

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 19133 of St. Thomas' Episcopal Parish**, pursuant to 11 DCMR § 3103.2, for variance relief from the lot occupancy requirements under § 532.1 to allow the construction of an addition to an existing church building to create a new church and multifamily residential building in the DC/SP-1 District at premises 1772 Church Street, N.W. (Square 156, Lot 369).

**HEARING DATE:** December 15, 2015  
**DECISION DATE:** January 12, 2016

**DECISION AND ORDER**

This application was submitted by St. Thomas' Episcopal Parish (the "Applicant") on September 1, 2015. The application requested an area variance from the lot occupancy requirements under § 532.1 to allow the construction of an addition to build a church and a multifamily residential building where a small church structure and park now exist in the DC/SP-1 District at 1772 Church Street N.W. (Square 156, Lot 369) (the "Subject Property"). Following a public hearing, the Board voted to grant the application.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda dated September 9, 2015, 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 2; Advisory Neighborhood Commission ("ANC") 2B, the ANC in which the subject property is located; and Single Member District/ANC 2B07. Pursuant to 11 DCMR § 3112.14, on September 10, 2015 the Office of Zoning mailed letters providing notice of the hearing to the Applicant's representatives, ANC 2B, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on October 2, 2015 (62 DCR 12978).

Party Status. The Applicant and ANC 2B were automatically parties in this proceeding. The Board granted two requests for party status in opposition to the application: one from Church Street Neighbors ("CSN"), an unincorporated membership association comprised of neighbors living in the near vicinity of the subject property, and one from the Dupont Circle Citizens Association ("DCCA"), which is the civic association of the Dupont Circle neighborhood.

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OP Report. By memorandum dated December 8, 2015, OP recommended approval of the zoning relief requested by the Applicant finding that all three elements of the variance test were met. (Exhibit 33.) OP concluded that the property was subject to exceptional conditions as a result of the Parish Hall being a contributing building in the historic district and the church's 120-year history at its present location. OP concluded that these exceptional conditions would result in a practical difficulty for the Applicant to comply strictly with the lot occupancy requirements. OP noted that it "would be practically difficult to create a historically compatible design that could accommodate all necessary first floor functions for the Church (including the sanctuary and communal worship spaces) while conforming to the lot occupancy limit." OP also stated that the new church and residential program would need to be in one building to allow the Church to remain on-site, but due to the Parish Hall, it would be difficult to reduce the lot occupancy on the lower floors. Further, OP concluded the Historic Preservation Review Board's condition that the streetwall must be consistent with other buildings on Church and 18th Streets, would leave only the rear (south) of the Project for potential reduction in lot occupancy, but reducing lot occupancy in this location would create practical difficulties because of the necessity of accommodating certain first floor functions in the new residential construction. As to the third prong of the variance test, OP concluded that granting the relief would not result in a substantial detriment to the public good because the building would only exceed the permitted lot occupancy on the lower floors, and would have a proposed FAR less than would be permitted as a matter of right. OP also noted that the design includes multiple setbacks to minimize the appearance of the building as it rises above the Parish Hall and approaches the lower density rowhouses to the east, and the two-story addition atop the main block of the Parish Hall has been designed with setbacks to ensure that they would not be visible from street view. Finally, OP found that granting the relief would not substantially impair the intent, purpose, and integrity of the zone plan, because the "Project's restrained scale and setbacks from the residential areas should ensure that the Project would be an effective buffer and serve as a transition between the adjoining commercial and residential areas." (Exhibit 33.)

On January 5, 2016, OP submitted a supplemental report that responded to the Board's request that OP obtain the advice of the Zoning Administrator to explain why the three-foot setback from the property line that is part of a larger setback area is defined as a court and not a rear yard and to clarify whether the area would continue to be defined as a court if the three-foot-wide area were removed. Based upon the applicable definitions, OP explained why the Zoning Administrator considered the three-foot area to be a court and why its removal would not affect the remaining setback from being considered a court. (Exhibit 149.)

DDOT. By memorandum dated December 8, 2015, DDOT indicated no objection to approval of the application. However, DDOT did indicate that the Applicant is expected to continue to work with DDOT on public space issues, as well as the location of short-term bicycle parking. (Exhibit 34.)

ANC Report. By letter dated December 10, 2015, ANC 2B indicated that, at a properly noticed public meeting on December 9, 2015 with a quorum present, the ANC voted 6-2-0 to oppose the application. (Exhibit 72.) The ANC noted that the Applicant's property "is located in the Dupont Circle Historic District, and as such has protections to ensure that alterations of existing structures

are compatible with the character of the historic district, and to ensure that new construction and subdivision of lots in an historic district are compatible with the character of the historic district.” The ANC noted that this “may result in a development being unable to maximize the height and density otherwise allowed by the underlying zoning regulations.” However, the ANC did not believe that maintaining historic conditions in an historic district is a practical difficulty that would necessitate a lot occupancy variance and the applicant understood the underlying historic district and zoning overlays before designing the project.” Further, “from a neighborhood perspective the ANC does not believe that the decisions of the Historic Preservation Review Board necessitate a zoning variance.” The ANC also expressed its disagreement with the Applicant that the only location to remove the building’s footprint is at the rear (south) along the alley, and requested that the Applicant work with the Historic Preservation Office staff to set the building back 6.7% from 18th Street. The ANC further indicated that it worked with community, developers, and the Church to develop a Memorandum of Understanding which would address quality of life issues, but was unable to reach consensus and finalize a document. Finally, the ANC noted that the majority of residents who have contacted ANC 2B about the project have expressed opposition to the requested variance expressing concerns, among other things, about the increased traffic and adverse effects on parking, airflow, and light in the neighborhood that would result.

## **FINDINGS OF FACT**

### **The Subject Property**

1. The Subject Property is located on the south side of Church Street, N.W., near its intersection with 18<sup>th</sup> Street N.W. (Square 156, Lot 369). Square 156 is generally rectangular, defined by Church Street on the north, 18<sup>th</sup> Street on the west, P Street on the south, and 17<sup>th</sup> Street on the east.
2. Lot 369 is rectangular in shape and contains approximately 15,612 square feet of land area. It is bounded to the north by Church Street, to the south by a 12-foot public alley, to the east by a three-story dwelling, and to the west by 18<sup>th</sup> Street. The lot measures 95 feet by 165 feet.
3. The Subject Property is zoned SP-1 and is also included in the Dupont Circle Overlay District (“DC Overlay”). Surrounding properties to the north, south, and west are also located in the SP-1 Zone District. Other properties in Square 156 to the east are located in the R-5-B Zone District.
4. The surrounding area contains a mix of office buildings, chanceries, apartment buildings (moderate to high density), and row dwellings and flats. The heights and densities of the nearby buildings vary greatly. Immediately to the north are institutional offices and high density apartment buildings. Along Church Street further to the east are row dwellings and flats, and Church Street is bookended at 17<sup>th</sup> Street by large apartment buildings. Directly west across 18<sup>th</sup> Street are chanceries and other institutional and/or office uses. One block further west toward Dupont Circle are more institutional and retail uses and a high density office building.

5. The Subject Property is located in the Dupont Circle Historic District.
6. The Subject Property is improved with the Parish Hall of St. Thomas' Episcopal Parish, which is located at the far eastern end of the Property. The front (north) façade of the Parish Hall is set back approximately three feet from the Church Street property line. (Exhibits 6F and 139.)
7. The Property was formerly improved with the main church building of St. Thomas' Episcopal Parish, but that structure was lost to a fire in 1970. On the western side of the Property, where much of the former church building once stood, there is a private park that the Applicant has allowed the public to use.

**The Applicant's Project**

8. The Applicant will construct an addition to the existing Parish Hall to create a new mixed-use church and multifamily residential building (the "Project"). The church and the residential components will function largely independently, but the Project will be one building for zoning purposes. The Project will include three distinct elements: the new church, the new residential structure, and the Parish Hall, which will be incorporated into the residential structure. A shared underground parking garage, accessed via a ramp off the alley to the south, will service the entire Project. (Exhibits 6A, 6F, and 139.)
9. The new church element, located at the western end of the Property along 18<sup>th</sup> Street, will contain a sanctuary, church function rooms, classrooms, church offices, and community meeting and gathering space. The first floor of the church building will contain a large entry lobby that will also function as a ruins gallery to display the remnants of the original church. It will also include a reception area, a conference room, and offices. The second floor of the church element will contain the main sanctuary and all of the associated rooms and function spaces – such as the vestibule, cry room, and chapel – that must be contained within one floor. The third and fourth floors will contain classrooms and meeting space. (Exhibits 6A, 6F, and 139.)
10. The new residential element will be on the eastern side of the Property and will incorporate and preserve the Parish Hall. The residential building will have two components: the Parish Hall with an addition above it, and the addition to the west of the Parish Hall and east of the new church element. The residential element will incorporate multiple setbacks above the fourth floor of the addition west of the Parish Hall and above the third floor of the Parish Hall to minimize the Project's appearance of height and density in response to historic preservation concerns and guidelines as articulated by the Historic Preservation Review Board. The residential element will contain approximately 56 units. (Exhibits 6A, 6F, and 139.)
11. The Applicant will expand the alley to the south onto the Property at the ground level. The Applicant will devote three to six feet of width to the alley, through an easement, to effectively widen the alley to 15-18 feet for the length of the Property. (Tr. of December 15, 2015, p 117.)

12. The Project will have a maximum height of 70 feet (no penthouse) and a FAR of 4.22. Except for lot occupancy, the Project will comply with the Zoning Regulations (11 DCMR). The Applicant requested relief from the lot occupancy requirements as set forth below. (Exhibits 6A, 6F, and 139.)

**Zoning Relief**

13. In the SP-1 Zone District, the Zoning Regulations permit a maximum lot occupancy of 80% for a building with residential use. The lot occupancy of the Project will exceed 80% on residential floors 1 – 4, with a maximum lot occupancy of 86.7% on the first floor. However, to accommodate setbacks, residential floors 5 – 7 will have conforming lot occupancies decreasing from 77.6% to 50.3% as the Project increases in height. The Applicant requested a variance from § 532.1 to accommodate the nonconforming lot occupancy on residential floors 1 – 4. (Exhibits 3 and 6A.)

**Exceptional Condition**

14. Since the loss of the main church, the church has been operating out of the Parish Hall. The church has used the Parish Hall for religious, social, and community functions.
15. The Church has a 120-year history of its presence and activity on the Property, including loss of its former sanctuary to fire, which compels it to rebuild a new church building on the Property.
16. The Applicant requires approximately 5,000 square feet to accommodate the sanctuary (170 seats), vestibule, cry room, and chapel on the same floor in the new church element. The church requires this amount of single floor space to allow sufficient area for its congregation, including room for growth, to participate in religious services. Without this amount of single-floor area, the church would not be able conduct its religious exercises in the manner it sees fit, adequately provide community services, and perform functions consistent with its mission. The single-floor area necessary to accommodate all of the second floor functions in the church will have a lot occupancy of 32.2%.
17. The Parish Hall is a contributing building to the historic district. Consequently, it cannot be altered unless the Mayor or her agent finds that the issuance of an alteration permit is necessary in the public interest, or that failure to issue a permit will result in unreasonable economic hardship to the owner. (D.C. Official Code § 6-1104 (f).)
18. The Historic Landmark and Historic District Protection Act (“the Act”) defines “necessary in the public interest” to mean consistent with the purposes of the Act or necessary to allow the construction of a project of special merit. (D.C. Code § 6-1108(b).) The Applicant is not claiming economic hardship or that this is a project of special merit. Therefore, the Applicant must demonstrate that the proposed alteration of the Parish Hall and the proposed new construction is inconsistent with the applicable purposes of the Historic District and the Act.

19. With respect to properties in historic districts, those applicable principles are:
- (A) To retain and enhance those properties which contribute to the character of the historic district and to encourage their adaptation for current use;
  - (B) To assure that alterations of existing structures are compatible with the character of the historic district; and
  - (C) To assure that new construction and subdivision of lots in an historic district are compatible with the character of the historic district. (D.C. Official Code § 6-1101(b)(1).)
20. Pursuant to § 9(b) of the Act (D.C. Official Code § 6-1108), the Applicant requested the Historic Preservation Review Board (“HPRB”) to conduct a conceptual review of the project for compliance with the provisions of the Act. The Project received concept approval from HPRB on July 23, 2015. (Exhibit 6A.)
21. Consistent with the Act’s purposes, the vast majority of the Parish Hall will be retained for the Project.<sup>1</sup> The portion of the Parish Hall that will be retained will have a lot occupancy of 19.2%. (Exhibits 6A, 6F, and 139.)

**Practical difficulty**

22. The first floor of the new construction for the residential element, between the Parish Hall and the new church, needs to accommodate certain portions of the residential program. The residential lobby must be located in the new construction, as opposed to the Parish Hall, because the main core of the building (elevator, egress stairs, building mechanical risers, etc.) must fully stack and run from the garage up to the top level of the building. The addition above the Parish Hall does not extend fully to the top of the residential element. (Exhibits 6A, 6F, and 139.)
23. The taller massing of the Project is oriented toward the Church in the center of the site in order to accommodate historic concerns and to maintain the height setback from the Parish Hall. Since the Parish Hall portion of the Project does not extend up to the 7th Floor, it cannot contain the main building core. (Exhibits 6A, 6F, and 139.)
24. Based on the Project’s configuration and massing, the Applicant needs to accommodate the residential lobby, mailboxes, trash area, two egress stairs and their associated egress access paths and corridors, and other necessary ground floor functions in a single-floor space sufficiently large. (Exhibits 6A, 6F, and 139.)
25. The ground floor of the new construction for the residential element, between the church and the Parish Hall, must accommodate the area of the parking ramp, which will consume floor

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<sup>1</sup> Only a small portion of the rear of the Parish Hall will be removed.

area otherwise available for residential functions. No more of the Parish Hall can be removed, and the parking level would be highly inefficient if entered through the Parish Hall (i.e., perpendicular to the alley). Locating the ramp in the Parish Hall would also fill the entire historic structure with the ramp, which would be contrary to preservation and rehabilitation of a contributing historic building. Because DDOT policies strongly favor parking access from the public alley, the only feasible location for the parking ramp is within the footprint of the new construction of the residential element adjacent to the alley. (Exhibits 6A, 6F, and 139.)

26. The parking ramp must occupy at least 950 square feet of the ground floor area dedicated to the new construction area of the residential element. This would leave insufficient floor area for the other ground floor residential functions if the Project were to conform to the lot occupancy limit. It is not practical to accommodate the functions in such a small area. (Exhibits 6A, 6F, and 139.)
27. Because of historic constraints, it would not be practical to remove footprint from the new residential structure from the Church Street façade. Historic design principles generally dictate that building façades should maintain the building line consistent with the Parish Hall, which is what the proposed new structure would do. The Applicant would risk HPRB disapproval of a design that further recesses from the building line along Church Street established by the Parish Hall. Thus, the new residential structure must occupy more of the lot to the north to maintain holding the Church Street property line. (Exhibits 6A, 25, 25A, 33, and 139.)
28. Similarly, because of historic design principles that favor constructing to or near the property line and single-floor space requirements that necessitate extending the church building as far west as possible, it would not be feasible to set back the church element from 18<sup>th</sup> Street or otherwise remove building footprint along 18<sup>th</sup> Street. (Exhibits 6A, 25, 25A, 33, and 139.)
29. Reducing the Project's footprint at its rear (south) is the only location where it is theoretically possible for a conforming lot occupancy, but that would create design and functionality burdens. Further, such a reduction would not noticeably affect the height or massing as viewed from 18<sup>th</sup> and Church Streets. (Exhibits 6A, 25, 25A, and 139.)
30. At the ground floor, reducing building footprint from the alley (south) side of the Project would severely disrupt the back-of-house functions in the residential element. If building footprint were removed, then the secondary egress points, which must open onto the alley, would have to be relocated. This would result in a reduction of the area available for the trash room, bike room, and rear elevator access to the loading platform, thereby rendering these spaces largely useless. (Exhibits 25, 25A, and 139.)
31. Reducing the footprint of residential floors 2 – 6 from the alley side of the Project would leave the parking ramp uncovered and create highly inefficient residential units. An uncovered parking ramp would create multiple operational problems, such as an unsafe space for loiterers and a place where leaves, debris, snow, and trash could easily collect. In addition, removing

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floor area from the upper floors would compromise the south-facing residential units because they would be too small to accommodate all necessary functions, even if the core were shifted. (Exhibits 25, 25A, and 139.)

32. In the garage, shifting the elevator core to accommodate a reduction in footprint from the alley side of the Project would create a narrow, non-compliant drive aisle that would eliminate multiple parking spaces, thereby necessitating a variance for parking. (Exhibits 25, 25A, and 139.)

**The public good and the zone plan**

33. The Project will allow for adequate light and air to nearby properties. The setbacks at the upper floors, which will result in significantly less lot occupancy at those floors and considerably less density overall, will reduce the Project's massing and bulk to allow the passage of ample light and air. (Exhibits 6A, 6F, and 139.)
34. The lot occupancy of the Project will be nearly identical to that of the combined Parish Hall and former church on the site (approximately 87.6%), so the Project will recreate a condition that was compatible with and characteristic of the Property and the neighborhood. (Exhibit 139.)
35. The proposed height, density, and form of the Project are consistent with many other buildings in close proximity to the Property, including buildings on 17<sup>th</sup>, 18<sup>th</sup>, and P Streets; and Dupont Circle. (Exhibits 6D, 6F, 139.)
36. The widening of the alley onto the Property will prevent traffic conflicts and crowding of the alley, but it will not reduce the Project's lot occupancy. (Exhibits 6A and 6F.)
37. The Project's design features, including the upper floor setbacks, will reduce the appearance of mass and height, and will result in a redistribution of density at the lower floors. (Exhibits 6A, 6F, 139.)

**CONCLUSIONS OF LAW AND OPINION**

The Applicant seeks an area variance from the lot occupancy requirements under § 532.1 to allow the construction of an addition to the existing Parish Hall for a new mixed-use multifamily residential and church building in the DC/SP-1 District at premises 1772 Church Street N.W. (Square 156, Lot 369). 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

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without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. (*See* 11 DCMR § 3103.2.)

Based on the findings of fact, the Board concludes that this application satisfies the requirements for variance relief in accordance with § 3103.2.

The Board concurs with the Office of Planning that the subject property “includes several characteristics which contribute to an exceptional situation.” (Exhibit 33.) The property is improved with the existing Parish Hall which, as a contributing building to the historic district, may only be altered in a manner that retains its historic attributes and is compatible with its historic district. The design of the project therefore had to be compatible with the Parish Hall and the historic district. Also the church has a 120-year history at the present location and requires new and expanded facilities to accomplish its mission.

In fact, the contributing nature of the Parish Hall would in and of itself represent an exceptional condition. The District of Columbia Court of Appeals found that a landmark designation created an exceptional condition because it “reflects characteristics of exceptional design requiring special treatment in the planning of contiguous structures and additions.” *United Unions, Inc. v. D.C. Bd. of Zoning Adjustment*, 554 A.2d 313, 317 (D.C. 1989). The Parish Hall, though not a designated landmark, nevertheless possesses contributing features that also reflect an exceptional design that constrains the extent to which it may be altered and an addition added.

The Board finds that strict application of the lot occupancy regulations would result in a practical difficulty to the Applicant due to the exceptional condition affecting the Property.

Because of historic constraints, it would not be practical to remove footprint from the new residential structure from the Church Street façade. Historic design principles generally dictate that building façades should maintain the building line consistent with the Parish Hall, which is what the proposed new structure would do. The Applicant would risk HPRB disapproval of a design that further recesses from the building line along Church Street established by the Parish Hall. Thus, the new residential structure must occupy more of the lot to the north to maintain holding the Church Street property line.

As noted, the Applicant needs adequate space for its various services and functions. Given that the single floor area necessary to accommodate all of the second floor functions in the church will have a lot occupancy of 32.2%, and the Parish Hall, which cannot be demolished absent extraordinary circumstances, (*see* D.C. Code § 6-1104), occupies a significant portion of the lot, the subject property is subject to significant constraints as to what may be built and where.

Moreover, the ground floor of the new construction for the residential element, between the church and the Parish Hall, must accommodate the area of the parking ramp, which will consume floor area otherwise available for residential functions. The parking level would be highly inefficient if entered through the Parish Hall (i.e., perpendicular to the alley). Locating the ramp in the Parish Hall would also fill the entire historic structure with the ramp, which would be contrary to

preservation and rehabilitation of a contributing historic building. Because DDOT policies strongly favor parking access from the public alley, the only feasible location for the parking ramp is within the footprint of the new construction of the residential element adjacent to the alley. The parking ramp must occupy at least 950 square feet of the ground floor area dedicated to the new construction area of the residential element. This would leave insufficient floor area for the other ground floor residential functions if the Project were to conform to the lot occupancy limit.

Further, strict application of the Zoning Regulations would result in an inefficient and substandard building design with operational difficulties. Several unique circumstances result in a practical difficulty for the Applicant. It would be practically difficult to create a historically compatible design that could accommodate all necessary first floor functions for the church (including the sanctuary and communal worship spaces) while conforming to the lot occupancy limit; the historic Parish Hall and the proposed residential program would make it difficult to reduce the Project's lot occupancy on the lower floors. Variance relief would be needed for a realistic and practicable use of the Applicant's property as a church and residential building. In this case, the demonstrated inefficient and functionally challenged design of the Project that would result from compliance with the lot occupancy regulations would impose an unnecessary burden upon the Applicant. The Applicant sufficiently demonstrated that no reasonably feasible alternative for reducing lot occupancy exists; thus, the proposed design would result in a practical difficulty that is greater than the minor relief being sought. As a matter of law, the Applicant's demonstrated burdens constitute a practical difficulty that warrants variance relief.

The Board does not find that approval of the requested variance relief would cause substantial detriment to the public good or would substantially impair the intent, purpose, and integrity of the zone plan.

As noted by OP, "the building would only exceed the permitted lot occupancy on the lower floors, and would have a proposed FAR less than would be permitted as a matter of right." (Exhibit 33.) Furthermore, the proposal includes multiple setbacks to minimize the appearance of the building as it rises above the Parish Hall and approaches the lower density rowhouses to the east. The Project's lot occupancy would not cause substantial harm to the Zoning Regulations and would be consistent with the general provisions of the SP District, which include the following:

- 500.2 The major purpose of the SP District shall be to act as a buffer between adjoining commercial and residential areas, and to ensure that new development is compatible in use, scale, and design with the transitional function of this zone district.
- 500.3 The SP District is designed to preserve and protect areas adjacent to Commercial Districts that contain a mix of row houses, apartments, offices, and institutions at a medium to high density, including buildings of historic and architectural merit.

(11 DCMR §§ 500.2, 500.3.)

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The Project's restrained scale and setbacks from the residential areas suggest that the Project would be an effective buffer and serve as a transition between the adjoining commercial and residential areas.

The Board finds the argument made by the parties in opposition to be unpersuasive. Much of the opposition was related to the loss of the park that the community has enjoyed. However, the park is actually the private property of the church, and the community does not have a right to use that space. Furthermore, both the CSN and the DCCA expressed concerns regarding the application's compatibility with the historic district. However, the Board notes that in granting concept approval, the HPRB was required to find that such compatibility existed. And while the Board is not compelled to accept the HPRB conclusion, the evidence in the record clearly corroborates its finding.

As to the contention by CSN, DCCA, the ANC, and some persons in opposition that the Project is incompatible with the DC Overlay, the Board notes that DC Overlay does not have any prescriptions or prohibitions other than those relating to planned unit developments and curb cuts, so there are no standards by which to assess the Project's conformance. To this point, the Board previously determined that the Zoning Administrator's failure to assess a project's general compatibility with the DC Overlay was not an appealable action. *See BZA Appeal No.18851 of James Hill et. al.* Since any use or structure permitted by the underlying SP-1 zone is also permitted in the DC Overlay, if the Project complied with lot occupancy, then it would necessarily comply with the DC Overlay. Thus, a variance from the lot occupancy requirements does not translate into a nonconformity with the DC Overlay because there is no provision in the DC Overlay under which to also seek relief. Nevertheless, the Board finds that this Project is compatible with the DC Overlay general provisions and with the Dupont Circle neighborhood because of the substantial upper-floor setbacks, absence of a penthouse, significant preservation of the Parish Hall, and the concept approval by the HPRB.

Finally, both parties in opposition contended that the planned new construction would result in substantial detriment to light and air. However, neither the CSN nor the DCCA explained or provided evidence showing how the proposed lot occupancy would cause a more substantial diminution of light and air than a structure the Applicant could construct as a matter of right. Conversely, the Applicant demonstrated that the massing of the Project will decrease with height, which will constrain adverse light and air impacts. Finally, as stated previously, the project is consistent with the SP-1 District. Therefore, the Board finds the testimony of the Applicant and the OP report to be persuasive as to this issue.

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04.) In this case, OP recommended approval of the application. For the reasons stated above, the Board finds OP's advice, and its analysis of how the Applicant met the variance test as summarized earlier in this order, to be persuasive.

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)).) In this case ANC 2B voted to oppose the application. ANC 2B expressed several issues and concerns as summarized earlier in this order. The Board acknowledges the ANC's and other parties' contention that presence of the historic Parish Hall and the decision of the HPRB does not result in a practical difficulty from complying with the lot occupancy requirements, but the Board is not persuaded. The ANC did not consider the confluence of all of the factors that contribute to the exceptional condition on the Property, and the Board finds that retention of the historic Parish Hall, and the associated HPRB review process, is a significant component of, and relevant to, the exceptional condition. Similarly, the Board disagrees with the ANC's belief that satisfying historic requirements and the HPRB's decision are not the basis for a variance. The HPRB's approval implemented the protections afforded this contributing building by virtue of its inclusion in the historic district, protections which the ANC report noted. The design approved by the HPRB retained the Parish Hall's contributing elements and assured that the addition would complement these historic elements, but also created practical difficulties that this variance alleviates. And as to the ANC's observation that the Applicant was aware of the historic preservation constraints before designing the project, the Board notes that prior knowledge of a property's exceptional conditions does not negate a claim of practical difficulty. *See Gilmartin v. D.C. Bd. of Zoning Adj.*, 579 A.2d 1164, 1168 (D.C. 1990).

The Board further acknowledges the ANC's contention that the Applicant could reduce the lot occupancy of the Project from 18<sup>th</sup> Street. However, for the reasons stated above, the Board finds that this option raises historic preservation concerns and is not feasible. The Board does not question ANC 2B's assertion that the majority of comments it received expressed opposition to the application based upon perceived adverse impacts, but the record simply does not support this conclusion. Similarly, the inability to reach agreement on a memorandum of understanding to address "quality of life issues" is not legally relevant to this application because the evidence in the record proves that even without such an MOU this variance will not impair the public good.

For the foregoing reasons, the Board does not find the ANC's advice to deny the zoning relief to be persuasive.

Based on the findings of fact and conclusions of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for an area variance from the lot occupancy requirements under § 532.1 of the Zoning Regulations to allow the construction of a residential and church addition to an existing building in the DC/SP-1 District at 1772 Church Street, N.W. (Square 156, Lot 359). Accordingly, it is **ORDERED** that the application is **GRANTED SUBJECT TO THE APPROVED PLANS AT EXHIBIT 25A - PLANS, AS REVISED BY EXHIBIT 151 - REVISED SITE PLAN.**

**VOTE: 4-0-1** (Marnique Y. Heath, Jeffrey L. Hinkle, Frederick L. Hill, and Peter G. May to APPROVE; one Board seat vacant.)

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

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

ATTESTED BY:



**SARA A. BARDIN**  
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** August 19, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, 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

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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.