BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

Application for Area Variances and a Special Exception
To Allow Construction of a Residential Condominium at
10th and V Streets, N.W.

2105 10th Street, N.W., L.L.C., Applicant

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I. Nature of Relief Sought

This is an application by 2105 10th Street, N.W., L.L.C. (the "Applicant") for variance relief pursuant to Section 3103 of the Zoning Regulations and a special exception under Section 3104 to allow construction of a residential condominium at 10th and V Streets, N.W. (Square 358, Lots 5, 6 and 802) (the "Property"). The specific request is for variances from the rear yard, residential recreation space and slope of parking ramp requirements set forth in the Zoning Regulations at 11 DCMR §§ 774.1, 773 and 2117.8, respectively. A special exception pursuant to § 411 is also requested for flexibility from the roof structure setback requirements of § 770.6. The Property is zoned C-2-B/Arts and has 9,563 square feet of land area.

II. Jurisdiction of the Board of Zoning Adjustment

The Board of Zoning Adjustment has jurisdiction to grant the relief requested pursuant to §§ 3103 and 3104 of the Zoning Regulations.

III. The Site, Surrounding Area and Existing Zoning

The site is a nearly square property located at the northeast corner of the intersection of 10th and V Streets, N.W., in the Shaw neighborhood. Lot 802 is occupied

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by the First African New Church (the "Church"), an individually listed historic landmark with the address, 2105 10th Street, N.W. The remainder of the Property is partly vacant and partly occupied by a vacant, two-story brick building formerly occupied by Koons Roofing Company.

The Property is towards the eastern end of the U Street corridor, which has experienced significant new development and renovation of both commercial and residential buildings in the past 10-15 years, proceeding generally from 15th Street towards the east. The immediate neighborhood consists of a mixture of uses and zone districts.[1] The broad band of C-2-B/Arts zoning along and north of U Street and Florida Avenue, extending generally from 11th Street to 7th Street/Georgia Avenue, N.W. (including the Property), is improved predominantly with row dwellings, plus scattered retail and service uses, building materials and trades offices, churches and vacant lots.

The southern and eastern portions of the subject Square 358 are within the C-2-B/Arts District. Existing development on V Street to the east of the Property consists of an automobile repair shop and row dwellings on V Street and extending north along Florida Avenue. On a large site at Florida Avenue and W Street a six-story residential condominium is under construction.

Approximately the northwestern one-fourth of the subject square is devoted to two-story row dwellings and an apartment house, reflecting its R-5-B zoning. The R-5-B district extends two blocks to the west and north, where the predominant uses are townhouses, flats and small apartment buildings. Directly across 10th Street are three-story flats or apartments of fairly recent construction. Immediately across the alley to the

[1] See the "Neighborhood Context Map" in *Exhibit A* and the "Zoning Map" in *Exhibit B*.

north of the Church, a new three-story apartment house is under construction. The Garnett Patterson Middle School structure is located directly across V Street to the south and occupies its entire city block.

The Property is zoned C-2-B/Arts. C-2-B is a medium-density mixed-use zone that allows residential and mixed uses to a maximum height of 65 feet and 3.5 FAR, of which commercial uses are limited to 1.5 FAR. The "Arts" designation refers to the Mixed Use Uptown Arts overlay district, which modifies the base zoning to provide incentives for retail, arts, entertainment and residential uses along the 14th Street, U Street and 7th Street corridors. The provisions of this overlay zone are found in Chapter 19 of the Zoning Regulations.

IV. The Project

The Church will be preserved and converted to condominium apartments, and six stories of new construction will be an addition to the landmark church.[2] The Church is 53.73 feet high[3] and has approximately 5,531 gross square feet ("gsf") of floor area on four levels (1st to 4th Floors). The preservation of this space plus new construction of an additional of 906 gsf at the 3rd Floor level brings the total gsf in the Church to approximately 6,437 gsf.

The attached new apartment building will have a height of 64.5 feet and will accommodate 33,982 gsf of residential space for a total project of 40,171 gsf. This constitutes a 4.20 FAR on the site of 9,563 sf. This density in excess of the normal limit of 3.5 FAR is accomplished by use of bonus density pursuant to the overlay zone.

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[2] See the Photographs of the Property in *Exhibit C*, the "Zoning Analysis" tabulation in *Exhibit D* and the set of Plans in *Exhibit F*.

Subsection 1904.3 states, "A building that provides 3.0 or more FAR devoted to residential use is entitled to a bonus of 0.5 FAR." The project qualifies for this 0.5 FAR bonus by exceeding 3.0 FAR of residential density. Subsection 1904.2 allows each square foot of space devoted to "below-market housing" to earn three square feet of bonus density. The Applicant proposes to include approximately 640 gsf of below-market housing to earn this additional bonus of 1,919 gsf. The total of 4.20 FAR is within the maximum density with bonuses (4.5 FAR) that is allowed in the C-2-B/Arts District under § 1904.1(b). A total of 42-45 apartments are proposed in the project.

Six conforming and 10 nonconforming parking spaces will be provided in the basement level, and an additional three nonconforming spaces will be provided off the alley for a total of 19 spaces. At the C-2-B requirement of one space for every three apartments, the normal zoning requirement would be 15 spaces. However, the landmark property is entitled to the waiver of required parking under § 2100.5. The Applicant notes that this is an urban neighborhood, and the site is within two blocks of the U Street/Cardozo Metrorail station and numerous bus lines.

On December 23, 2004 the Mayor's Agent for Historic Preservation approved the consolidation of lots into a single lot of record to be created for the purpose of carrying out this preservation-new construction project. The Historic Preservation Review Board ("HPRB") had previously granted concept design approval of the restoration and new construction on November 18, 2004 and referred the subdivision request to the Mayor's Agent.

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[3] The height of the steeple, which is exempt from the maximum height under zoning, is 67.07 feet.

The height of the proposed new construction is 64.5 feet, which complies with the 65-foot height limit in the C-2-B District. The proposed building also complies with the following zoning requirements:

- Lot occupancy – 80 percent;
- Side yard – none required or provided;
- Penthouse – single enclosure;
- Parking – 6 conforming spaces in the basement level; plus 13 additional non-conforming spaces are provided; none required for a historic building;
- Loading – none provided or required for a residential building with fewer than 50 units; and
- Open court – exceeds minimum 15-foot width and 350 sf area and thus complies with zoning requirements.

The areas of requested variance relief are from the rear yard setback, the residential recreation space requirements and the parking ramp slope requirements. In addition, a special exception is requested from the penthouse setback/roof structure requirements. The rationale for the requested forms of relief is set forth in the following two sections.

V. The Requested Variances

The requested variances from the rear yard, residential recreation space and slope of parking ramp requirements are area variances, the granting of which requires a demonstration to the Board of Zoning Adjustment (the "Board" or "BZA") that some exceptional condition of the Property creates a practical difficulty for the owner in using or developing it as regulated by zoning. The Board must also find that the requested variances can be granted without substantial detriment to the public good and without substantially impairing the purpose and integrity of the zone plan.

A. **Exceptional Condition/Practical Difficulty.** In this case the practical difficulty stems from the historic designation of the Church and the resultant regulatory and practical constraints on developing the Property.

1. ***Rear Yard Variance.*** Regarding the rear yard setback, a 15-foot rear yard is required under § 774.1. In this project, the main entrance is on V Street, and thus the rear yard is the opposite side -- the northern boundary of the Property -- which borders a 10-foot-wide public alley. In that location the Church faces 10th Street, and its northern side wall is on the northern property line along the alley. The Church by itself is allowed to have no side yard, but as a part of the larger development, it occupies part of the required rear yard setback area based on V Street as the front of the project. The new construction to the southeast of the Church complies with the 15-foot rear yard requirement.

The exceptional condition is that, as a designated historic landmark, the Church essentially cannot be demolished, and accordingly there is no practical way to comply with the rear yard setback under zoning.

The lack of a rear yard is thus a technicality created by V Street becoming the front of the larger project. Along the 10th Street frontage, it is preferable in urban design terms for the church to continue in place rather than to demolish the Church (even if that were to be allowed) and create a 15-foot-wide gap in the built street frontage in order to comply with the rear yard requirement. This is a densely-constructed, urban neighborhood with predominantly attached buildings, and a continuation of that pattern is generally considered preferable to creating large gaps in the street wall.

The alternative of using 10th Street as the front of the project could not be pursued because this would have required construction abutting the rear (east) wall of the Church, thus obscuring this part of the historic landmark and also being complicated by the fact that this wall is not a party wall (unlike the south side wall, which will abut the new construction). Also, creating a 15-foot setback along the eastern border of the property on this small site would substantially reduce the building's footprint, resulting in a significant loss of FAR given the 65-foot height limit and creating serious constraints in laying out the apartment building. Also, as on 10th Street, this approach would create an unattractive 15-foot-wide gap in the built street frontage along V Street, which could potentially become a public safety problem as well.

The Applicant also notes the favorable intent of the Zoning Regulations in avoiding rear yard requirements that result in unsightly gaps in the built fabric. In particular, for Commercial Districts, § 774.9(c) allows a court to be provided in lieu of a rear yard on a corner lot. This relief, however, is limited to the C-3-B through C-5 zone districts. The intent of this regulation should be noted favorably in regard to a mid-rise apartment building in the C-2-B/Arts District as proposed in this application.

2. ***Residential Recreation Space Variance.*** The residential recreation space requirement in the C-2-B District is fifteen percent (15%) of the residential gross floor area of the building. In this case, the requirement is 6,035 square feet. The project plans dedicate 275 square feet of residential recreation space on one roof deck at the 6th story level on the 10th Street side. Immediately adjacent to the deck is an interior room having 363 gsf that will be used as a "function" or "party" room with casual seating and a wet bar. The landscaped portion of the front yard or "parking" at the ground level constitutes

an additional 1,771 square feet of outdoor sitting or walking area as recreation space. The Applicant also notes that a significant number of balconies are provided for the apartment units, totaling 1,191 gsf. Although these are private and thus do not qualify as residential recreation space, they help achieve the goal of on-site recreation space for residents of the building.

The total residential recreation space provided is thus 3,600 square feet, the great majority of which is outdoors and in the spirit of § 773.8, which requires at least 50 percent of the space to be outdoors. This is 60 percent of the required amount of space. Also, the 11-foot, 4-inch east-west dimension of the roof deck does not meet the required 25-foot minimum width requirement of § 773.7.

The practical difficulty regarding residential recreation space stems from the following factors. First, the historic church has a sloping roof that cannot accommodate recreation space. Second, the core facilities in the new construction must serve the Church as well as the new construction and the proportionally large core facilities (in terms of the new construction) preclude a significant part of the combined roof level from being devoted to recreational uses. This leaves a relatively small roof area available for recreation space. Third, the site, at 9, 563 sf is quite small and is rendered smaller still when the footprint of the Church is excluded from it. Setbacks required by the HPRB further decreased the roof area.

3. ***Slope of Parking Ramp Variance.*** Subsection 2117.8 sets forth standards for "a driveway that provides access to required parking spaces." Paragraph (a) states:

> *(a) It shall have a maximum grade of not more than twelve percent (12%) with a vertical transition at the property line.*

Comment: The actual maximum grade provided is a 20 percent slope. This is unavoidable for the following reasons. To maintain historic integrity on the site, the existing and proposed facades on 10th Street and V Street should not be penetrated by a driveway entrance. The only desirable option is off the alley, which is at the high point of the site, although the grade differential is quite small. The driveway must then go below the cellar level of apartments and must accomplish this in a distance of only 95 feet – the north-south dimensions of the building site. Consequently, the grade must be relatively steep to reach the parking level.

B. The requested relief can be granted without substantial detriment to the public good and without substantial impairment of the zone plan. The proposed variances can be granted without detriment to the public good and without impairing the zone plan. As to the rear yard variance, the proposed new construction provides a 31.56-foot rear yard along the east-west alley, significantly exceeding the 15-foot requirement. The Church, which occupies the remainder of this property line, is an existing condition with very few windows facing the alley and properties to the north. Thus, in terms of imposing upon the light, air or privacy of neighbors to the north, the paucity of windows on the north wall of the Church, the extra space provided by the alley and the setback of the new construction assure that there will be no such imposition.

The project is fully in keeping with the purposes of the C-2-B/Arts zoning of the site, as well as the purposes of the Historic Preservation Act. The existing zoning encourages full-density residential buildings up to a maximum height of 65 feet in the interest of adding population, pedestrian activity and consumer support for business and entertainment uses in the 14th and U Street corridors. The project restores the landmark

Church in conjunction with compatible new construction that has received concept design approval from the Historic Preservation Review Board.

Regarding the shortfall in residential recreation space, it should be noted that the purposes of the Arts overlay district are to encourage an active environment of retail, arts and entertainment uses along 14th, U and 7th Streets, in a pedestrian-oriented environment. The residents of the condominium will take advantage of nearby attractions and meet many of their recreational needs in that manner.

Regarding the non-complying slope of the parking ramp, the Applicant notes that this will be a residential property with less in-and-out traffic than many retail, office and nonprofit uses (customers, commuters, business visitors). Also, the total number of parking spaces is relatively small, with 16 spaces on the parking level.

VI. The Requested Special Exception

This Application also requests a Special Exception regarding the roof structure setback (§§ 770.6, 411.11). Subsection 770.6 applicable to the Commercial zones, provides, in part:

> *770.6 If housing for mechanical equipment or a stairway or elevator penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:*
>
> *(a) It shall meet the requirements of § 411;*
>
> *(b) It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located;*

In this Application, the plans provide a north side penthouse setback facing the rear courtyard that is slightly less than the required 1:1 ratio. Specifically, the proposed height of the penthouse is 12 feet, whereas the setback is 10.23 feet. Hence the need for zoning relief.

Section 411 governs roof structures in all zone districts and authorizes a special exception from the setback requirements and some other standards. The following summary indicates compliance with all but the setback requirements. Then the basis for the specific request is set forth.[4]

411.1 Purpose clause. Not regulatory.

411.2 Cross reference to specific standards in zone districts, including § 770.6 applicable to the C-3-A District among others and the subject property.

411.3 All penthouses and mechanical equipment shall be placed in one enclosure and shall harmonize with the main structure in architectural character, material and color.

Comment: The building has one rooftop enclosure. The roof structure has been designed to be low (12 feet), simple and unobtrusive. The exterior material will be a plaster in a light color in the white or gray range. The Historic Preservation Review Board has granted concept design with the roof structure included.

411.4 When there are varying roof levels, multiple elevator cores are allowed.

Comment: Not applicable. Only the new construction has elevator cores, and this roof has one level.

411.5 Enclosing walls from roof level shall be of equal height and shall rise vertically to a roof, except as provided in § 411.6.

Comment: A higher roof is proposed above the elevator machine room to accommodate standard machine requirements. This roof is proposed to be three feet higher than the rest of the penthouse roof. Although the penthouse is allowed to be 18.5 feet tall, the plans have maintained a 12-foot-high penthouse favored by the HPRB and

[4] A copy of the full text of § 411 is attached in *Exhibit E.*

shall be empowered to approve, as a special exception under § 3104, the location, design, number, and all other aspects of such structure regulated under §§ 411.3 through 411.6, even if such structures do not meet the normal setback requirements of §§ 400.7, 530.4, 630.4, 770.6, 840.3, or 930.3, when applicable, and to approve the material of enclosing construction used if not in accordance with §§ 411.3 and 411.5; provided, that the intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.

This is the critical regulation authorizing a special exception from the setback standards of § 770.6. The justification for setting back less than 1:1 from all exterior walls in this project is simply that the 10.23-foot setback dimension aligns with the elevator hoistway and cannot be increased. The elevator provides access from the parking level up to the sixth floor. The hoistway has been set back as far away from the rear yard as possible while still maintaining a 20-foot drive aisle at the parking level.

If this special exception is approved, there is unlikely to be any impairment of the zone plan or any substantial adverse effect on the public. The actual setback is only 1-foot, 9-inches less than the required setback. The penthouse is only 2/3 of the height allowed under the Zoning Regulations (12 feet provided versus 18.5 feet allowed). This reduced height more than offsets the very minor deviation from a 1:1 setback on one of the four walls of the building.

VII. Community Comment

The applicant has presented the plans and discussed the project with Advisory Neighborhood Commission ("ANC") 1B, and the ANC has been generally supportive. The ANC will not take an official position on the application until a time closer to the public hearing. The Cardozo-Shaw Neighborhood Association ("CSNA"), Preservation and Development Committee, has officially endorsed the project.

consistent with the Applicant's desire to keep the overall penthouse as low as possible and thereby minimize its visibility from the street and sidewalk.

411.6 Allows no roof on the penthouse when the penthouse encloses solely mechanical equipment, and use of louvers.

Comment: The Applicant does not request the flexibility allowed in this subsection.

411.7 Additional density of 0.37 FAR is allowed solely for the roof structure.

Comment: The allowed 0.37 FAR equals 3,515 g.f.a. The proposed roof structure is only 1,825 g.f.a. and therefore complies with the regulations.

411.8 Roof structures not to exceed 1/3 of roof area in those zones having a limit on the number of stories.

Comment: Not applicable because the C-3-A District does not have a limit on the number of stories.

411.9 Special provision for mass transit facilities.

Comment: Not applicable.

411.10 The Zoning Administrator is to refer plans to the Office of Planning for review and report as to whether the roof structure harmonizes with the exterior of the building.

Comment: This provision applies to a matter-of-right project. In the instant case, the Office of Planning will report its findings to the Board of Zoning Adjustment.

The special exception provision is § 411.11:[5]

411.11 Where impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable, the Board of Zoning Adjustment

[5] Subsections 411.12 through 411.17 provide rules of interpretation rather than regulation and are accordingly not reviewed as to compliance.

VIII. Conclusion

Based on the analysis and rationale presented in this statement and other evidence submitted to the record of this case, the Applicant believes that the requested variances and the special exception are justified. The Applicant respectfully requests approval by the Board.

Sincerely,
ARNOLD & PORTER LLP

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Attachments