 916, Lots 74, 811, and 818)

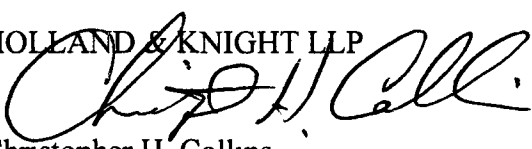
Dear Members of the Board

On behalf of 819D, LLC, the Applicant in the above-referenced case, enclosed please find one original and ten copies of the Applicant's prehearing submission in support of its application for zoning relief requested for the above-referenced property

We look forward to the Board's consideration of this application at the hearing on March 11, 2014

Very truly yours,

HOLLAND & KNIGHT LLP


Christopher H Collins

CHC/lis

Enclosures

cc Brandice Elliott, D C Office of Planning (via Hand Delivery)
Lewis Booker, DDOT (via Hand Delivery)
David Holmes, ANC 6A (via U S Mail)
Gregory Auger (via U S Mail)
Andrew Economakis (via U S Mail)
Bill Bonstra (via U S Mail)
Lynn Hackney (via U S Mail)
Jami Milanovich (via U S Mail)

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18724
EXHIBIT NO. 23

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Board of Zoning Adjustment
District of Columbia
CASE NO. 18724
EXHIBIT NO. 23

**BEFORE THE BOARD
OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA**

**APPLICATION OF
819D, LLC**

**BZA APPLICATION NO. 18724
HEARING DATE: MARCH 11, 2014
ANC 6A03**

STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This statement is submitted on behalf of 819D, LLC (the “Applicant”) in support of its application to the Board of Zoning Adjustment for the following variance relief from the requirements of the Zoning Regulations pursuant to 11 DCMR § 3103.2 (i) a variance from the minimum lot dimension requirements under subsection 401.1 to convert an existing townhouse to a flat; (ii) a variance from the minimum lot dimension requirements under subsection 401.3 to convert an existing church building to a multiple dwelling, and (iii) a variance from the minimum closed court area and width requirements of subsection 406.1, to allow the renovation and conversion of a vacant church and two adjacent administrative buildings into 30 residential units in the R-4 District at premises 819 D Street, N E (Square 916, Lots 74, 811, and 818)

**II.
JURISDICTION OF THE BOARD**

The Board of Zoning Adjustment (the “Board”) has jurisdiction to grant the variance relief requested herein pursuant to Section 3103 of the District of Columbia Municipal Regulations (“Zoning Regulations”) 11 DCMR § 3103

III.
EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION

<u>Exhibit A</u>	A portion of the Zoning Map showing the Site
<u>Exhibit B</u>	Updated Architectural Plans and Drawings Prepared by Bonstra Haresign Architects
<u>Exhibit C</u>	Baist Atlas Map
<u>Exhibit D</u>	Sanborn Map
<u>Exhibit E</u>	Chart of other Houses of Worship Converted to Multi-family Residential in the R-4 Zone
<u>Exhibit F</u>	Zoning Commission Order No 07-03 amending 11 DCMR § 401 1
<u>Exhibit G</u>	Office of Planning Preliminary Report and Pre-hearing Statement for Zoning Commission Case No 07-03
<u>Exhibit H</u>	Market Report Prepared by Urban Pace
<u>Exhibit I</u>	Traffic Report prepared by Wells + Associates
<u>Exhibit J.</u>	Outlines of Testimonies
<u>Exhibit K.</u>	Resumes of Expert Witnesses

IV.
BACKGROUND

A. Description of the Site and Surrounding Area

The property is currently owned and occupied by Way of the Cross Church of Christ, Inc. The property is at the southwest corner of the intersection of 9th and D Streets, N.E. The property is zoned R-4, and is also located within the Capitol Hill Historic District. See portion of Zoning Map, attached hereto as Exhibit A. Square 916 is bounded by D Street to the north, 9th Street to the east, C Street to the south, and 8th Street to the west, all located in the northeast quadrant of the District. The Square is roughly bisected north-south into the R-4 zone on the east side along 9th Street, and the C-2-A zone on the west side, along 8th Street.

The main building on Lots 74 and 818 is a church. This large brick structure was built in two phases, with the sanctuary building at the corner of 9th and D Streets constructed in 1898 and the church annex on D Street constructed in 1916. These two portions of the church building are connected on the interior at all levels. The church building includes a cellar level and three floors above grade, with three additional levels in the existing bell tower at the corner of 9th and D Streets. The cellar level of the church building currently includes a large kitchen, plus event and lounge space, storage, and mechanical, toilet, and laundry space. The first floor of the church building includes a large function room with a stage, plus offices, a small chapel, a nursery, and toilet facilities. The church sanctuary is on the second floor, with a balcony located on the third floor, plus classrooms. The church building is deemed to contribute to the character of the Capitol Hill Historic District.

Flanking the church building on both the D Street and 9th Street sides are two-story plus cellar townhouse buildings, both of which are contributing buildings to the historic district, and both of which are currently connected internally to the church building. The D Street townhouse is connected to the church at the cellar level, and the 9th Street townhouse is connected to the church at the first and second floor levels. The townhouses are currently occupied with church administrative office and other related and support uses. There is an open gravel parking area at the southwest corner of the site which does not meet any of the requirements of Chapter 21 of the Zoning Regulations. The parking area is accessed from the 30 foot wide north-south alley in the middle of the square. The alley system in the square is accessed from three points along 8th Street, and one mid-block point along 9th Street.

The church building and the D Street townhouse both sit on Lots 74 and 818. The 9th Street townhouse sits on Tax Lot 811 (Record Lot 67). Record Lot 67 measures 17.66 feet in

width and 1448 12 square feet in land area and does not meet the current lot area and lot width requirements for a flat in the R-4 zone

The property is located in the heart of the Capitol Hill neighborhood, which has a unique mix of residential streets, national chain and specialty retail stores, restaurants, and professional services. With several transportation options, including Union Station, which services the Metrorail's Red line, plus multiple Metrobus lines, two D C Circulator routes, car share facilities, and Capital Bikeshare stations, the Capitol Hill neighborhood offers residents an easy commute and a strong neighborhood feel.

B. Project Description

Way of the Cross Church is planning to relocate to a new facility in Capitol Heights, Maryland, because most of its congregation lives in Prince George's County. The property has been on the market for over eight years, but there has been no expressed interest to purchase the property for any other church use or other matter of right uses.

The Applicant proposes to convert the church building to 26 residential units, as shown on the Architectural Plans, Sections, and Elevations, attached as Exhibit B. The proposed configuration will consist of a wide variety of unit types, as determined by a thorough market analysis, and will include six units on the cellar level, seven units on the first floor, seven units on the second floor, and six units on the third floor. The three upper levels of the tower will become part of Unit 305 on the third floor. The sloping third floor balcony will be removed and replaced with a full floor at that level, and mezzanines will be added to the proposed units on the third floor, as shown on the plans. The existing areaways on the west side of the church building will be reconfigured to create terraces for Units 02 and 03 at the lower level.

Each of the two townhouses flanking the church building will be converted to two-family flats, consistent with the R-4 zoning of the property. The interior connections between the two townhouses and the church building will be discontinued, and a partial third floor and roof deck will be built on each townhouse. A terrace will also be created at the rear of the D Street townhouse at the lower level, and a window well will be added at the rear of the 9th Street townhouse.

Although no parking is required by the Zoning Regulations, the open area at the southeast corner of the site will be paved to provide six parking spaces, including two tandem spaces behind the 9th Street townhouse. D.C. law requires one bicycle parking space for each three units in the church building, resulting in a requirement of nine spaces. A bicycle room that will accommodate a minimum of 12 bicycles will be located in the cellar level of the church building. Each townhouse unit will have its own bike storage area.

V.
THE APPLICANT MEETS THE BURDEN OF PROOF FOR
VARIANCE RELIEF

A. Standards for Granting Area Variances

Under D.C. Code §6-641.07(g)(3) and 11 DCMR 3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

- (1) the property is unusual because of its size, shape or topography or other extraordinary or exceptional situation or condition,
- (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 zone plan as embodied in the Zoning Regulations and Map.

See French v District of Columbia Board of Zoning Adjustment, 658 A 2d 1023, 1035 (D.C. 1995) (quoting *Roumel v District of Columbia Board of Zoning Adjustment*, 417 A 2d 405, 408 (D C 1980)), see also, *Capitol Hill Restoration Society, Inc v District of Columbia Board of Zoning Adjustment*, 534 A 2d 939 (D C 1987). As discussed below, and as will be further explained at the public hearing, all three prongs of the area variance test are met in this Application

1. **The Property is Unusual Because of its Size, Shape, or Topography and is Affected by an Exceptional Situation or Condition**

The phrase "exceptional situation or condition" in the above-quoted variance test may arise from a confluence of factors which affect a single property *Gilmartin v D C Board of Zoning Adjustment*, 579 A 2d 1164, 1168 (D C 1990) In this case, the site is affected by several exceptional conditions due to its unique size and existing improvements. The site is significantly larger than all of the other lots in Square 916, measuring 11,458 square feet in land area, and is occupied by a large church building and two adjacent connected townhouses The preservation of the significant features of these historically important structures presents significant design and program challenges

The existing buildings on the site have several non-conforming conditions The church building and the adjacent townhouses were constructed prior to the adoption of the current Zoning Regulations, and the connections between them were made at some unknown time in the past The church building and the D Street townhouse sit on one record lot, although the connection between them is below the main level of both buildings By definition, this connection does not render them a single building for zoning purposes. See 11 DCMR 199.1 This is an existing nonconforming condition, and the Zoning Administrator has confirmed that this condition may remain The 9th Street townhouse is located on Record Lot 67, which

measures 17 66 feet in width, with 1448 12 square feet of land area, and does not meet the current requirements for lot area and lot width in the R-4 zone

The church building is very large relative to its land area, was built in two phases at two different times, and was constructed with two different load-bearing structural systems. The church building is designed with a unique layout, placing the sanctuary on the second level with a partial mezzanine above. Most of the windows on the north, east, and south sides of the church building are leaded glass windows, and the Historic Preservation Office ("HPO") has deemed these windows to be important features.

The existence of an obsolete structure on a parcel of land constitutes an exceptional situation or condition for variance relief. See *Clerics of St Viator v D C Board of Zoning Adjustment*, 320 A 2d 291 (D C 1974).¹ In this case, the 115 year old church building, together with two adjacent and connected townhouses used for office and support functions, are no longer desirable for church purposes. The structures have been marketed for sale for over eight years, but there has been no expressed interest for reuse of the buildings by a church or any other matter of right use. Thus, as a result of the confluence of factors described above, the property is affected by an exceptional situation or condition and meets the first prong of the variance test.

2. Strict Application Would Result in a Practical Difficulty to the Owner

The D C Court of Appeals has held that to satisfy the practical difficulty element of the area variance test, an applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome." *Gilmartin, supra* at 1170. In that case, the Court noted

¹ In *Clerics of St Viator*, the decrease in enrollment at a religious seminary, due to historical circumstances and a change in the form of religious education, prevented the seminary from being able to sell or transfer the property to another similar use. The court held that the existence of the obsolete seminary use constituted an exceptional situation or condition for variance relief, and permitted the granting of a use variance to convert the seminary to convalescent or nursing home use.

that “the severity of the variance(s) requested,” “the weight of the burden of strict compliance,” “the effect the proposed variance(s) would have on the overall zone plan,” and the “increased expense and inconvenience to applicants for a variance” are among the proper factors for BZA’s consideration *Id* at 1171

In this case, the Applicant will encounter a practical difficulty if the Board does not grant variances for the three areas of relief requested. First, the conversion of the church building to a multiple dwelling requires a variance from Section 401.3 of the Zoning Regulations, which requires a minimum of 900 square feet of land area per apartment unit (the “900 square foot rule”) Second, a variance from Section 401.1 of the Zoning Regulations is necessary for the conversion of the 9th Street townhouse back to a residential use, for a matter of right two family dwelling, which requires a minimum width of 18 feet and a minimum land area of 1,800 feet for a flat in the R-4 District Third, the new terraces adjacent to Units 02 and 03 at the cellar level on the west side of the church building, and adjacent to the lower level unit at the rear of the D Street townhouse, require variance relief from the closed court area and width regulations of Section 406.1 of the Zoning Regulations

a) Section 401.3 - Church Building and D Street Townhouse

These two buildings occupy Record Lot 74 and Tax Lot 818 The church building will contain 26 dwelling units The D Street townhouse will contain two dwelling units, which is consistent with the matter of right zoning regulations allowing a flat in an R-4 zone The two buildings are on the same record lot (a nonconforming condition that is permitted to remain), and are therefore considered together for this variance. The upper level of the sanctuary (at the third floor of the church building) is a sloped balcony, which will be removed and replaced with a full floor at that level Mezzanines will also be added to each of the units on the third floor

The church building contains approximately 28,128.5 sq ft of gross and cellar floor area. With the addition of the mezzanines and the full third floor in the sanctuary portion of the building, the overall gross and cellar floor area of the church building will be approximately 30,022 sq ft. In order to strictly comply with the "900 sq ft" rule, Lots 74 and 818 could only accommodate 11 units. The D Street townhouse will be a matter of right two-unit flat, meaning that the church building could only have nine dwelling units spread across four levels. These units would need to average 3,336 sq ft of floor area. However, the applicant's marketing expert has concluded that nine units of an average size of 3,336 sq ft would not be marketable in a building of this type at this location.

The unit size, location and configuration proposed in this application is dictated by the size and configuration of the church and townhouse building, the market demand for units of a certain size, in this neighborhood, in buildings of this type, the physical limitations imposed by the interior bearing walls of the church building, and the location and configuration of the existing leaded glass windows, which must remain for historic preservation purposes. Given these physical configurations and limitations, and the market demand for units of a certain size, in this neighborhood, in a building of this type, the Applicant has proposed 26 units in the church building, and two units in each of the townhouse buildings. This will result in 383.15 square feet of land area per unit, for the proposed 26 units in the church building on Lots 74 and 818 (9,962 sq ft of land area). The proposed layout in the church building will create one studio apartment with 520 square feet, nine one-bedroom apartments, four one-bedroom plus den apartments, 10 two-bedroom apartments, one two-bedroom plus den apartment with 1,235 square feet, and one three-bedroom plus den apartment with 1,615 square feet. Providing fewer units would result in

excessively large units with dark and inefficient layouts. The Applicant's marketing consultant has indicated that creating larger units would not be appropriate for the market.²

The D Street townhouse will be converted back to a matter of right residential use, with two units, including an 800 sq ft one-bedroom unit in the lower level and a 1700 sq ft two-bedroom plus den unit on the upper levels. This includes a partial third floor to allow for rooftop use.

b) Section 401.1 - 9th Street Townhouse

The 9th Street townhouse will also be converted into two units, with a 795 square foot one-bedroom unit in the lower level and a 1,710 square foot two-bedroom unit in the upper levels, including a partial third floor. The 9th Street townhouse is located on Record Lot 67, which measures 17.66 ft in width and 1448.12 sq ft in land area. A flat requires a lot with a minimum width of 18th ft and a minimum land area of 1800 sq ft. Therefore, a variance from Sec. 401.1 is required. Section 401.1 states in relevant part:

The lot area requirements of § 401.3 must be met when the building is being converted to a use or replaced by a building intended to house a use that would require more lot area or lot width than is on the building's lot.³

The width of record lot 67 cannot be increased because the buildings on both sides of the lot are built to the lot line. The church building to the north, the adjacent townhouse to the south, and lot 818 to the west constrain lot 67 on all sides, preventing the lot from being increased to 18

² A search of the Office of Zoning website has produced only one other BZA case for conversion of a purpose-built house of worship to a multiple dwelling in the R-4 District, at 501 E Street, SE (BZA Order No. 14712, dated 1/6/88). That approval resulted in 403 sq ft of land area per dwelling unit. The website shows that the Board approved four other conversions of churches to multiple dwellings in the R-4 zone, but those buildings were originally built for non-church purposes (i.e., row dwellings, apartment house, gas station and tire store). See Exhibit E.

³ This sentence was added by the Zoning Commission in 2007 in Order No. 07-03. The stated rationale in the Order and in the OP Report in that case (see Exhibit G) does not appear to apply to the conversion of a former residential building back to a residential use in a residential zone where most all of the other residential townhouses in the square also sit on substandard-sized lots. Nonetheless, the adopted language is clear, and variance relief is required.

feet in width or 1,800 square feet in land area. Thus, the conversion of the existing building on lot 67 from church administrative use back to the original residential use cannot occur without variance relief from Section 401.1. Even if lot 67 and lot 818 were combined to create a new, larger record lot, that theoretical lot would still fall short of the minimum lot area and lot width requirements for a flat in the R-4 zone. As a result, variance relief from Sections 401.1 and 401.3 would both be required. Without the requested variance from Section 401.1, the 9th Street townhouse cannot be converted back to matter of right residential use.

c) Section 406.1 - Closed Courts

Section 406.1 of the Zoning Regulations requires that a closed court for a flat or multiple dwelling in R-4 districts must have a width of four inches per foot of height of court, but not less than 15 feet, and an area twice the square of the required width of court dimension based on the height of court, but not less than 350 square feet. In this case, in order to provide adequate light to the lower level units on the west side of the church building, portions of the existing areaways will be enlarged to create outdoor terraces adjacent to Units 02 and 03. Although the areaways are existing and may remain, the proposed enlarged areaways have been deemed by the Zoning Administrator to be closed courts. These courts will not meet the minimum 15 foot closed court width or the 350 square foot area requirements of Section 406.1. In addition, an outdoor terrace measuring eight feet in width will be added to the rear of the D Street townhouse at the lower level. This space will likewise be a closed court and will also not meet the 350 square foot minimum area requirement.

Strict compliance with the closed court width and area requirements would require the following changes to the proposed design and dimensions, which would result in a practical difficulty to the Applicant.

1) The width of the closed court at the lower level at the rear of the D Street townhouse would need to increase from eight feet to 21 5 feet to meet both the minimum width and area requirements This would require the elimination of parking spaces 1 and 2.

2) The width of the closed court adjacent to Unit 02 in the church building would need to extend for the full width of the unit and extend out 11 66 feet from the building to meet the minimum width and area requirements This would result in the elimination of the 12-foot walkway between the church building and the D Street townhouse

3) The closed court adjacent to Unit 03 could not meet the area and width requirements in any configuration, due to the proximity of the D Street townhouse

Without the requested relief from the closed court requirements, the Applicant's project would lose parking spaces and valuable outdoor areas that would reduce the overall viability of this project, thus resulting in a practical difficulty to the Applicant

3. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan

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 project will adaptively reuse an existing church building and two flanking townhouse buildings for a residential use with appropriately-sized units in a residential neighborhood The church building will be adaptively reused and repurposed from an obsolete use to a residential use in an artfully preserved historic structure The two townhouse buildings will be similarly converted to what was likely their original residential use The proposed closed courts are appropriate sized for the individual units which they serve, and will have no adverse impact on adjacent properties The project will not have a detrimental impact

on light and air or create an unreasonable intensity of residential use in the neighborhood. Relief can be granted without substantial detriment to the public or to the Zone Plan.

VI. COMMUNITY SUPPORT

The Applicant has worked with the community and has obtained support for the project. The Applicant presented its plans to Advisory Neighborhood Commission ("ANC") 6A's Economic Development and Zoning Committee on January 15, 2014, which voted to recommend that the full ANC support the application for 30 units, with the condition that any contracts for sale or lease of the residential units restrict the number of Residential Parking Permits available to the building to no more than six, and that this restriction be recorded as a covenant in the land records. The Applicant has accepted these conditions. On February 13, 2014, the Applicant was scheduled to present the application to the full ANC, however, due to inclement weather, the meeting was postponed to February 25, 2014. As of the date of this submission, the ANC has not yet voted on the application.

VIII. WITNESSES

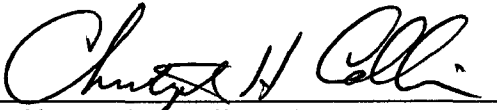
- A. Greg Auger, representative of the Applicant
- B. Bill Bonstra FAIA, Bonstra Haresign Architects
- C. Lynn Hackney, Urban Pace, real estate market consultants
- D. Jami Milanovich, Wells + Associates, traffic and transportation consultant

IX.
CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for variance relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests that the Board grant the application.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By 

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* Admitted to practice in Pennsylvania. Practicing in the District of Columbia pursuant to D.C. Court of Appeals Rule 49(c)(8).