

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

Application of The Boundary Companies and  
The Missionary Society of St. Paul the Apostle

BZA Application No: 19377  
ANC: 5E

PRE-HEARING STATEMENT OF THE APPLICANT

This is the prehearing submission of The Boundary Companies and the Missionary Society of St. Paul the Apostle (collectively, the “**Applicant**”) for special exception and variance relief to allow the construction of a sixty (60) townhouse community and the new building for the Missionary Society of St. Paul the Apostle (collectively, the “**Project**”). The property that is the subject of this application is located at Square 3648, Lot 1067<sup>1</sup> (the “**Property**”) and is associated with the address of 3015 4<sup>th</sup> Street NE and shown more specifically on Exhibit C. The Property is included in the RA-1 Zone District. A portion of the District of Columbia Zoning Map and a plat depicting the Property are attached as Exhibit E, and a Surveyor’s plat is attached as Exhibit C, 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;

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<sup>1</sup> We note that Assessment and Taxation (“A&T”) Lot 1067 was created out of A&T Lot 915 along with A&T Lots 1068 and 1069. All of A&T Lot 1067 is subject to this application, including the new Paulist building lot, which is now included. A&T Lots 1068 and 1069 contain the existing St. Paul’s College historic building and grounds – currently operated by two public charter schools and owned by an unrelated entity. Such A&T Lots 1068 and 1069 are not subject to this application. The Applicant is currently in the process of creating more A&T lots out of A&T Lot 1067 that will all be subject to this application.

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 be at least 24 feet in width and (ii) the requirement that lot occupancy and rear and side yards be compliant based on the theoretical lot boundaries; and
4. A special exception under Section 1500.4 of Subtitle C to allow roof structures on rowhouses subject to certain conditions.

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 Edgewood neighborhood of Ward 5. The Property is irregularly-shaped and contains approximately 241,600 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 4<sup>th</sup> Street NE, and to the east by the Chancellor's Row townhouse development and the "St. Paul's College" building (which now operates as two charter schools).

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 (from the R-5-A Zone District to the R-5-B Zone District) by Z.C. Order Nos. 07-27 and 07-27A. Across 4<sup>th</sup> 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**

##### **A. Updated Project**

The Applicant proposes to construct sixty (60) townhouses grouped in eleven (11) clusters and the new Paulist building on a single lot, as shown on the plans attached as Exhibit A (the “**Plans**”).

Each townhouse unit will appear as and be owned as a single-family townhouse, along with existing as an individual building for zoning purposes. The number of townhouses has been reduced from approximately 78 in the original application. The buildings will be oriented around landscaped areas, heavily wooded areas, sidewalks, private roads, and driveways. The Project utilizes open, green, and landscaped space as a central design feature for both the new community and the surrounding neighborhood. To such end, more than 2.18 acres (or more than 95,000 square feet) of the Property will be green or otherwise landscaped space, particularly those areas along 4<sup>th</sup> Street and at the south of the Property. The Applicant notes that it has included an updated Form 120 and Form 135 as Exhibit D.

The Project includes the new Paulist building, which has been designed in a manner that appropriately reflects its context – particularly the proximity to the St. Paul’s College historic building and the nearby Chancellor’s Row townhouses and the abundance of greenery where it sits. The new Paulist building is approximately 22,828 gross square foot and will contain no more than fifteen (15) residents. The design of the new Paulist building was the subject of HPA Case No. 18-101 before the Historic Preservation Review Board (“**HPRB**”), where it was approved. Further discussions of the design considerations of the new Paulist building are included in Section IV(B) below.

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 32% (excluding private streets), which is a reduction from approximately 33% in the original application. The Project will have an overall floor area ratio (“**FAR**”) of up to approximately 0.74 (including private streets, down from 0.90 in the original application) or up to approximately 0.91 (excluding private streets, down from 1.07 in the original application). The individual units will have widths of 16 or 20 feet. We note that the 14 foot wide units have been removed from the Project. Each unit will have one or two garage parking spaces. A chart showing the significant changes from the originally submitted application is attached as Exhibit B.

The townhouses, as buildings located on theoretical lots that have been purposely drawn to match the typical size of such a townhouse community’s assessment and taxation lots, will not conform to the Zoning Regulations with respect to certain zoning requirements, as shown in detail on Page C-05A of the Plans. Specifically, the lot occupancy and rear and side yard setbacks would require relief for each such theoretical lot 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 townhouse buildings on the theoretical lots all provide rear yards in the range of 0 to 7 feet (depending whether the subject house will construct a deck), 20 to 13 feet less than required for the various unit types and configurations. Therefore, each theoretical townhouse lot must obtain relief for such item. The new Paulist building’s lot will have a conforming rear yard.

In the RA-1 Zone District, although side yards are not required, when they are provided they must be three (3) inches in depth for every foot of building height or ten (10) feet for the proposed

40 foot buildings. When they are provided, the buildings on the Project's theoretical lots provide varying side yards between 1.67 to 4.67 feet. Therefore, each theoretical townhouse lot that provides a side yard must obtain relief for such item. The new Paulist building's lot will have conforming side yards.

In the RA-1 Zone District, a maximum lot occupancy of 40% is set forth. As seen on Page C-05A of the Plans, all townhouse theoretical lots show a lot occupancy greater than 40%, ranging from 61% to 89%, however this is typical for this type of zoning approach. Globally, the lot occupancies are favorable at 32% for the townhouse community and 32% overall (when excluding private streets). The new Paulist building's lot will have a conforming lot occupancy.

We note that the minimum lot area of Sections C-201.2 and C-201.3 are satisfied by the Project. Since the lot area for the townhouse community, excluding streets and roadways, contains approximately 161,783 square feet of lot area and the community contains 60 theoretical lots, each lot is attributed a lot area of 2,696 square feet of lot area in the townhouse portion of the site. This area is based largely upon the significant open, green space that is integrated throughout the property. Such 2,696 square foot of lot area figure well exceeds the minimum of 1,800 square feet of lot area required for each townhouse within the RA-1 Zone District.

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, new entrance driveway onto the Property from 4<sup>th</sup> Street will be 26 feet in width and the portion of Regent Place being continued through the Property will be 24 feet in width. However, the streets that branch throughout the Property 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.

We note that the townhouses have been designed to allow for construction of a minimized roof structures allowing for access to a roof terrace. These structures will be no more than

approximately 4 feet wide by 22 feet long. The vast majority of such enclosure will consist of the stairs themselves as only a 4 foot by 4 foot wide landing will exist at the top of such stairs. These roof structures would not be located on the two “sticks” of townhouses located on Lots 1 – 7 or 23-28 as labeled on Page C-05 of the Plans, since such homes will be closest to the Chancellor’s Row residences. The design of such roof structure elements is shown on Pages A-3 and A-5 in plan and Pages A-2 and A-4 in section.

We also note that the townhouses have been designed to allow for the construction of an approximately 5 foot by 12 foot deck on the rear of these units; however, the construction of such decks will occur only at the election of the individual property owners. As a result, the zoning calculations have been tabulated both with and without decks on Page C-05A of the Plans. The Applicant and subsequent owners of the individual townhouses will have the flexibility whether to install the decks on such units.

**B. Extensive Outreach to Community and Agencies and Updates to Prior Proposal**

The Applicant has engaged in significant community and agency outreach for approximately two years relating to the development of the Property. A summary of meetings between the Applicant and the community and agencies is below:

Meeting #	Organization / Agency	Date
1	Office of Planning / Historic Preservation Office	January 2016
2	DDOT	February 2016
3	ANC 5E	March 2016
4	Historic Preservation Office	April 2016
5	Office of Planning	April 2016
6	Councilman McDuffie	April 2016
7	Chancellor’s Row Homeowners Association	May 2016
8	Chancellor’s Row – Driveway Working Group	May 2016

<b>9</b>	Office of Planning	June 2016
<b>10</b>	Chancellor's Row Homeowners Association	June 2016
<b>11</b>	Historic Preservation Office	June 2016
<b>12</b>	Historic Preservation Office	August 2016
<b>13</b>	Chancellor's Row – NE Neighbor Working Group	August 2016
<b>14</b>	Chancellor's Row Homeowners Association	August 2016
<b>15</b>	Edgewood Civic Association	September 2016
<b>16</b>	Office of Planning / Historic Preservation Office	October 2016
<b>17</b>	Office of Planning / Historic Preservation Office	November 2016
<b>18</b>	Office of Planning / Historic Preservation Office	December 2016
<b>19</b>	Office of Planning / Historic Preservation Office	January 2017
<b>20</b>	Chancellor's Row Homeowners Association	March 2017
<b>21</b>	ANC 5E SMD	March 2017
<b>22</b>	Chancellor's Row Homeowners Association	April 2017
<b>23</b>	Office of Planning / Historic Preservation Office	April 2017
<b>24</b>	Edgewood Civic Association	April 2017
<b>25</b>	ANC 5E (Informational)	April 2017
<b>26</b>	ANC 5E (Voted 8-2 in Support of Project)	May 2017
<b>27</b>	ANC 5E (Voted 9-1 in Support of Compromise Boundary)	October 2017
<b>28</b>	HPRB (Voted 5-0 in Support of Compromise Boundary)	November 2017
<b>29</b>	Casey Trees	November 2017
<b>30</b>	ANC 5E (Voted 9-0 in Support of New Paulist Building Design)	December 2017
<b>31</b>	Chancellor's Row – Working Group	December 2017
<b>32</b>	Chancellor's Row – Working Group	February 2018
<b>33</b>	ANC 5E (Informational Presentation – BZA Package)	February 2018
<b>34</b>	Casey Trees	February 2018

As the result of this significant outreach, the Applicant incorporated numerous significant changes into the Project. Such modifications are summarized most clearly on the chart included as

Exhibit B. Due to such outreach and work with the community, ANC 5E voted to approve the Project, as evidenced by the letter in support in the record (Exhibit 51).

The Project is now designed as the incorporation of new townhouses and the new Paulist building into the verdant, treed landscape. Rather than being a development that imposes itself into the landscape, the new Project sensitively responds to the landscape and topography. It is designed to complement and enhance its surroundings. In particular, the Project incorporates large areas of greenery and landscaping, including saving approximately 35 trees. To such end, the Applicant has been working with Casey Trees and an arborist selected by Casey Trees to enhance its tree retention strategy and approach to increasing tree canopy. The Tree Preservation Plan is attached as Page C-14 of the Plans and an enlarged inventory of the Tree Preservation Plan is attached as Exhibit H.

The townhouses have also been designed to be located in a manner that will ensure ample light, air, and views for the adjacent neighbors of the site. To such end, the townhouses at the northeast of the site have been located no less than 50 feet from the closest townhouses within the Chancellor's Row community (building face to building face).

As stated above, the updated Project also now includes the new Paulist building. The proposed Paulist building has been sensitively designed for its location between the new townhouses and the Chancellor's Row community, and within the "viewshed" of the St. Paul's College historic landmark. Such design was approved in HPA Case No. 18-101. As shown on the Plans, the new Paulist building incorporates design elements of the adjacent St. Paul's College historic landmark and serves to offer a unique framing element both in the material and function of the new building. Further, similar to the townhouse community redesign, the new Paulist building has been designed to respond to its environment rather than impose itself into its environment. As a result, the new Paulist building is built into the topography of the gently sloping property, while also allowing for the preservation of trees and green space all around the building. Similar to the



townhouses, the new Paulist building has also been designed to be located in a manner that will ensure ample light, air, and views for the adjacent neighbors of the site. To such end, the new Paulist building has been designed to be located no less than 75 feet from the closest townhouses within the Chancellor’s Row community. We note that the new Paulist building and its related land have been included in the Property subject to this application in order to allow for a more holistic review of the Project. As a result, all of A&T Lot 1067 is subject to this application.

In addition to the design elements detailed above, the Project includes several unique aspects that will be beneficial to the District at large, including:

- Nine (9) homes subject to Inclusionary Zoning (“**IZ**”) affordability limits, including three (3) homes set aside for households earning no more than 50% of the Washington D.C. Median Family Income (“**MFI**”), three (3) homes set aside for households earning no more than 60% MFI, and three (3) homes set aside for households earning no more than 80% MFI.
- A pledge that no construction traffic or residential traffic will be routed through the Chancellor’s Row neighborhood.
- Broader community use of the playground and open green space; and
- A detailed tree preservation plan.

**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 has been referred to the relevant agencies and Councilmembers for the reviews described in this subsection. The Applicant worked with the Office of Planning (“**OP**”) to address concerns or issues related to site density, design, and configuration. The Applicant worked with the District Departments of Transportation (“**DDOT**”) to address concerns or issues related to public streets and traffic. The Applicant met with D.C. Fire and Emergency Services to review the Project and incorporated comments accordingly. Further, the Applicant will work with the relevant agencies to address concerns or issues related to the school, recreational facility, or other impacts relating 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 OP and the Historic Preservation Office (“**HPO**”) and has refined the Project in response to OP’s and HPO’s requests. As a result of these conversations, the site plan was reworked to allow for the enhancement to light, air, tree preservation, landscaping, and recreation. 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, typical floor plans, elevations, grading plans (existing and final), landscaping plans, and rights-of-way plans and easements as described in this section are 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. Since the size, height, open space and density of the Project are all cumulatively well below the applicable maximums or limitations of the RA-1 Zone District the Project is an appropriate sized use of land in the RA-1 zone. Further, the use of the Property for a new townhouse development is appropriate for this neighborhood. 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 and the enhanced affordable housing incorporated into the Project. In addition, as the result of such positive attributes of the Project, the Project is also consistent with the D.C. Comprehensive Plan and its Future Land Use Map.

The Project will not adversely affect neighboring property. In fact, the Project will complement and enhance the existing charter school uses in the now-historic St. Paul's College building. Further, the Project will be a less dense neighbor to the Chancellor's Row townhouse development to the east and south of the Property. Chancellor's Row was constructed to an FAR of approximately 1.27. However, the Project is designed to give ample open space and light and air to the adjacent Chancellor's Row townhomes. For example, the townhouses at the northwest portion of the Project are no less than 50 feet from the adjacent Chancellor's Row residences while, at the south of the Project, the new Paulist building is no less than 75 feet from the adjacent Chancellor's Row residences.

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 C-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 for the theoretical lots for the sixty (60) townhouses and the new Paulist building, as shown on page C-05 and C-05A of the Plans. We note that, where the theoretical lots require relief from lot occupancy provisions of the Zoning Regulations, the entirety of the Project, the townhouse community separately, and the new Paulist building separately all comply with such Zoning Regulations. We also note that, previously, the application was requesting review of the Project with individual “sticks” of townhouses to be considered as one building for zoning purposes, each located on one theoretical lot for zoning purposes; however, as shown on Pages C-05

and C-05A of the Plans, each individual townhouse is now to be considered as one building for zoning purposes, located on one theoretical lot for zoning purposes.

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 at the Project will provide significant buffers for each building on the Property. However, 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. Although such yard requirements lead to certain requests for necessary relief, holistically, the Project provides ample open space and buffering, particularly relating to its existing neighbors.

Second, access to the buildings will be via private streets, alleys, and driveways, but the width of some of these streets will not conform to the Zoning Regulations. The main, new entrance driveway onto the Property from 4<sup>th</sup> Street will be 26 feet in width and the portion of Regent Place being continued through the Property will be 24 feet in width. However, the private vehicular accessways (i.e. alleys) that branch throughout the Property leading to the individual buildings will be 20 feet in width, and therefore require relief from the 24-foot minimum width requirement, as shown on page C-07 of the Plans, as described in Section VII below. The vehicular accessways throughout the site provide ample movement for trucks and other larger vehicles, including fire and rescue vehicles potentially called to the site. In fact, the minimum dimension of the Project's vehicular accessways throughout the site, 20 feet, is in line with the minimum dimension required for vehicular accessways in relevant D.C. regulations – 20 feet. We note that the minimum vertical

clearance for such space under the relevant D.C. regulations – an unobstructed 13 feet, 6 inches – is also satisfied by the Project.

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-05A 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)*

The Applicant has included all of the above-stated required information as part of the Plans, including but not limited to: (a) site plans including a proposed lot plan, plans showing the location of proposed streets and vehicular accessways, a plan showing easement locations, a plan showing the proposed theoretical lots (including a delineation of vehicular accessways, building footprints, and required yards where applicable), existing and proposed grading plans, and existing and proposed landscaping plans, including the size and locations of all trees on or adjacent to the property; (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 (included on page C-05A of the Plans). A surveyor's plat is attached as Exhibit C.

- 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, as a whole, 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. It will also feature the new approximately 22,828 gross square foot new Paulist building. 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. The new Paulist building in particular has been designed to complement and enhance the surroundings as it has been reviewed and approved by HPRB after a significant degree of consultation with HPO staff.

It is important to note that the Project maintains large open areas at the west and south of the Property, including approximately 45,421 square feet of space on the west side of the Property (including the green area of the main viewshed) and approximately 19,801 square feet of space on the south side of the Property (between the townhouses and the new Paulist building). The space at the south of the townhouses will allow for a “viewshed” from 4<sup>th</sup> Street, NE to the St. Paul’s College buildings adjacent to the Property to be maintained. Perhaps most importantly and certainly most fundamentally related to the identity of the new townhouse community, an approximately 20,935 square foot (almost one half acre) tree preserve has been maintained at the main entrance to the townhouse community. Along with preserving a dense cluster of trees, this area, named “Sylvan Grove”, will be landscaped and allow for immersive recreational opportunities, as shown on Page B-5 of the Plans.

- 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 current character 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 in this statement. Also, the use of the Property for townhouse and the new Paulist building seamlessly blends with the surrounding neighborhood uses. Perhaps most importantly, the relief requested allows the Property to be used efficiently while still remaining appropriate for this unique context. As stated above, as the result of the positive attributes of the Project, the Project is also consistent with the D.C. Comprehensive Plan and its Future Land Use Map.

The Applicant has met with the neighboring Chancellor's Row community numerous times over the two plus years 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 redesigning the Project's southern 4<sup>th</sup> 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 spaces shown towards the west and south of the Property (i.e., areas shown on Page B-3 of the Plans as the Corner Park, Sylvan Grove, the historic viewshed, and the Verge) 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. To such end, the Applicant has offered The Verge, the landscaped area at the south of the Property as shown on Pages B-3 and B-4 of the Plans, for use by Chancellor's Row.

**VII. THE APPLICATION MEETS THE FOR VARIANCE RELIEF FROM (I) THE MINIMUM WIDTH REQUIREMENTS FOR INGRESS/EGRESS ACCESS TO PRINCIPAL BUILDINGS AND (II) THE LOT OCCUPANCY, FLOOR AREA RATIO, AND 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 the Chancellor’s Row townhouse development, to the west by 4<sup>th</sup> Street NE, and to the east by the Chancellor’s Row 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 site. The resulting buildable portions of the Property are highly constrained, particularly on the townhouse parcel.

In addition, the Applicant has endeavored to retain a significant number of trees on the Property, which has further complicated the placement of the buildings and the ability to provide larger yards and vehicular accessways. For example, in order to retain the main stand of trees near the new entrance to the townhouse community from 4<sup>th</sup> Street, the townhouses have been stepped back significantly to create an approximately 20,935 square foot wooded area for recreation named "Sylvan Woods." Similarly, trees have been retained along the west of the site in particular to further restrict encroachment by structures. Altogether, approximately 35 trees are intended to be retained as part of the Project.

Perhaps most importantly, a significant portion of the Property has been 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 townhouses 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.

Each of these above site complications has a magnifying effect on the others, as each must be considered in the design and placement of each building on the site. All of these site characteristics combine to create a very challenging site for siting any new structures.

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 the odd property configuration, open space/viewshed requirements, significant tree cover (that the Applicant is endeavoring to retain and incorporate) 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 FEMS). As stated above, even the most narrow of the vehicular accessways in the Project will comply with the minimum width and clearances required by the D.C. fire access regulations.

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 lot occupancy, 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. Similar to the effect of requiring wider vehicular accessways, requiring additional lot occupancy, side yards, or rear yards for the theoretical lots would have the effect of eliminating greenery, and likely trees, throughout the site.

In addition to greatly increasing the difficulty and complexity of the Project, requiring compliant accessways and lot occupancy and rear and side yards for the theoretical lots 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 Project and will continue to do so as the project design is finalized. Perhaps most importantly, the proposed dimensions of the Project's vehicular accessways meet the width and clearance requirements of the D.C. fire access regulations (20 feet of width and 13 feet, 6 inches of clearance). 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 lot occupancies and 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 4<sup>th</sup> Street. In addition to the open space furnished elsewhere on the Property, approximately 45,421 square feet of such open, green space has been consolidated into three (3) components north of the new Paulist building and one approximately 19,801 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 4<sup>th</sup> Street, NE. The Property as a whole maintains appropriate green space and provides an appropriately-sized residential Project.

We note that, regarding the lot occupancy of the Project specifically, the cumulative lot occupancy (without including the area of any streets or rights of way) is approximately 32%, well below the 40% maximum in this Zone District.

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 lot occupancy and yards for the theoretical lots 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. It is important to note that the Project proposes both significantly more IZ housing and a large portion of such housing at affordability levels well below those required under the IZ regulations. The Project will contain nine (9) IZ units, with MFI levels to be no higher than 50% MFI (for three (3) such units), 60% MFI (for three (3) such units), and 80% MFI (for three (3) such units). The IZ regulations would require that approximately six (6) townhouses (10% of GFA) be reserved for households earning no more than 80% MFI (since such townhouses will be for sale). As a result, the Project's IZ offering is highly unusual for a project that does not seek additional height or density through the PUD process.

As stated elsewhere in this statement, the Project is also consistent with the D.C. Comprehensive Plan due to the Project's provision of such desired elements as new housing, enhanced affordable housing, and open, landscaped areas.

#### **VIII. THE APPLICATION MEETS THE REQUIREMENTS FOR A SPECIAL EXCEPTION FOR ROOF STRUCTURES ON ROWHOUSES**

Under Subtitle C, Section 1500.4 of the Zoning Regulations, rowhouses may contain penthouses if approved by the Board as a special exception subject to specific design conditions. Sections C-1500.4 sets forth the special exception criteria for the Board to consider and includes a reference to the general special exception provisions of Subtitle X, Chapter 9. As described below, the proposed Project satisfies these criteria.

- A. *The roof structures are no more than ten feet (10 ft.) in height and contain no more than one (1) story (Subtitle C, § 1500.4(a))*

The Project's roof structures are no more than ten feet in height and contain no more than one story. These designs can be best seen on Pages A-2 and A-4 of the Plans.

- B. *The roof structures contain only stair or elevator access to the roof and a maximum of thirty square feet (30 sq. ft.) of storage space ancillary to a rooftop deck. (Subtitle C, § 1500.4(b))*



The Project's roof structures contain only one stair access to the roof of each rowhouse and a maximum of twenty (20) feet (shown on the plans as a four (4) foot by four (4) foot landing at the top of the stairs within the roof structure). These designs can be best seen on Pages A-3 and A-5 of the Plans.

- C. *The roof structures will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps (Subtitle X, § 901.2(a))*

The Project's roof structures will be harmonious with the general purpose and intent of the Zoning Regulations and Zoning Map. The roof structures are within the specific constraints set forth in Section C-1500.4 limiting the size of roof structures in this particular residential context. Therefore, such roof structures can be deemed appropriate for this particular residential context and Zone District. Further, the activation of the townhouses' roofs to allow for the recreational uses of such spaces is in harmony with the intent of the Zoning Regulations and the Zone Plan. These roof structures will increase resident's outdoor recreation and health while not creating adverse or objectionable conditions to the light, air, or views. We also note that the roof structures will not be located on Lots 1-7 or 23-28, as depicted on Page C-05 on the Plans.

Given the Project's characteristics, nothing about the proposed roof structures contravenes the intent of the Zoning Regulations.

- D. *The roof structures will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps (Subtitle X, § 901.2(b))*

The Project's roof structures will not adversely affect the use of other residential or institutional users within the near vicinity of the Property. The roof structures merely allow for the low-impact recreational use of the townhouse roofs while still remaining appropriate for this unique context.

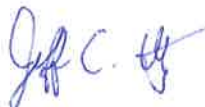
The roof structures are designed to give ample open space and light and air to adjacent townhomes and to the nearby Chancellor's Row residences. To such end, the roof structures have been set back a significantly greater distance than one-to-one from the roofs' exterior walls. The result will be that views of the roof structures will be significantly diminished from typical pedestrian perspective. As noted above the roof structures will not be located on Lots 1-7 or 23-28, as depicted on Page C-05 on the Plans, which are those proposed townhouses closest to the Chancellor's Row community.

The roof structures have been designed to present with as small of a profile as possible, evoking similarities to chimneys rising above the townhouses rather than separate levels that add to their heights. The roof structures are the smallest square footage possible to still provide code-compliant access to the roof. Although the special exception set forth in Section C-1500.4 would allow up to 30 square feet for such habitable space on the roof, the Project's roof structures will contain only a portion of such space, as landings of approximately four (4) feet by four (4) feet are intended. No storage or other space is intended for such roof areas.

**IX. 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