

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Board of Zoning Adjustment**

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Application No. 19133 of J. River 1772 Church Street, LLC and Saint Thomas' Episcopal Parish pursuant to 11 DCMR § 3103.2 for a variance from the lot occupancy requirements in § 532.1 of the Zoning Regulations to allow the construction of a residential and church addition to an existing building in the DC/SP-1 District at premises 1772 Church Street NW (Square 156, Lot 369).

HEARING DATE: December 15, 2015

DECISION DATE: January 12, 2016

**DECISION AND ORDER**

**Preliminary Matters**

Application. The application was filed by J. River 1772 Church Street, LLC and Saint Thomas' Episcopal Parish (the "**Church**") (together, the "**Applicant**"). The application was filed pursuant to 11 DCMR § 3103.2 for a variance from the lot occupancy requirements in § 532.1. (Exhibits 1-7). The zoning relief requested in this application was self-certified pursuant to 11 DCMR § 3113.2. (Exhibit ("**Ex.**") 3). The application included photographs of the property and plans and elevations depicting the proposed building.

Notice of Application and Notice of Public Hearing. By memoranda dated September 9, 2015, the Office of Zoning sent notice of the application to the Office of Planning ("**OP**"); Advisory Neighborhood Commission ("**ANC**") 2B, the ANC for the area within which the subject property is located; the single-member district representative for ANC 2B07; the Councilmember for Ward 2; and the District Department of Transportation ("**DDOT**"). (Ex. 8-12.)

A public hearing was scheduled for December 15, 2015. Pursuant to 11 DCMR § 3113.12, the Office of Zoning mailed notice of the public hearing to the Applicant, the owners of property within 200 feet of the subject property, and ANC 2B on September 10, 2015. (Ex. 13-15.) Notice of the public hearing was also published in the *D.C. Register* on \_\_\_\_\_.

The Applicant confirmed by affidavit that it had posted notice of the public hearing on the subject property on November 25, 2015. (Ex. 24.)

Public Hearing. The Board held a public hearing on the application on December 15, 2015. At the end of the hearing, the Board closed the record except for several submissions from the Applicant as well as draft findings of fact and conclusions of law from the Applicant and the parties. The Board scheduled a decision for January 12, 2016.

Requests for Party Status. In addition to the Applicant, ANC 2B was automatically a party in this proceeding. The Church Street Neighbors (“CSN”) filed a party status request on December 1, 2015. (Ex. 26.) The Dupont Circle Citizens Association (“DCCA”) also filed a party status request on December 1, 2015. (Ex. 27 & 28.) The Board granted both of these requests. (12/15/15 Hearing Transcript (“12/15 Tr.”) at \_\_\_\_\_.)

Applicant’s Case. The Applicant provided testimony and evidence from Jeffrey Lockwood, the project’s architect, Robert Moluf, a representative of the Church, and Kevin Riegler, a representative of J. River 1772 Church Street, LLC. The Applicant described the project, explained the site’s history, demonstrated the subject property’s exceptional condition, described the practical difficulty of complying with the lot occupancy requirements, and demonstrated that granting the variance would not cause a substantial detriment to the public good or the zone plan. (Ex. 6A-6G, 25-25A, & 139.) At the December 15, 2015 public hearing, the Applicant’s team presented testimony in support of the requested variance. (12/15 Tr. at \_\_\_\_\_.) Following the December 15, 2015 public hearing, at the Board’s request, the Applicant filed additional information relating to modified plans, study of matter-of-right options, its comprehensive traffic review (“CTR”), and possible compromise with the ANC. The Applicant filed this information on January 7, 2016. (Ex. \_\_\_\_.)

Government Reports. By report dated December 8, 2015 and through testimony at the public hearing, OP recommended approval of the application. (Ex. 33; 12/15 Tr. at \_\_\_\_.) OP found that the application satisfied all the criteria for the requested variance, including that the property is affected by an exceptional condition resulting in a practical difficulty and that there would be no substantial detriment to the public good or zone plan. In particular, OP determined that the exceptional condition affects the subject property includes the existence of the Parish Hall, a contributing building in the historic district; the necessity of a design compatible with the historic district; and the Church’s 120-year history on the site. OP also determined that the practical difficulty resulting from the exceptional condition would include accommodating all necessary functions on a single floor and in particular locations; retaining the historic Parish Hall; and a loss of efficiency from moving the core by reducing the lot occupancy at the building rear. The Board finds the OP report convincing because of the thoroughness of the report and because of the specialized knowledge OP has for assessing variances.

DDOT filed a report, dated December 8, 2015, stating that it had no objection to the requested lot occupancy variance. (Ex. 34.) Through testimony at the public hearing, DDOT stated that it found no issues with alley access and that the proposed widening of the alley would resolve any issues. (12/15 Tr. at \_\_\_\_\_.)

ANC Report. At a regularly-scheduled and duly-noticed public meeting held December 9, 2015 with a quorum present, ANC 2B voted 6-2-0 to adopt a resolution opposing the requested variance. (Ex. 72.) The ANC stated that it disagrees that there are not other options for setbacks; that the Applicant’s argument is not convincing; that maintaining historic conditions does not result in a practical difficulty that necessitates a lot occupancy variance; and that “from a neighborhood

perspective the ANC does not believe that the decisions of the Historic Preservation Review Board necessitate a zoning variance.” (Ex. 72.)

John Kupcinski from ANC 2B testified at the public hearing. He acknowledged that a group representing the Applicant, the community, and the ANC negotiated a memorandum of understanding (“MOU”) over a course of three months. He testified that the full ANC rejected the final MOU because of the opposition to the Project that the ANC heard. He also testified that he believed that the Project did not satisfy the variance standards. (12/15 Tr. at \_\_\_\_\_.)

The Board finds that the ANC’s report and testimony are not convincing, and for the reasons stated below, the Board is not persuaded by the ANC’s arguments in opposition to the requested variance.

Persons in support. The Board heard testimony and received letters from persons in support of the application. Ten people testified in support of the application. At least three of the persons who testified in support live within 200 feet of the Property. Persons testified in support based for the following reasons: (1) the extensive community service provided by the Church; (2) the necessity of having more physical space so the congregation can grow; (3) the sanctuary must be a certain size so that the religious services can be performed; (4) denial would adversely impact the Church’s functions but a matter-of-right building would be no more benefit to the neighborhood; (5) the extensive cooperation between the Applicant and the neighbors; (6) benefit to the public interest by providing more housing; (7) no adverse impact on the surrounding community because it returns the lot occupancy condition of former church; (8) no adverse impact on the zone plan because of setbacks at upper levels of building; and (9) the necessity of a new facility so that the Church can continue its mission of providing community services and can better serve its congregation. (12/15 Tr. at \_\_\_\_\_.) The Board also received multiple letters in support of the application. The letters – many from nearby residents – expressed a multitude of sentiments in support of approving the variance, including the many community services provided by the Church; the history and importance of the Church remaining on the site; the historic value of preserving the Parish Hall; the responsiveness of the Applicant in modifying the design to accommodate neighbor concerns; the necessity of adequate and specific amounts of space to accommodate Church functions; the lack of adverse impacts from the variance; the fact that the prior church had nearly identical lot occupancy; the necessity of the partnership with the residential developer; the fact that the design is the result of many compromises and to balance the Church’s/developer’s needs and the community’s concerns; the practical difficulty of designing a building to accommodate all necessary functions; the small amount of variance requested; and the proposed building’s consistency with the neighborhood in terms of height and scale. (Ex. 36, 37, 38, 55, 61, 95, 113, 116, 118, 119, 123, 127.)

Parties in opposition. The CSN party testified in opposition at the public hearing. Their testimony included concerns about: (1) compatibility with the historic district and the overlay district; (2) concern about traffic, parking, and loading; (3) concern about loss of light and air; (4) and concern about loss of green space. They also cited the number of neighbors in opposition. (12/15 Tr. at \_\_\_\_\_.) The DCCA party also testified in opposition at the public hearing. Their

testimony stated that the Project is out of scale and inconsistent with the neighborhood and that they were concerned about the loss of the “park.” Further, they supported the reasoning in Councilmember Evans’ letter that the application did not satisfy the variance test. Finally, they noted that many of their members were opposed to the project. (12/15 Tr. at \_\_\_\_.)

Persons in opposition. At the December 15, 2015 public hearing, the Board heard testimony in opposition from six people. The testimony in opposition was based on the following: (1) belief that there are options for reducing the Project’s footprint to a conforming lot occupancy; (2) height and massing are too large out of character with the neighborhood and the historic district; (3) concern about giving up the right to oppose the variance with the MOU; (4) maintaining historic conditions does not necessitate a variance; (5) belief that a compromise design is possible; and (7) support for the church rebuilding despite opposing the variance. (12/15 Tr. at \_\_\_\_). The Board also received written submissions in opposition. The written submissions included concerns about compatibility with the overlay district, the SP-1 zone, and the neighborhood; project size; detrimental impacts on light and air; traffic and alley congestion; loss of the “park”; alternative designs; and a failure to satisfy the variance standards. (Ex. 29, 31, 60, 65, 67, 69, 75, 77, 80, 85, 102).

Post-hearing submissions. At the conclusion of the public hearing, the Board closed the record except for additional information from the Applicant, and draft findings of fact and conclusions of law from the Applicant and the parties. (12/15 Tr. at \_\_\_\_.) On January 7, 2016, the Applicant submitted the additional information and its proposed findings of fact and conclusions of law. (Ex. \_\_\_\_).

## **FINDINGS OF FACT**

### **The Subject Property and Surrounding Area**

1. The subject property is located in the northwest quadrant of the District of Columbia at 1772 Church Street NW (Square 156, Lot 369) (the “**Property**”). (Ex. 6B, 6F; 12/15 Tr. at \_\_\_\_.)
2. The Property is 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 the east by a three-story dwelling, and to the west by 18<sup>th</sup> Street (90 feet wide). (Ex. 6A, 6F; 12/15 Tr. at \_\_\_\_.)
3. The Property is located in the Dupont Circle Historic District. (12/15 Tr. at \_\_\_\_.)
4. The Property is improved with the Parish Hall of St. Thomas’ Episcopal Parish, which is located at the far eastern end of the Property. The Property also had formerly been improved with the main church building of St. Thomas’ Episcopal Parish, completed in 1899, but that structure was lost to a fire in 1970. 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. (Ex. 6A; 12/15 Tr. at \_\_\_\_.)

5. The Parish Hall and prior church building that was lost to fire had a combined lot occupancy of approximately 87.6%. (Ex. 139; 12/15 Tr. at \_\_\_\_\_.)
6. St. Thomas' Episcopal Parish has been present on the Property since 1894. After the main church was lost to fire, the Church operated out of the Parish Hall and continues to do so. (12/15 Tr. at \_\_\_\_\_.)
7. The Church has long been committed to many social causes and provides social services for the benefit of the public. 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 inflicted. The Church provides meeting space for many community organizations, such as Alcoholics Anonymous and Narcotics anonymous. (Ex. 6A, 12/15 Tr. at \_\_\_\_\_.)
8. The Parish Hall is inadequate to continue accommodating the Church and its operations. The space is too small for all of its functions, it is not handicap accessible, and it needs many upgrades and repairs. (Ex. 6A, 12/15 Tr. at \_\_\_\_\_.)
9. The Church is committed to the neighborhood and desires to rebuild a new church building on the Property. As such, the Church desires to re-establish its prominence and presence in the neighborhood by constructing a new church building at the western end of the Property along 18<sup>th</sup> Street. (Ex. 6A; 12/15 Tr. at \_\_\_\_\_.)
10. The Property is zoned SP-1. The SP-1 Zone District permits multifamily residential dwellings and churches as a matter-of-right. For a mixed-use residential project in this zone, the maximum permitted floor area ratio ("**FAR**") is 4.8 and height is 70 feet as a matter-of-right. Surrounding properties to the north, south, and west are also located in the SP-1 Zone District. Other properties in Square 156 to the east are located in the R-5-B Zone District. (Ex. 6C.)
11. The Property is also included in the Dupont Circle Overlay District ("**DC Overlay**"). The DC Overlay is intended to require a scale of development consistent with the Dupont Circle area and to protect the integrity of buildings contributing to the historic district, which is accomplished through restricting height and density for planned unit developments and limiting driveways and curb cuts. All matter-of-right uses and structures permitted in the underlying Zone District are permitted in the DC Overlay.
12. The surrounding area contains an eclectic mix of office buildings, chanceries, apartment buildings (moderate to high density), and row dwellings and flats. The heights and densities of the nearby buildings vary greatly. Immediately to the north are institutional offices and high density apartment buildings. Along Church Street further to the east are row dwellings and flats, and Church Street is "bookended" at 17<sup>th</sup> Street by large apartment buildings. Directly west across 18<sup>th</sup> 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 has been 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 located on the south side of P Street. (Ex. 6A, 6D, 6E, 6F, 139; 12/15 Tr. at \_\_\_\_)

### **The Applicant's Project**

13. The Applicant will construct an addition to the existing Parish Hall to create a new mixed-use church and multifamily residential building (the “**Project**”). The church and the residential components will function largely independently, but the Project will be one building for zoning purposes. The Project will include three distinct elements: the new church, the new residential structure, and the Parish Hall, which will be incorporated into the residential structure. A shared underground parking garage, accessed via a ramp off the alley to the south, will service the entire Project. (Ex. 6A, 6F, 139; 12/15 Tr. at \_\_\_\_\_.)
14. The new church element, located at the western end of the Property along 18<sup>th</sup> Street, 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 element will contain the main sanctuary and all of the associated rooms and function spaces – such as the vestibule, cry room, and chapel – that must be contained within one floor. The third and fourth floors will contain classrooms and meeting space. (Ex. 6A, 6F, 139; 12/15 Tr. at \_\_\_\_\_.)
15. The new residential element will be on the eastern side of the Property and will incorporate and preserve the Parish Hall. 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 and east of the new church element. The residential element will incorporate multiple setbacks above the fourth floor of the addition west of the Parish Hall and above the third floor of the Parish Hall to minimize Project’s appearance of height and density in response to historic preservation concerns and guidelines as articulated by the Historic Preservation Review Board. The residential element will contain approximately 56 units. (Ex. 6A, 6F, 139; 12/15 Tr. at \_\_\_\_\_.)
16. The Applicant will expand the alley to the south onto the Property at the ground level. The Applicant will devote three (3) to six (6) feet of width to the alley, through an easement, to effectively widen the alley to 15-18 feet for the length of the Property. (Ex. \_\_\_\_; 12/15 Tr. at \_\_\_\_\_.)
17. The Project will have a maximum height of 70 feet (no penthouse) and a FAR of 4.22. Except for lot occupancy, the Project will comply with the Zoning Regulations (11 DCMR). The Applicant requested relief from the lot occupancy requirements as set forth below. (Ex. 6A, 6F, 139; 12/15 Tr. at \_\_\_\_\_.)

## Zoning Relief

18. In the SP-1 Zone District, the Zoning Regulations permit a maximum lot occupancy of 80% for a building with residential use. The lot occupancy of the Project will exceed 80% on residential floors 1 – 4, with a maximum lot occupancy of 86.7% on the first floor. However, to accommodate setbacks, residential floors 5 – 7 will have conforming lot occupancies decreasing from 77.6% to 50.3% as the Project increases in height. The Applicant requested a variance from § 532.1 to accommodate the nonconforming lot occupancy on residential floors 1 – 4. (Ex. 3, 6A; 12/15 Tr. at \_\_\_\_\_.)
19. The Parish Hall, located at the far eastern side of the Property, is a contributing building in the historic district. The Project received concept approval from the District of Columbia Historic Preservation Review Board (“**HPRB**”) on July 23, 2015. (Ex. 6A; 12/15 Tr. at \_\_\_\_\_.)
20. The Church has a 120-year history of its presence and activity on the Property, including loss of its former sanctuary to fire, which compels it to rebuild a new church building on the Property. (12/15 Tr. at \_\_\_\_\_.)
21. Since the Parish Hall is a contributing building in the historic district, it cannot be demolished absent exceptional circumstances, pursuant to the Historic Landmark and Historic District Protection Act (D.C. Code § 6-1101 *et. seq.*). (12/15 Tr. at \_\_\_\_\_.)
22. The Parish Hall is located at the far eastern end of the Property, and its front (north) façade is set back approximately three feet from the Church Street property line. (Ex. 6F, 139; 12/15 Tr. at \_\_\_\_\_.)
23. Pursuant to the applicable historic preservation laws and regulations as administered by the HPRB, the vast majority of the Parish Hall will be retained for the Project.<sup>1</sup> The portion of the Parish Hall that will be retained will have a lot occupancy of 19.2%. (Ex. 6A, 6F, 139; 12/15 Tr. at \_\_\_\_\_.)
24. The Church requires approximately 5,000 square feet to accommodate the sanctuary (170 seats), vestibule, cry room, and chapel on the same floor in the new church element. The Church requires this amount of single floor space to allow sufficient area for its congregation, including room for growth, to participate in religious services. Without this amount of single-floor area, the Church would not be able conduct its religious exercises in the manner it sees fit, adequately provide community services, and perform functions consistent with its mission. The single floor area necessary to accommodate all of the second floor functions in the church will have a lot occupancy of 32.2%. (Ex. 6A, 6F, 139; 12/15 Tr. at \_\_\_\_\_.)

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<sup>1</sup> Only a small portion of the rear of the Parish Hall will be removed.

25. The first floor of the new construction for the residential element, between the Parish Hall and the new church, needs to accommodate certain portions of the residential program. The residential lobby must be located in the new construction, as opposed to the Parish Hall, because the main core of the building (elevator, egress stairs, building mechanical risers, etc.) must fully stack and run from the garage up to the top level of the building. The addition above the Parish Hall does not extend fully to the top of the residential element. (Ex. 6A, 6F, 139; 12/15 Tr. at \_\_\_\_\_.)
26. The taller massing of the Project is oriented toward the Church in the center of the site in order to accommodate historic concerns and to maintain the height set back from the Parish Hall. Since the Parish Hall portion of the Project does not extend up to the 7<sup>th</sup> Floor, it cannot contain the main building core. (Ex. 6A, 6F, 139; 12/15 Tr. at \_\_\_\_\_.)
27. Based on the Project's configuration and massing, the Applicant needs 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 single-floor space sufficiently large. (Ex. 6A, 6F, 139; 12/15 Tr. at \_\_\_\_\_.)
28. The ground floor of the new construction for the residential element, between the church and the Parish Hall, must accommodate the area of the parking ramp, which will consume floor area otherwise available for residential functions. No more of the Parish Hall can be removed, and the parking level would be highly inefficient if entered through the Parish Hall (i.e., perpendicular to the alley). Locating the ramp in the Parish Hall would also fill the entire historic structure with ramp, which would be contrary to preservation and rehabilitation of a contributing historic building. Because DDOT policies strongly favor parking access from the public alley, the only feasible location for the parking ramp is within the footprint of the new construction of the residential element adjacent to the alley. (Ex. 6A, 6F, 139; 12/15 Tr. at \_\_\_\_\_.)
29. The parking ramp must occupy at least 950 square feet of the ground floor area dedicated to the new construction area of the residential element. This would leave insufficient floor area for the other ground floor residential functions if the Project were to conform to the lot occupancy limit. It is not practical to accommodate the functions in such a small area. (Ex. 6A, 6F, 139; 12/15 Tr. at \_\_\_\_\_.)
30. Because of historic constraints, it would not be practical to remove footprint from the new residential structure from the Church Street façade. Historic design principles generally dictate that building façades should maintain the building line consistent with the Parish Hall, which is what the proposed new structure would do. The Applicant would risk HPRB disapproval of a design that further recesses from the building line along Church Street established by the Parish Hall. Thus, the new residential structure must occupy more of the lot to the north to maintain holding the Church Street property line. (Ex. 6A, 25, 25A, 33, 139; 12/15 Tr. at \_\_\_\_\_.)



31. Similarly, because of historic design principles that favor constructing to or near the property line and single-floor space requirements that necessitate extending the church building as far west as possible, it would not be feasible to set back the church element from 18<sup>th</sup> Street or otherwise remove building footprint along 18<sup>th</sup> Street. (Ex. 6A, 25, 25A, 33, 139; 12/15 Tr. at \_\_\_\_\_.)
32. Reducing the Project's footprint at its rear (south) is the only location where it is theoretically possible for a conforming lot occupancy, but that would create design and functionality burdens. Further, such a reduction would not noticeably affect the height or massing as viewed from 18<sup>th</sup> and Church Streets. (Ex. 6A, 25, 25A, 139; 12/15 Tr. at \_\_\_\_\_.)
33. At the ground floor, reducing building footprint from the alley (south) side of the Project would severely disrupt the back-of-house functions in the residential element. If building footprint were removed, then the secondary egress points, which must open onto the alley, would have to be relocated. This would result in a reduction of the area available for the trash room, bike room, and rear elevator access to the loading platform, thereby rendering these spaces largely useless. (Ex. 25, 25A; 139; 12/15 Tr. at \_\_\_\_\_.)
34. Reducing the footprint of residential floors 2 – 6 from the alley side of the Project would leave the parking ramp uncovered and create highly inefficient residential units. An uncovered parking ramp would create multiple operational problems, such as an unsafe space for loiterers and a place where leaves, debris, snow, and trash could easily collect. In addition, removing floor area from the upper floors would compromise the south-facing residential units because they would be too small to accommodate all necessary functions, even if the core were shifted. (Ex. 25, 25A, 139; 12/15 Tr. at \_\_\_\_\_.)
35. In the garage, shifting the elevator core to accommodate a reduction in footprint from the alley side of the Project would create a narrow, non-compliant drive aisle that would eliminate multiple parking spaces, thereby necessitating a variance for parking. (Ex. 25, 25A, 139; 12/15 Tr. at \_\_\_\_\_.)
36. The Project will allow for adequate light and air to nearby properties. The setbacks at the upper floors, which will result in significantly less lot occupancy at those floors and considerably less density overall, will reduce the Project's massing and bulk to allow the passage of ample light and air. (Ex. 6A, 6F, 139; 12/15 Tr. at \_\_\_\_\_.)
37. The lot occupancy of the Project will be nearly identical to that of the combined Parish Hall and former church on the site (approximately 87.6%), so the Project will recreate a condition that was compatible with and characteristic of the Property and the neighborhood. (Ex. 139; 12/15 Tr. at \_\_\_\_\_.)
38. The proposed height, density, and form of the Project are consistent with many other buildings in close proximity to Property, including buildings on 17<sup>th</sup>, 18<sup>th</sup>, and P Streets; and Dupont Circle. (Ex. 6D, 6F, 139; 12/15 Tr. at \_\_\_\_\_.)

39. The widening of the alley onto the Property will prevent traffic conflicts and crowding of the alley, but it will not reduce the Project's lot occupancy. (Ex. 6A, 6F, \_\_\_\_.)
40. The Project and the variance will not result in overcrowding of land. The purpose of lot occupancy, as described in Section 101 of the Zoning Regulations, is to prevent the overcrowding of land. The provided lot occupancy will not cause overcrowding of land because the overall height and density (FAR) of the Project will be at and below, respectively, the limits in the zone, and the setback upper stories of the Project will be well below the lot occupancy limit. (Ex. 6A, 6F, 139; 12/15 Tr. at \_\_\_\_\_.)
41. As determined by the HPRB, the design of the Project is compatible with the Dupont Circle Historic District and the neighborhood. The Project's design features, including the upper floor setbacks, will reduce the appearance of mass and height, and will result in a redistribution of density at the lower floors. (Ex. 6A, 6F, 139; 12/15 Tr. at \_\_\_\_\_.)

## **CONCLUSIONS OF LAW AND OPINION**

### **Variance Relief**

1. The Applicant seeks a variance, pursuant to Section 3103.2, from the lot occupancy requirements to allow the construction of an addition to the existing Parish Hall for a new mixed-use multifamily residential and church building.
2. The Board is authorized under Section 8 of the Zoning Act (D.C. Code § 6-641.07(g)(3)) to grant variances, as provided in the Zoning Regulations, "[w]here, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; provided, that the 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." *See* 11 DCMR § 3103.2.
3. The Board concludes that the Applicant has met the burden of proof under Section 3103.2. For the reasons stated below, the Applicant is entitled to the requested variance relief as a matter of law.
4. The Board finds that the Property is affected by an exceptional condition arising from a confluence of factors. An exceptional condition affecting a property can arise from a combination of multiple factors, including existing structures and non-physical traits extraneous

to the land, such as history. *Gilmartin v. D.C. Bd. of Zoning Adj.*, 579 A.2d 1164, 1168 (D.C. 1990); *Monaco v. D.C. Bd. of Zoning Adj.*, 407 A.2d 1091, 1097-99 (D.C. 1979). In addition, it is not necessary that the property be unreservedly unique to satisfy the exceptional condition standard. Rather, the applicant must prove that a property is affected by a condition that is unique to the property and not shared by other properties in the neighborhood. *Gilmartin*, 579 A.2d at 1168. In this case, the confluence of the status of the Parish Hall as a contributing building in the historic district, the presence of the Parish Hall at the eastern side of the Property, and the Church's long history on the Property satisfy this legal standard for the exceptional condition affecting the Property because it leads to a practical difficulty for the Applicant in complying with the Zoning Regulations.

5. For the reasons stated above in Findings of Fact no. 15 & 19-23, the Board finds that the Property is affected by an exceptional condition that leads to a practical difficulty in complying with the lot occupancy regulations.
  - a. OP concurred that the Property is affected by a confluence of factors that give rise to an exceptional condition. (Ex. 33.)
  - b. The Board acknowledges the ANC's and other opponents' contention that presence of the historic Parish Hall and the decision of the HPRB does not result in a practical difficulty from complying with the lot occupancy requirements, but the Board is not persuaded. The ANC did not consider the confluence of all of the factors that contribute to the exceptional condition on the Property, and the Board finds that retention of the historic Parish Hall, and the associated HPRB review process, is a significant component of and relevant to the exceptional condition. Furthermore, prior knowledge of the Property's conditions does not mean that no exceptional condition exists. *Id.* at 1169. The requested lot occupancy is justified by the Findings of Fact above, and the ANC fails to make a convincing argument that an exceptional condition does not affect the Property.
6. The Board finds that strict application of the lot occupancy regulations would result in a practical difficulty to the Applicant due to the exceptional condition affecting the Property. The Applicant demonstrated with sufficient evidence and testimony that strict application of the Zoning Regulations would result in an inefficient and substandard building design with operational difficulties. Indeed, efficiency, stylistic, feasibility, and design feasibility burdens are among the features that the Board may evaluate as legitimate practical difficulties imposed by Zoning Regulations on the owner of a property. *Palmer v. D.C. Bd. of Zoning Adj.*, 287 A.2d 535, 542 (D.C. 1972); *Washington Canoe Club v. D.C. Zoning Comm'n*, 889 A.2d 995, 1001-02 (D.C. 2005). Further, it is legally proper for the Board to grant a variance where it would result in a more efficient use of property and a decreased inconvenience to the applicant. *See Wolf v. D.C. Bd. of Zoning Adj.*, 397 A.2d 936 (1979); *see also Gilmartin*, 579 A.2d at 1171. The applicant is not required to prove that complying with the Zoning Regulations is impossible or that every conceivable design alternative would result in a practical difficulty; rather, the Board

must determine on a case-by-case basis that a practical difficulty would result from the exceptional condition and that a conforming design would not be feasible.<sup>2</sup> See *Gilmartin*, 579 A.2d at 1170. Finally, the severity of the variance is a proper consideration for the BZA, so a less severe variance may be justified by a lesser practical difficulty. *Id.* at 1171. In this case, the demonstrated inefficient and functionally-challenged design of the Project that would result from compliance with the lot occupancy regulations would impose an unnecessary burden upon the Applicant. The Applicant sufficiently demonstrated that no reasonably feasible alternative for reducing lot occupancy exists; thus, the proposed design would result in a practical difficulty that is greater than the minor relief being sought. As a matter of law, the Applicant’s demonstrated burdens constitute a practical difficulty that warrants variance relief.

7. For the reasons stated above in Findings of Fact no. 24-35, the Board finds that, because of the exceptional condition affecting the Property, the Applicant would face unnecessarily burdensome design, efficiency, and functionality challenges if the Project were to comply with the lot occupancy requirements. Furthermore, based on the Findings of Fact above, the Board finds that the Applicant has sufficiently demonstrated that there is not a feasible means to comply with the lot occupancy requirements and that the severity of the relief – a single variance for 6.7% lot occupancy – is minor compared to the practical difficulty.

a. OP concurred that the Property’s unique circumstances would result in a practical difficulty for the Applicant that would result from strict application of the lot occupancy requirements. OP noted that it “would be practically difficult to create a historically compatible design that could accommodate all necessary first floor functions for the Church (including the sanctuary and communal worship spaces) while conforming to the lot occupancy limit.” OP also stated that the new church and residential program would need to be in one building to allow the Church to remain on-site, but due to the Parish Hall, it would be difficult to reduce the lot occupancy on the lower floors. Further, OP concurred that maintaining the streetwall consistent with other buildings on Church and 18<sup>th</sup> Streets would leave only the rear (south) of the Project for potential reduction in lot occupancy, but reducing lot occupancy in this location would create practical difficulties because of the necessity of accommodating certain first floor functions in the new residential construction. (Ex. 33.)

b. The Board acknowledges the ANC’s belief that satisfying historic requirements and the HPRB’s decision are not the basis for a variance, but the Board is not persuaded. As described in the Findings of Fact, the unnecessary efficiency, design, and functionality burdens that would result from a conforming lot occupancy are based in part on the retention of the Parish Hall and the design elements incorporated specifically to respond

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<sup>2</sup> The D.C. Court of Appeals has stated that the applicant “is not charged with considering every option that a party in opposition may conceptualize” in a special exception case. *Washington Canoe Club*, 889 A.2d at 999. Certainly the same logic would apply in a variance case such that the applicant need not demonstrate that every feasible alternative presented by opposition, no matter how fleeting or ill-conceived, cannot conform to the Zoning Regulations.

to the HPRB's concerns about compatibility with the neighborhood. Thus, historic requirements, in this case, are specifically part of the basis for the variance. (12/15 Tr. at \_\_\_\_).

- c. The Board further acknowledges the ANC's contention that the Applicant could reduce the lot occupancy of the Project from 18<sup>th</sup> Street. However, based on Finding of Fact no. 31 and OP's testimony, the Board finds that this option raises historic preservation concerns and that the Applicant sufficiently explained the reasons why. (Ex. 25, 25A, 139; 12/15 Tr. at \_\_\_\_.)
  - d. The Board acknowledges the argument of the CSN party that there is no logical connection between the Project and the practical difficulty. However, the Board is not persuaded. The Board finds, based on the Findings of Fact, that the Project's design results directly from the exceptional condition of the Property. Therefore, the Applicant's demonstrated practical difficulty that would result from a conforming lot occupancy is necessarily the logical conclusion of the Project.
  - e. The Board acknowledges the contention of the opponents that the Applicant would not be burdened by a practical difficulty from strict application of the lot occupancy requirements and that there are conforming alternatives, but, ultimately, the Board is persuaded by the evidence and testimony from the Applicant and OP, and disagrees with the opponents.
8. Whether granting a variance would result in a substantial detriment to the public good or zone plan is a fact-based analysis for the Board. The granting of a variance is not inherently harmful to the public good or zone plan, and satisfaction of the variance test is not detrimental – including in historic districts and overlay districts – as a matter of law. *Draude v. D.C. Bd. of Zoning Adj.*, 582 A.2d 949, 957 (D.C. 1990). Further, the “public good” is much broader than the narrow interests of some neighbors, so the opponents in this case would need to demonstrate that a 6.7% lot occupancy variance to allow the retention of community-serving church would, on balance, harm the larger public good. *Id.*
  9. For the reasons stated above in Findings of Fact no. 36-41, the Board finds that the lot occupancy variance will not result in substantial detriment to the public good and will not impair the integrity of the zone plan. The Applicant proved that the requested minor variance is not likely to have substantial – if any – adverse impacts, so it will not be a substantial detriment to either the public good or the zone plan. The Applicant demonstrated with illustrations, data, and explanations that the variance can be granted without substantial impact.
    - a. OP concurred that granting of the lot occupancy variance will not result in substantial detriment to the public good. OP noted that the upper-floor setbacks and reduced lot occupancy, and the FAR below the matter-of-right limit would prevent an adverse impact on the public good. (Ex. 33.)

- b. OP stated that granting of the lot occupancy variance will not result in substantial harm to the Zoning Regulations. OP concluded that the Project's design would be consistent with the general provisions of the SP zone and that the setbacks will provide an effective buffer to the nearby residential buildings. (Ex. 33.)
  - c. DDOT stated that widening the alley as the Applicant proposed would be an appropriate measure to accommodate two-way traffic and avoid crowding in the alley. (Ex. 34.)
  - d. The Board acknowledges the contention of the CSN and persons in opposition that granting of the lot occupancy variances would result in substantial detriment to light and air. However, the Board is not persuaded by the opponents' arguments. The opponents did not explain or provide evidence showing how the proposed lot occupancy would cause a substantial diminution of light and air. The Applicant demonstrated that the massing of the Project will decrease with height, which will constrain adverse light and air impacts. Therefore, the Board finds the testimony of the Applicant persuasive and disagrees with the CSN and opponents.
  - e. The Board acknowledges the CSN's argument that the Project's design of a court in lieu of a rear yard substantially harms the public good and zone plan. However, the Board finds that this argument has no bearing on the variance request and disagrees in any event. This application is self-certified, and under § 534.4, a court in lieu of a rear yard is permitted. The Applicant did not seek any relief pertaining to a rear yard or the court, and whether the court is conforming is not at issue in this case. The permitted condition of a court in lieu of a rear yard has no relevance to the impact of the requested lot occupancy variance.
  - f. The Board acknowledges the claims of the ANC, CSN, and DCCA concerning the number of people in opposition to the variance. However, the number of opponents does not persuade the Board, and had the ANC agreed to the MOU, it would have supported the variance. (12/15 Tr. at \_\_\_\_). The Board finds that the "public good" extends to more than just certain residents nearby the Property. The Board also received many letters of support, including from church members and nearby residents, and heard persuasive testimony in support of the variance. The Board finds that granting the variance will not be a detriment to the public good because it will allow the Church to continue its mission of serving the broader public from the same location.
10. The Board finds that compatibility with the DC Overlay is not a proper consideration for this variance request. The Board acknowledges the arguments of the CSN, DCCA, ANC, and some persons in opposition that the Project is incompatible with the DC Overlay, but the Board disagrees. The DC Overlay does not have any prescriptions or prohibitions other than those relating to planned unit developments and curb cuts, so there are no standards by which to assess the Project's conformance. To this point, the Board previously determined that the Zoning Administrator's failure to assess a project's general compatibility with the DC Overlay was not an appealable action. *See BZA Appeal No.18851 of James Hill et. al.* Since any use or

structure permitted by the underlying SP-1 zone is also permitted in the DC Overlay, if the Project complied with lot occupancy, then it would necessarily comply with the DC Overlay. Thus, a variance from the lot occupancy requirements does not translate into a nonconformity with the DC Overlay because there is no provision in the DC Overlay under which to also seek relief. Nevertheless, the Board finds that the Project is compatible with the DC Overlay general provisions and with the Dupont Circle neighborhood because of the substantial upper-floor setbacks; absence of a penthouse; significant preservation of the Parish Hall; and the concept approval by the HPRB. The opponents and the ANC failed to provide any evidence that the Project is not compatible, so the Board is persuaded by the Applicant's evidence and testimony to the contrary.

### **Additional Considerations**

11. Traffic and loading considerations are not germane to the lot occupancy variance requested in this case because the Project complies with the Zoning Regulations with respect to parking and loading. Nevertheless, based on the Applicant's CTR and DDOT's report, the Board finds that the Project will not have a detrimental impact on neighborhood traffic and that that the Applicant's proposal for a loading plan will smooth loading operations at the Project. (Ex. 34, \_\_\_\_.)
12. The Board acknowledges the opposition's concerns about the loss of the "park" on the Church's property. However, this concern is not germane to the analysis of the lot occupancy variance. The "park" is private property, and as a matter of law, the Church can redevelop this space subject to applicable land use regulations.
13. The Board has accorded ANC 2B the "great weight" to which it is entitled as the affected ANC under D.C. Official Code § 1-309.10(d). The Board acknowledges the ANC report and the testimony of the ANC representative at the public hearing. However, for the reasons described above, the Board does not concur with the ANC's recommendation and conclusions, and the Board finds that the evidence weighs in favor of the Applicant.
14. In reviewing a special exception application, the Board is also required under D.C. Official Code § 6-623.04 to give "great weight" to OP recommendations. For the reasons stated in this Order, the Board concurs with OP's recommendations.
15. Based on the findings of fact, and having given great weight to the recommendations of OP and ANC, the Board concludes that the requested zoning relief can be approved.

For the reasons stated above, the Board concludes that the Applicant has satisfied the requirements for a variance from the lot occupancy requirements. Accordingly, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of the application, subject to the approved plans, as shown in Exhibit no. \_\_\_\_ of the record, and subject to the following conditions:

1. Prior to the issuance of a building permit, the Applicant will engage the services of a professional arborist to conduct an assessment of all existing street trees fronting the

property and provide applicable management and preservation measures during construction. If trees are deemed to need replacement by the arborist, the Applicant will consult with the appropriate neighborhood groups including Dupont Circle Historic Main Streets and the Dupont Circle Conservancy for recommended options.

2. Prior to the issuance of a building permit, the Applicant will provide to ANC 2B the Traffic Control and Staging Plan prior to seeking final approval of such plan from DDOT for public comment.
3. Prior to the issuance of a building permit, the Applicant will designate a construction “point person” and will provide their name, email, and cell phone number to ANC 2B to disseminate to the neighbors within 200 feet. This person will be available during work hours and after hours throughout demolition, environmental remediation, and construction to respond to concerns as they relate to the Project.
4. When the parking garage in the Project becomes operational, excess parking may be offered for rent or sale to members of the broader community at the discretion of the Church and the residential building.
5. The Applicant shall have flexibility to modify the design of the buildings to address any comments from the HPRB or Historic Preservation Office staff during final review of the Project, so long as such modifications do not require any additional areas of relief or have a material impact on the final plans approved by the BZA.

**VOTE: - - (other Board seat vacant)**

Vote taken on January 12, 2016

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

Each concurring member has approved the issuance of this Decision and Order.