

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

**3501-3527 Connecticut Avenue, NW  
Square 2222, Lot 15**

**PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF**

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This statement is submitted by JP Morgan Chase Bank, N.A. (the “Applicant”) in support of an application pursuant to Subtitle X § 901.2 and Subtitle H § 1200.1 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”) for special exception relief from 11-H DCMR § 1101.3(a) to dedicate more than 20% of the ground floor level of an existing building located in the NC-3 zone at premises 3501-3527 Connecticut Avenue, NW (Square 2222, Lot 15) (the “Property”) to financial service uses.

Attached hereto are letters from the Applicant and the owner of the Property (the “Owner”) authorizing the filing and processing of this application. Also attached is a filing fee in the amount of \$1,560.00 for the special exception relief requested.

Pursuant to 11-Y DCMR § 300.15, the Applicant will file its Prehearing Statement with the Board of Zoning Adjustment (“BZA” or “Board”) no fewer than 21 days prior to the public hearing for the application. In this statement, and at the public hearing, the Applicant will provide testimony and evidence to meet its burden of proof to obtain the Board’s approval of the requested special exception relief. The following is a preliminary statement demonstrating how the Applicant meets the burden of proof.

**I. BACKGROUND**

**A. Description of the Property and Surrounding Area**

The Property consists of Lot 15 in Square 2222 and has a total land area of approximately 49,057 square feet. The Property is bounded by Connecticut Avenue, NW to the west, Ordway Street, NW to the south, a public alley and Porter Street, NW to the east, and private property also owned by the Owner (Square 2222, Lot 16) to the north. As shown on the Zoning Map attached hereto, the Property is zoned NC-3 and is located within the Cleveland Park Historic District.

The Property is improved with an existing one- and two-story retail center known as Sam’s Park & Shop. The retail center was constructed in approximately 1930 and is a contributing building to the Cleveland Park Historic District. The retail center has approximately 19,986 square feet of rentable retail floor area on the ground floor.<sup>1</sup> The existing ground floor uses include eating

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<sup>1</sup> The net rentable square footage has been used instead of the “gross floor area,” as that term is defined in the Zoning Regulations. This is because the existing building was constructed circa 1931, which pre-dates the current gross floor area calculations required by zoning. Given the configuration of the building which is entirely retail at the ground level and has limited internal common areas, the net square footage would closely align with the gross floor area.

and drinking establishments, salons, an ice cream store, a liquor store, a dog daycare facility, a fitness facility, and a Capital One bank. A new Target store recently opened on the partial second-story of the retail center building.

Vehicular access to the Property is provided via existing curb cuts on Connecticut Avenue and Ordway Street. In front of the building along Connecticut Avenue is a surface parking lot with 51 parking spaces. Loading is provided from the rear alley (no loading requirement due to grandfathered nature of historic building). An entrance to the Cleveland Park Metrorail station is located directly adjacent to the Property along Connecticut Avenue. A number of Metrobus routes, including the H2, H3, H4, L2, D32, L1, and W47 routes, are located along streets abutting the Property with bus stops located less than 0.1 miles away.

The Property is located along Connecticut Avenue's Cleveland Park commercial corridor and comprises the entirety of the east side of the block between Porter and Ordway Streets, other than Lot 16 and an Exxon gas station to the north. Directly across Connecticut Avenue from the Property are other neighborhood-serving retail and service establishments, including restaurants, a Walgreens drug store/pharmacy, hair salons, a DC Fire and Emergency Medical Services facility, and an urgent care medical facility. The block to the south of the Property also has a variety of restaurants and cafes, salons, banks, a CVS pharmacy, grocery store, post office, and movie theater.

**B. Description of Proposed Use**

As shown on the architectural drawings attached hereto, the Applicant proposes to lease approximately 3,287 square feet of the existing building's ground floor retail space as a Chase Bank financial service use. The proposed bank would have three walk-up ATMs (one in an interior 24-hour accessible lobby and two within the bank itself), office and meeting spaces, data and equipment rooms, a customer waiting area, employee lounge, and restrooms. The bank would be located in the northern-most wing of the existing building, with entry doors located on Connecticut Avenue and from the parking lot.

As detailed below, the Applicant seeks special exception relief from 11-H DCMR § 1101.3(a), which limits the square footage permitted to be devoted to "financial services, travel agencies, or other ticket offices" to 20% of the building's ground floor level in the NC-3 zone. The existing building has approximately 19,986 square feet of floor area on the ground floor level devoted to retail use. The proposed bank would occupy approximately 3,287 square feet, and the existing Capital One bank occupies approximately 2,200 square feet. Thus, the total gross floor area devoted to financial services would be 5,487 square feet, which is approximately 27.5% of the total ground floor level (1,490 square feet or 7.5% greater than permitted).

**II. SPECIAL EXCEPTION RELIEF**

**A. Relief Requested**

As stated above, the Applicant seeks special exception relief from 11-H DCMR § 1101.3(a) to lease a total of approximately 5,487 square feet of the ground floor of the existing building to

financial service uses. Relief is necessary because approximately 27.5% of the ground floor would be devoted to financial service uses, whereas a maximum of 20% is permitted. The Board can grant the relief requested pursuant to the general special exception standard of review set forth in 11-X DCMR § 901.2, and the special exception standard of review applicable to the NC zones set forth in 11-H DCMR § 1200.1.

**B. Burden of Proof**

Pursuant to D.C. Code § 6-641.07(g)(2) and 11-X DCMR § 901.2, the Board is authorized to grant a special exception where it finds the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property, subject in each case to the special conditions specified. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested relief are met. In reviewing an application for special exception relief, “[t]he Board’s discretion... is limited to a determination of whether the exception sought meets the requirements of the regulation.” *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 706 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

In addition, pursuant to 11-H DCMR § 1200.1, the Board may grant special exception relief from the specific standards of Subtitle H, subject to the criteria set forth in 11-H DCMR § 1200.1(a)-(g).

As set forth below, the application meets the burden of proof to meet the general special exception standard of review and the specific standards of 11-H DCMR § 1200.1.

**1. The Applicant Meets the General Test for Special Exception Relief Under 11-X DCMR § 901.2**

The proposed financial service use meets the general special exception standard of review set forth in 11-X DCMR § 901.2.

Before granting an application for a special exception, the Board must determine that 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 in accordance with the Zoning Regulations and Zoning Maps. 11-X DCMR § 901.2(a)-(c). The stated purposes of the Zoning Regulations are set forth in DC Code § 6-641.02:

Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the national capital, and zoning regulations shall be designed to lessen congestion in the street, to secure safety from fire, panic, and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration of population and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation,

prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein.

In this case, the proposed financial service use will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. Financial service uses are permitted as a matter-of-right in the NC-3 zone, and it is only the percentage of financial service uses within the ground floor level of the building that is limited. Nonetheless, as a permitted use, the proposed Chase Bank will not be out of character with the surrounding commercial neighborhood, which already has a variety of service uses (financial and otherwise), retail establishments, and restaurants that serve the surrounding community. Another bank will be a benefit to the community and will be able to serve neighborhood residents, visitors, and employees alike. Moreover, given that the proposed bank will be located within the existing building, it will not create any adverse impacts on surrounding properties related to the reduction of light and air. Finally, as described below, the proposed use will not create any adverse impacts related to noise, parking, loading, or traffic generation. Instead, the use will be a benefit to the neighborhood and will occupy a vacant tenant space thus improving the streetscape in front of the Property.

Accordingly, the proposed financial service use is in harmony with the purpose and intent of the Zoning Regulations and meets the test for special exception relief under 11-X DCMR § 901.2.

**2. The Applicant Meets the Test for Special Exception Relief Under 11-H DCMR § 1200.1**

Pursuant to 11-H DCMR § 1200.1, the Board may grant relief from the standards of Subtitle H as a special exception subject to the following criteria:

- a. *The excepted use, building, or feature at the size, intensity, and location proposed will substantially advance the stated purposes of the NC zones, and will not adversely affect neighboring property, nor be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity;*

The proposed financial institution use will meet the purposes of the Neighborhood Mixed Use zones, as set forth in 11-H DCMR § 100. For example, the proposed use will help to maintain the existing stable, mixed-use neighborhood of Cleveland Park by providing a new commercial use in an existing neighborhood-serving retail center along a major commercial corridor (*see* 11-H DCMR § 100.1). The use will provide for a varied mix of employment and service uses in the area (*see* 11-H DCMR § 100.2(a)); will preserve and enhance the neighborhood shopping area by adding to the range of appropriate uses (*see* 11-H DCMR § 100.2(c)); and will encourage the retention and establishment of a variety of retail and personal service

uses in a continuous pattern at the ground level to meet the needs of the surrounding area's residents, workers and visitors (*see* 11-H DCMR § 100.2(e)).

In addition, the proposed financial service use will not disrupt the existing flow of motor vehicle movements into or out of the retail center's parking lot, and will not require new driveways or curb cuts since no changes are proposed to the retail center's existing vehicular ingress or egress (*see* 11-H DCMR §§ 100.2(b) and (g)). The proposed use will maintain the existing scale of development as no physical changes are proposed to the building other than internal renovations and upgrades. The financial service use will enhance the existing mix of building uses and will preserve the safe and efficient flow of pedestrians by simply adding a new use to the building without undertaking any new building additions or changes to existing circulation patterns (*see* 11-H DCMR § 100.2(f)).

The request is also consistent with the purposes of the Cleveland Park Neighborhood Mixed Use Zone (NC-3) set forth in 11-H DCMR § 500, which is intended to permit mixed-use development at a moderate density (11-H DCMR § 500.2). Consistent with 11-H DCMR § 500.1(a), the proposal will maintain the existing building's compatibility with the purposes of the Historic Landmark and Historic District Protection Act of 1978 (D.C. Law 2-144) by protecting, enhancing, and perpetuating improvements within the Cleveland Park Historic District that represent distinctive elements of the city's cultural, social, economic, and architectural history, and retaining and enhancing the existing building that contributes to the character of the Historic District and encouraging its adaptation for current use (*see* D.C. Law 2-144 §§ 2(a)(1) and 2(b)(1)(A)). Pursuant to 11-H DCMR § 500.1(b), the project will maintain the building's existing height and scale of development that is compatible with surrounding buildings; and consistent with 11-H DCMR § 500.1(c) the project will encourage consumer support for businesses in the commercial area.

Based on the foregoing, the proposed use is fully consistent with the purposes of the Neighborhood Mixed Use zones (11-H DCMR § 100) and the NC-3 zone specifically (11-H DCMR § 500).

In addition, the proposed use will not adversely affect neighboring property or be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity. As detailed below, the financial service use will be located within an existing building, such that neighboring properties will not have any reduced light or air that can result from construction of a new building. The financial service use will not create any adverse noise impacts, will operate within the existing building during normal business hours, and will not generate any additional parking or loading demand or increased traffic congestion. Moreover, the proposed Chase bank will lease a currently vacant tenant space that will bring additional eyes and ears to the street and help to increase the vibrancy of the surrounding commercial corridor. The use will add a convenient service to the neighborhood that will service residents, visitors, and employees alike.

- b. *The architectural design of the project shall enhance the urban design features of the immediate vicinity in which it is located; and, if a historic district or historic landmark is involved, the Office of Planning report to the Board of Zoning Adjustment shall include review by the Historic Preservation Office and a status of the project's review by the Historic Preservation Review Board;*

As noted above, the Applicant does not propose to make any exterior architectural design renovations to the existing building, other than adding new signage for the Chase Bank. Thus, the building, which is already designated as contributing to the Cleveland Park Historic District, will continue to benefit the urban design features of the immediate vicinity. The application will be forwarded to Office of Planning for review, which will include a report from the Historic Preservation Office.

- c. *Exceptional circumstances exist, pertaining to the property itself or to economic or physical conditions in the immediate area, that justify the exception or waiver;*

Exceptional circumstances exist given that the proposed bank will be located in an existing building with existing tenant spaces, demising walls, and exterior building walls that cannot be shifted or relocated. As shown on the architectural drawings, the location of the proposed Chase Bank will be in the northern-most wing of the existing building in a vacant 3,287 square foot retail space. In order to comply with the 20% financial service use requirement of 11-H DCMR § 1101.3(a), the Applicant would not be permitted to occupy approximately 1,490 square feet (45.3%) of that tenant space. Doing so is not possible for Chase Bank's program, which requires the full 3,287 square feet to accommodate the ATMs, meeting rooms, data and equipment facilities, customer waiting area, employee lounge, and restrooms. Moreover, the 1,797 square feet of leftover leasable space would be useless to another separate tenant given its extremely small size and location at the edge of the existing building.

In addition, the Applicant has made good faith efforts over the years to lease the retail space to a use that would not require special exception relief. The tenant space has been vacant since 2014, and since that time, many letters of intent were pursued for a variety of uses, but none were successful.

- d. *Vehicular access and egress are located and designed so as to encourage safe and efficient pedestrian movement, minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions;*

The application does not propose any changes to the existing vehicular access or egress to the retail center.

- e. *Parking and traffic conditions associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences;*

The proposed use will not create any parking or traffic conditions that will adversely affect adjacent or nearby residents. Given that the existing retail center is a contributing building to the Cleveland Park Historic District, the Applicant is not required to provide additional parking spaces for the change in use without an expansion. *See* 11-C DCMR § 705.3. Nonetheless, the parking requirement for financial service use is the same as the requirement for general retail use, such that the anticipated parking demand is the same as what already exists within the building. *See* 11-C DCMR § 701.5.

Regarding demand, the times of day and days of the week for which the bank will be used is generally the same as or less than the other retail uses within the building, and approximately the same as the existing Capital One bank, such that the proposed use will not create any noticeable changes to the existing parking or traffic conditions. The 51-space parking lot located in front of the retail center is shared by all of the retail and service uses within the building. The lot is available for use by employees and customers of the retail center. Thus any parking demand generated by the proposed financial service use will be easily accommodated on-site. Moreover, an entrance to the Cleveland Park Metrorail station is located directly adjacent to the Property along Connecticut Avenue, NW, and the Property is located in a mixed-use and walkable neighborhood, such that the Applicant anticipates that most patrons to the Chase Bank will walk.

Finally, the closest residences are located on the opposite side of the retail center, half a block to the southeast from the southern-most part of the Property on Ordway Street (the Cleveland Park Apartments), and will therefore not be impacted by the proposed use.

- f. Noise associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences; and*

As noted above, the closest residences are located on the opposite side of the retail center, half a block to the southeast from the southern-most part of the Property. The bank itself will not generate any noise not already associated with the existing retail center or existing Capital One bank, and will operate normal banking hours. Therefore, the proposed use will not generate any adverse effects on adjacent or nearby residences.

- g. The Board of Zoning Adjustment may impose requirements pertaining to design, appearance, signs, size, landscaping, and other such requirements as it deems necessary to protect neighboring property and to achieve the purposes of the NC zone.*

Given the foregoing information demonstrating the lack of any adverse impacts generated by the proposed use and the consistency with the purposes of the NC zone, the Applicant does not believe that any additional requirements are warranted.

### **III. COMMUNITY ENGAGEMENT**

The Property is located within the boundaries of Advisory Neighborhood Commission (“ANC”) 3C04. Prior to filing the subject application, both the Applicant and the Owner discussed the project and the special exception relief with the Single Member District representative for ANC 3C04 on several occasions. The Applicant will continue to engage with the ANC as a whole and request a formal vote on the application prior to the public hearing.