

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19823 of Wisconsin Avenue Baptist Church, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the use requirements of Subtitle U § 203.1(f)¹, and under Subtitle C § 1402 from the retaining wall requirements of Subtitle C § 1401.3(c), and pursuant to Subtitle X, Chapter 10, for variances from the height limitations of Subtitle D § 303.1, from the lot occupancy requirements of Subtitle D § 304.1, and from the side yard requirements of Subtitle D § 307.1, to construct a new church and continuing care retirement community in the R-1-B Zone at 3920 Alton Place, N.W. (Sq. 1779, Lot 14)

HEARING DATES: September 12, October 10 and 17, and November 14, 2018
DECISION DATE: February 6, 2019

DECISION AND ORDER

Wisconsin Avenue Baptist Church (“**WABC**”), the owner of Lot 14 in Square 1779 with an address of 3920 Alton Place, N.W. (the “**Property**”) and Sunrise Senior Living (“**Sunrise**,” and collectively with WABC, the “**Applicants**”) filed an application (the “**Application**”) with the Board of Zoning Adjustment (the “**Board**”) on June 14, 2018, requesting the following relief under the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, to which all references are made unless otherwise specified):

- special exception under Subtitle U § 203.1(f) to allow for a continuing care retirement community (“**CCRC**”);
- special exception Subtitle C § 1402 to allow a retaining wall greater than four feet in height;
- area variance from the height requirements of Subtitle D § 303.1;
- area variance from the lot occupancy requirements of Subtitle D § 304.1; and
- area variance from the side yard requirements of Subtitle D § 307.1.

to construct a church and CCRC at the Property (the “**Project**”). For the reasons explained below, the Board voted to **APPROVE** the Application.

FINDINGS OF FACT

Notice of the Application and of the Public Hearing

1. Pursuant to Subtitle Y §§ 400.4 and 402.1, the Office of Zoning (“**OZ**”) sent notice of the Application and the October 10, 2018 public hearing by an August 10, 2018, letter to:

¹ On September 13, 2019, after the Board decided this case, the Zoning Commission amended the Zoning Regulations pursuant to Z.C. Case No. 19-04 to add “Community solar facility not meeting the requirements of Subtitle U § 201.19(c)” as Subtitle U § 203.1(f), and subsequently renumbering the special exception for CCRCs as Subtitle U § 203.1(g).

Board of Zoning Adjustment

Telephone: (202) 727-6311

441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

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- the Applicant;
- Advisory Neighborhood Commission (“ANC”) 3E, the ANC in which the subject property is located and therefore the “affected ANC” per Subtitle Y § 101.8;
- the Single Member District/ANC 3E05;
- the Office of Advisory Neighborhood Commissions;
- Office of Planning (“OP”);
- the District Department of Transportation (“DDOT”);
- the Councilmember for Ward 3;
- the Chairman of the Council;
- the At-Large Councilmembers; and
- the owners of all property within 200 feet of the Property.

2. OZ published notice of the original October 10, 2018,² public hearing in the *D.C. Register* on August 17, 2018 (65 DCR 8525), as well as through the calendar on OZ’s website.

Party Status

3. The Applicants and ANC 3E were automatically parties in this proceeding per Subtitle Y § 403.5.
4. The Board received a request for party status in opposition to the Application from Tenleytown Neighbors Association (“TNA”). The organization is comprised of residents living within the Tenleytown neighborhood, including members who live in the same block or within one block of the proposed development site. (Exhibit [“Ex.”] 33.)
5. The Board granted the party status request of TNA at its public meeting of September 12, 2018. (Ex. 43.)
6. The Board also received a request for party status in opposition from nine neighbors on the 3900 block of Yuma Street, N.W., who live within 200 feet of the Property, and who collectively referred to themselves as the Yuma Street Requesters (“YSR”). (Ex. 48 and 84.)
7. The Board granted the party status request of YSR at its public hearing of November 14, 2018. (Public Hearing Transcript of November 14, 2018 [“**Nov. 14 Tr.**”] at 316.)

The Property

8. The Property is an irregularly shaped, five-sided lot with frontage on Alton Place, Yuma Street, and Nebraska Avenue, N.W.
9. The Property has a land area of 35,443 square feet and is approximately seven times larger than the average of the other five lots on the square.

² The first hearing was originally scheduled for October 10, 2018, postponed until October 17, 2018, and then held on November 14, 2018.

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10. WABC holds the fee title to the Property. Sunrise has an ownership interest as a contract purchaser. (Ex. 9.)
11. The Property is improved with a brick church constructed circa 1955 and occupied by WABC. The existing church provides 350 seats and includes space for 56-student day care facility. The Property also includes a parking lot and playground.
12. The Property is bounded to the east by single-family residences fronting on 39th Street.
13. The National Park Service ("NPS") owns Lot 811, the triangular parcel in Square 1779 immediately west of and abutting the WABC land which fronts on Tenley Circle, Nebraska Avenue, and Yuma Street, N.W (the "**NPS Lot**").
14. On the west side of Tenley Circle are American University Washington College of Law, St. Ann Catholic Church, and the Yuma Study Center. Woodrow Wilson High School is located to the northeast of the Property on Nebraska Avenue, N.W. and Janney Elementary School and the Tenleytown Public Library are to the northwest at Wisconsin Avenue and Albemarle Street, N.W. 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.
15. The Property is well-served by Metrobus and Metrorail. The Tenleytown-AU Station Metrorail station is approximately 0.1 miles to the north and there are 19 Metrobus stops and 11 Metrobus routes located within one-quarter of a mile.
16. The Property is zoned R-1-B.
17. The Residential House (R) zones are residential zones, designed to provide for stable, low- to moderate-density residential areas suitable for family life and supporting uses. (Subtitle D § 100.1.)
18. The R zones are intended, in part, to:
 - a) *provide for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development;*
 - b) *recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city;*
 - c) *allow for limited compatible accessory and non-residential uses; and*
 - d) *allow for the matter-of-right development of existing lots of record.* (Subtitle D § 100.2.)
19. The purposes of the R-1-B zone specifically are to:
 - a) *protect quiet residential areas now developed with detached dwellings and*

adjoining vacant areas likely to be developed for those purposes; and

b) *stabilize the residential areas and promote a suitable environment for family life.* (Subtitle D § 300.1.)

20. The R-1-B zone provides for areas predominantly developed with detached houses on moderately sized lots. (Subtitle D § 300.3.)

The Application

21. The Applicants submitted the Application on June 14, 2018. (Ex. 1, 8, 11.)

22. The Applicants propose to demolish the existing church building in order to construct a new building (the “**Building**”) housing a 250-seat church (the “**Church**”) and an 86-unit CCRC facility (the “**CCRC**”).

The Building

23. The Building will have an overall height of 40 feet with four stories and two levels below grade. It will also include an approximately 70-foot tall steeple.³

24. The roof will not have a penthouse but will contain some mechanical equipment that will be located behind a sloped mansard roof, which will serve as a mechanical screen wall to limit its visibility from the street and to reduce the potential noise impacts. (Ex. 69E2; Nov. 14 Tr. at 344.)

25. The Building will occupy 57% of the lot.

26. The Application proposes the following setbacks:

- 10 feet from Alton Place (front yard);
- 45.4 feet from Yuma Street (rear yard);
- 36 feet from its eastern lot line; and
- No side yard is provided on the western lot line abutting the open space National Park Service lot.

27. The Application proposes green roof areas as part of the project’s sustainability enhancements. (Ex. 69E2.)

28. The Building will provide a total of 66 vehicle parking spaces on-site in the two-level below-grade garage to serve both the needs of both the Church and the CCRC. (Subtitle C § 705.1; Ex. 5.)

29. Thirty-two long-term bicycle spaces will be located on the first level of the garage in a bicycle storage room. The amount of spaces provided meets the requirements for both multi-unit residential buildings (29 spaces) and religious institutions (2 spaces). Because seniors living in the building are not anticipated to be riding bikes to and from the site,

³ A spire, dome, pinnacle, minaret serving as an architectural embellishment, or antenna may be erected to a height in excess of the otherwise permitted height. (Subtitle D § 207.2.)

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these spaces will be available for CCRC staff, visitors, and church members. (Ex. 69E2.)

30. The garage will have a designated area for deliveries, and a screened, 30-foot loading dock will be located just outside the garage entrance. All deliveries will be limited to the hours of 8:00 AM to 6:00 PM. (Ex. 69E2, 119A.)
31. Trash receptacles for the facility will be located inside an air-conditioned trash room. Receptacles will be wheeled to the loading dock area on trash collection days. Collection times will be controlled and will occur after 8:00 AM in the morning, three times a week. (Ex. 119A.)
32. The driveway will enter at grade level at Alton Place, descending 13 feet to the garage entrance at a maximum slope of 12%, and then rise again to grade level at the south to allow cars to exit onto Yuma Street. (Ex. 121A1 at 48.)
33. The Application proposes a retaining wall that will range in height from a few inches at its lowest point closest to the streets to a maximum of 13 feet where the driveway meets the garage entrance. The Application noted that the retaining wall would be setback between 8.3 and 16.5 feet from the common property line. In addition, the Application proposes to provide a six-foot-high board fence along the property line with a landscaped buffer between the fence and the retaining wall, which would be topped with a wrought iron fence for additional security. Finally, due to the configuration of the Property, the full height of the retaining wall would not be fully visible from either Alton Place or Yuma Street. (Ex. 121A1 at 48.)
34. The Application also noted that it would be providing numerous landscaping improvements to the NPS Lot based on discussions with NPS and the Commission of Fine Arts. The Application noted that these improvements would result in the conversion of the currently empty lot to a park space which, in addition to providing a benefit to the community, would serve as a visual buffer for the Building. (Ex. 69, 69E1 at 10, 13-14.)

The Church

35. WABC intends to use the Church for its worship and service needs. In addition to typical worship services, religious instruction, and Bible studies, the Church will meet the needs of its congregation and the community through its fellowship and support groups, counseling services, clothing and food drives, religious retreats, program and lecture series, weddings, funerals, ministries for the sick and infirm, support for international missions, service projects, and other functions. (Ex. 69 at 3.)
36. The Church will occupy approximately 16% of the Building consisting of the south portion of the Building on the first and second floors, and a portion of the first below-grade level. (Ex. 69E2.)
37. The main entrance to the Church will be on Yuma Street, N.W. and from the first below-grade level. (Ex. 69E2.)

38. WABC presently has 85 congregants, and it is anticipated that the number of members may increase modestly to approximately 100 congregants over the next several years. The proposed sanctuary will have a maximum capacity of 250 seats to accommodate occasional special events such as weddings or funerals. (Nov. 14. Tr. at 325.)

The CCRC

39. The CCRC will provide assisted living units designed for older adults who value their independence but need some assistance with daily activities such as bathing, dressing, transportation, and medication reminders. The CCRC will also provide a dedicated memory care floor. The CCRC will not offer units for independent living nor skilled nursing facilities. (Ex. 69.)

40. The CCRC will provide 86 units and will be licensed for 115 beds. (Ex. 8.)

41. The CCRC will occupy portions of the first below-grade level, first and second floors, as well as the entire third and fourth floors. (Ex. 69E2.)

42. The first below-grade level will provide vehicular and bicycle parking spaces, a main kitchen, laundry facilities, fitness and physical therapy space, and mechanical space. (Ex. 69E2.)

43. Floors one through three of the CCRC 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. (Ex. 69E2.)

44. The CCRC's fourth floor is proposed to 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 the people with dementia. Staff would be on site 24 hours to assist all CCRC residents. (Ex. 69.)

45. The CCRC will employ approximately 75 full-time equivalent employees over three shifts. Based on a stabilized resident occupancy rate of 93%:

- a) the morning shift (6:30 AM to 2:30 PM) will have approximately 30 employees;
- b) the afternoon/evening shift (2:30 PM to 11:30 PM) will have approximately 25 employees, reduced by 25% after dinner and another 25% at 9:00 PM; and
- c) the night shift (11:30 PM to 6:30 AM) will have approximately six employees.

46. The main entrance to the CCRC will be on Alton Place, N.W., which includes a semi-circular drive off the street for drop off and pick up at the front door. (Ex. 69E2.)

Relief Requested

47. The Application requests the following relief:

48. Special Exceptions:

- a. Special exception to allow the CCRC, as authorized in the R-1-B zone per Subtitle U § 203.1(f).
- b. Special exception relief to allow a retaining wall greater than four feet in height, as the proposed retaining wall will range from a few inches to a maximum height of 13 feet. (Subtitle C § 1401.3(c).)

49. Variances:

- a) Area variance relief from the maximum permitted three stories for all structures to provide a total of four stories for the Building. (Subtitle D §§ 207.5 and 303.1.)
- b) Area variance relief from the maximum 40% lot occupancy requirement for non-religious uses to allow the Building to occupy 57% of the lot. (Subtitle D § 304.1.)
- c) Area variance relief from the eight-foot side yard requirement, in order to provide no side yard along the western lot line abutting the open space National Park Service lot. (Subtitle D § 307.1.)

Applicants' Justification of Requested Relief

50. The Application notes that, while the Property is affected by a confluence of factors, the most extraordinary condition affecting the Property is its unique value to WABC as the home of its congregation for more than 60 years combined with the fact that the Existing Building is functionally outmoded and in a state of disrepair. The Existing Building has inadequate heating, lighting, and safety features. In addition, the Existing Building is not ADA-accessible. (Ex. 69.)

51. The Application provided evidence that WABC could not afford on its own to make needed repairs or retrofit the building to be ADA accessible. WABC also noted that selling the Property in its entirety would result in having to permanently disband WABC at that location. WABC considered alternate funding options, including subdividing the site into three lots and selling two of the lots for development as detached single-family houses. However, WABC concluded that option would not generate enough revenue to pay for all the needed maintenance and repairs and to sustain the long-term interests of the church. (Ex. 69.)

52. Ultimately, WABC elected to partner with Sunrise which agreed to purchase an interest in the Property and construct the Building to include both a modern church, to be owned by WABC, and a CCRC to be owned by Sunrise on the Property. The Application noted that part of WABC's decision to partner with Sunrise stemmed from the determination by the trustees of WABC that a CCRC would be a "mission compatible use" with the church. (Ex. 69.)

53. The Application also included an analysis of demand for assisted living facilities in the District. This analysis noted that while there are several existing assisted living facilities in Upper Northwest D.C., the demand still outpaces the supply. The Application's

analysis concluded that the number of seniors aged 75 years and older living in the District is expected to grow by over 40% in the next ten years and that the city will need additional facilities to support the aging population. (Ex. 69 at 5-6.)

54. The Application noted that the District government had recognized “the importance of increasing the supply of high-quality senior housing options,” including assisted living facilities, as evidenced by passage of the Assisted Living Residence Regulatory Act of 2000 (D.C. Law 13-127; D.C. Official Code § 44-102.1) that defined “Assisted Living Residences” and established a licensing requirement for them. (Ex. 69, Footnote 4.)
55. The Application asserts that in order be financially viable, a CCRC providing assisted living facilities and memory care requires a minimum of 86 units over which to spread the construction costs, which are much higher than the typical multi-family building. In order to accommodate the minimum number of units for economic viability, the building is designed with double-loaded corridors. Assisted living facilities require I-2 type construction under the building code; robust resident safety systems, particularly with memory care units and floors, such as door security, e-call, and staff communication systems; specialized furniture; as well as other specialized design needs. (Ex. 69.)
56. The Application noted that in order to accommodate the minimum number of units for economic viability, the Building is designed with double-loaded corridors and further contended that the minimum 86 units required for the project would not fit on a smaller footprint. The Application asserted that meeting the 40% lot occupancy limit for non-religious buildings would either require reducing unit size below functional standards for an assisted living facility or would require the elimination of not just one unit, but tiers of units or the double-loaded corridor. Removing one floor to meet the matter-of-right limit on stories would similarly reduce the number of units and render the assisted living facility unviable. (Nov. 14 Tr. at 350-51.)
57. The operational costs of a CCRC use also outpace a typical residential building. The typical CCRC must have computerized care planning and management systems, and medication administration, storage and disposal. The increasing level of care required for residents demands a more highly skilled and costly staff. Capital expenditures average \$2,990 per unit per year. (Ex. 131A.)
58. In order to evaluate the visual impact of the building envelope with the requested relief for the proposed CCRC, the Applicants submitted drawings comparing the proposed development and a matter-of-right church constructed to a height of 60 feet. The submission also included shadow studies illustrating the potential impacts of the existing structure, the new building and garage, and a matter-of-right church (60 feet in height and 60% lot occupancy) on the surrounding area. (Ex. 135E.)
59. The shadow studies demonstrated that 75% of the time, the impacts on the adjacent properties to the east will be no greater than those caused by the Existing Building. These shadow studies showed that the Building would decrease the sunlight to the adjacent properties to the east beginning at approximately 4:00 p.m. only during the spring and fall

equinox, and the winter solstice, when total darkness occurs approximately 50 minutes later. The studies also demonstrated that a church built to matter-of-right specifications would cast the same or greater shadows than the proposed facility at these same times of year. (Ex. 135E.)

60. The Application also included a noise study analyzing the rooftop mechanical equipment, which concluded that any noise produced would be at or below existing background noise levels and well below the D.C. noise control regulations. (Ex. 69C.)
61. At peak operating capacity of the CCRC and the Church on an average Sunday, when church attendance is highest, the potential maximum usage of the Building could be 250 people (100 WABC congregants, 119 CCRC residents, and 30 CCRC staff). (Ex. 69, 121A1.) The CCRC staff will work in shifts, with a maximum of approximately 30 staff on site at one time.
62. The Applicants also provided a Comprehensive Transportation Review (“CTR”, Ex. 41, 52-52A) prepared by Gorove/Slade Associates. The CTR includes a Traffic Demand Management Plan (“TDM Plan”), a Loading Management Plan, and truck routing diagrams. The CTR concluded that the Building would not result in a detrimental impact to the surrounding transportation network once all proposed site design elements are implemented. The CTR noted the Property’s proximity to Metrobus and Metrorail stops, the availability of sufficient on-site vehicular and bicycle parking, and the Applicants’ proposed TDM Plan elements.

Responses to the Application

OP Report

63. OP submitted a report dated November 2, 2018 (the “**OP Report**”, Ex. 90), recommending approval of the Application subject to the following conditions:
 - a) All lighting on the roof deck should be down lit; and
 - b) Amplified music on the roof deck be prohibited.
64. The OP Report concluded that the Applicants had demonstrated that the proposed CCRC had met the special exception criteria of Subtitle U § 203.1(f) and was not likely to result in objectionable impacts to the neighboring properties due to noise, traffic or other conditions. Other than the conditions regarding outdoor lighting and amplified music, the OP Report did not recommend any additional special treatment for the Building.
65. In terms of the requested special exception for the retaining wall, the OP Report concluded that the retaining wall facilitated the provision of underground parking and loading facilities, thereby reducing potential impacts on the surrounding properties and the streetscape.
66. The OP Report also concluded that no substantial detriment to the public good was likely to result from the approval of the requested variances noting that the Building would still be within the 40-foot height limit which would prevent undue impacts on the adjacent properties’ light and air. The OP Report further concluded that “[granting] the requested

increase in lot occupancy and number of stories, and the reduced side yard adjacent to the NPS land would allow the church to continue to fulfill its mandate and provide a needed option for seniors residences.”

67. The OP Report noted that the Property is within the Washington Metro Area Transit Authority’s (“WMATA”) zone of influence as the Metrorail Red Line tunnel crosses the property below grade. The OP Report noted that the Applicants had indicated that the preliminary design and engineering plans had already been sent to WMATA for review and that they would need to be approved prior to the start of any construction.
68. The OP Report included findings from the DC Office of Aging (“DCOA”) which concluded that the number of District residents aged 65 and older is increasing, particularly in Wards 3, 4 and 5, and this will require increased services and facilities to accommodate and care for them.
69. The OP Report concluded that CCRC would be a benefit to the public good as it would allow elderly residents to age in their community, which is consistent with the Zoning Regulations’ intent for the R Districts. (*See* Subtitle D § 100.2.)

DDOT Report

70. DDOT submitted a report dated October 10, 2018 (the “**DDOT Report**”, Ex. 53), concluding that approval of the Application would not result in any adverse impacts to the District’s transportation network. The DDOT Report recommended no objection to approval of the Application, subject to the Applicant implementing the TDM and Loading Management Plans identified in the DDOT Report.
71. The DDOT Report noted that, based on the Applicant’s CTR, the Application would reduce the Property’s demand on the District’s transportation network when compared to the existing uses on the Property.
72. The DDOT Report also noted the 66 on-site parking spaces being provided in the Building’s garage met the requirements of the Zoning Regulations for both the Church and the CCRC uses.
73. The DDOT Report also noted that the Applicants had proposed three potential improvements to the District’s transportation network, including:
 - a) The implementation of an all-way stop at 39th Street, N.W. and Wisconsin Street N.W.;
 - b) The installation of “Do Not Block the Box” pavement markings and signage at Nebraska Avenue, N.W. and Alton Place, N.W.; and
 - c) Increased pedestrian crossing time for the east-west crossing over Nebraska Avenue, N.W. just north of Tenley Circle, N.W.

The DDOT Report noted that these potential improvements were not required by DDOT based on the Application's impacts but were being proffered by the Applicants based on coordination with the community.

74. After the November 14, 2018 public hearing, DDOT filed a response to a letter from Ward 3 Councilmember Mary Cheh. DDOT explained that the trip estimates that the Applicants provided were "developed in close coordination with DDOT during the CTR process" and reiterated its conclusion that "the proposed redevelopment would generate fewer weekday peak hour trips than the current site . . . primarily due to the changing of the daycare use to a less intense assisted living use." (Ex. 137.)

WMATA Letter

75. By letter dated December 28, 2017 (the "**WMATA Letter**", Ex. 108), WMATA stated that it had reviewed the project and determined that it would have an impact on WMATA property and facilities, specifically the Metrorail Red Line Tunnel. The WMATA Letter went on to note that it would support the project, contingent on the Applicants' agreement to comply with standard WMATA construction related policies including:

- Ongoing coordination with WMATA;
- Compliance with operational and safety criteria; and
- Payment of WMATA's administrative, design review, construction oversight, and support costs.

ANC Report

76. The Applicants made presentations to ANC 3E on October 12, and December 14, 2017, and on March 15, June 14, September 17, and November 8, 2018.

77. By resolution dated November 12, 2018 (the "**ANC Report**," Ex. 119), ANC 3E stated that, at a properly noticed public meeting on November 8, 2018 with a quorum present, the ANC adopted a report in support of the Application and attached a memorandum of understanding ("**MOU**", Ex. 119A) reached between the ANC and the Applicants.

Parties in Opposition

78. YSR and TNA (collectively the "**Party Opponents**") both submitted pre-hearing statements to the record outlining their opposition to the project.

79. YSR's statement (Ex. 48) argued that the proposed Building and CCRC would:

- Cause significant impacts to traffic, parking, and noise in the surrounding neighborhood;
- Result in the loss of greenery, open space, mature trees, and landscaping;

- c) Adversely impact the light, air, and privacy available to the adjacent properties; and
- d) Result in an “overall degradation of the character of the neighborhood”.

80. YSR’s statement noted that it intended to proffer an expert witness in the area of transportation planning and traffic engineering, Mr. Joe Mehra, to comment on the Applicant’s CTR and the potential adverse impacts on traffic resulting from the Building.

81. As preliminary matters, TNA’s statement (Ex. 83A) argued that Sunrise could not properly request relief because it is not the true owner of the Property. TNA also contended that the Applicants were not entitled to additional “public good flexibility” regarding the variance standards because WABC had not made a showing that it had or intended to serve the community.

82. TNA’s statement also raised the follow substantive arguments in response to the Application:

- a. The size and density of the Building is too great for the surrounding neighborhood;
- b. The “volume of use” and amount of variance relief requested would effectively result in a zone change;
- c. The CCRC is a health care or commercial use and not permitted in the R-1-B zone;
- d. The approval of the Application would conflict with the Comprehensive Plan;
- e. The proposed use would create potential traffic and parking impacts;
- f. The proposed use would result in noise impacts;
- g. The proposed retaining wall presents potential safety hazards;
- h. The approval of the Application would impact on the market value of neighboring homes;
- i. The construction of the Building would negatively impact the neighbors; and
- j. The proposal is noncompliant with other requirements of the Zoning Regulations, particularly the height of the proposed steeple, pervious surface, loading access and parking requirements.

Persons in Opposition

83. The Board also received letters and heard testimony from persons in opposition to the Application. The persons in opposition commented unfavorably on the WABC’s decision to construct a CCRC on its property, objected to the size and density of the proposed

structure, and expressed concern about traffic and parking impacts.

Persons in Support

84. The Board received letters and heard testimony from persons in support of the application. Supporters included immediate neighbors, members of Ward 3 Vision, and representatives from community organizations.
85. The persons in support generally cited the needs of WABC to redevelop its property with a compatible partner that could construct a new right-sized church and an assisted living facility for the city's senior population. Supporters stated that Property was an appropriate location for the CCRC use, that the size and operation of the CCRC would not be objectionable, and that the uses would not generate adverse impacts in the surrounding neighborhood, including with respect to traffic and parking.

Public Hearing of November 14, 2018

86. At the public hearing of November 14, 2018 (the “**Public Hearing**”), the Applicants presented testimony from Ms. Patricia Dueholm and Ms. Janet Brooks representing WABC; Mr. Philip Kroskin with Sunrise; Ms. Alice Katz, the Applicants’ financial analyst; Mr. Dan Van Pelt with Gorove/Slade, the Applicants’ traffic expert; and Mr. Andrew Altman, the Applicants’ expert in land planning.
87. Ms. Dueholm and Ms. Brooks testified as to the institutional needs of WABC. They noted WABC’s long history in Tenleytown as well as the fact that the existing building is in a state of severe disrepair and not ADA accessible. (Nov. 14 Tr. at 323-328; Ex. 121A at 6-7.)
88. Mr. Kroskin testified as to the scope of Sunrise’s services. In particular, he noted that approximately 70% of Sunrise’s residential population is drawn from the surrounding communities within a 10 to 15-minute drive of the particular facility. Mr. Kroskin also detailed Sunrise’s community outreach and intergenerational programs. (Nov. 14 Tr. at 333-334; Ex. 121A at 17-18.)
89. Ms. Katz testified on the increasing need for CCRCs in the area and the necessity of providing at least 85 units. Ms. Katz noted that typically urban CCRCs will draw most of their population from within a three-mile radius. Ms. Katz noted that incremental needs in the next five to ten years within a three- and five-mile radius of the Property are expected to be in excess of 2,000 beds. (Nov. 14 Tr. at 354; Ex. 121A at 19, 52-60.)
90. Regarding the minimum number of units required for financial viability, Ms. Katz testified that the “increasing acuity of residents requires more highly-skilled staff, higher staffing levels, which means more staff hours per resident, and also more technology to support the building.” (Nov. 14 Tr. at 356, Ex. 121A at 61-66.)
91. Mr. Altman testified that the proposed project provides two fundamental public benefits:
 - a) the development of a new church building for a congregation with a long-standing

commitment to the surrounding community, and

- b) a CCRC that is critically needed in the District. (Nov. 14 Tr. at 361.)

Mr. Altman explained, “[the CCRC use] is clearly a critical need in the District, as it's pointed out in the Office of Aging Report and OP's report, in terms of, the demand for this and where we need these facilities and it's very hard to find locations for these facilities that meet these tests.” (Nov. 14 Tr. at 363.)

- 92. Mr. Altman also noted that a church built to maximum matter-of-right standards, including a lot occupancy of 60% rather than the 57% proposed, would result in a much larger building with much greater potential impacts on the surrounding neighborhood than the proposed Building. (Nov. 14 Tr. at 367.)
- 93. OP testified in support of the Application and reiterated its two proposed conditions regarding outdoor lighting and amplified music. OP also noted that it had not considered the more flexible non-profit, public service organization variance standard in evaluating the relief requested in the Application. (Nov. 14 Tr. at 402, 407.)
- 94. Regarding potential traffic impacts, YSR's transportation expert, Mr. Mehra, testified at the public hearing that the Applicant's CTR used flawed methodology inconsistent with “industry standards” and was therefore inaccurate. (Nov. 14 Tr. at 412.)
- 95. On cross-examination, Mr. Mehra conceded that the scope and methodology used by Gorove/Slade was approved by DDOT. Mr. Mehra also stated he had not conducted his own study but instead relied on a church document from 2008 that was not submitted to the record. Mr. Mehra did not reference any evidence in the record suggesting that the church was pursuing the potential programs that would lead to this increase. (Nov. 14 Tr. at 416-418.)
- 96. The Party Opponents testified that they understood that CCRCs were allowed as a special exception use, but they still believed that the Property was an improper place for one to be located. The representative of TNA, Judy Chesser, reiterated that TNA believed that the proposed “volume of use” combined with the number of requested special exceptions and variances would result in an effective rezoning of the Property. (Nov. 14 Tr. at 419-420.)
- 97. The Party Opponents noted that the Property “is bounded on all three sides by single-family homes” and that the proposal is too close to the single-family homes. (Nov. 14 Tr. at 422 and 444.) The Party Opponents also argued that the proposed setbacks from property lines are insufficient and that the inclusion of a driveway ramp within the setback to the east defeats the intended purpose of the setback. (Nov. 14 Tr. at 424 and 457.)
- 98. The Party Opponents argued that the CCRC would have an inappropriate “volume of use” that would equate to approximately 450 people on the site assuming that all CCRC residents and staff are on the site at one time and that the 250-seat church is filled to

capacity. (Nov. 14 Tr. at 423.)

Post-Hearing Submissions

99. At the conclusion of the hearing, the Board requested the Applicant to provide several documents:

- a) additional perspective renderings of the proposed building;
- b) further detail on the landscape buffer between the proposed building and the 39th Street neighbors;
- c) a plan showing a matter-of-right option;
- d) shadow studies; and
- e) a vehicle turn diagram.

100. In addition, the Board specified that the Party Opponents could respond to the Applicants' post-hearing filings by December 17, 2018. (Nov. 14 Tr. at 545-546.)

101. The Applicants submitted the requested materials on December 10, 2018. (Ex. 135-135F.)

102. YSR did not file a response.

103. TNA filed a response to the Applicant's post-hearing submissions on December 17, 2018. TNA provided a critique of the documents submitted by the Applicants. (Ex. 136.) TNA also submitted:

- a. Its own renderings of the Building compared to the surrounding properties (Ex. 139A);
- b. A plan showing a matter-of-right option (Ex. 136B);
- c. Information on truck turn rotations (Ex. 136C);
- d. A critique of the MOU agreed to by the Applicants and the ANC, along with an alternative construction management plan (Ex. 136D1);
- e. A geotechnical report prepared for the Applicants and released to TNA by WMATA. (Ex. 136D2.)

104. TNA's post-hearing filings continued to reiterate the arguments presented in its pre-hearing statement and in the testimony at the hearing of November 14. Specifically, that the Building and proposed use would be too intense and too large for the surrounding neighborhood and would result in multiple adverse impacts to the neighboring properties. TNA also reiterated its assertions that Sunrise was not properly able to request zoning

relief since it was not the property owner and that the Applicants should be required to indemnify the neighboring property owners for damages resulting from construction. (Ex. 136.)

CONCLUSIONS OF LAW

Ownership Issue

1. The Board concludes that the Applicants met their burden to show that the current fee-title owner of the property, WABC, and its authorized agent, Sunrise, have filed this application.
2. The Board is not persuaded by the Party Opponents' argument that only an owner may request zoning relief from the Board and that any relief benefitting Sunrise is not permitted under the Zoning Regulations because:
 - a. WABC is the current owner of the property, is a co-applicant in the case, and specifically authorized Sunrise to file the application on its behalf in accordance with the requirements of Subtitle Y §§ 300.4 and 300.5. (Ex. 9.)
 - b. As noted in the Application, at such time that WABC transfers an ownership interest in the Property to Sunrise, WABC will continue to own a portion of the Property. (Finding of Fact ["FF"] 10, 52.)

Special Exception Relief

3. Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(2) (2018 Repl.); *see also* Subtitle X § 901.2) authorizes the Board to grant special exceptions, as provided in the Zoning Regulations, where, in the judgement of the Board, the special exception:
 - (i) *will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map,*
 - (ii) *will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, and*
 - (iii) *complies with the special conditions specified in the Zoning Regulations.*
4. Relief granted by the Board 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 relief requested are met. In reviewing an application for special exception relief, the Board's discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and "if the applicant meets its burden, the Board ordinarily must grant the application." *First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).

Special Exception for CCRC Use

5. The Board concludes that the requested special exception for a CCRC use 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 Map.

6. The Zoning Regulations (Subtitle B § 100.2) define a CCRC as:
 - [a] building or group of buildings providing a continuity of residential occupancy and health care for elderly persons. This facility includes dwelling units for independent living, assisted living facilities, or a skilled nursing care facility of a suitable size to provide treatment or care of the residents; it may also include ancillary facilities for the further enjoyment, service, or care of the residents. The facility is restricted to persons sixty (60) years of age or older or married couples or domestic partners where either the spouse or domestic partner is sixty (60) years of age or older.
7. Pursuant to Subtitle U § 203.1, a CCRC use is a permitted use in the R-1-B Zone if approved by the Board as a special exception under Subtitle X, Chapter 9, subject to the associated provisions.
8. The Board concludes that the Application has met the criteria for a CCRC special exception for the following reasons:

Subtitle U § 203.1(f)(1) – CCRC Qualifying Uses

9. To qualify as a CRCC, the facility must 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;*
10. The Board concludes that the Application meets the definition of an assisted living facility CCRC because it will provide residential accommodations, assistance with daily living, healthcare services and memory care for elderly persons over 60 years of age who value their independence but need some assistance with daily activities. (FF 39.)
11. While the Zoning Regulations do not specifically define an “assisted living facility”, they do classify an assisted living facility as a residential use under Subtitle B § 200.2(aa)(3), therefore the use is compatible with residential zones including the R-1-B.
12. As such, the Board rejects the assertion of the Party Opponents that the CCRC should be classified a “healthcare use” because CCRC uses specifically allow for the provision of some health care services. The Board also rejects the assertion that the CCRC is a “commercial use” for the same reason.

Subtitle U § 203.1(f)(2) - *If the CCRC use does not include assisted living or skilled nursing facilities, the number of residents shall not exceed eight;*

13. The Board concludes that the proposed use does include assisted living facilities, so the number of residents is not limited by this provision. (FF 39.)

Subtitle U § 203.1(f)(3) - The CCRC use may include ancillary uses for the further enjoyment, service, or care of the residents;

14. The Board concludes that the CCRC will include various ancillary uses including exercise and gym space, physical therapy rooms, spas, a cinema and a bistro that would contribute to the enjoyment and care of the residents. (FF 42-43; Ex. 69B and 90.)

Subtitle U § 203.1(f)(4) - The CCRC use and related facilities shall provide sufficient off-street parking spaces for employees, residents, and visitors;

15. The Board concludes that there will be sufficient off-street parking for both the CCRC and the Church uses.
16. The Board notes that the Applicants are meeting the parking requirements of the Zoning Regulations, as confirmed by DDOT and OP, by providing a total of 66 parking spaces in the below-grade parking garage. (FF 28, 72; Ex. 53 and 90.)
17. The Board credits the findings of the DDOT Report, which noted that the Property's proximity to a Metro station, major bus transfer points, and the proposed TDM plan, resulted in DDOT having "no concerns with the parking proposal." (FF 70, Ex. 137.)
18. The Board also credits the findings of the DDOT-approved CTR which concluded that the CCRC and Church will not generate a demand for parking more significant than already exists. (FF 70-72; Ex. 53, and 137.) The Board also notes that the CTR found that the proposed number of parking spaces will exceed the expected demand for the Church and the CCRC employees, residents and visitors. (Ex. 52A.)
19. The Board notes that the number of employees will be relatively small, generally 6 to 30 employees. Further, most of the employees are anticipated to use public transportation, which is highly accessible given the proximity of Metro, multiple bus lines, and nearby car- and bicycle- sharing facilities. (FF 15, 45, 61-62.)
20. The Board credits the Applicants' statement that residents of the CCRC will be prohibited from applying for a residential parking permit to ensure that the supply of on-street spaces available to the immediate neighbors is not diminished, although the Applicants have stated that CCRC residents are unlikely to drive or own cars. (Ex. 69 at 15, 119A.)
21. The Board also finds that the Applicants have committed to directing any overflow traffic to nearby metered spaces or parking garages in the vicinity. (Ex. 52A, 119A.)

Subtitle U § 203.1(f)(5) - The CCRC 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;

22. The Board concludes that the CCRC is not likely to result in objectionable impacts to the neighboring properties due to noise, traffic or other conditions because of the various design and operational features that the Applicants have incorporated into the Building and use.

23. The Board notes that the outdoor lighting on the Building would be limited to the entrance and garage ramp and would be down lit. Lights at the loading dock would be turned off at 6:00 PM while other required exterior or interior lighting would be dimmed after 11:00 PM. To minimize light spill, the Board concurs with the recommendation of the OP Report that roof deck lighting be down lit. (Ex. 119A.)
24. The Board notes that, per the MOU, the Applicants have agreed to limit use of the rooftop terrace to between the hours of 8:00 AM to 10:00 PM on Sundays through Thursdays, and 8:00 AM to 11:00 PM on Fridays and Saturdays. No amplified music will be permitted on the roof. (Ex. 119A.)
25. The Board finds that all rooftop mechanical equipment would be located away from adjacent properties and buffered by the sloped mansard roof, which also acts as the mechanical screen wall. Further, the Board credits the Applicants' noise study that demonstrates that the rooftop mechanical equipment will only generate noise at or below the existing background levels, and well below the levels established in the D.C. noise control regulations. (FF 24, 60.)
26. The Board also concludes that potential noise generated by ambulance trips to the CCRC use would also be limited and within an acceptable range. Based on evidence from other area CCRC facilities, there is expected to be a maximum of ten ambulance visits per month to the site, with most occurring between 7:00 AM and 7:00 PM, thereby not creating any undue nighttime disturbance. In reaching this conclusion, the Board concurs with the findings of the OP Report that the Property is uniquely located at the edge of the Wisconsin Avenue commercial corridor and only two blocks from the Tenleytown Firehouse at Warren Street, N.W. (FF 14, Ex. 90.)
27. With respect to traffic, the Board credits the Applicants' CTR and the findings of the DDOT Report, that the Church and CCRC would not have an adverse impact on the transportation network. (FF 62, 70-72; Ex. 52A, 53, 90.) The number of trips expected to be generated by both uses is *de minimis* and will likely be fewer than the number of trips generated by the current church and child development center. (FF 71, 74.) It is anticipated that most traffic would be generated at shift changes during non-peak travel hours, and during church services on Sunday, thereby lessening traffic impacts. The Board also concludes that implementation of the Applicants' TDM Plan will ensure that any potential adverse impacts can be averted. (FF 70.)
28. The Board also notes that the Loading Management Plan restricts trash pickup and loading dock operations to the hours of 8:00 AM to 6:00 PM. The Applicants anticipate a total of 16-19 deliveries a week, including trash removal three times a week. The Loading Management Plan includes the provision of a loading manager to coordinate the arrivals and departures from the loading dock to minimize any adverse impact. Trucks would also not be permitted to idle on or near the property. (FF 70; Ex. 119A.)

Subtitle U § 203.1(f)(6) - The Board 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.

29. The Board concludes that elements to protect nearby and adjacent properties have been properly incorporated into the proposed plans, including the landscape buffer on the east side. The Board concurs with the OP recommendations that no amplified music be allowed on the roof terrace and that lights on the roof deck be down lit. (FF 33, 63.)
30. The Board finds that the Building will provide a buffer and transitional use between the active commercial and institutional uses along Wisconsin and Nebraska Avenues and the residential uses to the east. (FF 12-14.)

Subtitle X § 901.2 – General Special Exception Standards (CCRC)

31. The Board finds that the CCRC is permitted in the R-1-B zone and falls within acceptable parameters for R-1-B development, including the variance relief discussed below. The Board also notes that the CCRC will provide a needed facility for elderly district residents, particularly in Ward 3, and will be conducive to maintaining the quiet character of the residential area. (FF 53-54, 68-69, 88-89.)
32. The Board also concludes that the CCRC will not adversely affect the use of the neighboring properties. The Board notes that the Application proposes to provide significant landscaping around the property and that the Applicants have agreed to the conditions proposed by OP regarding exterior lighting and music. The Board also credits the conclusions of the Applicants' DDOT-approved CTR which concluded that the CCRC would not result in any undue parking or traffic impacts to the surrounding area. (FF 33-34, 62, 70-72.)
33. With regards to the Party Opponents' concerns regarding construction impacts, the Board has consistently held that construction management issues are not within its purview and are governed by the Construction Codes and other District agencies.

Special Exception for Retaining Wall

34. Subtitle C § 1401.3(c) allows an increase in the height of a retaining wall if the requirements of Subtitle C § 1402.1 are met: *"In addition to meeting the general conditions for being granted a special exception . . . the applicant must demonstrate that conditions relating to the building, terrain, or surrounding area would make full compliance unduly restrictive, prohibitively costly, or unreasonable."* (Subtitle C § 1402.1.)
35. The Board concludes that if the Applicants were required to comply with the retaining wall height limitation, it would impede the Applicants' ability to provide parking and loading facilities below grade. This would in turn require the Applicants to provide surface level parking and loading facilities which would require the Applicants to reduce the size of the Building and result in greater impacts to the neighboring properties and the streetscape. (FF 32-33, 65.)

36. The Board also notes that proposed driveway design, with access to both Alton and Yuma Streets, was specifically suggested by OP and supported by DDOT to reduce traffic impacts by allowing cars to access and depart the site to and from thereby reducing traffic impacts to the residential areas to the east. (FF 32-33, 65.)

Subtitle X § 901.2 – General Special Exception Standards (Retaining Wall)

37. The Board concludes that the proposed wall will be in harmony with the general purpose and intent of the Zoning Regulations because only the center segment of the wall will exceed the four-foot height limitation for a maximum height of 13 feet. Further, the Board notes that the retaining wall will face the Building and is necessary to provide the through-drive and access to the parking garage and loading dock. (FF 32-33, 65.)

38. The Board also concludes that the retaining wall will not adversely affect the use of the neighboring properties. The Board notes that the retaining wall is set back from the east property line to create the landscape buffer for adjacent 39th Street neighbors. The wall will not be visible from the 39th Street neighbors' rear and side yards and is only partially visible from Alton Place or Yuma Street. Only residents of the CCRC will have direct views of the portion of the retaining wall exceeding four feet. (FF 33; Nov. 14 Tr. at 351.)

39. The Party Opponents argued that the proposed retaining wall presents a hazard to children who might live or play near the facility. However, the Board finds that the retaining wall is designed to ensure maximum safety, specifically:

- a. A six-foot fence will separate the WABC property from the 39th Street neighbors on the property line;
- b. A wrought iron fence will be constructed atop the retaining wall, another 8 to 16 feet from the property line;
- c. There will be extensive evergreen plantings between the property line and the retaining wall/wrought iron fence; and
- d. Locked gates will be located on the north and south ends of the planting strip.

With these safety features, the Board concludes that any potential harms resulting from the retaining wall are significantly minimized and would pose no greater threat than a matter-of-right retaining wall. (FF 33.)

Variance Relief

40. The Board is authorized to grant variances from the requirements of the Zoning Regulations where:

- (i) *“by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,”*

- (ii) *the strict application of any zoning regulation “would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property,” and granting the requested variance would not cause*
- (iii) *“substantial detriment to the public good” or*
- (iv) *“substantial impairment to the intent, purpose, and integrity of the Zone plan as embodied in the Zoning Regulations and Map.”*

(Section 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3) (2018 Repl.); Subtitle X § 1000.1.)

Area Variances

41. An applicant for an area variance must prove that an extraordinary condition of the property would result in “peculiar and exceptional practical difficulties” by demonstrating first that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. (*Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990); Subtitle X § 1002.1(a).)
42. The Board concludes that the Application’s requests for relief from the height, lot occupancy, and side yard requirements properly qualify as area variances because they are requirements “that affect the size, location, and placement of buildings and other structures …”. (Subtitle X § 1001.3(a).) Therefore, the Applicants must only show that strict compliance with the Zoning Regulations will result in “peculiar and exceptional practical difficulties”. (Subtitle X § 1001.2(a).)
43. The Board concludes that the Party Opponents confuse the standard of review for area variances with the use variance test. *See Neighbors for Responsive Gov’t, LLC v. District of Columbia Bd. of Zoning Adjustment*, 195 A.3d 35, 60 (D.C. 2018) (“a property owner need only show “practical difficulties” to obtain an area variance, whereas property owners must always show “undue hardship” to obtain a use variance.”) As such, the Board does not find the Party Opponents’ arguments that the Applicants are required to demonstrate that they will suffer undue hardship if the variances are not granted and that there are no alternative uses that will produce a reasonable income to be relevant. *See Clerics of St. Viator*, 320 A.2d at 296; *Gilmartin*, 579 A. 2d at 1168.
44. For the same reason, the Board concludes that the Party Opponents’ argument of self-created hardship due to WABC’s “lack of maintenance” is also not persuasive or applicable. (Nov. 14 Tr. at 428.) The Board notes that the self-created hardship doctrine only applies when evaluating relief for a use variance and is therefore not pertinent to these proceedings. *See Gilmartin*, 579 A.2d at 1171 (“Prior knowledge or constructive knowledge or that the difficulty is self-imposed is not a bar to an area variance.”)

Area Variances for Number of Stories, Lot Occupancy, and Side Yards

45. Extraordinary or Exceptional Situation “The extraordinary or exceptional conditions affecting a property can arise from a confluence of factors; however, the critical requirement is that the extraordinary or exceptional condition must affect a single property.” *Metropole Condo. Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 141

A.3d 1079, 1082–83 (D.C. 2016).” *Ait-Ghezala v. District of Columbia Bd. of Zoning Adjustment*, 148 A.3d 1211, 1217 (D.C. 2016).

46. The Board concludes that the Property is affected by an exceptional situation and condition resulting from a confluence of factors including:

- a. the size of the lot which is approximately seven times larger than the average of the other lots in the square (FF 9);
- b. the five-sided shape of the lot with frontages on three streets (FF 8);
- c. the site’s prominent location on a Washington, D.C. traffic circle at the intersection of a major commercial corridor, meaning that the Property is unlikely to be developed for low density residential uses (FF 12-14); and
- d. the institutional needs of the non-profit WABC to partner with a mission-compatible use, without which WABC could not maintain the existing building or survive on the Property. The Board finds that WABC has sufficiently demonstrated that its proposal to partner with Sunrise is its only viable option that would allow WABC to remain in its current location. The Board concludes that the specific design of the Building, including its size, is an institutional necessity for WABC to leverage its property with a mission-compatible use. (FF 50-52, 87.)

Public Good Flexibility

47. Generally, an applicant’s desire to utilize property for a certain use is not by itself deemed sufficient to create an extraordinary or exceptional situation or condition under the zoning regulations, *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540 (D.C. 1972), but subsequent decisions modified *Palmer*, permitting the Board to weigh more fully the equities in an individual case. *National Black Child Development Institute, Inc. (“NBCDI”) v. District of Columbia Bd. of Zoning Adjustment*, 483 A.2d 687, 690 (D.C. 1984) citing *DeAzcarate v. District of Columbia Board of Zoning Adjustment*, 388 A.2d 1233, 1237 (D.C. 1978); *Clerics of St. Viator, Inc. v. District of Columbia Board of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974).

48. The Board may consider the property owner’s needs in finding an “exceptional situation or condition” when the applicant is a non-profit organization devoted to public service which seeks to upgrade and expand its existing inadequate facilities. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091, 1098 (D.C. 1979) (“...the BZA may be more flexible when it assesses a non-profit organization...public need for the use is an important factor in granting or denying a variance” (internal citation omitted)).

49. In applying for an area variance, a public service organization must show:

- i. that the specific design it wants to build constitutes an institutional necessity, not merely the most desired of various options; and
- ii. precisely how the needed design features require the specific variance sought.

Draude v. District of Columbia Bd. of Zoning Adjustment, 527 A.2d 1242, 1256 (D.C.

1987)

50. This additional flexibility is not limited to expansions of existing uses, but can also apply to new uses provided the use is for a public good:

“...when a non-profit organization applies for a variance as being necessary to enable it to meet a public need or serve the public interest without undue burden, the BZA has discretion to take the public benefit into account in assessing whether the requirements for a variance are met (including the existence of an exceptional condition affecting the property), regardless of whether the applicant seeks to expand or continue an existing, authorized use, or to add or substitute a new use of the property in question.”

Neighbors for Responsive Government, LLC v. District of Columbia Board of Zoning Adjustment, 195 A.3d 35, 59 (D.C. 2018)

51. The Board concludes that while the Application satisfied the first variance prong – an exceptional condition – the Application, in the alternative, also qualifies for public good flexibility. The Building promotes a public good in both the continuation of the existing church and the establishment of the CCRC use. The Board finds that the Applicants have demonstrated that there is a public need for more facilities to address the rising population of seniors in the District and that the CCRC is likely to draw the majority of its residents from the surrounding communities and is therefore eligible for flexibility. (FF 53-54, 68-69, 88-89, 91.)

52. The Board also concludes that the Applicants have satisfied the two-prong test from *Draude*. Regarding the first prong, the Board finds that the Applicants have provided sufficient evidence that the partnership with Sunrise to construct the Building was the only viable way in which WABC could continue to operate on the Property. (FF 50-52, 86.) The Board also notes that the Applicants have demonstrated that the CCRC will also serve a public need in the community. (FF 53-54, 68-69, 88-89, 91.) Regarding the second prong, the Board finds that the requested variances from the regulations on the number of stories, lot occupancy, and side yard are required for the CCRC use, and therefore, the partnership between WABC and Sunrise, to be economically viable. (FF 55-57, 66, 88-90.)

53. In reaching these conclusions, the Board credits the findings of the OP and DCOA Reports, as well as the Applicants’ analysis, which noted the growing population of adults aged 65 and older. In particular, the Board notes that Ward 3, is experiencing some of the highest growth in the District for this demographic. (FF 53-54, 68-69, 88-89, 91.) As such the Board concludes that the CCRC would be a benefit to the public good as it would allow elderly residents to age in their community, which is consistent with the Zoning Regulations’ intent for the R Districts. (FF 53-54; Subtitle D § 100.2.)

54. The Board finds that WABC needed a partner to survive on the Property and continue to serve its mission in the Community. WABC chose to partner with Sunrise because it determined that the CCRC use was mission compatible with that of the church because the CCRC would also provide a much-needed public benefit in the form of senior

residences. (FF 50-54, 68-69, 89, 91.) In reaching this conclusion, the Board concurs with the OP Report, which found that “[granting] the requested increase in lot occupancy and number of stories, and the reduced side yard adjacent to the NPS land would allow the church to continue to fulfill its mandate, and provide a needed option for seniors residences.” Therefore, the Board is not persuaded by the Party Opponents’ arguments that the flexible standard offered to non-profit, public service organizations should not apply to this application because Sunrise is a for-profit organization and WABC will occupy only a small portion of the Building.

Practical Difficulties

55. The Board concludes that strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the Applicants by precluding the construction of the Building on the Property thereby hindering WABC’s ability to continue to operate from its historic location.
56. Regarding the relief from the number of stories, the Board finds that a building limited to number of stories permitted for non-church buildings as a matter of right would not be economically viable and would not permit WABC to partner with Sunrise and thereby leverage the Property’s value in a way that benefits WABC and the community. (FF 55-57, 90.)
57. Regarding the relief from the lot occupancy, the Board also finds that efforts to meet the 40% lot occupancy limit for non-religious buildings would reduce the unit size below functional standards for CCRC and would result in the loss of not just one unit, but tiers of units or the elimination of the double-loaded corridor. This would also affect the economic viability of the proposed partnership between WABC and Sunrise. (FF 55-57, 90.)
58. The Board credits the testimony of Philip Kroskin and Alice Katz that any reduction to the number of stories or the lot occupancy would force a reduction in the number of units that the CCRC could provide. The proposed structure would offer 86 CCRC units, and the Applicants have provided uncontested testimony that a minimum of 85 units must be provided for financial viability. (FF 88-90; Nov. 14 Tr. at 337-38 and 353-57.)
59. Regarding the requested side yard relief, the Board concurs with the findings of the OP Report that the irregular shape of the lot and the Applicants’ desire to provide underground parking and the greatest buffer for the neighbors to the east create practical difficulties for the Applicants. (FF 65-66; Ex. 90.)

No Substantial Detriment to the Public Good

60. The Board concludes that approval of the requested variance relief will not result in substantial detriment to the public good. As previously discussed, the proposed CCRC use satisfies the requirements for special exception approval, such that the use is consistent with the Zoning Regulations and is located and designed so that it is not likely to become objectionable to neighboring property because of noise, traffic, or other objectionable conditions. (FF 59-60, 64, 66, 70.)

61. Regarding both the number of stories and lot occupancy relief, the Board concurs with the findings of the OP Report which noted that that building on the property line adjacent to the NPS land allows for a larger side yard with landscaping and fencing adjacent to the residences to the east, which minimizes potential impacts of the larger building. (FF 65-66.)
62. Regarding the side yard relief, the Board concludes that the configuration of the lot allows the setbacks to be effectively shifted from one side of the Property to the other, and more of the lot to be occupied, without an impact on the appearance of open space, light and air as the NPS Lot will remain open. Therefore, the lack of side yard on the western property line will not result in a substantial detriment. (FF 34.)
63. The Board also notes that the Applicants are proposing numerous landscaping improvements to the NPS Lot. This will not only further help mitigate the visual impacts of the Building but will also allow the NPS Lot to serve as a park space for neighboring residents, thereby benefiting the public good. (FF 34.)

No Substantial Impairment of the Zone Plan

64. The Board concludes that approval of the requested variances from the number of stories and lot occupancy requirements will not result in substantial impairment of the zone plan. The Board notes that while the project will exceed the permitted number of stories by one story, the Building will still be within the maximum permitted height of 40 feet. Further, the Building will also be under the matter-of-right lot occupancy permitted for a church. On this point, the Board credits the OP Report and the testimony of Mr. Altman that a church built to maximum matter-of-right standards would result in a much larger building than what is proposed. (FF 66, 92.)
65. With regards to lot occupancy, the Board notes that the Applicant is reducing the impact of the larger building on the surrounding residential properties by providing compliant side yards on three sides of the Building, and as explained further below, is utilizing the existing NPS Lot as a buffer on the fourth. (FF 34.)
66. Regarding the side yard, the Board concludes that the condition of the NPS Lot will provide the visual effect of the required side yard, thereby meeting the intent of the Zoning Regulations. (FF 34.)
67. The Board does not find convincing the Party Opponents' argument that granting the area variances will have an undue effect in terms of density on the neighborhood and "equate to a rewrite of zoning in an R-1-B single family detached low density neighborhood conservation area." (Nov. 14 Tr. at 419 and 430.) The Board has concluded that the Property is affected by a unique condition, not applicable to other properties in the surrounding area, which hinders its ability to comply with the Zoning Regulations. As such the granting of the requested area variances addresses the Property's unique condition and does not effectively "rezone" the surrounding area. (FF 8, 9, 12-14, 50-52, 87.)

Additional Contested Issues

68. The Board is not persuaded by the Party Opponents arguments that the provided setbacks are insufficient or that the presence of the driveway within the setback defeats the purpose of the setback. (FF 97.) The Board notes that setbacks govern the distance between a *building* and a street lot line and are therefore not applicable to driveways. (Subtitle B § 100.) Further, the Board notes that the Applicant is providing compliant side yards, with the exception of the side yard adjacent to the NPS Lot. However, as discussed above, the Board concludes that the configuration and proposed landscaping of the NPS Lot will allow it to serve the purpose intended by the side yard requirements of ensuring light and air around buildings. (FF 34.)
69. The Board is not persuaded by the Party Opponents' argument that the proposed 70-foot steeple exceeds the maximum permitted height of the R-1-B District. (FF 81(j).) The Board notes that Subtitle D § 207.2 specifically provides that "a spire, dome, pinnacle, minaret serving as an architectural embellishment, or antenna may be erected to a height in excess of that which this section otherwise authorizes in the district in which it is located." A steeple clearly falls within this category of architectural embellishments that may exceed the R-1-B height limits. (FF 23.)
70. The Board is not persuaded by Party Opponents' concern that the Applicants would not meet all other zoning requirements, specifically the requirements for pervious surface and the slope of the driveway ramp. (FF 81(j).) The Board notes that the Applicants are only entitled to the relief from the Zoning Regulations granted to them by this Order and are required to meet all other requirements under the Zoning Regulations. If any additional zoning relief is needed, the Applicants will have to file a new application to the Board or revise the project to meet the requirements for areas where relief has not already been granted.

“Great Weight” to the Recommendations of OP

71. The Board must give “great weight” to the recommendations of OP under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990. (D.C. Law 8-163; D.C. Official Code § 6-623.04); *see* Subtitle Y § 405.8.)
72. For the foregoing reasons, the Board finds OP’s analysis and recommendation of approval persuasive and concurs in that judgment.

“Great Weight” to the Written Report of the ANC

73. The Board must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976. (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl); *see* Subtitle Y § 406.2.) To satisfy the great weight requirement, the Board must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016). The District of Columbia

Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).

74. The Board notes that the ANC Report indicated that its issues and concerns had been addressed by the MOU, certain portions of which are included in this order as agreed to by the Applicants. Therefore, the Board concludes that the ANC has no outstanding issues or concerns that must be further addressed. The Board notes that the ANC Report supported the Application and concurs in that judgement. (Exhibits 119, 119A; FF 77.)

DECISION

In consideration of the case record, the Findings of Fact and Conclusions of Law, and, the Board concludes that the Applicants have satisfied the burden of proof for the following requested relief:

- Special exception for a CCRC use pursuant to Subtitle U § 203.1(f);
- Special exception under Subtitle C § 1402 from the retaining wall requirements of Subtitle C § 1401.3(c);
- Area variance from the height limitations of Subtitle D § 303.1;
- Area variance from the lot occupancy requirements of Subtitle D § 304.1; and
- Area variance from the side yard requirements of Subtitle D § 307.1.

The Board, therefore, **ORDERS** that the Application is **GRANTED**, subject to the following **CONDITIONS**:

1. The Building shall be constructed in accordance with the Approved Plans, dated October 24, 2018. (Ex. 69E1 and 69E2),⁴ as required by Subtitle Y §§ 604.9 and 604.10.
2. All lighting on the roof deck shall be down lit.
3. Amplified music on the roof deck shall not be permitted.
4. The Applicants shall abide by the following Transportation Demand Management (“TDM”) Plan and Loading Management Plan as proposed in the October 8, 2018, Comprehensive Transportation Review study prepared by Gorove/Slade Associates (Ex. 41, 52-52A):

Transportation Demand Management Plan

- a. The Applicants will identify TDM Leaders (for planning, construction, and operations). The TDM Leaders will work with employees in the development to

⁴ Self-Certification. The zoning relief requested in this case was self-certified, pursuant to Subtitle Y § 300.6. (Exhibit 5.) In granting the requested self-certified relief subject to the plans submitted with the Application, the Board makes no finding that the requested relief is either necessary or sufficient to authorize the proposed construction project described in the Application and depicted on the approved plans. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any such application that would require additional or different zoning relief from that is granted by this Order.

distribute and market various transportation alternatives and options.

- b. The Applicants will work with DDOT and goDCgo (DDOT's TDM program) to implement TDM measures at the proposed development.
- c. The Applicants will share the full contact information of the TDM Leader for the proposed development with DDOT and goDCgo.
- d. The Applicants will meet ZR16 Zoning requirements to provide bicycle parking facilities at the proposed development. This includes a minimum of 30 secure long-term parking spaces located within the buildings of the proposed development and a minimum of 12 short-term bicycle parking spaces around the perimeter of the buildings (in the form of bicycle racks).
- e. The Applicants will install a Transportation Information Center Display (kiosk) containing materials related to local transportation alternatives and maintain a stock of materials at all times.
- f. The Applicants will provide information on alternative parking locations for Church attendees and Sunrise visitors on its website, instructing drivers to park in on-street meters and/or nearby parking garages and not in residential spaces. This information will be sent to attendees of any events on site.

Loading Management Plan

- a. A loading manager will be designated by the property management for the site.
- b. All tenants, Sunrise operations, and the Church must schedule move-ins/move-outs with the loading manager.
- c. The hours of operation for the loading dock will be limited to 8:00 am to 6:00 pm.
- d. The loading manager will schedule deliveries such that loading capacity is not exceeded. If an unscheduled delivery vehicle arrives while the loading area is full, that driver will be directed to return at a later time so as not to impede traffic flow.
- e. Building management will be responsible for disseminating routing information, particularly as it relates to large trucks (e.g. 30-foot box trucks or trash trucks).
- f. Trucks using the loading docks will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the regulations set forth in DDOT's Freight Management and Commercial Vehicles Operation document, and the primary access routes listed in the DDOT Truck and Bus Route System.
- g. The loading managers will be responsible for disseminating DDOT's Freight Management and Commercial Vehicle Operations document to drivers as needed to

encourage compliance with District laws and DDOT's truck routes. The loading managers will also post these documents in a prominent location within the service areas.

5. The Applicants shall abide by the provisions (and the subparts contained within those provisions), agreed to in the Memorandum of Understanding reached between WABC, Sunrise Senior Living, and ANC 3E (Ex. 119A) titled:
 - a. PARKING;
 - b. LIMITS ON THE INTENSITY OF USE OF THE BUILDING;
 - c. BUILDING OPERATIONS;
 - d. OTHER DESIGN AND TRANSPORTATION MEASURES; and
 - e. TRANSPORTATION MITIGATION EFFORTS.

VOTE (Feb. 6, 2019): 4-0-1 (Frederick L. Hill, Lorna L. John, Robert E. Miller, and Lesylleé M. White to APPROVE; Carlton E. Hart not participating.)

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

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

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: February 14, 2020

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

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

OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

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

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