

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

Application of J. River 1772 Church Street, LLC and St. Thomas' Episcopal Parish
ANC 2B

STATEMENT OF THE APPLICANT

This is the application of J. River 1772 Church Street, LLC and St. Thomas' Episcopal Parish ("**Applicant**") for variance relief to permit the construction of a new church and multifamily condominium building as an addition to an existing historic structure. The property that is the subject of this application is 1772 Church Street NW (Square 156, Lot 369) ("**Property**"). A Surveyor's Plat is attached as Exhibit B. The Property is located in the DC/SP-1 Zone District. An excerpt of the Zoning Map is attached as Exhibit C.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment (the "**BZA**" or the "**Board**") approve a variance from Section 532.1 (lot occupancy). The proposed residential lot occupancy is 86.7%, and the maximum permitted is 80%.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Section 3103.2 of the Zoning Regulations (11 DCMR § 3103.2).

III. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

The Property is located in the Dupont Circle neighborhood of Ward 2 and is within the Dupont Circle Historic District. The Dupont Circle Metro station entrance is approximately three blocks southwest. The Property is generally rectangular in shape and contains approximately 15,612 square feet of land area. It is bounded to the north by Church Street (45

feet wide), to the south by a 12-foot public alley, to east by a three-story row dwelling, and to the west by 18th Street (90 feet wide).

The surrounding area contains an eclectic mix of office buildings, chanceries, apartment buildings (moderate to high density), and row dwellings and flats. Because of this mix of uses, the heights and densities of the nearby buildings vary greatly, as shown on the illustration attached as Exhibit D. Immediately to the north are institutional offices and high density apartment buildings. To the east along Church Street are row dwellings and flats, and Church Street is “bookended” at 17th Street by large apartment buildings. Directly west across 18th Street are chanceries and other institutional and/or office uses. One block further west toward Dupont Circle are more institutional and retail uses and a high-density office building. Approximately two blocks to the southwest, on Dupont Circle, an existing building will be converted and expanded to become a six-story apartment building containing approximately 92 units. To the south across the alley are row dwellings, flats, and mid-size apartment buildings. More high density apartment buildings are found on the south side of P Street.

The Property is currently improved with the Parish Hall of St. Thomas’ Episcopal Parish, as shown on the photos in Exhibit E. The Property also had formerly been improved with the main church building of St. Thomas’ Episcopal Parish, completed in 1899, but the structure was lost to a fire in 1970. The Parish Hall is situated on the eastern side of the Property and is currently used by the parish of St. Thomas (the “**Church**”) for all church functions. Ruins of the original sanctuary are along the western side of the Parish Hall. On the western side of the Property, where much of the former church building once stood, there is a private park that the Church has allowed the public to use with its permission. The Parish Hall is a contributing building in the historic district.

St. Thomas' Episcopal Parish has been present in this location since 1894. The Church currently has approximately 250 diverse members and has long been a progressive and prominent institution in both the Dupont Circle neighborhood and the District as a whole. The Church has long welcomed all members of the community and has committed itself to championing social justice and attending to the concerns of the broader community. The Church played a supportive role during the civil rights movement of the 1960s and 70s, and during the AIDS crisis of the early 1980s, the Church played a prominent role in supporting those afflicted.

The Church continues to be committed to social causes and serving the neighborhood, but the Parish Hall, from whence circumstances have forced the Church to operate for the past 45 years since the fire, is not an appropriate or adequate facility. It has become too small for the Church's needs and would require a significant and costly modernization for continued use.

Unfortunately, the Church lacks the financial resources to construct a new building. For that reason, the Church partnered with J. River 1772 Church Street, LLC to jointly redevelop the Property, which will allow the Church to use its land value to construct a new building and remain on the site for its foreseeable future.

IV. PROJECT DESCRIPTION

The Applicant proposes to construct an addition to the Parish Hall in order to create a new church and residential building (the "**Project**"), as shown on the plans in Exhibit F. The Project will consist of two parts: the church building and the apartment building. The church and the apartment buildings will function largely independently, but the Project will be connected and will be considered one building for zoning purposes. The Church has partnered with the developer to create a project that will benefit the District by adding housing – including affordable housing – on an underutilized parcel in a central part of the city. The development of the residential building will provide the funds necessary for the Church, in turn, to construct a

new and modern home that will allow the Church to continue its mission and commitment to the neighborhood and the District.¹

The new church building will be on the western side of the Property so that it has prominent frontage on 18th Street, allowing it to once again be a landmark in the neighborhood. The new church building will contain a sanctuary, church function rooms, classrooms, church offices, and community meeting and gathering space.

The first floor of the church building will contain a large entry lobby that will also function as a ruins gallery to display the remnants of the original church. It will also include a reception area, a conference room, and offices.

The second floor of the church building will contain the church sanctuary and associated spaces, such as the chapel and the vestibule. The third and fourth floors will contain classrooms and meeting space.

The new residential building will be on the eastern side of the Property and will incorporate and preserve the Parish Hall. Effectively, the residential building will have two components: the Parish Hall with an addition above it, and the addition to the west of the Parish Hall next to the new church building. The residential building will incorporate multiple setbacks above the third story to minimize its appearance of height and density. The residential building will contain approximately 56 units.

The overall Project will comply with the Zoning Regulations except in only one respect: lot occupancy. The Project will have a lot occupancy of 86.7%, which exceeds the permitted residential lot occupancy of 80%. However, the lot occupancy will be exceeded only at the levels of the Project containing church use. At and above the church's third floor, the Project's

¹ J. River 1772 Church Street, LLC will own the residential portion of the Project, and the Church will own the church portion. Reciprocal easement agreements exist between them.

lot occupancy will be significantly below the maximum permitted, as shown in the floor-by-floor analysis in Exhibit G.

Other than the relief area described above, the Project will conform to all applicable Zoning Regulations. The Project's height will be at the maximum permitted of 70 feet, and the FAR (4.22) will be below the maximum 4.8 permitted. The Project will have a single level of underground parking that will serve both the church building and the residential building. The parking entrance will be from the alley, and the Project will provide 36 parking spaces.² Although loading is not required under Section 2200.5, some loading facilities at the Project's southeast corner, off the alley, will be provided. The Project will also provide affordable housing consistent with the requirements of Inclusionary Zoning.

V. THE APPLICATION MEETS THE REQUIREMENTS FOR AN AREA VARIANCE

The burden of proof for an area variance is well established. The applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition; (ii) that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant; and (iii) that the granting of the variance will not cause substantial detriment to the public good or substantially impair the intent, purpose, or integrity of the zone plan. *See, e.g., Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). As set forth below, this application meets the three-part test for the requested variance from the lot occupancy requirement.

² The required number of parking spaces is 31. Five tandem spaces will also be provided.

A. The Property is Affected by an Exceptional Situation or Condition

The D.C. Court of Appeals held in *Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A. 2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the "property", not just the "land"; and that "property generally includes the permanent structures existing on the land." *Id.* at 293-294. Indeed, the Court repeatedly has rejected the idea that the exceptional situation and practical difficulty justifying a variance must arise from the physical aspects of the land. *See Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979).

The Property is affected by an exceptional condition because it is improved with the Parish Hall located at one end of the building. Because the Parish Hall is a contributing building in the historic district, it must be retained as part of the Project, and the design of the Project must be compatible with the Parish Hall and the historic district pursuant to the review by the Historic Preservation Review Board (“**HPRB**”).³ The Parish Hall includes many unique architectural features, such as extensive detailing along its front façade; a setback of approximately three feet from the Church Street property line, and site location at the far eastern end of the Property. Together, these features of the Property and Parish Hall drive the Project’s design and create the exceptional condition affecting the Property.

Furthermore, the Property is unique because of the long 120-year history of the Church’s presence there. Based on this history, the Church has a strong and compelling reason to rebuild on the Property, and this history contributes to the uniqueness of the Property that is also part of the basis of the practical difficulty of complying with the lot occupancy requirement.

³ The HPRB granted concept design approval to the Project on July 23, 2015.

B. Strict Application of the Zoning Regulations Would Result in a Practical Difficulty

To satisfy the second element for an area variance standard, the Applicant must demonstrate "practical difficulty." The D.C. Court of Appeals has established that the applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome" and that the practical difficulty is "unique to the particular property." *Gilmartin*, 579 A.2d at 1170. The Court of Appeals has held that the "nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." *Id.* at 1171. "Increased expense and inconvenience to applicants for a variance are among the proper factors for [the] BZA's consideration." *Id.* Some other factors that the BZA may consider are "the weight of the burden of strict compliance" and "the severity of the variance(s) requested." *Id.*

The practical difficulty of complying with the lot occupancy requirement results from the retention of the Parish Hall in its location at the eastern end of the Property and from the requirements of the church and the residential program in one building that is necessary for the Church to remain on the Property. The Project will exceed lot occupancy because it would be very burdensome to create a historically compatible design that could accommodate all necessary first floor functions for the building and conform to the lot occupancy limit. Due to the presence of the historic Parish Hall at the eastern side of the Property, closest to the other nearby residential uses, the Applicant designed the Project with multiple setbacks to minimize the appearance of the building as it rises above the Parish Hall. It would be extraordinarily difficult for the Applicant to design a historically compatible addition to the Parish Hall that has greater mass at the upper floors, which would otherwise allow for less lot occupancy at the lower floors. Thus, the most feasible and historically-compatible design resulted in the need to

“squeeze” much of the Project’s mass into the lower floors so that the upper floors could contain less mass.

However, if the lower floors were to conform to lot occupancy, then the Applicant would be unable to create a feasible design for all of the uses and program functions that must be accommodated on the site and in one building. The Project has three components that form the basis of the practical difficulty with respect to complying with lot occupancy: (1) retention of the Parish Hall, (2) new construction of the church building, and (3) new construction of the residential building. The residential program must be built for the new church to be possible, and the Parish Hall must be included in the overall Project. Programmatic requirements for each of the three components must be accommodated on the Property, and reducing the lot occupancy to a conforming level would greatly compromise those programmatic requirements.

First, because it is a contributing building in the historic district, the majority of the Parish Hall must be retained. This means that without anything else on the Property, 19.2% of the Property’s land area will be occupied by just the Parish Hall. This is the starting place from which new residential construction and new church construction must be accommodated on the Property.

Second, the Church has programmatic requirements that must be accommodated on a single floor of its new building. The church building requires a minimum amount of floor area on one floor so that the sufficiently large sanctuary and communal worship spaces can be provided. The main sanctuary must provide seating for at least 170 people plus associated worship space for the Church’s functional needs to be met. There is a minimum floor area of approximately 5,000 square feet needed to accommodate the sanctuary, vestibule, cry room, and chapel on the same floor. The single floor area necessary to accommodate all of the second

floor functions equates to 32.2% of the Property's land area. This minimum "footprint" necessary for the sanctuary on the second floor determines the lot occupancy for the entire church building because it has the largest single-floor space requirement; therefore, the second floor area determines the lot occupancy for the whole church building. The Parish Hall and the new church building result in a combined lot occupancy of 51.4%, but the new residential structure must still be accommodated.

Third, the first floor of the new construction for the residential building must accommodate both the residential program and the area for the parking ramp to the underground garage. The residential lobby must be located in the new construction, as opposed to the Parish Hall, because the core of the building (elevator, egress stairs, building mechanical risers, etc.) must fully stack and run from the garage up to the top-most level of the building. The HPRB-approved design pushes the taller massing toward the Church in order to keep the height set back from the historic Parish Hall. Since the Parish Hall portion of the building does not extend up to the 7th Floor, it cannot contain the main building core. Based on the building's configuration and massing, it is not possible to accommodate the residential lobby, mailboxes, trash area, two egress stairs and their associated egress access paths and corridors, and other necessary ground-floor functions in a space smaller than approximately 3,000 square feet, which is more area than is left if the Project were to have a conforming lot occupancy.

In addition, the ground floor of the new construction for the residential building must accommodate the area of the parking ramp. No more of the Parish Hall can be removed, and the parking level would be highly inefficient if entered through the Parish Hall in a way that did not remove much of the Parish Hall's fabric (i.e., perpendicular to the alley). Locating the ramp in the Parish Hall would also fill the entire historic structure with ramp and would be counter to the

design approach appropriate for the preservation and rehabilitation of a contributing historic building. Also, the new church building cannot sacrifice much ground floor space necessary to accommodate all of its programmatic needs to the parking ramp. Thus, because the District Department of Transportation policies effectively require parking access from the public alley, the only feasible place to locate the parking ramp is within the footprint of the new construction of the residential building between the church and the Parish Hall and adjacent to the public alley.

The parking ramp will occupy approximately 950 square feet of the area dedicated to the new construction area of the residential building. This would leave only approximately 540 square feet of ground area if the Project were to conform to the lot occupancy limit of 80%. Therefore, the Applicant would be faced with an extraordinary burden if forced to comply with the lot occupancy limit: it would simply not be feasible to accommodate all of the practical functions that must be on the ground floor of the new residential structure.

Finally, it would be infeasible, from a design perspective, to set back the new residential structure from Church Street to create a conforming lot occupancy, which is why 540 square feet of land area remaining for a conforming lot occupancy is insufficient.⁴ Historic design principles dictate that building façades should hold or approach the property line. If the Applicant were to further set back a portion of the new residential structure, then it would face the practical difficulty of attempting to secure HPRB approval of a design element that is clearly contrary to their principles. It would be highly unlikely that the HPRB would approve of such a design that further recesses from the building line established by the Parish Hall. Thus, the new

⁴ Once the parking ramp is accommodated in the area of the new residential construction, then, for a conforming lot occupancy, only 540 square feet of land area would remain to accommodate the residential functions and the design of holding the Church Street property line.

residential structure must occupy more of the lot to maintain its current design of holding the Church Street property line.

The culmination of the retention of the Parish Hall, the minimum necessary floor area for the church building, the necessary floor area for the new residential structure, and the design standard of holding the property line effectively dictate the footprint of the Project. Attempting to deviate from this footprint to conform to the lot occupancy limit would create a significant practical difficulty for the Applicant.

Additional considerations contribute to the practical difficulty that would arise from complying with the lot occupancy requirement. Reducing the lot occupancy of the lower floors would result in reducing the effectiveness of the setbacks required to create a building compatible with the historic district. In order to accommodate the many setbacks on the upper floors that reduce the mass and allow the Parish Hall to remain distinguished and off-set from the addition, it is necessary to have a larger “base” on the lower floors. This condition necessitates a greater lot occupancy.

To summarize, the practical difficulty arises out of the presence of the Parish Hall in its location on the Property and the necessity of providing both the church and the residential building on the site. This is not a “self-imposed” hardship because the Church must maintain its historic presence on the Property, and the Parish Hall cannot be removed. As explained above, the Parish Hall is no longer an appropriate building for the Church, but the Church should not be expected to relocate because of construction challenges on the Property. Also, as described above, the Church does not have the funds necessary to construct a new building without leveraging the value of its land, which necessitates the construction of a residential building since that is the highest and best use of the Property, based on its zoning and location.

Therefore, the practical difficulty with respect to lot occupancy results from the Church's need to remain on the site and front on 18th Street, the necessary footprint of the church building, the location of the residential core/lobby/parking ramp in the new residential structure, and the need to preserve the Parish Hall.

C. Relief Can Be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan

Finally, the Applicant must demonstrate that "granting the variance will do no harm to the public good or to the zone plan." *Gilmartin*, 579 A.2d at 1167. Here, the requested variance can be granted without causing any adverse impact on the neighboring properties or to the Zone Plan.

There will be no harm to adjacent properties or the Zone Plan by granting the relief from the lot occupancy limit for the lower floors. The lot occupancy relief will not allow for additional density or height since the Project will be at or below the matter-of-right limits for both. Rather, the variance will allow for a better design. The lot occupancy relief will allow the permitted density to be better distributed in a way that is compatible with the historic district and the Parish Hall and is necessary to accommodate all of the first-floor functions that are necessary for the Project. Indeed, the Project has a proposed FAR of 4.22, which is less than permitted as a matter-of-right, but the lot occupancy relief will allow the Applicant to construct a less bulky structure than if it had a uniformly conforming lot occupancy for all floors, which would result in much greater bulk at the upper stories. Because the overall density of the Project will be under the matter-of-right limit and the design will be best suited to the historic context, the lot occupancy relief will not result in an overcrowding of land. Nearby properties will be unable to perceive the greater lot occupancy because the compatible design of the Project at the upper

stories will be so restrained and has been carefully sculpted with significant feedback from the HPRB, the HPO staff, the ANC, and the community. Since the upper stories of the Project will have a lot occupancy at or less than what is permitted and the overall Project density will be below what is permitted, granting the lot occupancy variance will not overcrowd the Property, consistent with the purpose of the Zone Plan.

VI. EXHIBITS

EXHIBIT A	APPLICATION, SELF-CERTIFICATION, AUTHORIZATION LETTERS
EXHIBIT B	SURVEYOR PLAT
EXHIBIT C	EXCERPT OF ZONING MAP
EXHIBIT D	ILLUSTRATION OF BUILDING HEIGHTS IN SURROUNDING NEIGHBORHOOD
EXHIBIT E	PHOTOGRAPHS OF EXISTING CONDITIONS
EXHIBIT F	PROJECT PLANS
EXHIBIT G	FLOOR-BY-FLOOR ANALYSIS OF LOT OCCUPANCY
EXHIBIT H	LIST OF PROPERTY OWNERS WITHIN 200 FEET

VII. CONCLUSION

For all of the above reasons, the Applicant is entitled to the requested variance relief in this case.

Respectfully submitted,
GOULSTON & STORRS, PC


Allison Prince


Cary Kadlecek