

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

**APPLICATION OF
JP MORGAN CHASE BANK, N.A.**

**BZA CASE NO. 20259
SQUARE 2222, LOTS 15
HEARING DATE: APRIL 22, 2020¹
ANC 3C04**

PREHEARING STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

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

**II.
JURISDICTION OF THE BOARD**

The Board has jurisdiction to grant the requested relief pursuant to 11-X DCMR § 901.2.

**III.
WITNESSES**

Outlines of testimony for the Applicant and its architect were previously submitted as part of the BZA application and are included in the record at Exhibit 12. A copy of the resume for the Applicant’s architect is included in the record at Exhibit 13. The Applicant also proposes to include

¹ The public hearing is currently scheduled for April 22, 2020. However, due to the District’s State of Emergency declared by the Mayor on March 16, 2020, and currently extended through April 25, 2020, the hearing date will be postponed to a date to be determined.

a representative from the Owner of the Property as a third potential witness at the public hearing. Thus, attached hereto as Exhibit A is an additional outline of witness testimony to supplement the outlines of testimony already submitted at Exhibit 12.

IV. THE PROPERTY

The Property consists of Lot 15 in Square 2222 and has a total land area of approximately 49,057 square feet. The Property is bounded by Connecticut Avenue, NW to the west, Ordway Street, NW to the south, a public alley and Porter Street, NW to the east, and private property also owned by the Owner (Square 2222, Lot 16) to the north. As shown on the Zoning Map (Exhibit 14), the Property is zoned NC-3 and is located within the Cleveland Park Historic District.

The Property is improved with an existing one- and two-story retail center known as Sam's Park & Shop. The retail center was constructed in approximately 1930 and is a contributing building to the Cleveland Park Historic District. The retail center has approximately 19,986 square feet of rentable retail floor area on the ground floor and approximately 4,622 square feet on a partial second floor.² The existing ground floor uses include eating and drinking establishments, salons, an ice cream store, a liquor store, a dog daycare facility, a fitness facility, and a Capital One bank. A new Target store recently opened on the partial second-story of the retail center building.

Vehicular access to the Property is provided via existing curb cuts on Connecticut Avenue and Ordway Street. (*See* Existing photographs included at Exhibit 5.) In front of the building along

² The net rentable square footage has been used instead of the "gross floor area," as that term is defined in the Zoning Regulations. This is because the existing building was constructed circa 1931, which pre-dates the current gross floor area calculations required by zoning. Given the configuration of the building which is entirely retail at the ground level and has limited internal common areas, the net square footage would closely align with the gross floor area.

Connecticut Avenue is a surface parking lot with 51 parking spaces. Loading is provided from the rear alley; however, there is no loading requirement due to grandfathered nature of the historic building. *See* 11-C DCMR § 901.5(c), which states that when an historic resource changes or adds a use category it is not required to provide additional loading for the change in use without expansion.

The Property is located along Connecticut Avenue's Cleveland Park commercial corridor and comprises the entirety of the east side of the block between Porter and Ordway Streets, other than Lot 16 and an Exxon gas station to the north. Directly across Connecticut Avenue from the Property are other neighborhood-serving retail and service establishments, including restaurants, a Walgreens drug store/pharmacy, hair salons, a DC Fire and Emergency Medical Services facility, and an urgent care medical facility. The block to the south of the Property also has a variety of restaurants and cafes, salons, banks, a CVS pharmacy, grocery store, post office, and movie theater. An entrance to the Cleveland Park Metrorail station is located directly adjacent to the Property along Connecticut Avenue. A number of Metrobus routes, including the H2, H3, H4, L2, D32, L1, and W47 routes, are located along streets abutting the Property with bus stops located less than 0.1 miles away.

V. PROPOSED USE

As shown on the architectural drawings included in the record at Exhibit 6 (the "Architectural Drawings"), the Owner proposes to lease approximately 3,287 square feet of the existing building's ground floor retail space to the Applicant to be used as a Chase Bank financial service use.

As shown on Sheet 6 of the Architectural Drawings, the proposed bank would have three walk-up ATMs (one in an interior 24-hour accessible lobby and two within the bank itself), office and meeting spaces, data and equipment rooms, a customer waiting area, employee lounge, and restrooms. As shown on Sheet 4 of the Architectural Drawings, the bank would be located in the northern-most wing of the existing building. Entrance doors to the bank would be located off of Connecticut Avenue and from the parking lot.

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

VI. SPECIAL EXCEPTION RELIEF

The Board can grant special exception relief from 11-H DCMR § 1101.3(a) pursuant to the general special exception standard of review set forth in 11-X DCMR § 901.2, and the special exception standard of review applicable to the NC zones set forth in 11-H DCMR § 1200.1.

The special exception burden of proof standard is set forth in Section II(B) of the Applicant’s Statement in Support included in the record at Exhibit 8. The justification for how the Applicant meets the general test for special exception relief under 11-X DCMR § 901.2 is set forth

in Section II(B)(1) of the Statement in Support. With respect to how the application meets the more specific test for special exception relief pursuant to 11-H DCMR § 1200.1 from the standards of Subtitle H are set forth below:

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

The proposed financial institution use will meet the purposes of the Neighborhood Mixed Use zones, as set forth in 11-H DCMR § 100. For example, the proposed use will help to maintain the existing stable, mixed-use neighborhood of Cleveland Park by providing a new commercial use in an existing neighborhood-serving retail center along a major commercial corridor. *See* 11-H DCMR § 100.1. The use will contribute to the varied mix of employment and service uses in the area; will preserve and enhance the neighborhood shopping area by adding to the range of commercial uses; and by filling a vacant storefront it will encourage the retention of the surrounding retail and personal service uses in a continuous pattern at the ground level to meet the needs of the area's residents, workers and visitors. *Id.* at 100.2(a), (c) and (e).

In addition, the proposed financial service use will not disrupt the existing flow of motor vehicle movements into or out of the retail center's parking lot, and will not require new driveways or curb cuts since no changes are proposed to the retail center's existing vehicular ingress or egress and because the financial service use is expected to generate minimal new vehicular trips. *Id.* at 11-H DCMR §§ 100.2(b) and (g).

The proposed use will maintain the existing scale of development because no physical changes are proposed to the building other than internal renovations and upgrades to the bank area itself, and exterior signage to identify the use. The financial service use will contribute the diverse mix of commercial uses within the building and will preserve the safe and efficient flow of pedestrians by filling in a vacant storefront without requiring any building additions or changes to existing circulation patterns. *Id.* at 11-H DCMR § 100.2(f).

The request is also consistent with the purposes of the Cleveland Park Neighborhood Mixed Use Zone (NC-3) set forth in 11-H DCMR § 500, which is intended to permit mixed-use development at a moderate density. 11-H DCMR § 500.2. Consistent with 11-H DCMR § 500.1(a), the proposal will maintain the existing building's compatibility with the purposes of the Historic Landmark and Historic District Protection Act of 1978 (D.C. Law 2-144) by protecting, enhancing, and perpetuating improvements within the Cleveland Park Historic District that

represent distinctive elements of the city's cultural, social, economic, and architectural history, and retaining and enhancing the existing building that contributes to the character of the Historic District and encouraging its adaptation for current use. *See* D.C. Law 2-144 §§ 2(a)(1) and 2(b)(1)(A)).

Pursuant to 11-H DCMR § 500.1(b), the proposed use will not impact the building's existing height or scale, such that the development will continue to remain compatible with surrounding buildings. Consistent with 11-H DCMR § 500.1(c), by filling in the vacant storefront, the proposed use will encourage consumer support for businesses in the commercial area.

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

In addition, the proposed use will not adversely affect neighboring property or be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity. The financial service use will be located in a vacant retail space within the existing building. Thus, there will be no impacts on light or air to neighboring properties. The financial service use will not create any adverse noise impacts, will operate within the existing building during normal banking hours, and will not generate any additional parking or loading demand or increased traffic congestion. Moreover, the proposed financial service use will lease a currently vacant tenant space, which will bring additional eyes and ears to the street and help to increase the vibrancy of the surrounding commercial corridor. The use will add a convenient service to the neighborhood that will serve residents, visitors, and employees alike.

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

The Applicant does not propose any exterior architectural design renovations to the existing building other than adding new signage for the Chase Bank. All new signage will comply with the signage regulations of the District of Columbia Construction Codes Supplement of 2013 and with the specific signage regulations applicable to historic properties set forth in 10-C DCMR § 2509.

Based on the foregoing, the building, which is already designated as contributing to the Cleveland Park Historic District, will continue to benefit the urban design features of the immediate vicinity. Moreover, the application was forwarded to Office of Planning for review (Exhibit 19), which will include a report from the Historic Preservation Office.

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

Exceptional circumstances exist given that the proposed bank will be located in an existing building with existing tenant spaces, demising walls, and exterior building walls that cannot be shifted or relocated. As shown on the architectural drawings, the location of the proposed Chase Bank will be in the northern-most wing of the existing building in a vacant 3,287 square foot retail space. In order to comply with the 20% financial service use requirement of 11-H DCMR § 1101.3(a), the Applicant would only be permitted to occupy approximately 1,797 square feet (approximately 54.7%) of the vacant tenant space. Operating in this small of a retail space is not possible for Chase Bank's program, which requires the full 3,287 square feet to accommodate the ATMs, meeting rooms, data and equipment facilities, customer waiting area, employee lounge, and restrooms. Moreover, even assuming that Chase could operate within the 1,797 square feet permitted, the leftover 1,490 square feet of leasable space would be useless to another separate tenant given its extremely small size and lack of direct access at the far rear corner of the building.

In addition, the Owner has made good faith efforts over the years to lease the retail space to a use that would not require special exception relief. The tenant space proposed to be occupied by Chase has been vacant since 2014, and since that time, many letters of intent were pursued for a variety of uses, but none were successful. Most of the interested tenants were restaurants, the two most recent of which were potential relocations where the users ultimately remained in place. The prior tenant was a restaurant known as Palena, which primarily operated out of the building on Lot 16 to the north. In 2010, Palena expanded some of its operations into the space proposed for the financial institution use, including operating a small café in this location. However, Palena closed in 2014 after 14 years in business. Since then the Owner has been unable to lease the space to any other type of commercial tenant.

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

The application does not include any changes to the existing vehicular access or egress to the retail center. The existing curb cuts and parking lot layout will remain unchanged. The existing pedestrian improvements and circulation patterns will also remain in their current condition. The proposed financial service use is expected to generate very few vehicular trips given its location within a walkable and mixed-use commercial center, and will also operate within already-established business hours for the other commercial uses on the Property. This Chase bank is intended to serve residents, employees, and businesses in the immediately surrounding area, as the Applicant also operates other nearby neighborhood serving branches that serve those communities, including in Tenleytown, Columbia Heights,

Georgetown, H Street, NE, among others. Therefore, because the proposed financial services use is intended to serve the immediate neighborhood, it is not expected to generate many new vehicular trips from customers that do not already live, work or shop in the surrounding community. Therefore, the proposed use will not create any dangerous or objectionable traffic conditions.

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

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

Regarding parking demand, the times of day and days of the week for which the bank will be used is generally the same as or less than the other retail uses within the building and approximately the same as the existing Capital One bank. The 51-space parking lot located in front of the retail center is shared by all of the retail and service uses within the building. The parking lot is gated and managed by Colonial Parking. Retail employees and customers are free to use the parking lot for a fee.

The Owner evaluated the parking lot during the fourth quarter of 2019 (after Target was open and operational) and based on its findings, noted that the parking lot was rarely full, with occupancy averaging at approximately 60%. Prior to Target, the Owner estimates that the average occupancy rate was approximately 50%. Thus any parking demand generated by the proposed financial service use will be easily accommodated on-site.

Given that Chase has several other nearby branches in the District that serve their own respective neighborhoods, including a branch in Tenleytown which is approximately two miles away, the financial services use proposed for the Property is not expected to generate significant new parking demand or vehicular traffic from customers that do not already live, work or shop in the surrounding community. An entrance to the Cleveland Park Metrorail station is located directly adjacent to the Property along Connecticut Avenue, NW, and the Property is located in a mixed-use and walkable neighborhood in close proximity to surrounding residential uses. Moreover, the Chase bank will have a limited number of employees (a maximum of approximately eight employees) working on site at any given time, and the Applicant anticipates that some will live in the surrounding area and therefore walk or take public transit to work. Therefore, the proposed use will not create any noticeable changes to the existing parking or traffic conditions.

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

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

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

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

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

VII. **COMMUNITY ENGAGEMENT**

The Property is located within the boundaries of Advisory Neighborhood Commission (“ANC”) 3C04. Prior to filing the subject application, both the Applicant and the Owner discussed the project and the special exception relief with the Single Member District representative for ANC 3C04 on several occasions. Since then, the Applicant formally presented the application at the ANC’s March 2, 2020, Planning and Zoning Committee meeting and responded to questions from the Commissioners. The Applicant was scheduled to present at the ANC’s March 16, 2020 regularly scheduled and duly noticed public meeting; however due to the District’s State of Emergency declared by the Mayor on March 16, 2020, due to the coronavirus in DC and the region,

the ANC's March meeting was cancelled. The Applicant has continued to communicate with the ANC and currently has requested to present at its April 20, 2020, public meeting.

VIII.
CONCLUSION

For the reasons stated above and described elsewhere in the case record, the Applicant has demonstrated that its request for special exception relief to dedicate more than 20% of the ground floor level of the existing building in the NC-3 zone at the Property is in harmony with the purpose and intent of the Zoning Regulations and Zoning Map and meets the test for special exception approval under 11-X DCMR § 901.2 and 11-H DCMR § 1200.1. Accordingly, the Applicant respectfully requests the Board's approval of the application.

Respectfully submitted,

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