BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application of Calvary Baptist Church and Congregation, Inc. and Calvary Baptist Church Extension Association
711-725 8th Street, NW

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

I. Background:

The Subject Property, Lots 18, 19, 803, and 835 in Square 429, with premises address of 711-725 8th Street, NW, is currently improved with the Calvary Baptist Church - consisting of the Church sanctuary, Woodward Hall, the Greene Memorial Building, the Abernathy Building, and a parking lot. The Subject Property is zoned DD/C-4. The Church sanctuary, Woodward Hall, and the Greene Memorial Building have been determined by the Historic Preservation Review Board ("HPRB") to be "contributing" buildings to the Downtown Historic District.

The Applicant is pursuing restoration of the facades of the Church sanctuary, (including a modern re-creation of its historic spire) and Woodward Hall, along with renovation and redevelopment of the remainder of the Subject Property (the "Project") pursuant to approvals of the HPRB and the Mayor's Agent for Historic Preservation. This restoration and renovation work at the Church is being made possible by the sale of transferable development rights (TDRs) and land, which will provide for construction of a 90-foot tall mixed use building along the southern portion of the Subject Property.

In order to proceed with the Project, the Applicant seeks variance relief from §1707.5(i) of the Zoning Regulations, which permits up to 25 percent of eligible TDRs to be transferred and fully vest in a receiving site without any relationship to the sending site. At the public hearing, the Applicant will show that it can only proceed with the restoration and renovation program for the Church if it has funds available from the sale of TDRs, yet under the Regulations, the Church cannot transfer more than one-fourth of the total number of TDRs to be generated by the project until after the restoration work has been completed and certified. Under the existing scenario, no prudent developer would purchase TDRs from the Applicant without assurance that the right to construct a building using the TDRs had vested.

Pursuant to §3113.8 of the Zoning Regulations, the Applicant will file its Statement of the Applicant with the Board no fewer than 14 days prior to the public hearing for the present Application. In said Statement, and at the public hearing, the Applicant will provide testimony to meet its burden of proof to obtain the

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Board's approval of the requested variance relief. Following herein, as required by the Board's application process, is a summary statement indicating how the Applicant will meet said burden of proof.

II. Burden of Proof:

A. Variance Relief

The test for variance relief is three-part: (1) demonstration that a particular piece of property is confronted with some exceptional condition or situation; (2) such that, without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty upon the property owner; and (3) that the relief requested can be granted without substantial detriment to the public good or zone plan.

(1) Exceptional Condition or Situation:

The Applicant will demonstrate that the Subject Property is a property within the Downtown Development District ("DD") that is exceptionally confronted with an exceptionally long and narrow site area improved with a number of historic buildings that have been approved for restoration and renovation by the Mayor's Agent for Historic Preservation as a project of special merit. This approval was based primarily upon the agreement of the Applicant to undertake extensive high level restoration of the Church sanctuary, including a modern re-creation of the Church's historic metal spire and the Church clock, and restoration of the façade of Woodward Hall. Based upon this preservation work to be undertaken by the Applicant, the Mayor's Agent has approved partial demolition of one of the accessory buildings, Greene Memorial Building, behind its façade, and the construction of 90-foot tall mixed-use office and retail construction on the southern portion of the Subject Property. The Project has likewise been the subject of continuing HPRB review.

Because the Subject Property is located within the DD and is improved with designated historic buildings, it is subject to the Regulations applicable to historic properties located in the DD. These Regulations include the ability to generate and transfer TDRs as a result of HPRB-approved preservation work undertaken within the DD.

(2) Resulting Practical Difficulty:

The Applicant will demonstrate that the strict interpretation of the Zoning Regulations will result in a practical difficulty upon the Applicant. While the Regulations applicable to historic preservation within the DD provide for the transfer and full vesting of up to 25 percent of eligible TDRs to a receiving site, under the Applicant's current financial situation and non-profit status, it simply cannot undertake the restoration work on the Church until it has obtained funding from the sale of the entire amount of TDRs said preservation project will generate. Yet under the Regulations, said TDRs cannot fully vest with a purchaser until after a certified restoration at the sending site has been completed. Because the Applicant cannot move forward with its Project until it has sold the TDRs it expects to generate, a strict interpretation of §1707.5 of the Regulations results in a practical difficulty to the Applicant.

(3) No Harm to Public Good or Zone Plan:

The Applicant will demonstrate that requested relief can be granted without harm to the public good and without threat to the integrity of the zone plan. With respect to the public good, the Mayor's Agent for Historic Preservation has already determined that the proposed project is necessary in the public interest, in no little measure as a result of the extensive high-level preservation scope proposed. The preservation components of the Project have had the support of the Office of Planning and Advisory Neighborhood Commission 2C. The relief requested will break the circle that has developed where the Applicant must undertake the preservation work before obtaining the TDRs yet cannot begin the preservation work until it has the funding necessary from the sale of the TDRs.

Similarly, the Applicant will demonstrate that the integrity of the zone plan will not be compromised as a result of the Board's approval of the requested relief. In fact, the purchaser of the TDRs is the developer of the new construction portion of the project and construction manager for the preservation scope of work. This purchaser is willing to put itself at risk, to the added security of the District, in that it is willing to make the issuance of the Certificate(s) of Occupancy for the purchaser's new office construction portion of the Project dependent upon the completion and certification of the preservation scope, so long as the Applicant is granted variance from §1707.5(i) to transfer and vest up to 100 percent of said TDRs to the purchaser without regard to the status of work at the sending site. Certificate(s) of Occupancy for the Applicant's construction and renovation portion of the Project shall not be dependent upon such completion and certification.