

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

**2033 11<sup>th</sup> Street, NW (Square 332, Lot 807)**

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

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On behalf of Beacon Communities, LLC and Christian Tabernacle Church of God, Inc. (collectively the “Applicant”), and pursuant to 11-X DCMR § 901.2 and 11-X DCMR § 1000.1, this statement is submitted in support of an application for the following:

- (i) **Lot Occupancy**: special exception relief from the requirements in 11-K DCMR § 804.1 to allow the ground floor, consisting of a residential use, to exceed 80 percent lot occupancy, pursuant to 11-K DCMR § 813 and 11-X DCMR § 901.2;
- (ii) **Open Court**: special exception relief from the open court width requirement of 11-K DCMR § 807.1, pursuant to 11-K DCMR § 813 and 11-X DCMR § 901.2;
- (iii) **Green Area Ratio**: special exception relief from the requirements in 11-K DCMR § 808.1 to allow a Green Area Ratio (“GAR”) of less than 0.3, pursuant to 11-K DCMR § 813 and 11-X DCMR § 901.2;
- (iv) **Loading**: special exception relief from the requirements in 11-C DCMR § 909.1 to provide no loading berth or delivery space, pursuant to 11-C DCMR § 909.2 and 11-X DCMR § 901.2;
- (v) **Penthouse Setback**: special exception relief from 11-C DCMR § 1504.1(d) for a reduced penthouse setback adjacent to an open court, pursuant to 11-C DCMR § 1506 and 11-X DCMR § 901.2; and
- (vi) **Garage Ramp Slope**: area variance from the requirements in 11-C DCMR § 711.8 to permit a garage ramp to have a 20 percent slope where a maximum of 12 percent is permitted, pursuant to 11-X DCMR § 1001.1.

The purpose of this application is to permit the construction of a seven-story mixed-use building on the eastern portion of the property located at 2033 11<sup>th</sup> Street, NW (Square 332, Lot 807) (the “Property”). The building will contain 65 affordable units and new daycare facility on the ground floor. The Property is zoned ARTS-2 and is within the boundaries of the Greater U Street Historic District.

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 30 days prior to the public hearing on 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

relief. The following is a preliminary statement demonstrating how the Applicant meets its burden of proof.

## I. BACKGROUND

### A. Description of the Property, Neighborhood Context, and Zoning

The Property is an “L” shaped corner lot with frontage along 11<sup>th</sup> Street, NW to the west, V Street, NW to the north, and 10<sup>th</sup> Street, NW to the east, and consists of approximately 14,382 square feet of land area. The western portion of the Property is currently improved with the Christian Tabernacle Church of God (“Church”), which will remain on the site. The eastern portion of the Property is currently improved with a child development center, which will be demolished and replaced with a new seven-story building with approximately 65 affordable units (with a mix of studios, one-, two-, and three-bedroom units) and an 8,200 square foot child development center on the ground floor (the “Project”). The new child development center will include a 1,156 square foot outdoor play space; also the Project will include 16 below-grade parking spaces with dedicated spaces for each portion of the program. The proposed building design has received concept approval from the Historic Preservation Review Board.

The Property is located one block north of the U Street Corridor, which features eating and drinking establishments, retail, neighborhood services, and residential buildings, and is approximately 0.2 miles from the U Street / African American Civil War Memorial / Cardozo Metrorail station. The immediate neighborhood includes a blend of residential buildings, small businesses, and other religious institutions. To the north, across V Street, are row buildings and a multifamily building. To the east, across 10<sup>th</sup> Street, is a high school. To the west, across 11<sup>th</sup> Street, is a large multifamily building. Within the same square as the proposed redevelopment are row buildings, eating and drinking establishments, and the historic performance venue, Bohemian Caverns.

As shown on the portion of the Zoning Map included herein, the Property is zoned ARTS-2. The Mixed-Use-Uptown Arts (ARTS) zones are intended to promote arts and related uses, encourage pedestrian-friendly development with a mix of uses, expand housing and business opportunities, strengthen the area's design character, and foster public safety and 18-hour activity through adaptive reuse of older buildings and integration of new ones. *See* 11-K DCMR § 800.1. The ARTS-2 zone is specifically intended to permit medium-density, compact mixed-use development with an emphasis on residential development. 11-K DCMR § 800.3.

## II. SPECIAL EXCEPTION RELIEF

### A. Relief Requested

The Applicant requests **special exception relief** as follows:

1. **Lot Occupancy**: to allow the ground floor, consisting of a residential use, to have a lot occupancy of 86.36 percent, where 80 percent is permitted. (11-K DCMR § 804.1)

2. **Open Courts**: to have an open court width of 11.67 feet where 13.33 feet is required for the open court at the existing church, and 11.67 feet where 25.33 feet is required for the open court at the west property line. (11-K DCMR § 807.1)
3. **Green Area Ratio**: to allow a GAR of 0.23 where a minimum of 0.30 is required. (11-K DCMR § 808.1)
4. **Loading**: to provide no loading where one 30-foot berth and one delivery space is required. (11-C DCMR § 909.1)
5. **Penthouse Setback**: to allow a penthouse setback of 0-feet on the open court where a 1:1 setback is required. (11-C DCMR § 1504.1(d))

## **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.*

## **C. Compliance with the General Special Exception Standards of 11-C DCMR § 901.2**

The requested special exception relief may be approved by the Board pursuant to 11-X DCMR § 901.2.

To grant an application for a special exception, the Board must determine whether 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 adversely affect 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 D.C. 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 requested relief is in harmony with the general purpose and intent of the Zoning Regulations and the Zoning Map. The requested relief would permit the development of a new child development facility and affordable residential units on an underutilized site in the ARTS-2 zone. This zone is intended to permit medium-density, compact mixed-use development, with an emphasis on residential uses. These uses are permitted as a matter of right in the ARTS-2 zone and will contribute to the vitality of the surrounding mixed-use neighborhood, activate the streetscape, provide highly desirable uses in a transit-accessible neighborhood, and result in a significantly enhanced pedestrian-oriented environment.

Granting special exception relief will not adversely affect the use of neighboring properties. The building's massing and orientation have been strategically designed to minimize any potential visual intrusion on neighboring properties, as confirmed by HPRB's concept approval. More specifically:

- The careful design of the reduced court width ensures that it will not negatively impact light, air, or privacy for adjacent properties, particularly as it creates greater separation between the proposed building and the row buildings to the west.
- The increased lot occupancy is minor in nature and respects the scale and character of the surrounding properties.
- The Property will feature a context-sensitive landscape design that complies with the GAR development standards based on the A&T Lot, ensuring that the Project meets environmental objectives without impacting neighboring properties.
- Although the Project will not have a loading berth, the Property fronts on three streets, which is sufficient to serve the regular delivery and pick-up needs for the Project without affecting the use of neighboring properties. Also, the entrances to the child development center and the residential building are not adjacent to any other properties, which will also minimize the impact of traffic from deliveries and pick-ups.
- The visual impacts of the penthouse have been minimized to the greatest extent possible with courts providing additional buffers from adjacent buildings.

**D. Compliance with the Special Exception Criteria in 11-K DCMR § 813.1 for Relief from the Lot Occupancy, Open Court and GAR Requirements**

The BZA may grant exceptions from the lot occupancy, open court and GAR requirements established for the ARTS zones, in Subtitle K of the Zoning Regulations, subject to the following criteria:

- a. *The uses, buildings, or features at the size, intensity, and locations proposed, will substantially advance the purposes of the ARTS zones and will not adversely affect neighboring property or be detrimental to the health, safety, convenience, or general welfare of persons living, working, or visiting in the area (K § 813.1(a)).*
- b. *The architectural design of the project will enhance the urban design features of the immediate vicinity in which it is located; provided, if a historic district or historic landmark is involved, the Board of Zoning Adjustment shall refer the application to the Historic Preservation Office for review and report (K § 813.1(b)).*
- c. *Vehicular access and egress are located and designed so as to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions (K § 813.1(c)).*

As discussed below, the Application satisfies these requirements.

The Project will substantially advance the purposes of the ARTS zones and will not adversely affect neighboring property or be detrimental to the health, safety, convenience, or general welfare of persons living, working, or visiting in the area. By transforming an underutilized site into a new mixed-use building, the Project will introduce a new and modernized ground floor childcare development facility and affordable residential units, contributing significantly to the neighborhood's growth, diversity, and affordability. These uses align with the primary objectives of the ARTS zones, which emphasize the integration of arts, cultural facilities, and residential development, thereby enhancing the area's vibrancy.

The requested open court relief is essential for constructing approximately 65 new affordable residential units, which will revitalize and improve the neighborhood. Although the court width does not fully comply with the zone's development standards, the Project remains within the allowable height and density limits, and the design mitigates potential impacts on neighboring properties. The narrower courts provide additional separation between the proposed building and existing row houses, and the open space provided elsewhere on the Property further alleviates concerns related to light and air.

Additionally, the Project's layout, including setbacks, open courts, and strategic massing, ensures that the increased lot occupancy on the ground floor does not adversely affect neighboring properties. The ground floor, primarily dedicated to non-residential uses like the childcare facility, exceeds the 80 percent maximum lot occupancy only due to the inclusion of one residential unit.

This design choice contributes to a vibrant streetscape, enhancing the neighborhood's functionality and appeal while maintaining consistency in the building's volume as intended by zoning regulations.

The Project's design, including the GAR relief, thoughtfully balances the site's historical significance with modern development needs. Independently, the theoretical development site for the Project exceeds the .3 GAR. However, GAR is calculated across the record lot, which in this case, includes the existing church building. Notably, the Church is a historic resource and, therefore, it's theoretical development site would be exempt from the GAR requirements.

The architectural design of the Project will elevate the urban design features of the immediate vicinity by introducing a seven-story building that includes a ground-floor child development center and six stories of residential units. This design enhances the prominence of the site, incorporating architectural elements that respect both the character of the neighborhood and the historic district. The Project revitalizes the area with a modern yet contextually sensitive addition, greatly improving the visual appeal of the site. Furthermore, the Historic Preservation Review Board (HPRB) has reviewed the Project and granted concept approval, ensuring that the design aligns with historic preservation standards and enhances the overall character of the historic district.

The proposed lot occupancy, open courts, and reduction in GAR will not impact vehicular access and egress points to the property. These design elements have been carefully planned to ensure that they do not create dangerous or otherwise objectionable traffic conditions.

**E. Compliance with the Special Exception Criteria in 11-C DCMR § 909.1 and 909.2f or Relief from the Loading Requirements**

Pursuant to 11-C DCMR § 909.1, the Zoning Regulations permit special exception relief from the loading requirements if providing the number of loading spaces required would be:

- (a) impractical due to the shape or configuration of the site constraints;*
- (b) unnecessary due to a lack of demand for loading; or*
- (c) contrary to other District of Columbia regulations.*

Further, 11-C DCMR § 909.2, states that the Board may grant relief from the number of loading berths or service/delivery space required, subject to the applicant's demonstration to the Board's satisfaction that:

- (a) The use or structure will generate a lower loading demand than the minimum loading standards of Subtitle C §§ 901 and 905 require, as a result of:*
  - 1. The nature of the use of structure; or*

2. *A loading demand management plan filed in the case record in accordance with Subtitle Y § 300.14 and approved by District Department of Transportation, the implementation of which shall be a condition of the Board of Zoning Adjustment's approval, that will result in a lower loading demand than the minimum loading standards of Subtitle C §§ 901 and 905 require; or*
  - a. *The only means by which a motor vehicle could access the lot is from a public street, and provision of a curb cut or driveway on the street would violate any regulation in this chapter, or in Chapters 6 or 11 of Title 24 DCMR; or*
  - b. *The loading berths or service/delivery spaces are required for an addition to a Historic Resource, and providing the required loading facilities in compliance with the requirements of Subtitle C §§ 901 and 905 would result in significant architectural or structural difficulty in maintaining the integrity and appearance of the Historic Resource.*

In this case, designing the building with a loading berth is impractical because (1) the western portion of the Property is improved with the Church, which will remain; therefore, only a portion of the Property is developable; and (2) the Property is not served by a public alley. Additionally, the steep slope that is required to access the below-grade loading facilities makes it difficult to incorporate a loading dock and provide sufficient turning space for loading trucks. Finally, given that the Project is only limited to 65 affordable units and a child development center, and is directly accessible from three public streets, its regular delivery/pick-up needs can be sufficiently served without a loading berth.

**F. Compliance with the Special Exception Criteria in 11-C DCMR § 1506.1 for Relief from the Penthouse Setback Requirements**

Relief from the penthouse setback requirements is permitted by special exception pursuant to the criteria set forth in Subtitle C § 1506.1, subject to the following:

- a. *The special exception requirements of Subtitle X, Chapter 9.*
- b. *The Applicant's demonstration that reasonable effort has been made for the housing of mechanical equipment, stairway, and elevator penthouses to be in compliance with the required setbacks.*
- c. *The Applicant's demonstration of at least one (1) of the following:*
  - (1) *The strict application of the requirements of this chapter would result in construction that is unduly restrictive, prohibitively costly, or unreasonable, or is inconsistent with building codes;*

*(2) The relief requested would result in a better design of the penthouse or rooftop structure without appearing to be an extension of the building wall;*

*(3) The relief requested would result in a penthouse or rooftop structure that is visually less intrusive; or*

*(4) Operating difficulties such as meeting D.C. Construction Code, Title 12 DCMR requirements for roof access and stairwell separation or elevator stack location to achieve reasonable efficiencies in lower floors; size of Subtitle C § 115 building lot; or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly or unreasonable.*

This application satisfies all of the aforementioned criteria. First, as discussed above, the application meets the special exception requirements of Subtitle X, Chapter 9. Second, the Applicant has made reasonable efforts for the Project's mechanical equipment, stairways, and elevator penthouses to meet all applicable setback requirements. The need for the requested limited penthouse setback relief is a result of the Property's small size and narrowness, the presence of historic structures on the Property and only occurs along the edge of the courtyard, as all other sides of the penthouse meet the setback requirement. The court was also designed in both area and width as including the additional height of the penthouse structure in this area in order that the court meets light and air requirements. All other roof structures and rooftop mechanical equipment comply with applicable penthouse requirements, including setback requirements where applicable. Third, the strict application of the requirements of this chapter would result in construction that is unduly restrictive, cost prohibitive, or unreasonable, or is inconsistent with building codes (C § 1506.1(c)(1)). Specifically, to comply with the penthouse setback requirement the Applicant would have to remove a number of units that could make the Project financially infeasible.

### III. VARIANCE RELIEF

#### A. Relief Requested

The Applicant requests an area variance to permit the Project's garage ramp to have a 20 percent slope where a maximum slope of 12 percent is permitted. *See* 11-C DCMR § 711.8; *see also* 11-X DCMR § 1001.1.

#### B. Burden of Proof

Under D.C. Code § 6-641.07(g)(3) and pursuant to 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 condition or situation;
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); see also *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

Applicants for an area variance need only demonstrate that they will encounter “practical difficulties” if the variance is not granted. See *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540–41 (D.C. 1972) (nothing that area variances are allowed upon a showing of practical difficulties, whereas use variances require proof of hardship; a greater burden). An applicant experiences a practical difficulty if strict compliance with the Zoning Regulations would be “unnecessarily burdensome.” See *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990).

**C. The Applicant Meets the Variance Requirements Pursuant to 11-X DCMR 1000.1**

**1. *Exceptional Situation and Condition***

The phrase “exceptional situation or condition” in the above-quoted variance standard may arise from a confluence of factors that affect a single property. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990); see also *Ait-Ghezala v. D.C. Bd. of Zoning Adjustment*, 148 A.3d 1211, 1217 (D.C. 2016). There is no requirement that the uniqueness “inheres in the land at issue.” *Id.* at 1168. In fact, the purpose of a variance provision is to prevent a zoning statute from operating to deprive a property owner of all beneficial use of his property. *Clerics of St. Viator v. D.C. Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974).

In this case, the exceptional situation or condition results from the fact that western portion of the Property is improved with the Church, which will remain on the Property. The church is a late Victorian-era brick church constructed in 1902, designed by Louis Stutz, and located within the Greater U Street Historic District. Therefore, while the Property is 14,382 square feet, only 9,700 square feet is developable for the Project.

**2. *Resulting Practical Difficulty***

The requirement to provide a garage ramp that does not slope more than 12 percent creates a practical difficulty for the Project due to the specific constraints of the site. The developable area is both limited in depth and square in shape, meaning that a 12 percent slope ramp would require a significant amount of space to achieve the necessary length and grade. Implementing such a ramp would reduce up to one-third of the total square footage available for the childcare facility’s ground and cellar floors. This reduction in usable space would make it impossible to meet the childcare programmatic requirements, such as classroom sizes, safety standards, and operational needs, rendering the Project infeasible.

Additionally, the ramp would occupy space that is otherwise allocated for the required outdoor play area at ground level, which is essential for meeting both zoning regulations and childcare licensing standards. Eliminating or reducing the play area would further compromise the ability of the childcare facility to function and meet regulatory requirements. Therefore, providing a 20 percent slope ramp, which would require less space, is a necessary accommodation to ensure that the Project can move forward while maintaining compliance with both zoning and childcare standards.

3. *No Substantial Detriment to the Public Good or Substantial Impairment to the Intent, Purpose, or Integrity of the Zone Plan*

The requested relief can be granted without substantial detriment to the public good and without substantial impairment to the intent, purpose, or integrity of the zone plan. The 20 percent grade is an industry standard, although at the maximum end. Transition zones at either end of the ramp, including an elongated transition zone at street level at five percent grade, allow for ample space to transition safely to the public right of way. The limited amount of parking spaces further adds to a determination of no substantial detriment. The requested relief will allow the development to provide the required parking spaces on-site, minimizing the Project's impact on the surrounding community, and meeting the intent of the zoning regulations.

#### IV. COMMUNITY ENGAGEMENT

The Property is located within the boundaries of ANC 1B02, which is the “affected” ANC pursuant to 11-Y DCMR § 101.8. Commissioner Frank Chauvin is the representative of ANC Single Member District (“SMD”) 1B02.

The Applicant has presented the Project to the ANC in connection with the HPRB application, and will continue to work with the ANC in connection with the BZA application. Additionally, Christian Tabernacle Church held a community meeting regarding the project on August 28, 2024, to give community members an opportunity to learn more about the Project and to ask questions and express any concerns that they may have. The meeting was advertised by the Church and the ANC. It was attended by residents and two ANC Commissioners. The Church, along with Beacon Communities, gave an overview of the history and objective of the Project and the Project architect walked through the Conceptual Plan. There were no objections to the Project expressed at the meeting. Further, the Church has been a cornerstone of the U Street Corridor community since 1986, has a long history of providing much needed programs and services to the community, and has engaged with the community about the Project, especially its neighbors and the local businesses on U St, NW and 11<sup>th</sup> Streets, NW.

In accordance with 11-Y DCMR § 300.8(l), the Applicant will supplemental the record regarding its outreach efforts at least twenty-one (21) days prior to the public hearing.