

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19377 of The Boundary Companies and the Missionary Society of St. Paul the Apostle, as amended,¹ pursuant to 11 DCMR Subtitle X, Chapter 9 for special exceptions under the theoretical lot subdivision requirements of Subtitle C § 305.1, the roof structure requirements of Subtitle C § 1500.4, and the new residential development requirements of Subtitle U § 421, and pursuant to 11 DCMR Subtitle X, Chapter 10, variances from the vehicular access requirements and the RA-1 Zone development standards of Subtitle C § 305.3, to construct 60 row dwellings and a new clerical residential building in the RA-1 Zone at premises 3015 4th Street, N.E. (Square 3648, Lot 915).

HEARING DATE: April 25 and May 23, 2018
DECISION DATE: July 11, 2018

DECISION AND ORDER

Pursuant to notice, the Board of Zoning Adjustment (the “**Board**”) held a public hearing on April 25 and May 23, 2018, to consider a self-certified application, as amended (the “**Application**”), filed by the Boundary Companies and the Missionary Society of St. Paul the Apostle (the “**Applicant**”) This self-certified application was submitted on September 26, 2016. The Missionary Society of St. Paul the Apostle (also referred to herein as the “**Paulist Fathers**”) is the current owner of the property at 3015 4th Street, N.E. (Square 3648, Lot 915) (the “**Property**”) and the intended occupant of the clerical residence portion of the project. The Boundary Companies is the intended developer of the residential component of the project.

The Board conducted public hearings and considered the Application in accordance with the provisions of Subtitle Y of Title 11 of the D.C. Municipal Regulations (Zoning Regulations of 2016, the “**Zoning Regulations**,” to which all references are made unless otherwise specified).

¹ The caption has been modified to reflect an amendment to the Application. The Applicant initially requested special exceptions under Subtitle U § 421 and Subtitle C § 305.1, as well as an area variance from Subtitle C § 305.3 to allow multiple buildings – a residential development consisting of 12 new buildings, containing approximately 78 dwelling units – on a single lot utilizing theoretical lots with private vehicular access to each building, and area variances from the requirements of Subtitle C § 305.3 that the means of vehicular access must be at least 24 feet wide and that rear and side yards must be compliant based on the theoretical lot boundaries. (See Exhibits 1, 4, 11.) The Application was amended when the Applicant’s project was revised to propose 60 row dwellings and a new clerical residential building. (Exhibits 64, 64D.)

For the reasons explained below, at its January 30, 2019 public meeting, the Board voted to **APPROVE** the Application, subject to conditions.

PRELIMINARY MATTERS

Notice of Application and Notice of Public Hearing. By memorandum dated October 4, 2016, the Office of Zoning sent notice of the Application to the Office of Planning (“**OP**”); the District Department of Transportation (“**DDOT**”); Advisory Neighborhood Commission (“**ANC**”) 5E, the ANC for the area within which the Property is located; and the single-member district (“**SMD**”) representative for ANC 5E01 as well as to the Councilmember for Ward 5, the four at-large members, and the Chairman of the Council of the District of Columbia. By memoranda dated April 10, 2018, the Office of Zoning sent notice of the Application to the Department of Parks and Recreation and to the Office of the Deputy Mayor for Education.

Pursuant to Subtitle Y § 402.1, on October 7, 2016, the Office of Zoning mailed notice of the hearing to the Applicant, ANC 5E, and the owners of all property within 200 feet of the Property. Notice of the hearing was published in the *D.C. Register* on October 14, 2016. The hearing was originally scheduled for December 7, 2016. The Applicant requested four postponements of the public hearing in order to continue working with the community and the party in opposition requested one postponement of the public hearing, and the Board approved all postponement requests. The public hearing was scheduled for April 25, 2018. The Applicant confirmed by affidavit that it posted notice of the public hearing on the Property on April 9, 2018.

Public Hearing. The Board held a public hearing on the Application on April 25, 2018 and May 23, 2018. At the end of the May 23 hearing, the Board closed the record except for submissions providing a final set of plans, a response on certain issues, and a draft findings of fact and conclusions of law from the Applicant, and responses from the other parties. The Board scheduled a decision for July 11, 2018, when it deliberated and voted to approve the Application subject to conditions.

Party Status. The Applicant and ANC 5E were automatically parties in this proceeding. On November 22, 2016, the St. Paul’s College Neighbors for Thoughtful Development (“**Neighbors for Thoughtful Development**” or “**NTD**”), a group of residents in the adjacent Chancellor’s Row development, filed an application for party status in opposition to the Application. The Board granted NTD’s request for party status on February 8, 2017.

Applicant’s Case. The Applicant provided testimony and evidence from the Very Reverend Eric Andrews, C.S.P, a representative of the Paulist Fathers; Stephen Horne, a representative of the Applicant; Warren Ralston of W.C. Ralston Architects, residential architect for the project and an expert in architecture; John Edwards of Bonstra Haresign Architects, also an expert in architecture; Loren Helgason of Studio 39, an expert in landscape architecture; Kyle Oliver of VIKA Capitol, an expert in civil engineering; and Dan Van Pelt of Gorove/Slade Associates Inc., an expert in transportation engineering. (Transcript (“Tr.”) of April 25, 2018 at 23-70; Tr. of May 23, 2018 at 6-21; 28-41; 51-61; 67-74.) The Applicant asserted that the Application satisfied the applicable requirements of the Zoning Regulations under Subtitle U § 421, Subtitle C § 305, Subtitle C §

1500.4, and Subtitle X § 901.2 for approval of the special exceptions, and under Subtitle X §1000.1 for approval of the variances.

With the Application, the Applicant proposed a development of 60 row houses and a new clerical residence for the Paulist Fathers (the “**Paulist Building**”) at the Property. The Applicant described the Property and its neighborhood context, described the architecture of the development and the planned use of the clerical residence building, detailed the constraints created by the characteristics of the Property, explained the planned landscaping of the planned development, and detailed the transportation review and traffic mitigation measures and commitments.

The Applicant asserted that the development would not adversely affect the use and enjoyment of nearby properties due to traffic, noise, design, or other objectionable conditions and that granting the special exceptions would be in harmony with the general purpose and intent of the Zoning Regulations and would not tend to adversely affect the use of neighboring property. The Applicant also argued that the Property was affected by exceptional conditions that created a practical difficulty for the development of the Property in strict compliance with the Zoning Regulations, specifically the requirements for width of vehicular ingress and egress and for lot occupancy, side yard, and rear yard. According to the Applicant, relief from those requirements would not create substantial detriment to the public good or impair the intent, purpose, and integrity of the Zone Plan. (Exhibits (“Ex.”) 1-16, 62-62B, 63-64H, 85-85E.).

On May 9, 2018, in response to the Board’s request at the initial public hearing, the Applicant filed additional information relating to the use of the Paulist Building, the easements associated with the project, tree preservation, final landscape plans, site sections illustrating grading and relationships to surrounding properties, and the inclusionary zoning (“**IZ**”) units. (Ex. 170.) After the second hearing, at the Board’s request the Applicant filed final plans, clarification on the affordable housing, and a draft order on June 28, 2018. (Ex. 192.)

OP Report. By reports dated April 13, 2018 and May 16, 2018, and through testimony at the public hearing, OP recommended approval of the Application. (Ex. 89, 179; April 25, 2018 Tr. at 172-177; May 23, 2018 Tr. at 23-25.) OP concluded that the Application satisfied all of the criteria for the requested special exceptions, in particular that the proposed development would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and would not tend to affect adversely the use of neighboring properties, that the development would comply with the substantive intent and purpose the Zoning Regulations and would not have an adverse effect on the present character and future development of the neighborhood. With respect to the impact on neighboring properties, OP noted the separation of the planned development from Chancellor’s Row (50 feet in the northern portion and 75 feet in the southern portion of the Property). OP also noted the compatibility of the planned development with the Chancellor’s Row community design and the historic St. Paul’s College Building. (Ex. 89.) In its supplemental report, OP noted its continued support for the project. (Ex. 179).

DDOT Report. By reports dated March 9, 2018 and April 20, 2018 and through testimony at the public hearing, the District Department of Transportation stated that it had no objection to the approval of the Application subject to certain conditions. (Ex. 73, 96; April 25, 2018 Tr. at 177-182; May 23, 2018 Tr. at 26-27.) On May 18, 2018, DDOT submitted a supplemental report

expressing continued support of the Application and providing a revised set of conditions. (Ex. 182.) DDOT found that the Applicant had used sound methodology in its comprehensive transportation review (“CTR”).

ANC Report. At a regularly scheduled and duly noticed public meeting held on May 16, 2017 with a quorum present, ANC 5E adopted a resolution in support of the Application, noting the Applicant’s commitment to affordable housing and to making playground and open green space at the Property available for community use. (Ex. 51 and 53.) At the April 25th hearing, Edward Garnett, the ANC SMD commissioner testified regarding the ANC’s support. (April 25, 2018 Tr. at 106-115.)

Party in opposition. The St. Paul’s College Neighbors for Thoughtful Development testified in opposition at the public hearing and filed multiple documents into the record. Their testimony at the public hearing addressed concerns about: (1) the density of the project; (2) the placement of dwellings directly across from Chancellor’s Row; (3) whether the Applicant’s traffic review and CTR adequately addressed school traffic; (4) the loss of green space and trees for the benefit of the community; (5) the encroachment of traffic into the private streets of Chancellor’s Row; (6) adverse impacts caused by the construction of the Applicant’s project on Chancellor’s Row; (7) promises to retain the subject property as open space that were made in the planned unit development (“PUD”) proceeding that approved the development of Chancellor’s Row; (8) the project’s impacts on storm water management; (9) grading and topographical impacts of the project; and (10) the siting of inclusionary zoning units within the project. NTD also testified regarding a construction agreement it entered into with the Applicant for mitigation of construction-related impacts of the project. (Ex. 39, 181-181A; April 25, 2018 Tr. at 74-84; 85-89; 92-100; 102-104; May 23, 2018 Tr. at 22-23; 48-49; 61-67.) On July 10, 2018, NTD filed a letter restating their concerns regarding the project density, the location and clustering of IZ units, building and construction setbacks to adjacent homes, parking sufficiency, and traffic planning for the charter schools located on adjacent property. (Ex. 194.)

Persons in support. The Board heard testimony and received letters from persons in support of the Application, including the board of directors of Chancellor’s Row (Ex. 102), subject to conditions, and Casey Trees. (Ex. 97.) The persons in support commented favorably on the development of housing at the Property, especially the provision of affordable dwelling units, the Applicant’s revisions to the project in response to community concerns, especially with respect to pedestrian and vehicular traffic access and the preservation of green space, and the tree protection plan of the Project. (April 25, 2018 Tr. at 117-122; 131-137; Ex. 47, 48, 58, 61, 67, 97, 100, and 105.)

Persons in opposition. The Board heard testimony and received letters from persons in opposition to the Application. The persons in opposition stated concerns about issues relating to: (1) transportation, including the creation of additional demand for street parking, private street restrictions, and the Chancellor’s Row streets not being wide enough for access; (2) green space, including the loss of open and green space, tree protection and its ability to last through construction, accessibility of green space due to religious nature of the owner, and the fact that park space in Ward 5 is prioritized in the Comprehensive Plan; (3) the project’s impact on Chancellor’s Row, including the housing placement, the impact on private streets in Chancellor’s Row, construction impacts on adjacent homes, storm water impacts resulting from a change the

current storm water management on the project site, the narrow buffer between the project and Chancellor's Row, a request for an improved gate blocking access to Chancellor's Row, and increasing the number of homes subject to the construction mitigation agreement with the community; (4) the density of the project; (5) the development process, including objections that the subject property was promised as open space in a prior PUD, the piecemeal process of development including the establishment of the schools at the nearby historic St. Paul's College Building, that the Applicant had not been responsive to community concerns, and that the project was proceeding as a case before the Board as opposed to a PUD before the Zoning Commission; (6) impacts on the schools at the St. Paul's College Building, including the lack of access over private streets, construction impacts, loss of green play space, and removal of parking spaces, including handicapped spaces; (7) the use of the planned new Paulist Building and its location within the historic viewshed; and (8) matters relating to the nearby United States Conference of Catholic Bishops, including a slope easement, fences along the slope easement, drainage, and traffic concerns. (Ex. 17(2), 32, 37, 49, 50, 69, 74-78, 79(2), 80-84, 90-93, 95, 98, 99, 101, 103, 104, 111-123, 125-126, 128-137, 139-141, 143-169, 171-178, 186-187; April 25, 2018 Tr. at 122-172.)

FINDINGS OF FACT

1. The subject property is located at 3015 4th Street, N.E. (Square 3648, Lots 1070 and 1071) (the "**Property**").²
2. The Property is irregularly shaped and is currently unimproved except for a parking lot in the northeastern portion of the site. The lot area is approximately 241,600 square feet (5.5 acres).
3. The Property slopes from the interior of the site down toward 4th Street, with a change in grade of approximately 20 feet from east to west in vertical elevation to the western lot line.
4. The Property is bounded on the north by property used as the administrative offices by the United States Council of Catholic Bishops, housing approximately 300 employees using a parking lot of 220 spaces.
5. The Property is bounded on the west by 4th Street, N.E. Trinity College is located to the west of the Property across 4th Street.
6. Chancellor's Row, a development of 237 three- and four-story row dwellings, adjoins the Property to the east and south. Chancellor's Row was approved as a PUD and related Zoning Map amendment, from the R-5-A Zone District to the R-5-B Zone District, by Zoning Commission Order Nos. 07-27A (May 8, 2009) and 07-27A1 (August 5, 2011).

² The Applicant initially described the Property as Lot 915 (*see* Ex. 1). Assessment and Taxation ("A&T") Lot No. 915 comprised A&T Lot 1067 (the Property) as well as A&T Lots 1068 and 1069. The latter two lots are the location of the St. Paul's College building and grounds and are under separate ownership. (Ex. 11.) The Property is now known as A&T Lots 1070 and 1071. (Ex. 170; April 25, 2018 Tr. at 23.)

7. The St. Paul's College Building is also located to the east of the Property. The building was designated a historic landmark, and a protected viewshed extends from the building to cover part of the southern portion of the Property. The St. Paul's College Building, which contains more than 100,000 square feet of building area, now houses two charter schools: an elementary school, Lee Montessori, and a high school, Washington Leadership Academy.
8. The area surrounding the Property contains a mixture of residential and institutional buildings, including Trinity College to the west and several religious institutions to the north. The neighborhood to the south, zoned RF-1, is composed primarily of row dwellings. Two public recreation centers are located within a mile of the Property.
9. The Applicant proposes to develop the Property as a single lot utilizing theoretical lots with 60 row houses and a new building for use as a clerical residence known as the Paulist Building. The Application designated the row house lots as theoretical lots 1 through 60, and the Paulist Building site as theoretical lot 61. Theoretical lot 62 represented the open space on the Property not included within the row house lots or the Paulist Building site. (Ex. 85.)
10. Each row house will be an individual building for zoning purposes. The row houses will be grouped in "sticks" of two to ten dwellings oriented around landscaped areas, wooded areas, sidewalks, private roads, and driveways. Areas of open space will be provided between the new buildings and existing residences; the buffers will be at least 50 feet wide in the northeastern portion of the site and at least 75 feet in the southern portion. (Ex. 11, 64, 192.)
11. The row houses will be either 16 or 20 feet in width, and 42 feet in depth. Each row house will have a garage with either one or two parking spaces, accessible via a private alley at the rear of the dwelling. The building height of the row houses will not exceed the 40-foot maximum permitted as a matter of right. The 16-foot-wide row houses will be almost 36 feet in height; a roof structure, if present, will be almost nine feet in height. The 20-foot-wide row houses will be approximately 32 feet in height; a roof structure, if present, will be about 10 feet in height. (Ex. 64A1, 64A2, 64A3, 85)
12. Nine of the 60 row houses will be designated as inclusionary zoning units: three reserved for households earning 50 percent or less of the Washington DC median family income ("MFI"), three reserved for households earning 60 percent MFI or less, and three reserved for households earning 80 percent MFI or less. The applicant's proffer of IZ units exceed the minimum required under Subtitle C, Chapter 10, both in terms of the number of units and the level of affordability. The IZ units will be distributed throughout the development substantially as shown in Exhibit 192C.
13. The row houses were designed to allow for the construction of a rear deck approximately 12 feet wide and 5 feet deep, at the option of the eventual owners of the dwellings.

14. The row houses – excluding those in areas labeled as Lots 1-7 and 23-28 in the Applicant’s plans (Page C-05, Ex. 192B) – were designed to allow construction of a roof structure allowing access to a roof terrace. The roof structures, consisting of stairs and a landing (four feet wide and four feet deep), will provide access to a terrace approximately four feet wide and 22 feet long. The one-story roof structures will be either eight feet, 10 inches high (on the 16-foot-wide dwellings) or 10 feet in height (on the row houses 20 feet wide).
15. The row houses not designed to allow access to a roof terrace (*i.e.* on theoretical lots 1-7 and 23-28) will be those located closest to the neighboring Chancellor’s Row development. Those row houses also will not have condensers on the roofs; their condensers will be placed either on the terrace level or on the garage side of those buildings in the private streets.
16. The two-story Paulist Building will be 37 feet, five inches in height and will comply with applicable use and development standards.³ The building will contain approximately 22,828 gross square feet to house a maximum of 15 residents, with a garage providing approximately 18 parking spaces. The design of the building was approved by the Historic Preservation Review Board (HPA Case No. 18-101). The Paulist Building will be located in the southern portion of the Property, sited at least 75 feet from the neighboring Chancellor’s Row residences. (Ex. 64, 64A10, 64A11, 85, 192.)
17. Access to the buildings in the Project will be provided via private streets and driveways. The main entrance driveway, 26 feet wide, will provide an entrance onto the Property from 4th Street, continuing to a main street, 24 feet wide, through the Property. Streets branching off the main street will be 20 feet in width. As proposed, the dimensions of the vehicular accessways in the Project will meet the applicable width and clearance requirements for fire access. The main street and sidewalks at the Property will be subject to a public access easement for vehicular and pedestrian travel. (Ex. 64, 170C, 192B.)
18. The Project will have an overall lot occupancy of approximately 32 percent and a floor area ratio (“**FAR**”) of 0.93,⁴ which is marginally more than the by-right 0.9 maximum FAR and within the maximum 1.08 FAR allowed for IZ projects in the RA-1 zone.⁵ The Paulist Building will have a lot occupancy of approximately 30 percent and 0.65 FAR.
19. Lot occupancy, FAR, and yard setbacks will vary on the theoretical lots occupied by the row houses. Lot occupancies will range from approximately 61 percent to 89 percent, while FAR will range from approximately 1.77 to 3.01. Rear yards will be as large as seven feet;

³ Uses permitted as a matter of right in the RA-1 zone include clerical and religious group residences for no more than 15 persons pursuant to Subtitle U §§ 201.1, 301.1, and 401.1.

⁴ The Applicant’s calculations of development standards for the Project excluded the private streets from the lot area and assumed that all row houses on the individual theoretical lots would opt for rear deck additions. (Ex. 85.)

⁵ Subtitle C § 1002.3 authorizes twenty-percent (20%) bonus density for IZ projects above the maximum 0.9 FAR established for the RA-1 zone by Subtitle E § 302.1.

- in some cases, no rear yard will be provided. Side yards will be as large as 4.67 feet; in some cases, no side yard will be provided. (Ex. 192B.)
20. Approximately 2.2 acres (more than 95,000 square feet) of the Property will be devoted to green or landscaped space, particularly those areas along 4th Street and at the south of the Property. These areas, including spaces known as the Corner Park, the Verge, and Sylvan Grove, will be tree preserves and will be open to the public for recreational purposes. (Ex. 64, 192.)
 21. The Applicant will execute a covenant ensuring that the common green and open areas at the Property will be maintained as public open space in perpetuity. (Exhibits 170C-20 – C-22 in Ex. 192B.)
 22. The Property currently contains 74 trees, including 32 trees greater than 55 inches in circumference scattered throughout the Property. The Applicant plans to remove 39 trees, replacing them at a ratio of three new trees for every one tree removed, for a total of 117 new trees. The Project will preserve 18 of the 32 trees with a circumference over 55 inches, as well as 19 trees with a circumference of less than 55 inches. (Ex. 170, 192.) The Applicant proposed a tree preservation plan, including an inventory. (*see* Ex. 64H.)
 23. The Applicant will install a new storm water management system at the Property. The existing system, a retention pond and related facilities, will be replaced with new underground vaults designed to handle the anticipated storm water for the collection areas consistent with the requirements of the District Department of Energy and Environment. (*see* Page C-10 in Exhibit 192B. (May 23, 2018 Tr. at 68-69.)
 24. The Property and the immediately surrounding area are zoned RA-1.
 25. The Resident Apartment (RA) zones permit urban residential development and compatible institutional and semi-public buildings. (Subtitle F § 100.1.) The RA zones are designed to be mapped in areas identified as moderate- or high-density residential areas suitable for multiple dwelling unit development and supporting uses. (Subtitle F § 100.2.)
 26. Provisions of the RA zones are intended to (a) provide for the orderly development and use of land and structures in areas characterized by predominantly moderate- to high-density residential uses, (b) permit flexibility by allowing all types of residential development; (c) promote stable residential areas while permitting a variety of types of urban residential neighborhoods; (d) promote a walkable living environment; (e) allow limited non-residential uses that are compatible with adjoining residential uses; (f) encourage compatibility between the location of new buildings or construction and the existing neighborhood; and (g) ensure that buildings and developments around fixed rail stations, transit hubs, and streetcar lines are oriented to support active use of public transportation and safety of public spaces. (Subtitle F § 100.3.)
 27. The RA-1 zone provides for areas predominantly developed with low- to moderate-density development, including detached dwellings, row houses, and low-rise apartments. (Subtitle

F § 300.2.) The purposes of the RA-1 zone are to (a) permit flexibility of design by permitting all types of urban residential development if they conform to applicable height, density, and area requirements and (b) permit the construction of those institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive residential zones. (Subtitle F § 300.1.)

CONCLUSIONS OF LAW

1. As amended, the Application seeks (i) a special exception under Subtitle U § 421 to allow a new residential development in the RA-1 Zone District; (ii) a special exception under Subtitle C § 305 to allow multiple buildings on a single lot utilizing theoretical lots; (iii) a special exception under Subtitle C § 1500.4 to allow roof structures on row dwellings, and (iv) area variances from Subtitle C § 305.3 for relief from the requirement that a means of vehicular ingress and egress to a principal building must be at least 24 feet in width and the requirement that lot occupancy, side yards, and rear yards be compliant based on the theoretical lot boundaries.
2. The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception 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, subject to specific conditions. *See* Subtitle X § 901.2.
3. Under the provisions of Subtitle U § 421, special exception approval is required for all new residential developments in the RA-1 zone, except those comprising all one-family detached or semi-detached dwellings. Subtitle U § 421.1. The Board is directed to consider the adequacy of the area schools, both existing and planned, to accommodate the numbers of students that can be expected to reside in the project, as well as the adequacy of the public streets, recreation, and other services to accommodate the residents that can be expected to reside in the project. The Application was referred to the Office of Planning and other agencies for comment and recommendation on the site plan, the arrangement of buildings and structures, and the provision of light, air, parking, recreation, landscaping, and grading as they relate to the surrounding neighborhood as well as the relationship of the proposed project to public plans and projects. To facilitate review of the proposal, the Applicant submitted site plans and sets of typical floor plans and elevations, a grading plan (existing and final), a landscaping plan, and plans for all new rights-of-way and easements as required by Subtitle U § 421.4.
4. Pursuant to Subtitle C § 305, the Board may allow, by approval as a special exception, multiple primary buildings on a single record lot in the RA-1 zone, subject to certain requirements. Subtitle C § 305.1. Satisfactory evidence must be submitted to demonstrate that all applicable requirements 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. The proposed development must comply with the substantive intent and purpose of the Zoning Regulations and must not be likely to have an adverse effect on the present character and future development of the neighborhood.

Subtitle C § 305.6. To assist the Board's consideration, an applicant is required to submit detailed information about the proposal (*see* Subtitle C § 305.4), and the Application must be referred to the Office of Planning for coordination, review, and report on specified issues, including the relationship of the proposed development to the overall purpose and intent of the Zoning Regulations as well as a range of planning considerations and the findings, considerations, and recommendations of other District government agencies. Subtitle C § 305.5.

5. Based on the findings of fact, the Board concludes that the Application satisfies the requirements of Subtitle U § 421 and Subtitle C § 305, with approval made subject to conditions necessary to protect the overall purpose and intent of the Zoning Regulations. *See* Subtitle C § 305.7. The Applicant proposes a new residential development comprising 60 row houses and one clerical residence on a single record lot utilizing theoretical lots. Except with respect to those matters that are the subject of the Applicant's request for variance relief, relating to rear yard and side yard setbacks of the row houses and to the width of each means of vehicular access to any principal building (discussed below), the proposal meets the development standards required by the Zoning Regulations.
6. The Property is a large undeveloped area that is bordered on three sides by existing residences and a building housing two schools. The Applicant described the difficulties faced in creating uniformly shaped building lots on the Property due to its irregular shape and changes in grade as well as the number of significant trees on the site. The Project was designed to mirror surrounding development with regard to lot size and unit configuration while preserving a considerable number of trees, establishing a defined viewshed from 4th Street to the St. Paul's College Building, providing sufficient buffers in the northeastern and southern portions of the Property between the Project and Chancellor's Row, and identifying an appropriate location for the new Paulist Building. The Office of Planning concurred that the layout of the Project, including the reduced rear and side yards, allowed for a "compact development that provides more publicly accessible open space, helps to ensure preservation of trees along 4th Street, and respects the existing historic landmark building that is to the east of the Project site." (Ex. 89.)
7. The Board notes that the Applicant met with the D.C. Department of Fire and Emergency Services to discuss the Project and incorporated that agency's comments into the final design (*see* Ex. 64). The Office of Planning reviewed enrollment data published by D.C. Public Schools and concluded that nearby public and charter schools presently have additional capacity to accommodate the numbers of students who might be expected to reside in the Project. The Applicant's proposal will comply with applicable requirements relating to Inclusionary Zoning (as confirmed by OP with the Department of Housing and Community Development) as well as requirements relating to storm water management and the Green Area Ratio. The District Department of Transportation had no objection to approval of the Application, subject to conditions that have been addressed in this Order.
8. The Applicant also requested a special exception to allow roof structures (a stair and landing) on the row houses to provide access to roof terraces, excluding the row houses in specified locations closest to Chancellor's Row. In accordance with Subtitle C § 1500.4, a

penthouse may be permitted on the roof of a row house so long as the penthouse (a) is no more than 10 feet in height and contains no more than one story and (b) contains only stair or elevator access to the roof, and a maximum of 30 square feet of storage space ancillary to a rooftop deck. As demonstrated in Findings of Fact No. 14 and 15, the Applicant's proposal meets the requirements for approval under Subtitle C § 1500.4.

9. The Board concludes, consistent with Subtitle X § 901.2, that approval of the three requested special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Project will satisfy applicable development standards, except those for which variance relief was requested, and will be consistent with use requirements in the RA-1 zone. The Project will be an urban residential development in keeping with provisions of the RA zones intended to provide for the orderly development and use of land in an area characterized by predominantly moderate- to high-density residential uses, to promote stable residential areas and a walkable living environment, and to encourage compatibility between the location of new buildings and the existing neighborhood.
10. The Board notes OP's conclusion that the Project, which at 0.93 FAR is well within the maximum 1.08 FAR allowed for IZ projects in the RA-1 zone, "reflects an acceptable density for development of the site, which is consistent with the low- to moderate-density development ... contemplated in the RA-1 zone." The Office of Planning also commented favorably on the Applicant's efforts to preserve healthy, existing mature trees, and to site the new Paulist Building and row houses to respect the viewshed of the historic St. Paul's College Building. (Ex. 89.) The Board was not persuaded by testimony in opposition to the Application that the proposed density of the Project would be excessive for its location, or that the Property had been reserved as open space in the PUD approval for the Chancellor's Row development.
11. The Board also concludes, consistent with Subtitle X § 901.2, that approval of the requested special exceptions, as finally revised and subject to the conditions adopted in this Order, will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. The Board notes especially that the Project is consistent with the use requirements of the RA-1 zone, and that the development as a whole will comply with applicable development standards including floor area ratio, green area ratio, and storm water management requirements. In developing the Project, the Applicant will retain many existing trees and provide suitable landscaping, including a large number of new trees. The open spaces maintained on the Property will include significant buffer areas between the new buildings and existing residences. The Project will not create adverse traffic impacts in light of the easements maintaining public access to the private streets and sidewalks, and the provision of adequate parking.
12. Variance requests. Where multiple principal buildings are proposed on a single record lot utilizing theoretical lots, the Zoning Regulations prescribe certain development standards applicable to the theoretical lots, including that (a) the side and rear yards of a theoretical lot must be consistent with the requirements of the zone and (b) each means of vehicular ingress and egress to any principal building must be at least 24 feet in width, exclusive of

driveways. Subtitle C § 305.3(a), (b). The Applicant requested area variance relief from these requirements.⁶ The Board is authorized under Section 8 of the Zoning Act (D.C. Code § 6-641.07(g)(3)) to grant area variances, as provided in the Zoning Regulations, where, by reason of extraordinary or exceptional situation or condition of a specific piece of property, the strict application of the Zoning Regulations would result in a practical difficulty for the applicant, provided that the relief will not cause substantial detriment to the public good or substantial impairment of the intent, purpose, and integrity of the Zoning Regulations and Zoning Map. Subtitle X §§ 1000.1, 1002.1.

13. The Board concurs with the Applicant and the Office of Planning that the Property is affected by exceptional conditions due to the shape and topography of the Property, its significant tree cover, and the presence of a protected viewshed over a portion of the site. These factors constrain the development potential of the Property.
14. The strict application of the Zoning Regulations would cause practical difficulty to the Applicant especially by precluding the siting of the row houses in a way that would maximize the preservation of open space, including buffers separating the Project from existing development, as well as the retention of trees on the Property. The Applicant explained that the configuration of the new buildings in the Project was designed to accommodate the topography of the site, and measures intended to increase the size of side and rear yards on the theoretical lots would require regrading of the site and the use of additional retention walls.
15. Approval of the requested area variances will not cause substantial detriment to the public good, or substantially impair the zone plan. For the reasons discussed above, the Board finds that the Project is in harmony with the general purpose and intent of the Zoning Regulations and is not likely to adversely affect the use of neighboring property. The requested relief from development standards is not inconsistent with the purposes of the RA-1 zone but will allow the Applicant to provide greater open space in the development as a whole. The requested relief from vehicular access requirements will also facilitate better site design without impinging on necessary access for vehicles. The private streets will be used primarily for access to buildings in the Project, without direct connection to the public street network and therefore creating minimal impact on traffic in the neighboring area.
16. The Board is required to give “great weight” to the recommendation of the Office of Planning. D.C. Official Code § 6-623.04 (2012 Repl.). For the reasons discussed above, the Board concurs with OP’s recommendation that the Application should be approved with conditions.
17. The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC. Section 13(d) of the Advisory Neighborhood Commissions Act of 1975,

⁶ Because the Paulist Building will comply with applicable development standards, the Applicant requested variance relief from the side yard and rear yard requirements only with respect to the theoretical lots created for the new row houses.

effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.)). In this case ANC 5E adopted a resolution in support of the Application, stating the ANC's priorities in reviewing the Project as the provision of additional housing for a growing community, including an affordable component, the preservation of as much green space as possible as former institutional uses are converted to residential uses, and the minimization of the impact of new development on the existing community during and after construction. ANC 5E noted the Applicant's IZ commitment, its tree preservation plan, and its offer to allow "the greater community" to use the playground and open green space for recreation, and also stated that a planned buffer between the project and Chancellor's Row (which was increased after the ANC issued its report) would limit the impact of the project. (Ex. 53.) For the reasons discussed above, the Board concurs with the ANC's conclusions.

DECISION

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for special exceptions under the requirements for new residential development under Subtitle U § 421, the theoretical lot subdivision requirements of Subtitle C § 305.1, and the roof structure requirements of Subtitle C § 1500.4, as well as for variances from the vehicular access requirements and the RA-1 development standards of Subtitle C §305.3 to allow 60 row dwellings and a new clerical residential building in the RA-1 Zone at 3015 4th Street N.E. (Square 3648, Lots 1070 and 1071).

Accordingly, it is **ORDERED** that the Application is **GRANTED** subject to the following **CONDITIONS**:

1. The Applicant shall build the project in accordance with the plans submitted as Exhibit 192B in the record.⁷
2. The Applicant shall landscape the Property in accordance with the landscaping plans submitted as Pages L.01 – L7.05 in Exhibit 192B in the record and shall retain, preserve and replant trees as forth on Pages C-14 and C-14A in Exhibit 192B in the record.
3. The Applicant shall implement the following recommendations from DDOT:
 - a. Design all private streets to DDOT's 2019 DEM standards where they connect with the public street network;

⁷ Self-Certification. The zoning relief requested in this case was self-certified, pursuant to Subtitle Y § 300.6 (Ex. 5.) In granting the requested self-certified relief subject to the plans submitted with the Application, the Board made no finding that the requested relief is either necessary or sufficient to authorize the proposed construction project described in the Application and depicted on the approved plans. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application that would require additional or different zoning relief from that is granted by this Order.

- b. Provide 6-foot wide sidewalks adjacent to all private streets, including the driveway extending from 4th Street NE to Regent Place NE, with adequate landscape strips and/or pedestrian buffers, subject to DDOT's approval;
 - c. Provide public pedestrian and vehicular access easements as specified in Condition 7;
 - d. Improve pedestrian porosity between the site's access points by implementing a sidewalk connection from the 4th Street NE sidewalk to the pedestrian switchback ramp within the "Sylvan Grove" concept;
 - e. Provide a pedestrian connection along the western side of townhome unit numbers 50 and 60 (per the numbering shown on the site plan of the Applicant's pre-hearing submission) that also ties into the switchback connection to 4th Street NE;
 - f. Provide and furnish additional street trees on 4th Street NE adjacent to the site to fill all existing gaps in the "furniture zone", subject to public space permitting; and
 - g. Implement the following Transportation Demand Management (TDM) Plan as proposed in the Gorove/Slade and Associate's February 2, 2018 CTR, included in the record as Exhibit 62A:
 - i. The Applicant shall identify a TDM Leader (for planning, construction, and operations). The TDM Leader will work with residents to distribute and market various transportation alternatives and options;
 - ii. The Applicant shall provide updated contact information for the TDM Leader and will report TDM efforts and amenities to goDCgo staff once per year; and
 - iii. The Applicant shall establish a TDM marketing program that provides detailed transportation information and promotes walking, cycling, and transit. This information will be compiled in a brochure for distribution to residents. The marketing program will also use and provide website links to CommuteConnections.com and goDCgo.com, which provides transportation information and options for getting around the District.
4. The Applicant shall prohibit all traffic associated with the Project, including construction traffic and residential traffic, from using any roads within the Chancellor's Row development, including Regent Place east of the Project.
 5. The Applicant shall install a manually-operated gate, with stone pillars at each end, across the point where the current parking lot on the site connects with Regent Place, at the curve of the road just northeast of the Lee Montessori (or such other school as located at such location on the adjacent property) drop-off loop, with the goal of preventing private vehicles from routinely using Regent Place as a through connection from 4th Street N.E. to 7th Street N.E.
 6. The new Paulist Building shall be used as a clerical residence, housing no more than 15 residents at a time, including sleeping quarters and other clerical spaces such as a chapel and refectory, for uses associated with a religious order's mission.


7. Prior to the approval of the final DCRA Building Permit Zoning Inspection for the fiftieth townhouse in the Project, the Applicant shall record an easement substantially in the form included in the record as Exhibit 170C as updated by Pages C-20, C-21, and C-22 in Exhibit 192B, with updates mutually agreed upon by the Applicant and relevant District agencies, to provide public pedestrian and vehicular access and open space at the Property.
8. The Applicant shall provide 9 inclusionary zoning dwelling units, including three reserved for households earning 50% or less of the Washington, DC Median Family Income (“MFI”), three reserved for households earning 60% MFI or less, and three reserved for households earning 80% MFI or less. These affordable units will be distributed substantially in accordance with Exhibit 192C in the record, provided that the IZ home shown at Lot 4 shall be moved to Lot 57.
9. The Applicant shall not construct any improvements that would encroach upon the easement area for the benefit of USCCB identified in Exhibits 134, 186 or 187 to the extent that such improvements would violate the terms of that easement.
10. The Applicant shall reconstruct the existing fence in the same location along the boundary of the existing USCCB easement and shared property line, with the same height, materials, and other features as the existing fence, and subject to the same rights of USCCB in relation to the existing fence.
11. The Applicant shall install and maintain in the location identified in Exhibit 190 a fence of the same height as the fence that currently exists, and Applicant shall reconstruct, along the boundary of the existing USCCB easement and shared property line, per the request USCCB has made.
12. As part of the Project, the Applicant shall construct a new storm water system that meets the storm water management requirements for the Property, similar to or substantially in accordance with the facilities shown on Page C-10 in Exhibit 192.

VOTE: 5-0-0 (Frederick L. Hill, Carlton Hart, Lesylleé M. White, Lorna L. John, and Robert E. Miller voting to APPROVE.)

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

A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: October 24, 2019

PURSUANT TO SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.