

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

Application of The Missionary Society of St. Paul the Apostle
& Elm Street Development, Inc.

BZA Application No: _____
ANC: 5E

STATEMENT OF THE APPLICANT

This is the application of The Missionary Society of St. Paul the Apostle and Elm Street Development, Inc. (collective, the “**Applicant**”) for special exception and variance relief to allow the construction of multiple buildings on a single lot. The property that is the subject of this application is associated with the address of 3015 4th Street NE (Square 3648, part of ¹Lot 1067 (currently part of Lot 915)) (the “**Property**”) and is described more specifically on Exhibit D. The Property is included in the RA-1 Zone District. A portion of the District of Columbia Zoning Map depicting the Property is attached as Exhibit C, and a Surveyor’s plat is attached as Exhibit D, showing the proposed buildings’ footprints.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment (“**BZA**” or “**Board**”) approve the following relief:

1. A special exception under Section 421 of Subtitle U for new residential development in the RA-1 Zone District;
2. A special exception under Section 305 of Subtitle C to allow multiple buildings on a single lot utilizing theoretical lots; and
3. An area variance from Section 305.3 of Subtitle C for relief from (i) the requirement that means of vehicular ingress and egress to principal buildings

¹ The Office of Tax and Revenue has assigned Assessment and Taxation Lot number 1067 to the parcel subject to this application (along with the “Paulist Land Parcel”). The Property is described in more detail on Exhibit D. A&T Lot 1067, along with A&T Lots 1068 and 1069, comprised the entirety of A&T Lot 915. A&T Lots 1068 and 1069 contain the existing St. Paul’s College building and grounds – currently operated by two public charter schools.

be at least 24 feet in width and (ii) the requirement that rear and side yards be compliant based on the theoretical lot boundaries.

The project will conform to the Zoning Regulations in all other ways.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Sections 900.2 and 1000.1 of Subtitle X of the Zoning Regulations (11 DCMR Subtitle X, §§ 900.2, 1000.1).

III. DESCRIPTION OF PROPERTY AND SURROUNDING AREA

The Property is located in the Brookland neighborhood of Ward 5. The Property is irregularly-shaped and contains approximately 219,400 square feet of land area. The Property is currently unimproved with structures. The Property is bounded to the north by the Conference of Bishops property, to the south by the Chancellor's Row townhouse development, to the west by 4th Street NE, and to the east by the Chancellor's Row townhouse development and the "St. Paul's College" building.

The surrounding area is a mixture of residential and institutional buildings. The Chancellor's Row development that surrounds most of the Property to the south and east includes approximately 237 three (3) and four (4) story townhouses. Such development was approved as a Planned Unit Development and Zoning Map Amendment (to the R-5-B Zone District) by Z.C. Order Nos. 07-27 and 07-27A. Across 4th Street to the west is Trinity College. Further to the south, the neighborhood is composed of primarily row dwellings. Multiple religious institutions own and occupy properties further to the north.

IV. THE PROPOSED PROJECT

The Applicant proposes to construct twelve (12) new buildings with approximately 78 townhouse-style units on a single lot (the "**Project**"), as shown on the plans attached as Exhibit I (the "**Plans**"). Each unit will appear as and be owned as a single-family townhouse, but they will

be grouped into twelve (12) individual buildings for zoning purposes. Each building will have between four (4) and nine (9) units. The buildings will be oriented around private roads, driveways, and landscaped areas. The majority of the southernmost portion of the Property (approximately 65,575 square feet) will be open, including approximately 47,300 square feet of such space which will be landscaped. The remainder of the southern portion of Lot 1067 (approximately 22,225 square feet) will likely be retained by the Paulist Fathers for their future structure, although such parcel is not included in the instant application (as shown on Exhibit D). The residential units at the Project will each provide three (3) or four (4) bedrooms and be ideal for families, a housing type in high demand and short supply in the District.

Each building will have a height of up to 40 feet. Overall, the lot occupancy of the Project will be a maximum of approximately 33% (excluding private streets). The Project will have an overall floor area ratio (“**FAR**”) of up to approximately 0.92 (including private streets) or up to approximately 1.07 (excluding private streets). The individual units will have widths of 20, 16, or 14 feet. Each unit will have parking.

Some of the buildings will not conform to the Zoning Regulations with respect to rear and side yard setbacks when considered on the relevant theoretical lot boundaries. However, the global project zoning metrics will comply with the height, density and lot occupancy requirements. We note that the internal private streets are not factored into such metrics (except where otherwise noted) for purposes of conservative calculations. The buildings vary in terms of the yards provided. In the RA-1 Zone District, a rear yard of 20 feet is required. At the Project, the buildings on the theoretical lots all provide 6.67 foot rear yards (when no decks are considered), 13.3 feet less than the required 20 foot rear yards or 1.67 foot rear yards (when decks are considered), 18.3 feet less than required when such decks are elected to be installed. In the RA-1 Zone District, side yards must be three (3) inches in depth for every foot of building height or ten (1) feet for the proposed 40

foot buildings. The buildings on the Project’s theoretical lots provide varying side yards between 3.67 feet and 13.63 feet. Three (3) of the buildings provide side yards over the required amount, while nine (9) buildings will require relief. The provided metrics described above and requested relief are shown in more detail in the table on page C-03 of the Plans.

Access to the buildings will be via private streets and driveways, but the width of some of these streets will not conform to the Zoning Regulations. The main traffic thoroughfare on the Property is 26 feet in width. However, some of the private streets that branch off of this main thoroughfare leading to the individual buildings are 20 feet in width, and therefore require relief from the 24-foot minimum width requirement, as shown on page C-07 of the Plans.

V. THE APPLICATION MEETS THE REQUIREMENTS FOR A SPECIAL EXCEPTION FOR NEW RESIDENTIAL DEVELOPMENT

Under Section 421 of Subtitle U of the Zoning Regulations, new residential development is permitted in the RA-1 zone if approved by the Board as a special exception. Sections 421.2 – 421.4 set forth the special exception criteria that the Application must satisfy for the Board to approve such a use. As described below, the Project satisfies these criteria.

- A. The Board of Zoning Adjustment shall refer the application to relevant District of Columbia agencies for comment and recommendation as to the adequacy of . . . (a) existing and planned area schools to accommodate the numbers of students that can be expected to reside in the project; and (b) public streets, recreation, and other services to accommodate the residents that can be expected to reside in the project. (Subtitle U § 421.2)*

The application will be referred to the relevant agencies for the reviews described in this subsection. The Applicant will work with the District Departments of Transportation (“DDOT”) to address concerns or issues related to public streets and traffic. Further, the Applicant will work with the D.C. Department of Education to address concerns or issues related to the Project’s effect on area schools. Other District agencies will be involved to address any other concerns or issues relating to recreation and other services related to the Project.

B. The Board of Zoning Adjustment shall refer the application to the Office of Planning for comment and recommendation on the site plan, arrangement of buildings and structures, and provisions of light, air, parking, recreation, landscaping, and grading... (Subtitle U § 421.3)

The Applicant has met with the Office of Planning (“OP”) and the Historic Preservation Office (“HPO”) and has refined the Project in response to OP’s and HPO’s requests. The Applicant will continue to meet with OP and HPO regarding the Project and will address additional issues that may arise from OP and HPO.

C. ... the developer shall submit to the Board of Zoning Adjustment with the application a site plan and set of typical floor plans and elevations, grading plans (existing and final), landscaping plans, and plans for all new rights-of-way and easements. (Subtitle U § 421.4)

All site plans, grading plans, landscaping plans, and rights-of-way plans as described in this section are included with the plans included in the Plans.

D. The requested relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property.

Since the application satisfies the specific criteria set forth in Section 421 of Subtitle U, the proposed Project will be harmonious with the general purpose and intent of the Zoning Regulations and Zoning Map and will not adversely affect neighboring property. As a matter of policy, a project of the proposed size is an appropriate use in the RA-1 zone, provided that it satisfies applicable criteria. Given the Project’s characteristics, nothing about the proposed size or use contravenes the intent of the Zoning Regulations. Further, the Project advances the important goal of increasing the housing and affordable housing supply in the Washington, D.C. area, especially three (3) and four (4) bedroom housing units that are suitable for families.

The Project will not adversely affect neighboring property. In fact, the Project will complement and enhance the use of the St. Paul’s College building as public charter schools. Further, the Project will be a less dense continuation of the Chancellor’s Row townhouse

development to the east and south of the Property. The Project is a less dense proposal than such townhouse community (which has an FAR of approximately 1.27). The Project also does not adversely affect the use of other residential or institutional users within the near vicinity of the Property.

VI. THE APPLICATION MEETS THE REQUIREMENTS FOR A SPECIAL EXCEPTION FOR MULTIPLE BUILDINGS ON A SINGLE LOT

Under Subtitle C, Section 305 of the Zoning Regulations, multiple buildings may occupy a single lot if approved by the Board as a special exception. Sections 305.1 – 305.7 set forth the special exception criteria for the Board to consider and approve such a theoretical lot approach. As described below, the proposed Project satisfies these criteria.

- A. *In the R, RF, and RA zones, the Board of Zoning Adjustment may grant, through special exception, a waiver . . . to allow multiple primary buildings on a single record lot. (Subtitle C, § 305.1)*

The Property is located in the RA-1 Zone District.

- B. *The number of buildings permitted by this section shall not be limited; provided, satisfactory evidence is submitted that all the requirements of this section are met based on a plan of theoretical subdivision where individual theoretical lots serve as boundaries for assessment of compliance with the Zoning Regulations. (Subtitle C, § 305.2)*

Each proposed building will comply with the requirements of Section 305 of Subtitle C, as shown in the Plans, except as otherwise described in this statement. The development standards for the Project are measured based on the theoretical lots on which each of the twelve buildings is situated, as shown on page C-03 of the Plans.

- C. *The following development standards shall apply to theoretical lots:*
 - (a) *Side and rear yards of a theoretical lot shall be consistent with the requirements of the zone;*
 - (b) *Each means of vehicular ingress and egress to any principal building shall be at least twenty-four feet (24 ft.) in width, exclusive of driveways;*

(c) The height of a building governed by the provisions of this section shall be measured from the finished grade at the middle of the building façade facing the nearest street lot line (Subtitle C, §305.3)

The yards provided at the Project are adequate to provide sufficient buffers for each building on the Property. However, in some instances, the Applicant has requested variance relief from some of the open space development standards based on constraints of the Property, as addressed in Section VII below. Second, the main access street for the Property, which will be the primary means of vehicular ingress/egress, will have a minimum width of 26 feet, though some of the private access streets will have a width of 20 feet, for which the Applicant has requested variance relief as described in Section VII below. The Project's alleys will operate as private driveways and be at least 20 feet in width. Finally, the height of each building is measured from the finished grade at its middle front in compliance with the Regulations. The specific development standards are set out on page C-03 of the Plans.

D. The following information is required to be submitted to the Board of Zoning Adjustment . . . :

(a) Site plans including the following information: (1) a plat of the record lots proposed for subdivision; (2) the location of proposed streets and designated fire apparatus roads; (3) location of proposed easements; (4) lot lines of proposed theoretical lots, and the delineation of the lot lines shared by theoretical lots that will serve as private drives or easements; (5) existing grading and proposed grading plans; (6) existing landscaping and proposed landscaping plans, including the sizes and locations of all trees on or adjacent to the property on public or private lands; (7) plans for the location of building footprints on theoretical lots; and (8) required yards (rear, side and front) based on the regulations applicable to a zone or any modifications to regulations provided through this section;

(b) Typical and individual floor plans and elevations for the proposed buildings and structures; and

(c) A table of zoning information including required and proposed development standards. (Subtitle C, §305.4)

Site plans, typical floor plans, grading plans, landscaping plans (including showing the sizes and locations of all trees), and rights-of-way plans are included with the Plans. A surveyor's plat is attached as Exhibit D. A table of zoning information is included on page C-03 of the Plans.

E. Before taking final action on an application under this section, the Board of Zoning Adjustment shall refer the application to the Office of Planning for coordination, review, and report... (Subtitle C, § 305.5)

The application will be referred to OP for the described coordination, review, and report. The Applicant has met with OP and HPO and has revised the Project accordingly. The Applicant will continue to meet with OP and HPO and work with other agencies, including DDOT, the Department of Energy and the Environment (“DOEE”), the D.C. Department of Education, and any other agencies or departments necessary regarding the Project. The Applicant will also continue to meet with the community, including ANC 5E and neighboring property owners, regarding the Project.

F. The proposed development shall comply with the substantive intent and purpose of this title and shall not likely have an adverse effect on the present character and future development of the neighborhood. (Subtitle C, § 305.6)

To the greatest extent practical, the Project will comply with the development standards in the Zoning Regulations. However, as described below in Section VII the Applicant is requesting variance relief from some of the development standards of the Zoning Regulations. Nevertheless, the Project will be consistent with the existing character of the neighborhood. Like the Chancellor's Row project, this Project will consist of a series of townhouses oriented around open spaces. The Project will have a similar site plan and compatible architecture, so it will easily integrate into the existing neighborhood fabric and will not adversely affect future development. The Project has been designed to celebrate and incorporate the design of the surrounding fabric – particularly the Chancellor's Row community. It is important to note that the Project maintains a large open area at the south of the Property, including approximately 65,575 square feet of space, approximately

47,300 square feet of which is landscaped. Such space will allow for the “viewshed” from 4th Street, NE to the St. Paul’s College buildings adjacent to the Property to be unbuilt on the Property.

G. The Board of Zoning Adjustment may impose conditions with respect to the size and location of driveways; floor area ratio; height, design, screening, and location of structures; and any other matter that the Board determines to be required to protect the overall purpose and intent of the Zoning Regulations. (Subtitle C, § 305.7)

The Applicant is open to open to additional conditions beyond those described within this statement as described above, although the Applicant believes such additional conditions are unnecessary in this case. The Project will include ample open space, will have heights and an overall density consistent with the underlying zone, and will have a site plan designed to maximize light, air, and privacy. Furthermore, the Project will include landscaping that will accentuate the greenery that defines this neighborhood as well as maintain the privacy of the site.

H. The requested relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property.

Since the application satisfies the specific criteria set forth in Section 305 of Subtitle C, the Project will be harmonious with the general purpose and intent of the Zoning Regulations and Zoning Map and will not adversely affect neighboring property. The Project will comply with the standards of the Zoning Regulations to the greatest extent possible without adversely affecting neighboring properties, as discussed further in this statement. Also, the residential nature of the Project seamlessly blends with the surrounding neighborhood uses. Perhaps most importantly, the relief requested allows the Property to be used efficiently while still remaining below the maximum zoning constraints for the site on a cumulative basis.

The Applicant has met with the neighboring Chancellor’s Row community several times over the past year and plans to continue such meetings. Over the course of these meetings, the Applicant has significantly revised aspects of the Project, including reducing the number of

townhouses units to provide more open space, increasing the size of setbacks from the Chancellor's Row community, redirecting the Project's northern driveway and circulation road away from Chancellor's Row, and working to redesign the Project's southern 4th Street driveway north away from the Chancellor's Row neighbors comprising the southern portion of the Property. The Applicant intends to continue such cooperation with Chancellor's Row throughout the design and implementation processes. It is the Applicant's intent that the open space to be provided at the south of the Property (i.e., the viewshed area) will remain open to the public for use as a park. The Applicant believes that residents from Chancellor's Row will find such area to be of particular value.

VII. THE APPLICATION MEETS THE FOR VARIANCE RELIEF FROM (I) THE MINIMUM WIDTH REQUIREMENTS FOR INGRESS/EGRESS ACCESS TO PRINCIPAL BUILDINGS AND (II) THE MINIMUM SIDE AND REAR YARD REQUIREMENTS

In order to obtain area variance relief, an applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition, (ii) the strict application of the Zoning Regulations will result in a practical difficulty to the applicant, and (iii) the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose, or integrity of the Zone Plan. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972).

A. The Property is affected by an exceptional situation or condition.

The Court of Appeals held in *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990), that it is not necessary that the exceptional situation or condition arise from a single situation or condition on the property. Rather, it may arise from a "confluence of factors". *Id.*

In this case, the Property is affected by exceptional conditions based on a "confluence of factors." First, the Property has a very unusual and atypical lot configuration. As stated above, the

Property is bounded by Conference of Bishops property, to the south by a townhouse development, to the west by 4th Street NE, and to the east by a townhouse development and the “St. Paul’s College” building. The neighboring properties are largely used for similar residential, townhouse-style uses. There are also institutional uses in the surrounding area including the educational use of the existing St. Paul’s College building. The surrounding property lines and buildings create an irregular-shaped lot for the Property. Further, the Property has a difficult topography with significant variation in ground levels across the Property. Perhaps most importantly, a significant portion of the Property is to be incorporated into the preserved viewshed area for the St. Paul’s College as part of its historic preservation designation. As such, the location of the buildings proposed by the Project are so designed because these are the only practical locations to locate the buildings given the Property’s historic sensitivity, layout and topography. In addition, the Applicant has endeavored to retain many trees on the Property, which has further complicated the placement of the buildings and the ability to provide larger yards and vehicular accessways.

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 results from odd configuration, open space/viewshed requirements, and topography of the Property. These elements require the proposed buildings to be located where they are proposed, and thus dictate the area of the private drives to access those buildings and the proposed yards. Due to these conditions, some of the ingress/egress drives to the individual buildings are less than the required 24 feet in width. However, the main ingress/egress drive is wider than the required width at 26 feet (as requested by D.C. Fire and Emergency Services (“FEMS”)).

Requiring compliant ingress/egress drives would reduce the amount of green, landscaped space provided by the Project and, in particular, it would push buildings closer to existing trees, potentially resulting in their removal. Such effect would undermine the Applicant’s efforts to maximize greenery and retain as many trees as possible. Further, the increase in the size of the ingress/egress drives would push the buildings into open spaces surrounding the Project. Perhaps most importantly, such increase to accessways would push the southernmost buildings into the “viewshed” area at the south of the Property. Strict compliance with the ingress/egress requirements would also result in the significant regrading of the site, along with the introduction of additional retention walls. The Project has been delicately designed to accommodate the significant topography and uniqueness of the land. Sliding the buildings even a few feet would have major ramifications. In addition, the increase in the size of the accessways would also complicate the Applicant’s stormwater strategy, where pervious surface has been maximized where possible.

Similar to the above, requiring compliant side and rear yards across all buildings would have pushing the southernmost buildings into the “viewshed” area at the south of the Property. As mentioned elsewhere in this statement, the Project has been sensitively designed, at the request of historic preservation staff, to maximize the open area at the south of the Project. Also, as

mentioned above, since the Project has been designed to accommodate the significant site topographical and configuration challenges, even slight alterations to the siting of the Project's buildings (in order to increase side and rear yards) would require a great deal of regrading of the site, along with the introduction of additional retention walls.

In addition to greatly increasing the difficulty and complexity of the Project, requiring compliant accessways and rear and side yards at the Project would greatly increase the expense of the Project itself for all of the reasons described above.

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.

The private streets as part of the Project will be used primarily for access to the buildings with no direct connection to the public street network. Therefore, the narrower street width will not impact neighboring residents who are driving in the area. Instead, these accessways will service only elements of the Project. As mentioned, the Applicant has retained the services of Gorove Slade as the Project's transportation consultant to ensure that the proposed vehicular accessway and driveways function. In addition, the Applicant met with FEMS relating to the proposed vehicular circulation and FEMS agreed to the layout, including the accessways and driveway widths as proposed. In fact, FEMS requested that the 26 foot wide accessways be provided as shown on the Plans. Additionally, the design and layout of the buildings, including the streets, fit within the street and driveway access pattern and widths of the existing neighborhood.

Additionally, the yards of the individual buildings provide sufficient open space between the Project buildings and roads. The Project maintains significant open space around the Property to

create an appropriate buffer for neighboring Property owners and provide ample viewsheds at the Property. The use of theoretical lots – and the relief necessary for the improvement of these lots – grants the flexibility needed to maintain the significant open, green spaces on the Property and unlock the productive use of this site. It allows the Project’s buildings to be located away from the “viewshed area” at the south of the Property and thereby creates an expansive green area between the St. Paul’s building and 4th Street. In addition to the open space furnished elsewhere on the Property, approximately 47,300 square feet of such open, green space has been consolidated at the south of the site, while even more non-landscaped open space exists at such location. The Project provides an appropriately-sized housing community in an area with similar (or more intense) housing types and densities. The Project complements the uses in the surrounding area by providing a similar and appropriately-sized residential development for families in DC. Based on OP and HPO feedback, the Applicant refined the design to maintain the “viewshed” area of the Property for viewing the St. Paul’s College building from 4th Street, NE. The Property as a whole maintains appropriate green space and provides an appropriately-sized residential Project.

The Project will also not cause an adverse impact on the Zone Plan. There will be no adverse impact from the requested variance on the surrounding properties because the Project’s accessway design does not undermine any buffer between the Project and the surrounding properties and the proposed yards are in addition to the other significant open spaces on the Property. More generally, the Project’s design fits within the neighborhood’s character and the Zone Plan’s vision for this area. The main ingress/egress private drive at the Property, which provides circulation on and access through the site, is above the 24 foot minimum width requirement. The few accessways that do require relief will have traffic limited only traveling to individual residences, and the 20 foot width provided is sufficient to accommodate the relevant traffic. Additionally, the yards that require relief continue to provide adequate open areas in a

development of this kind, and the maintained open space around the proposed development protects the Project from adversely affecting views, light and air at neighboring properties.

Finally, the Project helps achieve the District goals related to housing and open space. The requested relief helps achieve the District's goal of increasing the amount of green space provided on private properties while also reducing the amount of pervious surface. The Project will also benefit the public by efficiently utilizing an underutilized parcel in a growing residential area in the Brookland neighborhood. The Project will provide additional housing and affordable housing in a high-demand area in accordance with the Mayor's goals to increase both the number of residents and the degree of homeownership by families in the District. Additionally, the Project furthers the goals and policies of the Zoning Regulations related to the increase of housing, especially three (3) and four (4) bedroom homes suitable for families.

VIII. CONCLUSION

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

Respectfully submitted,



Jeff C. Utz



Meghan Hottel-Cox