

**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), 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 DATE:** September 12, October 10, October 17 and November 14, 2018  
**DECISION DATE:** January 16, 2019

**DECISION AND ORDER**

This self-certified application was submitted on June 14, 2018 by Wisconsin Avenue Baptist Church (“WABC”), the owner of the property that is the subject of the application, and Sunrise Senior Living (“Sunrise”) (collectively, “Applicants”). The application requested special exception relief for a continuing care retirement community (“CCRC”) and to allow a retaining wall greater than four feet in height; and area variance relief from requirements for lot occupancy, number of stories, and side yard requirement on a single lot of record in the R-1-B Zone at 3920 Alton Place, N.W. (Square 1779, Lot 14). Following a public hearing, the Board of Zoning Adjustment (“Board”) voted to grant the application.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda dated August 10, 2018, the Office of Zoning provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 3 as well as the Chairman and the four at-large members of the D.C. Council; the Office of Advisory Neighborhood Commissions; Advisory Neighborhood Commission (“ANC”) 3E, the ANC in which the subject property is located; and Single Member District/ANC 3E05. Pursuant to 11-Y DCMR § 402.1, on August 10, 2018 the Office of Zoning mailed letters providing notice of the hearing to the Applicants, the Councilmember for Ward 3, ANC 3E, and the owners of all property within 200 feet of the subject property. Notice was published in the *D.C. Register* on August 17, 2018 (65 *D.C.Reg.* 8525).

Party Status. The Applicants and ANC 3E were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Tenleytown Neighbors Association (“TNA”), an organization comprised of residents living within the Tenleytown neighborhood, and whose president and some other members live in the same

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block of Alton Place, N.W., or within one block of the proposed development site. The Board also granted party status in opposition to nine neighbors in the 3900 block of Yuma Street, N.W., who live within 200 feet of the proposal, and who collectively referred to themselves as the Yuma Street Requesters (“YSR”).

Applicants’ Case. The Applicants provided evidence and testimony about the proposed new church and CCRC building, and the challenges that the church currently faces, from the following witnesses: Patricia Dueholm and Janet Brooks, Trustees of WABC; Philip Kroskin, Senior Vice President of Real Estate for Sunrise Senior Living; Chuck Heath, the principal architect of the proposed church and CCRC building and an expert in architecture; Alice Katz, President of the Vinca Group LLC and an expert in financial and market analysis in healthcare and assisted living facilities; Dan Van Pelt, Principal, and Robert Schiesel of Gorove/Slade Associates, who were both qualified as experts in transportation engineering; and Andrew Altman of Five Squares Development, an expert in land planning.

OP Report. By memorandum dated November 2, 2018, OP recommended approval of the zoning relief requested by the Applicants subject to the conditions that all lighting on the roof deck be down lit and that amplified music on the roof deck shall not be permitted. (Exhibit 90).

DDOT. By memorandum dated October 10, 2018, DDOT indicated no objection to approval of the application. (Exhibit 53).

ANC Report. By resolution dated November 12, 2018, 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”) reached between the ANC and the Applicants. (Exhibits 119-120). In its resolution, ANC 3E expressed support for the proposed building in reliance of the Applicants’ agreement to the MOU.

Parties in Opposition. TNA and YSR stated concerns about the size and density of the proposed structure on this particular site. (Exhibit 83A). The parties in opposition argued against approval of the variances and special exceptions requested by the Applicants, partly on the ground that residents living in neighboring properties would experience adverse impacts related to parking, traffic, noise, light, air, and construction. They argued that the intensity of the request is effectively a zoning change, and that the proposal is noncompliant with other requirements of the Zoning Regulations.

Persons in support. The Board received letters and heard testimony from persons in support of the application. The persons in support generally cited the needs of the church to redevelop its property with a compatible partner that could construct a new right-sized church and assisted living facility for the city's senior population. Supporters stated that the subject 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. Supporters included immediate neighbors, members of Ward 3 Vision, and representatives from community organizations.

Persons in opposition. The Board also received letters and heard testimony from persons in

opposition to the application. The persons in opposition commented unfavorably on the church'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.

Post-hearing submissions. At the conclusion of the hearing, the Board requested the Applicants to provide several documents: additional perspective renderings of the proposed building; further detail on the landscape buffer between the proposed building and the 39th Street neighbors; a plan showing a matter-of-right option; shadow studies; and a vehicle turn diagram. The materials were submitted on December 10, 2018. The parties in opposition were invited to respond to the Applicants' submission on December 17, 2018. Only TNA filed a reply.

## **FINDINGS OF FACT**

### **The Subject Property**

1. The subject property is a large parcel located at 3920 Alton Place, N.W. (Square 1779, Lot 14). WABC holds the fee title to the property. Sunrise Senior Living has an ownership interest as a contract purchaser. As part of the project, a condominium regime will be created on the property, and WABC and Sunrise Senior Living will each have an ownership interest in one or more condominium units.
2. The site is an irregularly-shaped, five-sided lot with frontage on Alton Place, Yuma Street, and Nebraska Avenue, N.W. The land area is 35,443 square feet, which is seven times larger than the average of the other five lots on the square.
3. The subject property is improved with a brick church constructed circa 1955 and occupied by the WABC. An asphalt parking lot and a playground are also on the site.
4. The adjoining land to the west, known as Lot 811, is owned by the federal government with jurisdiction vested in the National Park Service. Lot 811 is a triangular parcel maintained as open space, which fronts on Tenley Circle, Nebraska Avenue, and Yuma Street, N.W. The subject property is bounded to the east by single-family residences fronting on 39th Street.
5. The subject property is located within one-quarter of a mile of 19 Metrobus stops and 11 Metrobus routes on Nebraska and Wisconsin Avenues. The Tenleytown-AU Metrorail station is located approximate 0.1 miles to the north of the site. (Exhibit 52A).
6. Bicycle- and car-sharing options are accessible within 0.25 miles of the subject site. Bicycle facilities in the area include shared bicycle lanes on several nearby streets. (Exhibit 52A).

### **Church Needs**

7. WABC is a not-for-profit, religious organization that was founded over 130 years ago in the Tenleytown neighborhood. It has served the needs of its congregation and the community at its present site for approximately 63 years. (Tr. 323-24).

8. WABC's church structure suffers from functional obsolescence and major disrepair. The mechanical systems are failing, the boiler is rusted and corroded, pipes are leaking, the roof is in need of repair or replacement, the lighting and acoustics are poor, kitchen facilities are dysfunctional, the electrical grid is inadequate, asbestos tiles in the lower level are deteriorating, and there is peeling paint in areas throughout the building. Poor spatial configurations do not meet the needs of the nursery area and classrooms. The exterior of the building is also in need of significant repairs. The retaining walls securing the front steps have bricks missing, as do other steps. Outside doorframes are rotten and need paint. All doors need weather-stripping and several do not close properly, which further exacerbates the heating problems with the building. The church is not ADA-accessible, which is a particularly urgent concern due to several congregants now requiring the use of wheelchairs and walkers. The church has neither a security system nor sprinkler system, which are particularly critical in light of the other building deficiencies. WABC cannot afford to make needed repairs or retrofit the building to be ADA-accessible. (Tr. at 323-28)
9. The church is at a crossroads. It wants to continue to exist at its current location so that it can continue to serve its congregation and community. (Dueholm, Tr. at 323-24). It must leverage the value of its property to continue to exist and meet its religious needs, as it does not have the resources to do so otherwise. The church's goals include hiring a full-time pastor, eliminating the need to rent out the church to outside groups to cover even minimal operating expenses, and increasing the church's ability to give more to international missions and local ministries. The church decided to partner with Sunrise Senior Living as a mission-compatible use on the present site. (Tr. at 327, 330)
10. WABC considered all of its multiple options before joining with Sunrise Senior Living to construct to the proposed project. WABC was approached by many developers seeking to purchase the property and provide advice on relocating the church somewhere else. WABC rejected these offers because it would mean leaving a highly visible and desirable site, where it has ministered to its congregation and community for over 60 years. WABC also discussed combining with a so called "mega-church." This alternative, however, would likely cause the demise of WABC's identity and its small, family-like quality, which is important to WABC. Additionally, a large mega-church, which could be constructed to a height of 60 feet and 60 percent lot occupancy as a matter-of-right in the R-1-B District, would potentially create greater traffic and noise impacts on the neighborhood. WABC also examined the suggestion from TNA of subdividing the property into three lots, selling off two lots fronting on Yuma Street for development as detached single-family houses, and renovating the existing church building on the remaining land with proceeds from the sale. Based on estimates from its consultants, WABC rejected this option as infeasible because the sale proceeds would not generate sufficient funds for the extensive repairs, and would leave nothing in any event for a continuing operating budget. WABC would also be left with a significantly smaller lot, thereby reducing the amount of parking and playground space on the site. (Tr. at 327, 509-10).

## **Demand for CCRC Uses**

11. The proposed CCRC use will help alleviate the pressing need for senior care in the District. Currently, Upper Northwest DC and Montgomery County, Maryland, are home to several assisted living facilities, but demand still far outpaces the supply. The number and density of qualified senior ("QS") and qualified caregiver ("QCG") households within three and five miles (excluding Virginia) is very high.<sup>1</sup> However, the number of private-pay assisted living and memory care beds is very scarce. In the next ten years, the number of seniors (75+) in DC will grow by over 40 percent (4 percent Compound Annual Growth Rate).<sup>2</sup> (Exhibits 69, 121A1). There is a demand for an additional 2000 beds in the next five to ten years. The projections are in excess of a 20 percent increase for both routine assisted living and memory care facilities in the immediate District of Columbia and Maryland area. (Katz, Tr. 354). The need for assisted living and memory care services will only grow at this rapid rate. Without additional supply of high-quality senior housing options, the city will not be able to support its aging residents. They will have to relocate to meet their needs elsewhere.

### **The Proposal**

12. The Applicants propose to demolish the existing church building in order to construct a new building to house a church and a CCRC facility at the subject property.
13. The proposed building will have an overall height of 40 feet with four stories and will occupy 57 percent of the lot. The building will include an architectural embellishment serving as a steeple to the church, which will be approximately 70 feet in height.
14. The south portion of the building will be devoted to religious uses on the first and second floors, and parts of the cellar level. The main entrance to the church will be on Yuma Street, N.W. and from the below grade garage. The CCRC use will provide 86 units and occupy portions of the cellar, first and second floor levels and all of the third and fourth floor levels. The main entrance to the CCRC will be on Alton Place, N.W., which includes a semi-circular drive off the street for drop off and pick up at the front door.
15. At the east property line, the building will be set back approximately 36 feet, which exceeds the minimum eight-foot required side yard, in order to create a significantly larger buffer from the houses that front on 39th Street, N.W. An eight- to 16-foot wide landscaped strip, extending from Alton Place to Yuma Street parallel to the rear yards of these houses, will be heavily planted with evergreens and shrubs. Either side of the landscape buffer will be fenced. A new board fence will be erected at the east property line; a second, metal fence will be located on top of a retaining wall at the east side of

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<sup>1</sup> For 2015, the most current information available, a QS household's occupants are at least 75 years old with an annual income of approximately \$50,000 or more. QCG households' occupants are 45 to 64 years old with an annual income of \$100,000 or more. (Exhibits 69, 121A1).

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

the through-driveway between Alton Place and Yuma Street.

16. The through-driveway will be entered at grade level at Alton Place, descending 13 feet to the garage entrance at a maximum slope of 12 percent, and then rise again to grade level at the south to allow cars to exit onto Yuma Street. Because of the changing slope of the driveway, the retaining wall varies in height from several inches closest to the streets up to a maximum height of 13 feet where the driveway meets the garage entrance.
17. The CCRC portion of the building, on floors one to three, will provide residential units (without kitchens), dining rooms, a living room, activity rooms, a bistro, a library, a spa/salon, offices, and an interior garden courtyard. The top (fourth) floor will be dedicated to residents with memory and cognition-related disabilities. In addition to the memory-care residential units (also without kitchens), this floor will provide separate amenity space including dining, lounge and activity rooms, and a secure balcony.
18. The first below-grade level provides vehicular and bicycle parking spaces, additional church space, a main kitchen, laundry facilities, fitness and physical therapy space, and mechanical space. The second below-grade level will provide additional parking spaces. A total of 66 vehicle parking spaces will be provided in the two-level garage. The proposed number of parking spaces exceeds the expected demand for the church and the CCRC employees, residents and visitors. Nevertheless, in the event all parking spaces in the building are occupied, visitors and employees will be directed to park in metered spaces on the street or parking garages in the vicinity. Sunrise will include in its residential contracts a prohibition against CCRC residents applying for a residential parking permit to ensure that the supply of on-street spaces available to the immediate neighbors is not diminished. (Exhibits 52A.)
19. Thirty-two long-term bicycle spaces will be located on the first level of the garage in a bike storage room, in accordance with the standards for multi-unit residential buildings (29 spaces) and a religious institution (2 spaces). Because seniors living in the building are not anticipated to be riding bikes to and from the site, these spaces will be available for CCRC staff, visitors and church members.
20. 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.
21. The garage will have a designated area for deliveries and a screened 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.
22. 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 with the new churches. The proposed sanctuary will have a maximum capacity of 250 seats to accommodate occasional special events such as weddings or funerals.

23. The CCRC can accommodate up to 121 beds; however, it will only be licensed for 115 beds.
24. The CCRC will employ approximately 75 full-time equivalent employees over three shifts. Based on a stabilized resident occupancy rate of 93 percent, the morning shift (6:30 AM to 2:30 PM) will have approximately 30 employees; the afternoon/evening shift (2:30 PM to 11:30 PM) will have approximately 25 employees, reduced by 25 percent after dinner and another 25 percent at 9:00 PM; and the night shift (11:30 PM to 6:30 AM) will have approximately six employees.
25. At peak operating capacity of the CCRC and church on an average Sunday, when church attendance is highest, the potential maximum usage of the total building could be as much as 250 people (100 WABC congregants, 119 CCRC residents, and 30 CCRC staff). (Exhibits 69, 121A1).
26. CCRC residents will have access to the building's rooftop terrace and garden for recreation. Additional green roof areas are provided as part of the project's sustainability enhancements. The roof will not have a penthouse but will contain some mechanical and other equipment that will be located behind a screened wall to limit its visibility from the street and to reduce the potential noise impacts. Based on the Applicants' noise study for the rooftop mechanical equipment, the proposed uses will not create any perceptible noise at or below existing background noise levels and well below the D.C. noise control regulations. (Exhibit 69C).
27. The building will be set back 10 feet from Alton Place (front yard), 45.4 feet from Yuma Street (rear yard), and 36 feet from its eastern lot line to provide the maximum buffer for the adjacent residents. No side yard is provided on the western lot line abutting the open space National Park Service lot. Sunrise will landscape subject property, the adjacent public space, and the abutting National Park Service with trees and other plantings. (Exhibit 69E1).
28. The building will be at least a LEED minimum certified project. (Heath, Tr. at 344.)
29. The Applicants have had numerous discussions, email communications and meetings with individual neighbors, groups of adjacent owners and ANC 3E to gather feedback on the proposed building. As a result of these discussions, the building has been reduced in height and size. The original plan contemplated a building with 96 units, 69 percent lot coverage and a height of 60 feet for the portion of the building where the church would be located on the first and second floors. After several iterations, the Applicants were able to reconfigure the project to its current size of 86-units and 57 percent lot occupancy while remaining economically viable. The Applicants made presentations to ANC 3E on October 12, 2017, December 14, 2017, March 15, 2018, June 14, 2018, September 17, 2018, and November 8, 2018. The ANC voted to support the proposal at its November 8 2018, meeting after negotiating a memorandum of understanding ("MOU") with the Applicants. (Exhibits 119, 119A, 126).

## **CCRC Operational Needs and Financial Viability**

30. The average size of new assisted living buildings, and those that combine assisted living with memory care, constructed since 2015 is 93 units. In order to be financially viable, an assisted living facility with memory care requires a minimum of 85 units over which to spread the operational costs, which are much higher than the typical multi-family building. 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 relative to design and dimension to support residents; flame-spread rating of fabrics of furniture and drapery; as well as other specialized design needs. Almost 50 percent of the building is devoted to common areas for specialized dining venues, activity areas, support offices, therapy/wellness suites, and similar uses. (Katz, Tr. 355-56; Exhibit 131A).
31. The cost of the operational needs 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. (Exhibit 131A).

## **R-1-B Zoning Classification**

32. The subject property is located in an R-1-B Zone that also encompasses areas to the east of the subject property. The subject property is located within a narrow gap between two mixed-use zones on Wisconsin Avenue, N.W.
33. 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.)
34. The provisions of 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. (emphasis added)).
35. The purposes of the R-1-B Zone 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.) The R-1-B Zone provides for areas predominantly developed with detached houses on moderately sized lots. (Subtitle D § 300.3).



36. The bulk of structures in the R zones is controlled through the combined requirements of the general development standards and zone-specific standards of Subtitle D, and the requirements and standards of Subtitle C (stating General Rules). (Subtitle D § 101.1).
37. The development standards of Subtitle D are intended to (a) control the bulk or volume of structures, including height, floor area ratio, and lot occupancy; (b) control the location of building bulk in relation to adjacent lots and streets, by regulating rear yards, side yards, and the relationship of buildings to street lot lines; (c) regulate the mixture of uses; and (d) promote the environmental performance of development. (Subtitle D § 101.2).
38. Pursuant to Subtitle U § 203.1(f), a CCRC use is permitted in the R-1-B zone as a special exception.
39. Pursuant to Subtitle C § 1401.3, a retaining wall over four feet high maximum is permitted as a special exception. The Applicants propose a retaining wall that will range in height from a few inches at its lowest point to a maximum of 13 feet.
40. Pursuant to Subtitle D §§ 207.5 and 303.2, the maximum permitted height in the R-1-B District is three stories and 60 feet for houses of worship, and 40 feet for all other structures. 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. The Applicants' proposed building will be 40 feet in height and four stories, with a 70-foot tall steeple.
41. The maximum permitted lot occupancy for a church building is 60 percent, and is 40 percent for all other uses. The Applicants' proposed church and CCRC building will occupy 57 percent of the lot. Subtitle D § 304.1.
42. Pursuant to Subtitle D § 307.1, a structure must provide a minimum side yard of eight feet in the R-1-B zone. The Applicants will provide a 36-foot side yard on the east side to provide a buffer for the neighbors on the square and will provide no side yard to the west where the lot abuts a National Park Service lot, which will be maintained as an open landscaped area.
43. In order to evaluate any undue adverse effects of the proposed CCRC on the use of neighboring properties and whether the proposed variances would cause substantial detriment to the public good, the Applicants submitted drawings comparing the proposed development and a matter-of-right church constructed to a height of 60 feet. The submission 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 percent lot occupancy) on the surrounding area.
44. The Applicants' sun shadow studies demonstrated that 75 percent of the time there will

be no material effect, beyond the existing effect of the current structure, on adjacent properties to the east. These sun studies showed that the proposed new 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. (Exhibit 135E).

### **Nearby Properties**

45. The subject property is visually contiguous with Wisconsin and Nebraska Avenues and Tenley Circle, N.W., with mixed-use zones to the north and south on Wisconsin Avenue.
46. At Tenley Circle to the west are American University Washington College of Law, St. Ann Catholic Church, and the Yuma Study Center, a faith-based organization for women, all of which complement the proposed religious use that will continue at the Property. Woodrow Wilson High School is to the northeast of the site along Nebraska Avenue, N.W., Janney Elementary School and the Tenleytown Public Library are to the northwest at Wisconsin Avenue and Albemarle Street, N.W., and the Tenleytown Firehouse is two blocks to the southwest at Wisconsin Avenue and Warren Street, N.W. Mixed-use retail, service and office uses are two blocks north. Retail and commercial uses continue south along Wisconsin. The National Park 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.
47. The proposed 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. Other properties along Wisconsin Avenue in the vicinity of the subject property are zoned MU-3A, MU-4, or MU-7.

### **CONCLUSIONS OF LAW AND OPINION**

The Applicants seek a special exception under Subtitle U § 203.1(f), in addition to certain area variance relief, and a special exception relating to the height of a retaining wall, to allow a church and CCRC building in the R-1-B Zone at 3920 Alton Place, N.W. (Square 1779, Lot 14). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6- 641.07(g)(2) (2012 Repl.) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, 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 in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (See 11 DCMR Subtitle X § 901.2.)

### **Ownership issue**

The opposing parties have argued that only an owner may request zoning relief from the Board and that any relief benefitting Sunrise is not permitted under the Zoning Regulations. The opponents misinterpret the regulations and misapply the facts. First, there is no dispute that WABC is a current owner of the property, is a co-applicant in the case, and will continue to have an ownership interest after the project is constructed. Second, consistent with Subtitle X §§ 1000.1 and 1000.2, WABC specifically authorized Sunrise to process the application on behalf of the church. (Exhibit 9). Third, Sunrise has an equitable ownership interest in the property under a purchase and sale agreement with the church, which confers certain ownership rights and obligations. Moreover, as part of the project, a condominium regime will be created on the property, and WABC and Sunrise will each have an ownership interest in one or more condominium units. The Board is satisfied that the Applicants have met their burden to show that the current fee-title owner of the property and its authorized agent have processed this application.

### **CCRC use**

Pursuant to Subtitle U § 203.1, certain uses, including a CCRC use, may be permitted in the R-1-B Zone if approved by the Board as a special exception under Subtitle X, Chapter 9, subject to the provisions applicable to each use. In the case of a CCRC use considered under Subtitle U § 203.1(f), the provisions specify that the CCRC use shall include one or more of the following services: dwelling units for independent living, assisted living facilities, or a licensed skilled nursing care facility (Subtitle U § 203.1(f)(1)). If the CCRC use does not include assisted living or skilled nursing facilities, the number of residents shall not exceed eight. (Subtitle U § 203.1(f)(2)) The CCRC use may include ancillary uses for the further enjoyment, service, or care of the residents (Subtitle U § 203.1(f)(3)); the CCRC use and related facilities shall provide sufficient off-street parking spaces for employees, residents, and visitors (Subtitle U § 203.1(f)(4)); 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 (Subtitle U § 203.1(f)(5)); and 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. (Subtitle U § 203.1(f)(6)).

Based on the findings of fact, the Board concludes that in addition to the house of worship, the new building will be devoted to a continuing care retirement community use, as that term is defined in the Zoning Regulations, and that the application satisfies the requirements for special exception relief in accordance with Subtitle U § 203.1(f). The Zoning Regulations define a continuing care retirement community 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.

11 DCMR Subtitle B § 100.2.

The Board concludes that the proposed facility meets the definition of a CCRC. It will provide a continuity of residential occupancy and healthcare in the form of memory care and assistance with daily living for elderly persons over 60 years of age who can no longer care for themselves. The premises will provide dining rooms, a multipurpose room, an entertainment room, a fitness center, a library, staff offices and areas devoted exclusively to memory care residents, consistent with Subtitle U § 203.1(f)(3). The proposed CCRC use would be licensed under the District of Columbia Continuing Care Retirement Communities Act of 2004 (DC Official Code § 44-151.01 et seq.) (“CCRC Licensure Act”). The Board rejects the contention of TNA that the facility should be deemed a healthcare facility under the Zoning Regulations. A healthcare facility is defined as “[a] facility that meets the definition for and is *licensed under the District of Columbia Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983*, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §§ 32-1301 et seq.)” 11-B DCMR § 100.2 (emphasis added). The CCRC use is not a “hospital,” “maternity center,” “nursing home,” “community residence facility,” “group home for persons with intellectual disabilities,” “hospice,” “home care agency,” “ambulatory surgical facility,” “renal dialysis facility,” or “therapeutic service,” as those terms are defined under D.C. Law 5-48. Nor did TNA provide any evidence or testimony suggesting that a CCRC facility meets the definition of any of these categories of healthcare facilities under D.C. Law 5-48. Rather, TNA simply relies on the common usage of the term “healthcare,” as contemplated in the definition of CCRC, which covers memory care and assistance with daily living for seniors who can no longer care for themselves. Nor is a CCRC licensed under D.C. Law 5-48; it is licensed under the the CCRC Licensure Act. Consequently, because the proposed CCRC use is not a healthcare facility, it does not need to be located more than 1000 feet from another healthcare facility.

Similarly, the Board rejects the argument of a party opponent that the proposed CCRC is commercial use and therefore prohibited in a residential district. (Evans, Tr. at 445). The Zoning Regulations specifically classify an assisted living facility as a residential use under 11-B DCMR § 200.2(bb)(1). CCRC and church uses are highly compatible with single-family neighborhoods. They are quiet users, with limited impacts on adjacent properties.

Pursuant to Subtitle U § 203.1(f)(4), the proposed CCRC must provide sufficient off-street parking spaces for employees, residents, and visitors to the facility. The Applicants have demonstrated that a total of 66 parking spaces will be provided on site in a below-grade parking garage. The Applicants have submitted to the record a Comprehensive Transportation Review (“CTR”) prepared by Gorove/Slade Associates, which demonstrates that the proposed number of parking spaces will exceed the expected demand for the church and the CCRC employees, residents and visitors. (Exhibit 52A). Sunrise has committed to directing any overflow traffic to nearby metered spaces or parking garages in the vicinity. 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.

The number of parking spaces provided in the new garage will be adequate to meet the demand of occupants, employees, and visitors to the facility, consistent with the minimum zoning requirement of a combined 25 spaces for the church and 41 for the CCRC, for a total of 66 spaces as set forth in Subtitle C § 701.5. The Applicants are meeting their ZR16 requirement for on-site vehicle parking and is not seeking parking relief. Given the site proximity to a Metro station, major bus transfer points, and the proposed TDM plan, DDOT stated it has “no concerns with the parking proposal.” (Exhibit 137) The Applicants’ traffic expert concluded that the CCRC and religious uses will not generate a demand for parking more significant than already exists. Based on Sunrise’s experience at other CCRC facilities, very few residents will have personal vehicles. The number of employees will be relatively small, generally 6 to 30 employees. The majority of them are anticipated to use public transportation, which is highly accessible given the close proximity of Metro, multiple bus lines, and nearby car- and bicycle-sharing facilities.

In accordance with Subtitle U § 203.1(f)(5), the Board concludes the proposed CCRC and religious uses will not have an adverse impact on the neighborhood because of traffic, noise, operations, or other factors. With respect to traffic, the Board credits the DDOT report and the testimony of the Applicants’ transportation experts, Dan Van Pelt and Rob Schiesel of Gorove/Slade, that the church and CCRC would not have an adverse impact on the transportation network. The number of trips generated by the proposed uses is *de minimis* and will likely be fewer than the number of trips generated by the current church and child development center. (Exhibit 53). The implementation of the Applicants’ Transportation Management Plan and Loading Management Plan will ensure that any potential adverse impacts can be averted. (Exhibit 52A, pages 11 and 13; Exhibits 53, 90). 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. 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 subject property is well-served by regional and local transit services via Metrobus and Metrorail. The Tenleytown-AU Station Metrorail station is approximately 0.1 miles to the north and 19 Metrobus stops and 11 Metrobus routes are located within one-quarter of a mile. This transit-rich neighborhood will further lessen any adverse transportation effects.

The Board was not persuaded by YSR’s transportation expert, Joe Mehra, who claimed that the Gorove/Slade transportation report used flawed methodology inconsistent with “industry standard” and was therefore inaccurate. 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 relied on an outdated church document from 2008, which was not submitted to the record, to argue that 1,000 new daily trips to the church would be added, based on potential programs contemplated over ten years ago. However, Mr. Mehra did not point to any evidence in the record suggesting that the church was pursuing the potential programs. To the contrary, the church testified that it planned only modest growth of up to 100 congregants and that it was eliminating the now-existing child development center which currently generates the bulk of traffic to the site. Significantly, the church is permitted as a matter of right in the R-1-B District. It is not constrained in the number of programs it may

operate as accessory uses or the number of congregants it may welcome. After the hearing, DDOT filed into the record its response to a letter from Councilmember Cheh. DDOT explained that the trip estimates that the Applicants provided were “developed in close coordination with DDOT during the Comprehensive Transportation Review (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.” (Exhibit 137). The Board also disagrees with the party opponents’ contention that traffic in the neighborhood will be adversely affected because the Applicants have not proposed a plan for the drop-off and pick-up of CCRC residents. The Applicants’ transportation experts did not determine such a plan to be a necessary component to the TDM plan. The Board agrees with DDOT’s determination that the proposal will not have adverse impacts, subject to the condition that the Applicants’ implement the proposed TDM plan.

The party opponents also argued that “28-ton trucks” will be coming in and out of the facility, and that the trucks will be unlikely to make necessary turns. However, a maximum 30-foot truck has been proffered and agreed to by the Applicants’ and the ANC in their MOU. The maximum curb weight for a 30-foot box truck is 16.5 tons. Turning diagrams were provided after the hearing by the Applicants, which demonstrated that there would be no issue. (Exhibit 135F). The party opponents also argued that parking problems in the neighborhood will be exacerbated because the Applicants have not provided a shared parking arrangement between the CCRC and church uses. However, the Zoning Regulations do not require a shared parking agreement for a single building and the evidence of record indicates that there will be ample parking within the garage at peak times for each use. The party opponents have also stated that parking is already strained for the area, but offered only anecdotal evidence to support this contention. In contrast, the traffic report indicates that on-street parking spaces are available and that the proposed 66 parking spaces are sufficient to meet demand for both uses. Consequently, the Board concludes that the proposed project will not tend to affect adversely the use of neighboring property with respect to parking or traffic.

The CCRC use is not likely to generate any adverse impacts relating to operations or noise. Operation of the CCRC will be supervised by staff who will be on-site 24 hours each day. All operations will be contained within the building, except occasional rooftop activities for elderly residents or church socials. As evidenced by the MOU, the Applicants have agreed to limit use of the roof 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. Further, the Applicants’ noise study demonstrates that the rooftop mechanical equipment will only generate imperceptible noise at or below the existing background levels, and well below the levels established in the D.C. noise control regulations. All mechanical equipment would be placed at locations on the roof away from adjacent properties and buffered by the sloped mansard roof, which also acts as the mechanical screen wall. Move-ins and move-outs for residents, and food and other deliveries are limited to 30-foot or smaller trucks. To further limit potential noise impacts on adjacent properties, the Loading Management Plan restricts trash pickup and loading dock operations to the hours of 8:00 AM to 6:00 PM. Trucks would not be permitted to idle on or near the property.

Potential noise generated by ambulances trips to the CCRC use would also be limited and within an acceptable range. The evidence demonstrated that, based on other area CCRC facilities, there would 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 recognizes the unique location of the site at the edge of the Wisconsin Avenue commercial corridor and only two blocks from the Tenleytown Firehouse at Warren Street, N.W. The proposed CCRC use is not nestled within a quiet single-family neighborhood but at the juncture of commercial and residential areas. 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, OP has recommended that any lighting on the roof deck be down lit.

The opposing parties argued that the CCRC would have an inappropriate “volume of use” that would equate to approximately 450 people on the site at any given time. (Chesser, Tr. at 423). This high figure erroneously assumes, however, that all CCRC residents and staff are on the site at one time, and that the 250-seat church is filled to capacity. However, the typical maximum combined use on the site will be roughly 245-250 people on a Sunday. The CCRC staff will work in shifts, with a maximum of approximately 30 staff on site at one time. The church presently has 85 members but anticipates growth to occur to a possible 100 congregants. It would only be during the occasional major church functions, such as a wedding or funeral, when the sanctuary would reach peak capacity. Although the opponents have stated that the staffing shift changes do not occur during Metrorail and Metrobus hours of operation, Sunrise has stated that it anticipates that half of the employees will use Metro and others will use the garage. The Metro schedule comports with this transportation split modes.<sup>3</sup> The Board concludes, therefore, that the new building will not generate an inappropriate volume of use. The anticipated volume of use will not unduly affect the use of neighboring properties, particularly for a site at the edge of the Wisconsin Avenue corridor.

Pursuant to 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. The Board concludes that these elements have been properly incorporated into the proposed plan, 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.

In accordance with Subtitle X § 901.2, the Board concludes that approval of the requested special exception to allow a CCRC 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.

Approval of the requested special exception CCRC use will be in harmony with the R-1-B Zone and its purposes to protect quiet residential areas and stabilize the residential areas and promote

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<sup>3</sup> The party opponents also made an argument that the CCRC is not providing required affordable units. As no affordable units are required for this use, this argument has no merit.

a suitable environment for family life. The Residential (R) zones contemplate low- to moderate-density development and supporting uses such as religious and CCRC uses. The R-1-B District also anticipates some higher density development, as well, since houses of worship may be constructed to 60 feet in height and 60 percent lot occupancy as a matter-of-right. The Applicants' mixed-use CCRC and church proposal falls within acceptable parameters for R-1-B development, including the variance relief discussed below. The CCRC is a residential use designed specifically for an elderly population, which is conducive to maintaining the quiet character of the residential area.

### **Retaining Wall**

Subtitle C § 1401.3(c), allows retaining walls to a maximum height of four feet. The Applicants propose a wall that varies between one foot and 13 feet in height in order to provide access to the below grade parking and loading. Subtitle C § 1401.3(c) allows an increase in the height of the 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). Pursuant to Subtitle X § 901.2, the Board is authorized to grant special exception relief where the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.

Based on the evidence of record, the Board concludes that compliance with the four-foot height limitation would be unduly restrictive and unreasonable. Only the center segment of the wall will exceed the four-foot height limitation for a maximum height of 13 feet. The wall will face the proposed new building and is necessary to create the through-drive and access to the parking garage and loading dock. The retaining wall is set back from the east property line to create the landscape buffer for adjacent 39th Street neighbors. If the Applicants were required to comply with the height limitation, it would require shifting the building to the east, thereby reducing the spacious side yard separation (which separation will benefit adjacent neighbors), and the amount of available space within the building. Importantly, this through-drive condition was specifically suggested by OP and supported by DDOT to enhance traffic circulation by allowing cars to access and depart the site to and from the west and minimizing any through-traffic to the east. 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. (Heath, Tr. at 351).

Retaining walls are designed to resist the lateral displacement of soil or other materials; the height limitations are intended to encourage less site disturbance on sloping sites, and to minimize the visual appearance of retaining wall work, especially along street frontages or along property lines. In this case, most of the wall's visibility would be internal to the property and the portion above the natural grade would not be above four feet. Because of its north-south orientation, the full height of the wall would not be readily visible from either Alton Place or Yuma Street. Additionally, the adjacent 39<sup>th</sup> Street properties will be physically protected from retaining wall. A six-foot board fence will be installed along the property line and a



second metal fence will be erected on top of the retaining wall. In between the two fences will be the 8.3- to 16.5-foot wide landscape buffer, which fenced off with a gate at either end. The wall itself is attractively designed and will be faced in brick or similar masonry. It will be both aesthetically pleasing and safe. Consequently, it will not adversely affect the use of adjacent properties.

The opponents argued that the proposed retaining wall presents a hazard to children who might live or play near the facility. However, the retaining wall is designed to ensure maximum safety, including preventing any persons from getting close to the retaining wall at its highest point. A six-foot fence will separate the WABC property from the 39th Street neighbors on the property line. Additionally, a wrought iron fence will be constructed atop the retaining wall, another 8 to 16 feet from the property line. There will be extensive evergreen plantings between the property line and the retaining wall/wrought iron fence, and locked gates on the north and south ends of the planting strip. With these safety features, any potential harm attributable to the height of the retaining wall are significantly minimized and would seem to pose no greater threat than a matter-of-right retaining wall.

### **Area variances**

The Board concludes that the Applicants are seeking area variances from requirements relating to the number of stories under Subtitle D § 303.1, lot occupancy under Subtitle D § 304.1, and side yard under Subtitle D § 307.1. The Board is authorized under § 8 of the Zoning Act to grant variance relief where, “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,” the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. (See 11 DCMR Subtitle X § 1000.1.)

The party opponents argued that the Applicants are required to demonstrate that they will suffer undue hardship if the variances are not granted. They relied on the *Clerics of St. Viator* and *Gilmartin* cases to support their position, claiming that WABC and Sunrise must show there are no alternative uses that will produce a reasonable income. See *Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294, 296 (D.C., 1974); *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A. 2d 1164, 1168 (D.C. 1990). Opponents’ reliance on these cases is misplaced because they confuse the standard of review for *area* variances with the *use* variance test. Only under the use variance must an applicant demonstrate that an undue hardship exists that is not self-created and that no viable alternatives exist. 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. In addition, a use variance will not be granted if the owner’s hardship was self-created.”). There is no such requirement under an area variance. The Zoning

Regulations make clear that the Applicants are only seeking area variances. Subtitle X § 1001.2 provides that “[a]n area variance is a request to deviate from an area requirement applicable to the zone district in which the property is located.” Subtitle X § 1001.4(a) further provides that “[a] use variance is a request to permit [a] use that is *not permitted* matter of right or [by] *special exception* in the zone district where the property is located....” (Emphasis added). Here, a CCRC is expressly permitted use in the R-1-B District by special exception relief and the Applicants only seek deviations from the area requirements for lot occupancy, number of stories and side yard. Thus, the use variance standard is inapplicable.

Extraordinary or exceptional situation. For purposes of variance relief, the extraordinary or exceptional situation “need not inhere in the land itself.” *Neighbors for Responsive Gov't*, 195 A.3d at 55. Rather, the extraordinary or exceptional conditions that justify a finding of uniqueness can be caused by subsequent events extraneous to the land at issue, provided that the condition affects a single property. *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939, 942 (D.C. 1987); *De Azcarate v. District of Columbia Bd. of Zoning Adjustment*, 388 A.2d 1233, 1237 (D.C. 1978) (the extraordinary or exceptional condition that is the basis for a use variance need not be inherent in the land but can be caused by subsequent events extraneous to the land itself.... [The] term was designed to serve as an additional source of authority enabling the Board to temper the strict application of the zoning regulations in appropriate cases....); *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979) (for purposes of approval of variance relief, “extraordinary circumstances” need not be limited to physical aspects of the land). The extraordinary or exceptional conditions affecting a property can arise from a confluence of factors; the critical requirement is that the extraordinary condition must affect a single property. *Metropole Condominium Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1082-1083 (D.C. 2016), citing *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

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 (D.C. 1979) (BZA considered permissible factors in applying the first branch of the variance test to a public service organization; the organization’s wish to move to a particular site did not make the site unique, but the Board properly recognized that the site’s location made it “uniquely valuable” to the organization and “uniquely suitable for [its] headquarters.”). Generally, an applicant’s desire to utilize property for a certain use was 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). Consistent with “a well established element of our governmental system,” the Board “may be more flexible when it assesses a non-profit organization,” even if “a commercial user before the BZA might not be able to establish uniqueness in a particular site’s exceptional profit- making potential.” *Monaco* at 1098, quoting 3 R. Anderson, *American Law of Zoning* s 14.78 (1968) (the public need for a use is an

important factor in granting or denying a variance and “the apparently objective standards of the enabling acts are applied differently to the several kinds of uses....”). The characterization of a proposed use as a public service is significant, and “when a public service has inadequate facilities and applies for a variance to expand..., then the Board of Zoning Adjustment does not err in considering the needs of the organization as possible ‘other extraordinary and exceptional situation or condition of a particular piece of property.’” *Monaco* at 1099. *See also NBCDI*, 483 A.2d 687 (D.C. 1984) (BZA did not exceed its authority in granting variance relief to a nonprofit entity whose work promoted the public welfare by benefitting “black children and families within the District,” when, absent variance relief, “the great expense of operating offices at another site would cause serious detriment” to the nonprofit.) The need to expand does not automatically exempt a public service organization from all zoning requirements. In applying for an area variance, a public service organization must show (1) that the specific design it wants to build constitutes an institutional necessity, not merely the most desired of various options, and (2) precisely how the needed design features require the specific variance sought. *Draude v. District of Columbia Bd. of Zoning Adjustment*, 527 A.2d 1242, 1256 (D.C. 1987).

In this proceeding, the Applicants assert that the subject property is unusual and affected by an exceptional situation and condition as a result of a confluence of factors: (i) the size, shape and configuration of the lot are all unusual in comparison to other lots in the R-1-B area of Tenleytown, which is intended to be occupied by uses having larger footprint and space needs to adequately satisfy programmatic needs while effectively rendering the site uniquely exposed on four thoroughfares: Wisconsin Avenue/Tenley Circle, Nebraska Avenue, Yuma Street, and Alton Place; (ii) the site’s prominent location on a Washington, D.C. circle at the intersection of a major commercial corridor, low-density residential areas, and high-traffic urban crossroads, which effectively leaves the Property physically and visually exposed to the heavily trafficked mixed-use area; and (iii) the institutional needs of the non-profit WABC to partner with a mission-compatible use, without which the WABC cannot survive on this site. (Exhibit 69.) The party opponents testified that the lot “is not exceptionally narrow, shallow shaped, and . . . not on Wisconsin Avenue or Tenley Circle. That lot is close to rectangular and the size of the lot is not unique.” (Gunning, Tr. at 426.).

The Board disagrees with the party opponents. The Board concludes that the subject property is faced with an exceptional situation and condition as the result of a confluence of factors including the unusual size and shape of the lot, with frontages on Alton Place to the north, Yuma Street to the south, and the open park land owned by the National Park Service, which allows direct views from the site to Tenley Circle and Wisconsin and Nebraska Avenues. Frontage on a small piece of Nebraska Avenue creates an angle to the property at its northwest corner. Geographical location is an exceptional and extraordinary condition, as well. The site is unusual in its prominence on a Washington, D.C. circle, making its appearance of height of particular importance.

The Board also concludes that the WABC is a non-profit, public service organization that is seeking variances to enable it to continue to serve the needs of its members and the community. The Board concludes that the specific design of the building, including its size, is an institutional necessity in order for the church to leverage its property with a mission-compatible

use. WABC has demonstrated that its current building is functionally outmoded and in a state of major disrepair. In addition to its litany of problems regarding inadequate heating, lighting, and safety features; the church building is not ADA-accessible, rendering it inhospitable to the WABC congregants requiring the use of wheelchairs and walkers. WABC has further demonstrated that it cannot afford to make needed repairs or retrofit the building to be ADA-accessible. (Tr. at 323-28). The Board credits the testimony of WABC Trustee Pat Dueholm, who testified unequivocally that the church looked at multiple other options, including the party opponents' suggestion to subdivide the site into three lots and generate \$1.7 million by selling two of the lots for development as detached single-family houses. As Ms. Dueholm explained, that option would not generate enough revenue to pay for all the needed maintenance and repairs, while sustaining the long-term interests of the church. The scheme would also require BZA relief from the parking and aisle width requirements. WABC has demonstrated that its proposal to partner with Sunrise Senior Living is its only viable option that would allow it to remain in its home in Tenleytown. As the Applicants have demonstrated, without variance relief from the requirements for lot occupancy, side yard, and number of stories, the CCRC use will not be financially viable, and WABC will not be able to leverage its land value to obtain a right-sized church and long-term financial stability, while partnering with a mission compatible use.

The party opponents argued that the flexible standard offered to non-profit, public service organizations cannot apply to this application because Sunrise is a for-profit organization benefitting from its partnership with WABC. The opponents argue further that the church will only occupy 13% of the proposed building, and that the church only has 18 congregants, evidencing a lack of need for a new facility. According to the party opponents, the flexibility standard would only be suitable for the WABC if it were seeking a variance to "operate a daycare center." (Tr. at 529). The Board disagrees. WABC has demonstrated that it needs the requested variance relief to construct a facility which will allow it to remain in place and serve the community and its congregants. The church will occupy approximately 16% of the building and the WABC has stated it presently has roughly 85 congregants, with anticipation of modest growth up to 100 congregants. However, the physical size of the WABC portion of the building and the number of congregants affected have no bearing on whether or what the church needs to survive on its land or the WABC trustees' decision to partner with a for-profit that the trustees have determined to be mission-compatible. It is not unusual for churches to rely on partnerships with for-profit entities to survive. *See, e.g.*, BZA Case Nos. 19534 (National City Christian Church), 18272 (First Baptist Church of the City of Washington), 19313 (Emmanuel Baptist Church).

The party opponents also argued that the church cannot claim functional obsolescence when the church was approved for a certificate of occupancy to operate CommuniKids, a childcare center, in 2018. (Exhibits 77, 83). The Board is not persuaded by this line of reasoning. As explained by Ms. Dueholm, the CommuniKids program uses two classrooms on the second floor, which do not suffer from the same problems as the rest of the building. Additionally, the certificate of occupancy was issued in the summer, when the church building was not experiencing problems with its boiler as it is now.

While the Board concludes that the church, as a non-profit public service organization, is

entitled to greater flexibility when applying the variance standard, it also gives great weight to OP, which determined that the church met the more rigorous standard for variance relief. As discussed herein, the Board agrees that the Applicants have met the higher burden for variance relief without flexibility. Nonetheless, the flexibility applies to the WABC and this project, and the Board concludes the WABC's specific needs constitute an extraordinary and exceptional condition.

For purposes of the requests for variance relief to allow an increase in lot occupancy, number of stories, the Board concludes that the subject property is faced with an exceptional situation and condition as the result of the demonstrated needs of WABC. The Applicants have shown that without the variance relief requested, the church will be placed in a situation of extreme difficulty, unable to make the necessary repairs and maintenance on the building or afford to continue to serve its congregation. The site is uniquely valuable to the church as the home of the congregation for more than 60 years. The Applicants demonstrated a need for the proposed lot occupancy and number of stories to construct a building that will be viable for both the church and CCRC use. The Board credits the testimony of Philip Kroskin and Alice Katz that any reduction to lot occupancy or number of stories 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 uncontroverted testimony that a minimum of 85 units must be provided for financial viability. (Kroskin, Tr. at 337-38; Katz, Tr. at 353-57). There was no suggestion that designing this facility with 85 units rather than 86 would have in any way changed the footprint or required number of stories.

The Board concludes that the party opponents' argument of self-created hardship is not persuasive or applicable. They alleged that the church created its own hardship by "lack of maintenance on the part of the church." (Gunning, Tr. 428). However, 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."). The YSR's expert in architecture, Don Hawkins, testified about subdividing the lot and the size and shape of the lot. He did not provide any testimony about architecture, so the Board cannot credit him as an expert. Mr. Hawkins argued that the church has a viable option to subdivide and sell off a significant portion of its lot to residential developers, which he estimated (without basis) might raise enough money for the church to use for upkeep. (Hawkins, Tr. 441-42). The party opponents estimated that such a sell-off of land could raise \$1.7 million. (Gunning, Tr. 428). The Board credits the testimony of Ms. Dueholm, the WABC Trustee, who testified that Mr. Hawkins proposal would not adequately meet the needs of the church now nor would it create long term solvency for the parish. (Dueholm, Tr. 509-10).

As far as the setback/side yard is concerned, the Board agrees with the Office of Planning that the irregular shape of the lot and the need to provide the greatest buffer for the neighbors to the east create exceptional conditions for the Applicants. (Exhibit 90). With respect to the side yard relief, the west wall of the building is generally proposed to follow the west lot line abutting the NPS open space lot which separates the subject lot from Nebraska Avenue NW. The Applicants have stated the intent of distancing the new building from existing residences to the east in order to provide the most buffering distance and privacy for neighboring properties, and to

provide necessary space for access to underground parking and loading. The additional exceptional condition of the neighboring open space lot (the federally owned park land) also provides the visual effect of the otherwise required side yard. In short, the configuration of the lot, especially the adjacent park land, allows the setbacks to be effectively shifted from one side to the other, and more of the lot to be occupied, without an impact on the appearance of open space, light and air.

Practical difficulties. An applicant for area variance relief “need *only* demonstrate that compliance with the area restriction would be ‘unnecessarily burdensome’ and that the difficulties are unique to the particular property.” *Neighbors for Responsive Gov’t*, 195 A.3d at 55 (emphasis added). A showing of practical difficulty requires “[t]he applicant [to] demonstrate that . . . compliance with the area restriction would be unnecessarily burdensome . . . .” *Metropole Condominium Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1084 (D.C. 2016), quoting *Fleishman v. District of Columbia Bd. of Zoning Adjustment*, 27 A.3d 554, 561-62 (D.C. 2011). In assessing a claim of practical difficulty, proper factors for the Board’s consideration include the added expense and inconvenience to an applicant inherent in alternatives that would not require the requested variance relief. *Barbour v. District of Columbia Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976).

The Applicants asserted that absent variance relief from the number of stories and lot occupancy restrictions, the church cannot partner with Sunrise to construct the proposed church and CCRC facility, due to the financial constraints and design parameters of a CCRC use. Without that variance relief, if the church were downsized further in order to avoid the need for a variance, it would not be able to serve its congregants. The Board credits the unrefuted testimony of Philip Kroskin of Sunrise Senior Living, who explained the market difficulties in building assisted living facilities, despite significant and rising demand in the region for these services. The Board further credits the unchallenged expert testimony of Alice Katz, an expert in financial and market analysis in healthcare and assisted living facilities, who explained that the CCRC use needs a minimum of 85 units to be financially viable and sustainable. Ms. Katz further provided analysis as to the increasing market demand for assisted living services in the vicinity of the site.

The strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the Applicants by precluding the construction of the church and CCRC building on the site. A building limited to the height and number of stories permitted for non-church buildings as a matter of right would be unnecessarily burdensome to the Applicant by preventing its implementation of a design derived from hundreds of constructed and operating CCRCs, extensive research and consideration of operational efficiencies and the costs of providing the necessary services. In short, were the variance relief for number of stories and lot occupancy not provided, the church would not be able to leverage its property to allow it to continue to operate on this site, because the CCRC project would not be economically viable, and Sunrise would not partner with the church and thereby leverage the site’s value in a way that benefits the church and the community. The Applicants’ expert in architecture, Chuck Heath, was persuasive on this point. In order to accommodate the minimum number of units for economic viability, the building is designed with double-loaded corridors. CCRC-units are little

more than sleeping rooms, with sizes ranging from 336 square feet for a studio and 448 square feet for two-person unit. A two-bedroom unit is approximately 580 square feet. The minimum 86 units needed for financial viability for the project would not fit on a smaller footprint, not needing an area variance. Any effort to meet the 40 percent lot occupancy limit for non-religious buildings would reduce the unit size below functional standards for an assisted living facility. It would result in the loss of not just one unit, but tiers of units or the elimination of the double-loaded corridor. Removing one floor similarly reduces the number of units below financial viability. (Heath, Tr. 350-51). Moreover, significantly, reductions in lot occupancy or number of stories would not necessarily diminish the visual appearance of the building from the street, since a smaller building footprint could be achieved by simply increasing the size of the interior courtyard. If the building provided only three stories instead of four, there would be no change to the matter of right height of 40 feet. However, such reductions would render the project financially infeasible for Sunrise, and WABC would lose its opportunity to build a right-size church, secure its long-term financial health and stability, and partner with a mission-compatible use. The Board concludes that the four-story height and the lot occupancy are an institutional necessity with respect to the construction of a church and CCRC building to achieve the necessary cost efficiencies to make the project viable.

The provision of a side yard to the west would also create practical difficulty for the Applicants in light of need to provide the maximum buffer for the residential houses to the east and the Applicants' showing that the NPS open space to the west will create the visual equivalent of the side yard intended by the Zoning Regulations. The Board concludes that providing the maximum amount of space between the proposed facility and the residences to the east would be practically difficult if the 8-foot side yard were to be provided along the undeveloped NPS land. The 39<sup>th</sup> Street neighbors would also experience difficulties without the requested relief. The NPS land, which is to remain as open space, creates the intended effect that the Zoning Regulations desire.

Accordingly, the Board concludes that the strict application of the Zoning Regulations, with regard to lot occupancy, number of stories, and the side yard, would be unnecessarily burdensome to the Applicants.

No substantial detriment or impairment. Approval of the requested variance relief will not result in substantial detriment to the public good or cause any impairment of the zone plan. As previously discussed, the proposed CCRC use satisfies the requirements for special exception approval, such that the use is consistent with zoning requirements 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.

The Board concurs with the testimony of the Office of Planning, 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.” (Exhibit 90). The Office of Planning noted 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, to minimize potential impacts.

The Office of Planning also found no substantial detriment to the public good likely to result from approval of the requested variances for number of stories and lot occupancy, noting “the proposed four-story building would be within the 40-foot height limit allowed for the continuing care retirement community,” which prevents undue shadows or impact on the adjacent properties’ light and air. The Applicants have designed the building with a base, middle and top, thus making the building seem like a three-story building. The facility 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). Additionally, the Applicants have received approval from NPS to make improvements to the park which would benefit the neighborhood. The Board agrees with the Office of Planning analysis.

The Board credits the testimony of Mr. Andrew Altman, the former Director of the Office of Planning, and the Applicants’ expert in land planning, who testified that the proposed project provides two fundamental public benefits: the development of a new church building for a congregation with a long-standing commitment to the surrounding community, and a CCRC residence that is critically needed in the District. (Altman, Tr. at 361). As 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.” *Id.* at 363.

Mr. Altman testified that “the variances are quite minor,” that “a much more intensive and larger use could be built on this site” and that “the project accomplishes this in three [] fundamental ways, in a very sensitive design to ensure that it can fit comfortably within the community.” *Id.* at 361. As he stated, “the project is situated . . . along a very busy mixed use corridor. From a land planning perspective, in terms of location, it is along Tenley Circle.” *Id.* He explained that the unique location of the project site along a busy mixed-use corridor provides an ideal site for a transitional use to bridge between the mixed use and residential conditions: “located within 500 feet or so of a metro, so this is where you want to have these kinds of facilities, so you have access for staff, for visitors, for residents. Along our major corridors in the city.” *Id.* at 362. Mr. Altman explained that the variances needed to construct the CCRC and church building are “not likely to become objectionable, because of its quiet nature.” *Id.* at 363-63.

Mr. Altman testified that the proposed increased lot occupancy to 57 percent is less than what is permitted for a matter of right religious institution. He explained that the proposed building “meets the intent of the Zoning Regs and Zoning Maps, which contemplate a 60-foot tall building and a 60 percent lot occupancy for churches, by right. This building will only be 40 feet tall, as you’ve heard, and 57.5 percent lot occupancy, so it fits within the parameters of the District.” *Id.* at 363. With regard to the requested relief for lot occupancy and side yard, Mr. Altman testified that:

lot occupancies and setbacks in residential zones are established to provide adjacent residential neighborhoods with adequate light and air. To the west, the NPS park land will provide an aesthetic and quality of buffer that the regulations desire. The request for variance from the side yard requirements across this parcel, in fact, further the public good . . . it represents very good urban planning.



You want a building that fronts a park. It creates a safer park, it creates a strong edge. They're going to upgrade and enhance the Park Service, so essentially going from a cut-through to provide a real neighborhood amenity [by] enhance[ing] the NPS park.

*Id.* at 364. Mr. Altman also explained how the proposal is harmonious with urban land planning principals and the intentions of the Zoning Regulations, including the benefit of having the building front onto a park, the generous 36-foot buffer to the east, and the design choices which lessen impacts to be in harmony with the neighborhood. *Id.* at 365-66. The Board finds Mr. Altman's testimony compelling and persuasive.

The party opponents contended that permitting the variances will have a disparate 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." (*See, e.g.*, Chesser, Tr. at 419; Gunning, Tr. at 430). The Board disagrees: the opponents are simply mistaken that the CCRC use is not permitted in the R-1-B zone. As discussed above, it is expressly permitted by special exception – permitting it in this case and on this record is not a "rewriting of the zoning" but implementation of it. It is worth noting that the existing church is comparable in size and location to the proposed building for residents along Alton Place and three houses on 39<sup>th</sup> Street, and thus the proposed building does not unduly affect those neighbors. Moreover, the Board credits Mr. Altman's testimony that the proposed building will be smaller than a matter-of-right church building, as permitted in the R-1-B District. The Board concludes approval of this project does not constitute spot zoning.<sup>4</sup>

The party opponents raised several potential impacts of the proposed building, including that the subject property "is bounded on all three sides by single-family homes" and that the proposal is too close to the single-family homes. (Evans, Tr. at 444; Chesser, Tr. at 422). However, Lot 14 is only bounded to the east by single family homes. It is bounded to the west by NPS land and fronts on Alton Place, Nebraska Avenue, and Yuma Street, N.W. to the north, northwest, and south, respectively. Additionally, the Applicants propose a side yard of 36 feet from its eastern lot line. The proposed building will be approximately 46 to 86 feet from the individual existing residential structures on 39th Street and will be 84 to 93 feet from structures on Alton Place and Yuma Street, a distance more than twice the height of the proposed building. The party opponents also argued that the 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 (Gunning, Tr. at 424; Chesser, Tr. at 457). However, the proposed building meets or exceeds all required setbacks except for the setback to the west, for which relief is sought. The front of the building on Alton Place is setback approximately twelve to eighteen feet, uniform with the average front setbacks of neighboring properties, consistent with the Zoning Regulations. The proposal provides a rear yard of 45.4 feet to the property line on Yuma Street, well in excess of the 25 feet required in the Zoning Regulations. The proposed building is setback 36 feet from the property line to the east, providing a significantly larger

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<sup>4</sup> The party opponents have also argued that any project must comport with the District's Comprehensive Plan. This is not correct. The party opponents seem to conflate the Comprehensive Plan with the zone plan as embodied by the Zoning Regulations and Map.

buffer for the properties to the east than is required by the regulations.

The party opponents also contended that the construction of this facility will have a negative impact on the property values of nearby homes. (Hoyle, Tr. at 451). Mr. Kroskin testified that such an impact does not exist, specifically citing three homes in the immediate area that were sold after this proposal had been announced. (Kroskin, Tr. at 515-16). Two of the three home sold for more than their asking price, with the third offered below market as a quick close. The Board finds there is no evidence to support this contention.

Finally, the party opponents argued that the proposal will have detrimental effects on the neighboring homes during construction. They believe Sunrise should indemnify the neighbors from all possible harms. The Board has consistently held that construction management issues are not under BZA jurisdiction. (*See, e.g.*, BZA Order in Case. No. 18898). Nevertheless, the Applicants have stated that Sunrise and the General Contractor carry insurance to protect neighbors during construction activities. The Applicants have also agreed to a construction management plan as a part of the MOU reached with the ANC 3E to limit impact during construction. The Applicants will advise the ANC of construction plans before construction begins, and will notify the ANC of significant changes to those plans. The ANC and residents within 200 feet of the property will be notified in writing at least one week prior to any potentially noisy, disruptive, or hazardous events occurring. The Applicants will fund a vibration monitoring plan to minimize vibrations during construction, which will be provided for residents within 200 feet of the property. Sunrise will install vibration monitors on the houses closest to the construction activities and will stop construction promptly if monitors indicate vibrations above threshold levels. Pile drivers will not be used on this project. Additionally, construction activities, excepting emergency repairs, will be limited to the hours of 7:00 AM to 7:00 pm on weekdays and 8:00 AM to 8:00 PM on Saturdays, with no work to occur on Sundays.

In addition to alleged impacts, the party opponents also raised concerns that the Applicants would not meet all other zoning requirements, specifically including requirements for pervious surface and the slope of the driveway ramp. 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. Nonetheless, the design plans proposed by the Applicants comply with the pervious surface and maximum slope requirements. TNA also argued that the steeple, at 70 feet, exceeds the maximum permitted height of the R-1-B District. Yet 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. Significantly, in order to obtain a building permit for the project, the Applicants must comply with all Zoning Regulations applicable to this building in order to obtain a building permit. 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.

The ANC 3E found that the proposal will not create any objectionable conditions contingent on

the mutually agreed upon memorandum of understanding which details limits on intensity of use, community relations, building operations, design and transportation measures, traffic mitigation, and construction measures. (Exhibits 119, 119A.). The Applicants have agreed to have the specific conditions of the MOU included as conditions to this order.

### **Great weight**

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.)) For the reasons discussed above, the Board concurs with OP’s recommendation that the application should be approved in this case, with the conditions identified in the OP report.

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC. Section 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)(3)(A) (2012 Repl.)) In this case ANC 3E expressed support for the Applicants’ proposal to construct a church and CCRC building at the subject property subject to conditions agreed to the by the Applicants in a memorandum of understanding. For the reasons discussed above, the Board concurs with the ANC 3E, with the conditions identified in the MOU.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicants have satisfied the burden of proof with respect to the request for special exceptions to operate a CCRC and for a retaining wall above four feet in height, and for area variances from requirements relating to number of stories, lot occupancy, and side yard on a single lot of record in the R-1-B Zone at 3920 Alton Place, N.W. (Square 1779, Lot 14). Accordingly, it is **ORDERED** that the application is **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 69E1 AND 69E2 AND THE FOLLOWING CONDITIONS:**

1. All lighting on the roof deck shall be down lit.
2. Amplified music on the roof deck shall not be permitted.
3. The Applicants shall abide by the Transportation Demand Management Plan and Loading Management Plan as proposed in the October 8, 2018 Comprehensive Transportation Review study prepared by Gorove/Slade Associates.
4. The Applicants shall abide by all provisions agreed to in the Memorandum of Understanding reached between the WABC, Sunrise Senior Living, and the ANC 3E (Exhibit 119A). These provisions include, but are not limited to, parking, limits on intensity of use, community relations, building operations, design and transportation measures, traffic mitigation, and plans for construction activity.

**VOTE:**

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

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

**ATTESTED BY:**

\_\_\_\_\_  
**Sara Bardin**  
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** \_\_\_\_\_

PURSUANT TO 11 DCMR 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 11 DCMR 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 11 DCMR 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.

BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.