

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

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APPLICATION OF:	)	
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<b>Wisconsin Avenue Baptist Church and Sunrise Senior Living</b>	)	BZA Case No. 19823
	)	
for special exceptions under the use	)	Hearing Date: November 14, 2018
requirements of Subtitle U § 203.1(f) for a	)	
continuing care retirement community, and	)	
Subtitle C § 1401.3(c) and 1402 (retaining	)	ANC 3E05
wall height) and for variances under	)	
Subtitle D § 303.1 (number of stories),	)	
Subtitle D § 304.1 (lot occupancy), and	)	
Subtitle D § 307.1 (side yard) to construct	)	
a new church and continuing care retirement	)	
community in the R-1-B District at	)	
3920 Alton Place N.W. (Sq. 1779, Lot 14)	)	
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**APPLICANTS' PRE-HEARING STATEMENT**

**I. Introduction**

Wisconsin Avenue Baptist Church (“WABC”) and Sunrise Senior Living (“Sunrise”) (collectively, “Applicants”) seek special exception and variance relief to replace an existing, functionally obsolete church with a new house of worship and continuing care retirement community (“CCRC”) on the WABC property at 3920 Alton Place, N.W., Washington, D.C. (Square 1779, Lot 14). This project will allow WABC, which has been part of the Tenleytown community for over a century, to replace its aging, ADA-noncompliant, building with a new building designed to fulfill the religious and spiritual mission of the congregation and community, now and in the future. WABC has served the needs of a changing community for several generations and has now become a demographically diverse congregation. The proposed project

will allow the church to embrace a vibrant future, enhance its worship and ministry, and expand the services it provides to the greater community.

The property is located in the R-1-B District immediately east of Wisconsin Avenue, N.W., and south of Nebraska Avenue, N.W., at Tenley Circle. The new church will accommodate 250 seats in its sanctuary and provide limited ancillary meeting and gathering space. The CCRC use will provide 86 units and common living, dining, recreational, gathering and support spaces for its residents. The single building includes a below-grade parking garage with 66 automobiles spaces. The overall height of the building will be 40 feet and four stories. It will occupy 57 percent of the lot.

The Applicants seek the following special exceptions and variances for the new church and CCRC facility:

- Special exception relief to establish a CCRC use in the R-1-B District, pursuant to 11-U DCMR § 203.1(f);
- Special exception relief to allow a retaining wall greater than 4-feet in height with a maximum height of 13 feet and an average height of 8.25 feet , that allows for a depressed vehicle ramp into the below grade parking garage, pursuant to 11-C DCMR § 1401.3(c);
- Variance relief to increase lot occupancy (which is permitted by right at 60 percent for churches and 40 percent for other uses) to 57 percent, pursuant to 11-C DCMR § 304.1;
- Variance relief to increase the maximum number of stories from three to four while not exceeding the permitted 40-foot height limit, pursuant to 11-D DCMR § 303.1; and
- Variance relief from the 8-foot side yard requirement at the west side of the building only (where it abuts National Park Service land), which allows the inclusion of a 36-foot side yard on the east to provide a significant buffer for neighboring residences, pursuant to 11-D DCMR § 307.1.

## **II. Jurisdiction of the Board**

The Board of Zoning Adjustment (the “Board” or “BZA”) has jurisdiction to grant special exception and variance relief pursuant to 11-X DCMR §§ 901.2 and 1000.1, and 11-Y DCMR § 100.3.

### **III. Background**

#### **A. The Wisconsin Avenue Baptist Church**

WABC was founded over 100 years ago in the Tenleytown neighborhood and has existed at its current location on Tenley Circle for the last 60 years. The existing church building suffers from functional obsolescence, including non-ADA compliance, and major disrepair of its roof, mechanical systems, and other similar building elements. Due to these issues and others, the congregation cannot survive on the site without leveraging its land value. The church faces two options to avoid demise: (i) sell the property outright, likely to another religious institution, and permanently disband WABC at this site; or (ii) sell the property with the condition that new owner construct a new, right-sized, modern parish for WABC that fits its members and mission. The church chose the second option and partnered with Sunrise. As a continuing care retirement community (CCRC), Sunrise is the only potential buyer that is mission-compatible, less intrusive than the alternative “mega-church” that can be constructed to a height of 60 feet and 60 percent lot occupancy, and financially strong enough to support the development of both a right-sized church and a CCRC. Upon completion, a condominium regime will be created for the property and the church will continue to own its house of worship on the site.

With the new facility, WABC will be able to offer programs and services in a building specifically designed for its worship and service needs. In addition to the typical worship services, religious instruction, and Bible studies, the church will be able to meet the needs of its congregation and the community at large through its fellowship and support groups, counseling services, clothing and food drives, religious retreats, programs and lecture series, weddings, funerals, ministries for the sick and infirm, support for international missions, service projects, and other functions.

B. Sunrise Senior Living

Sunrise was founded in 1981 with a single community in Oakton, Virginia, as an alternative to the sterile, nursing home environment that was the accepted norm for senior care. The founders' vision for a resident-centered approach in a home-like community became the new standard in the assisted living industry. With approximately 350 communities in the United States, Canada, and the United Kingdom, Sunrise is considered the leader in private senior care and has the demonstrated experience to ensure the long-term success of the proposed facility at the WABC site. Sunrise is so highly regarded that in 2018 the company was awarded "Highest in Customer Satisfaction among Senior Living Communities" by J.D. Power and Associates. The new facility will offer assisted living and memory care services. Assisted living is for older adults who value their independence but need some assistance with daily activities, such as bathing, dressing, transportation and medication reminders. Seniors may live in their own suites or with a companion and are relieved of household chores such as laundry, cooking, and cleaning. The units include a living area, a sleeping area or a bedroom, and a bathroom. There are no kitchen facilities within each resident unit as dining is provided three times daily. The assisted living units will be located on the first, second and third floors of the proposed building. Significant common space is provided in the dining rooms, library, salon, bistro, and activity spaces.

The top floor of the building will be devoted to memory care units and services for seniors suffering from dementia, which slowly interferes with one's mental ability to manage everyday life. The memory care services provide a safe and stimulating environment where the needs of seniors with dementia, including its most common form, Alzheimer's disease, can be individually addressed.

The CCRC use will help alleviate the pressing need for senior care in the District.

Currently, Upper Northwest DC and Montgomery County, Maryland, are home to several assisted living facilities, but demand still far outpaces the supply. To analyze demand, Sunrise researched and analyzed qualified senior ("QS") and qualified caregiver ("QCG") households based on age brackets and income levels, consistent with industry norms.<sup>1</sup> The number and density of QS and QCG households within three and five miles (excluding Virginia) is very high. However, the number of private-pay assisted living and memory care beds is very scarce. In the next ten years, the number of seniors (75+) in DC will grow by over 40 percent (4 percent Compound Annual Growth Rate).<sup>2</sup> The need for assisted living and memory care services will only grow at this rapid rate. Without additional supply of high-quality senior housing options, the city will not be able to support its aging residents. They will have to relocate to meet their needs elsewhere.

Statistic	3 Miles	5 Miles
2015 QS Household (75+, \$50k+)	5,524	10,452
2015 QCG Household (45-64, \$100k+)	22,635	44,800

Dist	Property Name	Est.	Age	Total	AL+MC	AL	MC	IL
0.7	Forest Hills of DC	1926	91	57	57	57	0	0
0.8	Connecticut Ave, Sunrise of	2004	13	100	100	68	32	0
1.1	Chevy Chase House	1976	41	131	131	131	0	0
1.4	Friendship Heights, Brighton Gardens of	1997	20	131	131	107	24	0
1.5	Methodist Home Forest Side	2011	6	33	33	0	33	0
1.9	Grand Oaks	2001	16	172	172	139	33	0
3.2	Five Star Premier Residences of Chevy Chase	1990	27	335	79	79	0	256
3.8	The Residences at Thomas Circle	1963	54	140	140	140	0	0
4.3	Bartholomew House	1998	19	33	33	33	0	0
4.7	Springvale Terrace Retirement Community	1965	52	156	72	72	0	84
4.9	Kensington Park	1993	24	221	161	110	51	60

<sup>1</sup> For 2015, the most current information available, a QS household's occupants are at least 75 years old with an annual income of approximately \$50,000 or more. QCG households' occupants are 45 to 64 years old with an annual income of \$100,000 or more.

<sup>2</sup> "DC-VA-MD-WV Metropolitan Area Demographic Data, Montgomery College." <http://cms.montgomerycollege.edu/edu/departments.aspx?id=45952>.

<sup>3</sup> List of properties within 5-mile radius, as of 2017.

The District recognizes the importance of increasing the supply of high-quality senior housing options. Assisted living facilities are an important component of the District's overarching objective to promote aging in place in an environment that is less intensive than a nursing home and that empowers the continued vitality and individuality of District seniors.<sup>4</sup>

C. Description of the Site and Surrounding Area

WABC is located at 3920 Alton Place, N.W., Washington, DC 20016 (Square 1779, Lot 14) (the "Property") in the Tenleytown neighborhood. It is presently improved with a brick church that no longer serves the worship needs of the congregation. An asphalt parking lot and a playground are also on the site. The Property is zoned R-1-B, as shown on the excerpt of the zoning map attached as Exhibit A. It is bounded by Alton Place to the north, Yuma Street to the south, federal parkland to the west abutting Tenley Circle, and single-family residences to the east fronting on 39<sup>th</sup> Street.

While slightly set back from the Wisconsin Avenue corridor, the Property is visually contiguous with religious, educational and retail uses along Wisconsin Avenue, Nebraska Avenue, and Tenley Circle. At Tenley Circle to the west are the American University Washington College of Law, St. Ann Catholic Church, and the Yuma Study Center, a faith-based organization for women, all of which complement the proposed religious use that will continue at the Property. Woodrow Wilson High School is to the northeast of the site along Nebraska Avenue, N.W., Janney Elementary School and the Tenleytown Public Library are to the northwest at Wisconsin Avenue and Albemarle Street, N.W., and the Tenleytown Firehouse is two blocks to the southwest at Wisconsin Avenue and Warren Street, N.W. Mixed-use retail, service and office uses are two blocks north. Retail and commercial uses continue south along Wisconsin. The National Park

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<sup>4</sup> See District of Columbia Committee Report for the Assisted Living Regulator Act of 2000, <http://lims.dccouncil.us/Download/7568/B13-0107-CommitteeReport1.pdf>.



use will provide 86 units and occupy portions of the cellar, first and second floor levels and all of the third and fourth floor levels. The main entrance to the CCRC will be on Alton Place, N.W., which includes a drop-off drive to the front door. There are residences along the east side of the property, but the building will be set back approximately 36 feet from the property line (far more than the required eight feet), providing a significant tree and fence buffer for these residences. That buffer will include an 8 to 16-foot wide landscaped strip extending from Alton Place to Yuma Street parallel to the rear yards of these houses. A new board fence will be erected at the east property line; a second fence will be located on top of a retaining wall at the east side of the through-driveway between Alton Place and Yuma Street. The one-way driveway is entered at grade level at Alton Place, descends 13 feet to the garage entrance, and then rises again to grade level at the south to allow cars to exist onto Yuma Street. Because of the changing slope of the driveway, the retaining wall varies in height from several inches closest to the streets up to 13 feet where the driveway meets the garage entrance.

The CCRC portion of the building, on floors 1-3, will provide residential units (without kitchens), dining rooms, a living room, activity rooms, a bistro, a library, a spa/salon, offices, and an interior garden courtyard. The top (4th) floor will be dedicated to residents with memory and cognition-related disabilities. In addition to the memory-care residential units, this floor will provide separate amenity space including dining, lounge and activity rooms, and a secure balcony.

The CCRC will create a total of 70 full-time equivalent (“FTE”) jobs on an annual basis.

Employees will work in three shifts, as follows:

6:30AM – 2:30PM	~30 employees <sup>5</sup>
2:30PM – 11:30PM	~25 employees, reducing by approximately 25% after dinner and another 25% after 9:00 PM
11:30PM – 6:30AM	~6 employees

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<sup>5</sup> The number of employees is based on stabilized occupancy rate of 93 percent and is variable based on care needs of the then current resident population.



The staff levels will change based on the care needs of the resident population at a given time.

The church and its accessory uses are located in the south portion of the building on the first floor and a portion of the second floor. The first below-grade level provides vehicular and bicycle parking spaces, additional church space, a main kitchen, laundry facilities, fitness and physical therapy space, and mechanical space. The second below-grade level will provide additional parking spaces. A total of sixty-six (66) vehicle parking spaces will be provided in the two-level garage. Thirty-two (32) long-term bicycle spaces will be located on the first level of the garage in a bike storage room, in accordance with the standards for multi-unit residential buildings (29 spaces) and a religious institution (2 spaces). Because seniors living in the building are not anticipated to be riding bikes to and from the site, these spaces will be available for CCRC staff, visitors and church members.

Since the time of filing its application on June 14, 2018, the Applicants have revised the exterior architectural design of the building, with no appreciable change to the internal floor plans. The most significant change is to the exterior articulation of the church design. At the request of ANC 3E, the architectural expression was changed from a suburban-looking church to a modern idiom. The design of the CCRC portion of the building was also refined to emphasize the appearance of a three-story building. The new elevations are included with the revised drawings submitted as Exhibit E. The Applicants will describe these changes in greater detail at the hearing.

**IV. The Applicants Meet the Standards for Special Exception Relief under the Zoning Regulations**

A. Standard of Review

A special exception use is a use deemed compatible with other uses permitted in that particular zoning classification provided certain requirements are met. To grant special exception relief, the Board must find that the project:

- (1) will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
- (2) will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
- (3) will meet any special conditions required for each special exception requested, as specified in the Zoning Regulations.

11-X DCMR § 901.2.

Relief granted through a special exception is presumed appropriate, reasonable and compatible with other uses in the same zoning district, provided the specific regulatory requirements for the relief requested are satisfied. The D.C. Court of Appeals has consistently emphasized the narrow scope of the Board's discretion in reviewing special exception applications:

In evaluating requests for special exceptions, the Board is limited to a determination of whether the exception sought meets the requirements of the particular regulation on which the application is based . . . . The applicant has the burden of showing that the proposal complies with the regulations; but once that showing has been made, the Board ordinarily must grant the application.

*National Cathedral Neighborhood Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 753 A.2d 984, 986 n.1 (D.C. 2000) (quoting *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1032-33 (D.C. 1995)); *see also Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973) (noting that "[s]pecial exceptions, unlike variances, are expressly provided for in the Zoning Regulations"). If the specific requirements of the

regulation are met, the Board is generally precluded from denying an application for special exception relief.

B. Description of Requested Special Exception Relief

1. Operation of a Continuing Care Retirement Community

The Applicants seek special exception relief to operate a CCRC in the R-1-B Zone District in accordance with 11-U DCMR § 203.1(f).

2. Retaining Wall

Pursuant to 11-C DCMR § 1401.3(c), retaining walls are limited to four feet in height, with certain exceptions not applicable here. The Applicants seek special exception relief to construct a retaining wall along the east portion of the site ranging in height from a few inches to 13 feet at its highest point. The average height of the retaining wall along its length down the ramp is 8'3.1". The retaining wall is necessary to accommodate the sloped garage ramp to the below-grade parking and the loading facilities, as shown on the drawings. The board is authorized to grant relief from the retaining wall height restrictions pursuant to 11-C DCMR § 1402.1 and 11-X DCMR § 900-901.

C. Applicants Satisfies the Burden of Proof for a Special Exception to Operate a Continuing Care Retirement Community

1. Operating a Continuing Care Retirement Community will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

The Project will be in harmony with the purpose and intent of the zoning regulations and related maps. A CCRC is a residential use that fits comfortably within the R-1-B District. It is particularly suited to this site within the Tenleytown neighborhood, where the single-family community to the east meets the commercial Wisconsin Avenue corridor. It is an excellent transitional use between these two areas that allows senior residents to live in a multi-unit care

facility at the edge of a commercial district while remaining part of a single-family neighborhood . The size and the scale of the project conforms to the nature and character of the residential community. A nearby example of a CCRC use in an R-1-B District fitting comfortably within a neighborhood is the four-story Seabury at Friendship Terrace, approximately five blocks away at Butterworth and 43rd Street, N.W., across from St. Columba's Episcopal Church.

The Wisconsin Avenue corridor provides a variety of uses reflective and supportive of the proposed CCRC-church building. Directly across Tenley Circle are similar institutional, religious-based uses, such as St. Ann's Catholic Church and school, St. Alban's Early Childhood Center, Janney Elementary School, and American University Washington College of Law. Other nearby higher-intensity uses include Woodrow Wilson High School and the Restoration Church, which worships at the high school. The Property is located within a narrow gap between two mixed-use zones, and within 1/10<sup>th</sup> of a mile from the closest Metro access point. The project is surrounded on all sides by significant open space created by Alton Place, Yuma Street, National Park Service Land and a 36 foot buffer to the adjacent residential property lines. Given the close proximity to dense, more-active uses, the Project will provide an appropriate buffering and transitional use between the active commercial and institutional uses along Wisconsin Avenue and the residential uses to the east.

2. *Operating a Continuing Care Retirement Community will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.*

The project will not affect adversely the use of neighboring properties. Specialized residential units for an elderly population will maintain the residential character of the neighborhood at a site that is immediately adjacent to the commercial and institutional spines of Wisconsin and Nebraska Avenues. Given the residents' status and need for assistance with daily

living, they will not alter in any significant manner the existing quiet character of the neighborhood. Additionally, the shift rotation of the CCRC staff will be at non-peak vehicular and pedestrian times of the day. The existing religious use of the property will remain, but a with lower use intensity as there will be no child care services offered. As parking will be self-contained and consistent with code required number of spaces, there will be no added stress on street parking.

3. *The Proposed Continuing Care Retirement Community use meets the requirements for a special exception under Subtitle U § 203.1(f).*

*(1) The use shall include one or more of the following services: (A) Dwelling units for independent living; (B) Assisted living facilities; or (C) A licensed skilled nursing care facility.*

The proposed CCRC use will provide assisted living and memory care units, but it will not offer units for independent living or skilled nursing facilities. As such, the proposed use is consistent with this section and is permitted through special exception approval. The assisted living units are designed for older adults who value their independence but need some assistance with daily activities such as bathing, dressing, transportation and medication reminders. Seniors may live in their own suites or with a companion and are relieved of household chores such as laundry, cooking, and cleaning. A separate portion of the building would be devoted to older adults living with memory loss, including Alzheimer's and other forms of dementia. Generally, these services include a secure floor with staff trained to understand the needs of people with dementia. Staff would be on site 24-hours to assist all residents, as needed.

*(2) If the use does not include assisted living or skilled nursing facilities, the number of residents shall not exceed eight (8);*

The proposed use does include assisted living facilities and would have a total of 86 units with a maximum budgeted resident capacity of 103 residents.<sup>6</sup> The proposed use is consistent with this section.

*(3) The use may include ancillary uses for the further enjoyment, service, or care of the residents;*

The CCRC will include ancillary uses for the further enjoyment, service, and care of the residents. The premises will provide dining rooms, a multipurpose room, an entertainment room, a fitness center, a library, staff offices and areas devoted exclusively to memory care residents. The CCRC also offers a variety of activities and outings to enrich the lives of the residents. On an average day, the facility would offer three unique mind, body and spirit activities that can include music, art, light exercise or yoga classes, food and conversation events, games, and current events discussions. Offsite activities are also offered most days. A garden terrace in the center of the building and a rooftop terrace are proposed for recreation. A list of Sunrise's signature programs and activities, and a sample calendar of resident events, are attached as Exhibit B.

*(4) The use and related facilities shall provide sufficient off-street parking spaces for employees, residents, and visitors;*

A total of 66 parking spaces will be provided on site in a below-grade parking garage, which meets the required number of parking spaces for the religious and CCRC uses under the Zoning Regulations. Based on the updated Comprehensive Transportation Review ("CTR") prepared by Gorove/Slade Associates, and submitted to record as Exhibit 52A, the proposed number of parking spaces exceeds the expected demand for the church and the CCRC employees, residents and

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<sup>6</sup> The maximum bed count is 121, but Sunrise will only pursue licensing for a maximum of 115 beds.

visitors. The following table from page 12 the CTR summarizes the anticipated demand and supply.

**Table 2: Shared Parking Demand**

Parking Demand/Supply	Parking Demand	
	Weekday (mid-day)	Sunday (late morning)
Sunrise Community	43 spaces	25 spaces
Church	3 spaces	23 spaces
<b>Total Demand</b>	<b>46 spaces</b>	<b>48 spaces</b>
<b>Total Supply</b>	<b>66 spaces</b>	<b>66 spaces</b>
<b>Surplus</b>	<b>+20 spaces</b>	<b>+18 spaces</b>

In the unlikely and unanticipated scenario where all parking spaces in the building are occupied, Sunrise will direct visitors and employees to park in metered spaces on the street or parking garages in the vicinity. Sunrise will include in its residential contracts a prohibition against CCRC residents applying for a residential parking permit (“RPP”) to ensure that the supply of on-street spaces available to the immediate neighbors is not diminished. However, at an average age of 86 years old, Sunrise residents rarely drive or own cars. As shown in Figure 10 of the CTR, there is ample RPP-restricted on-street parking to accommodate area residents. Many houses in the vicinity also have off-street parking, as well.

CCRC staff will be offered SmartTrip Benefits to encourage the use of public transportation and reduce traffic and parking demand. The inclusion of secure long-term bicycle parking spaces within the development that meets or exceeds the zoning requirements will also reduce traffic and parking demands. Finally, as requested by the neighboring community, the Applicant will fund several pedestrian improvements if approved by DDOT. They include the implementation of an all-way-stop control at the intersection of 39th Street, N.W. and Alton Place, N.W.; increasing pedestrian crossing time (if needed) at Nebraska Avenue, N.W. adjacent to the Site; the addition of “Do Not Block Intersection” markings and signs at the intersection of Nebraska Avenue, N.W. and Alton Place N.W.; and possible curb extensions at several intersections.

*(5) The use, including any outdoor spaces provided, shall be located and designed so that it is not likely to become objectionable to neighboring properties because of noise, traffic, or other objectionable conditions; and*

The proposed CCRC is a quiet use that will serve as a buffer between Wisconsin Avenue, N.W., and the adjacent single-family neighborhood. It is not likely to become objectionable to neighboring properties because of noise, traffic, or other objectional conditions. Significantly, as indicated in the CTR and as documented by the District's Department of Transportation ("DDOT") report filed in the record at Exhibit 53, the proposed development will not generate a significant number of vehicular trips and does not meet the DDOT threshold for detailed capacity analysis. Therefore, no further vehicular capacity analysis is required or necessary. The Property is well-served by regional and local transit services via Metrobus and Metrorail. The Tenleytown-AU Station Metrorail station is approximately 0.1 miles to the north and 19 Metrobus stops and 11 Metrobus routes are located within one-quarter of a mile. The proposed development will generate a low number of new transit trips, which are easily handled by the existing transit facilities. The bicycle infrastructure in the vicinity is well-established. There is a dedicated bike lane along 39<sup>th</sup> Street, N.W., directly east of the Property that provides connection to a Capital Bikeshare to the south, shared lanes along River Road, 42nd Street, and Van Ness Street, and signed routes along 36th and 37th Street. These facilities provide access to the Rock Creek Trail, Capital Crescent Trail, C & O Canal Trail, and bicycle facilities on the Key Bridge. Residential low volume streets surrounding the Site also provide bicycle connectivity.

Additionally, the Applicants conducted a noise study for the rooftop mechanical equipment, which found that the proposed uses will create imperceptible noise at or below existing background noise levels and well below the D.C. noise control regulations. The proposed use will be quieter than the surrounding ordinary urban life background sound along the Wisconsin Avenue and



Nebraska Avenue corridors. In concert with the findings from the CTR and the noise study, the applicant has ensured the proposed uses have been designed to minimize noise, traffic, and other objectionable conditions. A copy of the noise study is attached as Exhibit C.

All trash receptacles for the facility will be located inside a conditioned trash room, which will be part of the mechanical/utility area on the lower level.<sup>7</sup> Receptacles will be wheeled to the loading dock area on trash collection days. Because Sunrise will contract with private companies, the collection times will be controlled and will occur after 8:00 AM in the morning, three times a week, so as not to create any objectionable noise and odors to adjacent properties. All deliveries will be limited to occur between the hours of 8:00 AM and 6:00 PM.

The proposed facility is also not anticipated to create any objectional noise from ambulances. Based on the Sunrise facility on Connecticut Ave., N.W., the average number of ambulance trips was approximately ten a month between January 2016 and October 2017, as reported the D.C. Fire Department. Seventy-six percent of the trips occurred between 7:00 a.m. and 7:00 p.m. The Applicants expect the proposed project to have fewer ambulance visits as it is smaller than the Sunrise on Connecticut Ave (100 units vs. 86 units).

Finally, the CCRC use will not create any objectionable conditions with respect to lighting. First, exterior lighting is not proposed for the Tenleytown CCRC, except at the entrance and along the garage ramp and entrance. All lighting will be directed downward so as not interfere with adjacent properties. Limited exterior lighting will also be provided in the loading dock area during the early evening hours (approximately 4:00 PM to 6:00 PM). After 11:00 PM, any exterior illumination at the entrance and any required interior lighting will be dimmed to the greatest extent possible. Interior shades will also be installed to further reduce any lightwash from the building to

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<sup>7</sup> While the interior partitions and layout of this lower level may change, the Applicant commits to placing the trash receptacles inside a conditioned trash room.

adjacent properties. Modest path lighting and decorative wall sconces will also be installed at the church entrance, which will be residential in quality. Consequently, no adverse effects from lighting will result from the project.

*(6) The Board of Zoning Adjustment may require special treatment in the way of design, screening of buildings, planting and parking areas, signs, or other requirements as it deems necessary to protect adjacent and nearby properties.*

The building design has been established to minimize its visual impact on the surrounding neighbors. These design features include the 36 foot heavily landscaped buffer and the removal of 40% of the building along the side yard to the 39<sup>th</sup> street neighbor's property line, the creation of a mansard roof element running along all the residential sides of the building starting at the top of the third floor to reduce the perceived height, the creation of various setbacks in the building along Alton Place and Yuma Street, and the placement of all parking, loading, and trash in below grade locations to limit noise and additional activity at grade. To date, no other special requirements for special treatment for design, screening of buildings, planting and parking areas, signs, or other requirements have been requested by BZA, other than the architectural, pedestrian enhancements and parking restrictions described above.

D. Applicants Satisfy the Burden of Proof for a Special Exception to Construct a Retaining Wall greater than 4 feet.

*1. The Retaining Wall will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.*

The proposed retaining wall will be in harmony with the purpose and intent of the zoning regulations and related maps. Unlike large retaining walls that dramatically alter steep, sloping topography, this retaining wall only serves to allow for a garage ramp to the below-grade parking. The retaining wall will be an average of 8'3.1" and 13' at its deepest. Normally, such a wall would be part of the building and not require any relief. Here, because the Applicants are setting their

building back significantly from the east property line, this wall now operates as a separate retaining wall instead of a building wall.

2. *The retaining wall will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.*

The retaining wall will have no adverse impact on the use of neighboring properties. An eight- to 16-foot wide planting strip will be located to the east of the retaining wall to create a pleasing green buffer between the residences on 39<sup>th</sup> Street and the new building. The plantings will consist of tall arborvitae to protect the privacy of adjacent homes and provide a visual and sound barrier between the adjacent uses. A new six-foot tall fence along the east property line with adjacent property will provide safety and security. A second fence on top of the retaining wall will add further protection.

3. *Conditions Relating to Building and Surrounding Area Make Full Compliance Unduly Restrictive or Unreasonable.*

In addition to meeting the general conditions for being granted a special exception for a retaining wall, the applicant must further demonstrate that conditions relating to the building, terrain, or surrounding area would make full compliance unduly restrictive, prohibitively costly, or unreasonable. 11-C DCMR § 1402.1.

The retaining wall will allow access to a below-grade parking garage while at the same time providing the requisite side-yard setback from the adjacent houses fronting on 39th Street. Compliance with limitation of four feet in height for the retaining wall would be unduly burdensome on adjacent properties because it would require shifting the building to the east, thereby reducing the spacious side yard separation of uses, and the amount of available space within the building. At the suggestion of the Office of Planning and DDOT, the Applicants created the through-drive condition to enhance traffic circulation by allowing cars to access and depart the site

to and from the west and minimizing any through-traffic to the east. Only residents of the CCRC will have direct views of the portion of the retaining wall exceeding four feet.

V. **The Applicants Meet the Standard for Area Variances under the Zoning Regulations.**

A. Overview

The Applicants request variances from the lot occupancy, number of stories, and side yard requirements. The Zoning Regulations provide that the maximum permitted lot occupancy for church buildings is 60 percent and 40 percent for all other uses. 11-D DCMR § 304.1. The proposed building will occupy 57 percent of the lot and thus an area variance is requested for the mixed-use building.

The R-1-B District restricts height to three stories and 60 feet for churches and 40 feet for all other buildings. 11-D DCMR §§ 207.5, 303.1. Here, the proposed building will not exceed the maximum permitted height of 40 feet for non-religious uses. However, the Applicants request area relief to allow four stories, instead of the permitted three, within that same height.

Finally, the Zoning Regulations require a minimum side yard width of eight feet. 11-D DCMR § 307.4. The Applicants will exceed that requirement significantly by providing a 36-foot side yard to the east in order to maximize the buffer to adjacent homes. To achieve this sizable buffer as a benefit to the adjacent residences, the Applicants will not provide any side yard adjacent to the NPS property.

B. Standard of Review for Area Variance Relief

Under D.C. Code § 6-641.07(g)(3) and 11-X DCMR § 1000.1, the Board is authorized to grant an area variance where it finds that three conditions exist:

- (1) The property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;
- (2) The owner would encounter practical difficulties if the zoning regulations were strictly applied; and
- (3) The variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

*See French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987); *see also St. Mary's Episcopal Church v. District of Columbia Zoning Comm'n*, 174 A.3d 260, 269 (D.C. 2017) (“the District’s zoning authorities are authorized to grant an area variance . . .”).

As discussed below, and as will be further explained at the public hearing, all three prongs of the area variance test are met for the relief requested.

C. The Application Meets the Standard for Variance Relief

1. *Extraordinary or exceptional situation or condition*

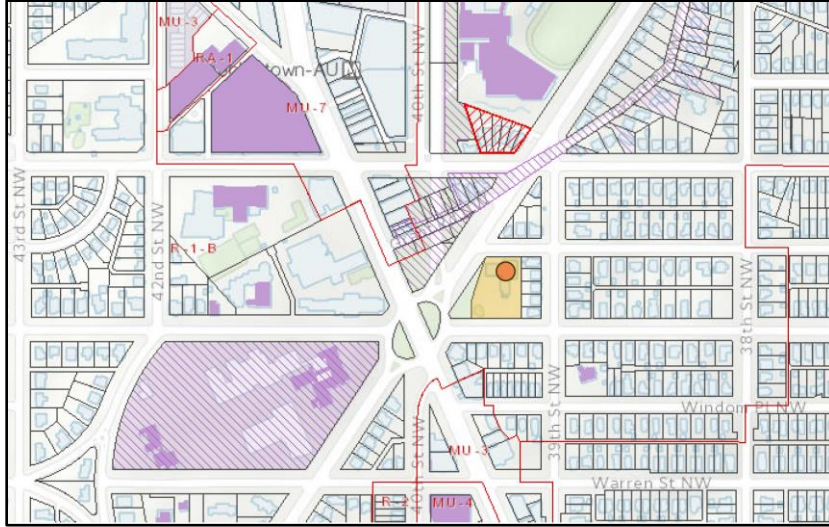
Under the first prong of the variance test, an applicant must demonstrate that “the property is unique because of some physical aspect or other extraordinary or exceptional situation or condition inherent in the property.” *Capitol Hill Restoration Society v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939, 941 (D.C. 1987). An exceptional or extraordinary situation or condition may arise from many factors, including history, shape, and location; may encompass the buildings on a property, not merely the land itself; and a “confluence of factors” may combine to

give rise to the exceptional condition. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (1990). It is not necessary that the property be unreservedly unique to satisfy this prong. Rather, the applicant must provide that a property is affected by a condition unique to the property and not related to the general conditions in the neighborhood. *Id.*

In assessing compliance with the variance test, the Board may apply flexibility to non-profit organizations and churches. The exceptional condition is not limited to the land or the improvements, but also applies to the needs of an organization devoted to public service which seeks to upgrade and expand its existing inadequate facilities. *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097-99 (D.C. 1979); *see also St. Mary's Episcopal Church at 270* (not disturbing Zoning Commission's finding of exceptional condition for non-profit religious organization seeking lot occupancy variance to better serve the needs of its members).

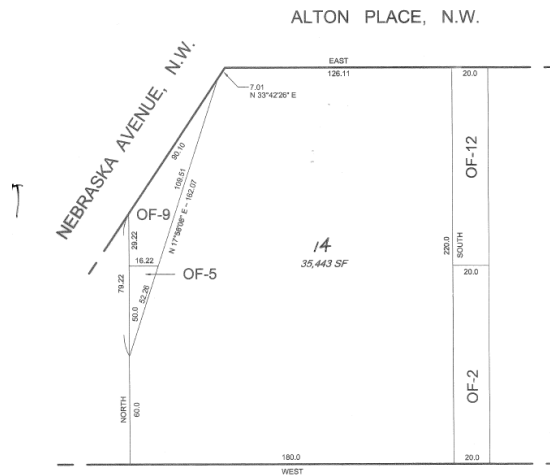
When a public service or non-profit organization has inadequate facilities and applies for a variance, the Board may also consider the needs of the organization as an exceptional condition. *Monaco*, 407 A.2d at 1099. Under the *Monaco* standard, the church is required to show "(1) that the specific design [the church] wants to build constitutes an institutional necessity, not merely the most desired of various options, and (2) precisely how the needed design features require the specific variance sought." *Draude v. District of Columbia Board of Zoning Adjustment*, 527 A.2d 1242 (D.C. 1987).

Here, the Property is like no other in the R-1-B zone in the Tenleytown neighborhood. First, its size, shape, and configuration are all unusual in comparison to other lots in the R-1-B area of Tenleytown.



Excerpt from Property Quest map showing size of lots in vicinity of WABC site  
[www.PropertyQuest.dc.gov](http://www.PropertyQuest.dc.gov)

The lot is an irregularly shaped, five-sided parcel that spans the full depth of the lot, which is 220 feet deep on its east side. The west property line is angled and is also approximately 220 feet in length. The site fronts on both Alton Place, N.W., and Yuma Street, N.W., with 126.11 feet of frontage to the north (Alton Place) and 180 feet of frontage to the south (Yuma Street). Approximately seven feet of Lot 14 also fronts on Nebraska Avenue, N.W. The total land area is 35,443 square feet, or seven times larger than the average of the other five lots on the square.



Excerpt from 2011 Subdivision Plat (Book 205, Page 134)

Unlike the majority of lots in the vicinity, this site is bounded on the west by the NPS parcel, which is designated as an open, landscaped area that will not be built upon. It is part of the Fort Circle Connector of the civil war defenses that comprise Fort Circle Park. The lot's character as a through lot, along with the open NPS lot to the west, effectively render this site uniquely exposed on four thoroughfares: Wisconsin Avenue/Tenley Circle, Nebraska Avenue, Yuma Street, and Alton Place.

The site's location at the intersection of a major commercial corridor, low-density residential areas, and high-traffic urban crossroads also present extraordinary condition unique to this lot. The site is on the edge of the boundary of the residentially-zoned neighborhood immediately adjacent to the Wisconsin Avenue commercial corridor, the public and institutional uses along Nebraska Avenues, and is within about 500 feet of the Tenleytown Metrorail Station. This unique position is unlike any improved property in its square, and unlike the majority of lots in the R-1-B zone in the neighborhood. The NPS lot provides a small open space buffer, effectively leaving the Property physically and visually exposed to the heavily trafficked mixed-use area.

Beyond its exceptionally uncommon physical characteristics, the Property is further burdened by the particular situation of its current non-profit, public service organization occupant. WABC has been a part of the Tenleytown neighborhood for over 100 years, including 60 years in its current location. The existing church building suffers from functional obsolescence and major disrepair. In addition to failing mechanical systems, roof issues, and other building deficiencies, other aspects of the church do not allow for adequate church-related services. Lighting and acoustics are poor, the electric grid is inadequate, kitchen facilities are barely operational, security or sprinkler system are non-existent, asbestos tiles are deteriorating, and poor spatial configurations do not meet the needs of the nursery area and classrooms. One of the congregations' greatest



challenges is that the existing church is not compliant with the Americans with Disabilities Act (“ADA”) accessibility requirements, which is antithetical to the church mission to be inclusive for all citizens. Although the WABC congregation has a valuable property, it sorely lacks the liquid assets needed to make necessary repairs and renovations, and to continue to operate in its present location. The congregation will not survive on this site without leveraging its land value.

In order to survive, WABC will sell its property to Sunrise, which will construct a new, right-sized, modern parish for WABC that fits its members and mission. As part of the new construction, Sunrise will also construct a CCRC in an area of town lacking housing options for its aging population. The WABC will gain new facilities and financial solvency that will allow it to continue its missions into the future. Upon completion, the building will be comprised of two condominium lots, with WABC owning the church portion and Sunrise owning the CCRC portion.

Between the pressing needs of the church, and the unique size, shape and location of the lot, the site is unlike any other in its zone. Thus, the property’s exceptional configuration and characteristics constitute the necessary exceptional situation or condition required to meet the first prong of the variance test, as established in the cases cited above. The specific design of the building is an institutional necessity in order for the church to leverage its property with a mission-compatible use. As described in greater detail below, the design features of the building require the specific variance relief sought.

## 2. *Practical Difficulties Created by the Exceptional Conditions*

Applicants for an area variance must demonstrate they will encounter “practical difficulties” in the development of the property if the variances are not granted. *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540-41 (D.C. 1972) (noting that “area variances have been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden”). An applicant experiences practical difficulties when compliance with

the Zoning Regulations would be “unnecessarily burdensome.” *Gilmartin*, 579 A.2d at 1170. The nature and extent of the burden that will warrant an area variance is best left to the facts and circumstances of each particular case. *Palmer*, 287 A.2d at 542. It is well settled that the BZA may consider “a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty.’” *Gilmartin*, 579 A.2d at 1171 (citing *Barbour v. District of Columbia Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976)); see also *Tyler v. District of Columbia Bd. of Zoning Adjustment*, 606 A.2d 1362, 1367 (D.C. 1992). Other factors to be considered by the BZA include: “the severity of the variance(s) requested;” “the weight of the burden of strict compliance;” and “the effect the proposed variance(s) would have on the overall zone plan.” *Gilmartin*, 579 A.2d at 1171. Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome, not impossible.

Here, without variance relief from the number of stories and lot occupancy restrictions, the church cannot partner with Sunrise to construct the proposed church and CCRC facility, due to the financial constraints and design parameters of a CCRC use. Newly constructed assisted living communities in high density urban locations typically cannot be built with fewer than approximately 90 units to generate the required revenue to cover land, construction and operating costs. Unlike other residential buildings, which can often be constructed using less expensive wood-framing (Type V), CCRC facilities must use more costly steel and concrete construction (Type I-2) due to D.C. Building and Fire Code requirements, which are triggered by facilities with more than six residents who are incapable of self-preservation in an emergency situation. See 12-A DCMR § 308.4; INT’L BLDG. CODE § 407 *et seq.* (the international building code is adopted and modified in the District by regulation). The proposed building has been designed to meet the I-2 Use Group requirements of the D.C. Building Code and is proposed to be constructed as a 1B Non-

Combustible Construction Type, which includes two-hour fire protection and includes an NFPA 13 Full Sprinkler System. Licensing requirements, including the provision of extensive support service space for residents and staff, also add to construction costs. Together, these factors significantly increase the cost of constructing and operating the building, particularly in urban regions with higher land costs. This, in turn, requires a greater number of units over which to spread the costs.

According to the National Investment Center, in the last five years, CCRCs constructed across the United States where the majority of units are devoted to assisted living (“AL”) units, and a smaller proportion devoted to memory care (“MC”) units, the buildings have averaged approximately 90 units. In the high-density markets of Washington, D.C., northern Virginia, Philadelphia, New York, and Chicago, the average number of units constructed in the last five years is closer to 100. This can be attributed to the higher cost of land and construction in these markets.

	<b>Buildings</b>	<b>Total Unit</b>	<b>AL</b>	<b>MC</b>
<b>U.S. Market</b>	1067	<b>90</b>	52	32
<b>Indv. Markets</b>				
Washington, DC	4	<b>107</b>	72	34
New York, NY	27	<b>111</b>	73	37
Chicago, IL	58	<b>95</b>	49	40
Northern Virginia, VA	11	<b>100</b>	57	31
Philadelphia, PA	17	<b>97</b>	52	34

Source: National Investment Center, [www.nic.org](http://www.nic.org).

A typical assisted living facility requires approximately 900 gross square feet per unit. This includes the residential unit itself and all common spaces, including the common living space on the ground floor, dining facilities, kitchen, staff offices, and hallways (not including underground parking). Multiplying the average unit size of 900 square feet by 90 units (the average number necessary for a financially viable CCRC), the typical facility would require approximately 81,000

square feet. Based on the specific financial parameters of the WABC site, Sunrise would be able to reduce the number of units to 86 and still remain financially viable. An 86-unit facility would translate to a building with approximately 77,400 square feet.

But none of the low- or moderate-density residential districts where CCRC uses are permitted as a special exception (R-1 through RA-1) have sites that are large enough to accommodate a CCRC. At three stories, the footprint of the building would need to be 25,800 square feet. At 40 percent lot occupancy, this building would require 64,500 square feet of land or 1.48 acres.<sup>8</sup> Any new CCRC use (comparable to the Sunrise proposed care model with both assisted living and memory care) in the city within an R-1 through RA-1 District will necessarily require lot occupancy variance if the site is less than approximately 1.5 acres. The Zoning Regulations recognize the need for CCRC uses in the low- and moderate-density zones through special exception approval but the regulations do not provide the necessary amount of lot coverage or number of stories to make them viable without variance relief.

Here, the WABC lot size is 35,443 square feet. If the church and CCRC had to comply with the 40 percent lot occupancy and three-story height limit, the total building could be no larger than 42,532 square feet over three stories. A 42,532 square foot building would yield only 47 units *without any space remaining for the church use.*

For the CCRC use to be financially viable, provide the needed care to D.C. residents, and allow the church to continue its presence on the site with a mission-focused compatible use, the combined structure requires a minimum lot occupancy of 57 percent and four stories within the allowed height of 40 feet. Significantly, the proposed lot occupancy is less than the 60 percent coverage and 60-foot height allowed if the site were to be developed solely as a religious

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<sup>8</sup> 77,400 sf /3 stories = 25,800 sf; 25,800 sf /40% lot occupancy = 64,500 square feet of land area required.

institution. When considered outside of the parameters of the specific lot size and in context of the surrounding environment, the lot occupancy of 57% does not adequately describe the actual limited impact this new building will have on its surrounding neighbors. In traditional urban planning, lot occupancy and setbacks in residential zones are established to provide adjacent residential neighbors with adequate light and air. When considered along with the National Park Service land, the sizable right of way widths of Alton Place and Yuma Street and the provided 36-foot wide buffer along the 39<sup>th</sup> Street side, this building presents minimal impact on its surrounding neighbors.

The unusual site configurations also necessitate relief from the side yard requirements on the western portion of the Property. The through-lot condition on this 35,443 square-foot site dictate a building arrangement where each use fronts on a street to create an appropriate urban design that (i) responds to the neighboring single-family dwellings by following building lines along streets, and (ii) reflects the site's adjacency to the Wisconsin Avenue commercial corridor and institutional uses on Tenley Circle and in the immediate vicinity.

On the eastern side of the Property, the Applicants will provide an expansive, 36-foot wide side yard to create a significant landscape buffer between the five detached single-family houses that front on 39<sup>th</sup> Street and the new church and CCRC use. Within this setback, the Applicant will provide an 8 to 16-foot wide planting strip along the rear yards of these houses, running from Alton Place to Yuma Street, as shown on the drawings. Tall evergreens and a new six-foot fence will be planted within this green strip. In order to accommodate this extensive green buffer, the Applicants cannot provide a side yard on the west property line that abuts NPS land. If the Applicants were to shift the building eight feet to the east to meet the strict application of the side yard provisions, they

would have to eliminate the green buffer on the east side because this setback area must also accommodate the garage ramp and access drive to the loading facilities, as shown on the drawings.

Because of the exceptional and extraordinary conditions of this particular Property, however, the Applicants can push the building to the west property line without creating any harm to the NPS parcel maintained as open space. This parkland will provide the same aesthetic and qualitative buffer that the regulations desire. The Applicants have been in discussions with NPS over the past 18 months on an appropriate landscape treatment for this federal parcel. The Applicant will design, improve and maintain this area, as shown on the concept plans included with the drawings, if approved by all required regulatory agencies. NPS and the Applicants presented their initial plans to the U.S. Commission of Fine Arts in September and will return with refinements to the design in November 2018.

3. *No harm to the public good or to the zone plan*

The requested variances can be granted without causing substantial detriment to the public good and without substantial impairment to the intent, purpose, and integrity of the Zoning Plan. The project will adhere to the residential character of the neighborhood, while simultaneously continuing the existing religious use of the property.

The increased lot occupancy to 57 percent is less than what would be permitted for a matter of right religious institution. When combined with the adjacent NPS parcel to the east, which will remain open and landscaped, it will create an effective lot occupancy of approximately 46 percent. Without Sunrise, WABC would have to seek another buyer. That buyer would be a religious institution that would take advantage of the by-right zoning and could build a larger facility at 60 percent lot coverage, with a more severe intensity of daily use than that contemplated by the combination of WABC and Sunrise.

The difference between 57 and 40 percent lot occupancy has marginal to no visual effect on the adjacent properties since it would not result in further setbacks from the streets. But for the practical, financial and operational difficulties described above, lot occupancy would be achieved by increasing the size of the interior courtyard, which would not affect the appearance of the building from the street. Similarly, if the building provided only three stories instead of four stories, there would be no change to the actual height of the building or its appearance from the street since both fall within the maximum permitted height of 40 feet. Finally, if the building provided a side yard to the west, there would be little visible difference due to the adjacent lot that is maintained as open space by NPS. Building up to that lot line allows the Applicants to provide as much space as possible between the new building and the neighbors to the east.

The variances would not cause substantial detriment to the public good and, in fact, would serve the public good by allowing elderly residents to age within their community at a site that is adjacent to a commercial corridor but within a residential neighborhood. The CCRC use is a particularly quiet and compatible residential use that is not in conflict with the adjacent single family houses, especially as compared to the likely alternative use of the site as a home for a modern, transit-oriented, mega-religious institution. The proximity of the Tenleytown-AU Metrorail Station – only 500 feet away – further supports the CCRC use at the WABC site. Accordingly, the Applicants satisfy each part of the variance-relief test.

## **VI. Community Outreach**

The Applicants have had numerous discussions, email communications and meeting with individual neighbors, groups of neighbors and Advisory Neighborhood Commission (“ANC”) 3E to gather feedback on the proposed building. As a result of these meetings, the building has been reduced in height and size. The original plan contemplated a 100-unit building with 69 percent lot

coverage and a height of 60 feet for the portion of the building where the church would be located on the first and second floors. The Applicants were able to reconfigure the project to its current size of 86-units while still remaining viable. The Applicants made presentations to ANC 3E on October 12, 2017, December 14, 2017, March 15, 2018, June 14, 2018, and September 17, 2018. The Applicants will return to the ANC on November 8 for final consideration and a vote on the application.

**VII. Witnesses**

The following witnesses may provide testimony at the Board’s public hearing on the application:

1. Patricia Dueholm, Moderator, WABC Board of Trustees
2. Janet Brooks, WABC Board of Trustees
3. Philip Kroskin, Senior Vice President, Sunrise Senior Living
4. Steve Ruiz, Moseley Architects (expert in architecture)
5. Charles R. Heath, AIA NCARB LEED ap (expert in architecture)
6. Andrew Altman, Five Squares Development (expert in land planning)
7. Rob Schiesel or Dan Van Pelt, Gorove Slade Associates (experts in transportation engineering)
8. Connie Fan, LSG Landscape Architecture (expert in landscape architecture)

**VIII. Exhibits**

The following exhibits are included in support of this submission:

Exhibit A Excerpt from Zoning Map showing Property

Exhibit B List of Sunrise Signature Programs for Residents and Sample Calendar of Events

Exhibit C Noise Study

Exhibit D Resumes of:

- Charles R Heath, AIA, Heath Architecture. LLC, expert in architecture and senior housing design
- Philip Kroskin, Senior Vice President Real Estate Development, expert in assisted living development
- Andrew Altman, Five Squares Development, expert in land planning



- Daniel Van Pelt, Gorove/Slade Associates, expert in transportation engineering

Exhibit E Updated architectural drawings

**IX. Conclusion**

For the reasons stated above, the proposed application meets the standards for variance relief and for special exception relief under the Zoning Regulations. The Applicants therefore respectfully request that the Board grant the application.

Respectfully submitted,

DONOHUE & STEARNS, PLC

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DATE: October 24, 2018