

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

Application of EQR-EYE Street, LLC
BZA Application No.:

Hearing Date:
ANC: 6C

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STATEMENT OF THE APPLICANT

I.
Nature of Relief Sought

This is an application by EQR-EYE Street, LLC ("**Applicant**") for relief from the strict requirements of the Zoning Regulations to permit the construction of a residential and retail building on the property located at Square 516, Lots 812 – 815 and 876 (the "**Property**"), also known as 443 – 459 I Street, NW. The application requests (i) special exception relief pursuant to 11 DCMR § 3104.1 from 11 DCMR §§ 771.1 and 411.11 relating to penthouse setback and uniform height requirements, and (ii) variance relief pursuant to 11 DCMR § 3103.2 from 11 DCMR § 772.1 relating to lot occupancy requirements, from 11 DCMR § 776.4 relating to closed court area requirements, and from 11 DCMR § 1707.4 relating to FAR limitation of historic lots, in order to restore historic buildings and construct an addition to create a residential and retail building with below grade parking.

II.
Jurisdiction of the Board

The Board has jurisdiction to grant the relief requested pursuant to 11 DCMR §§ 3104.1 and 3103.2.

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18289
EXHIBIT NO. 4

III.

Description of Environs

A. Description of the Property

The Property has approximately 144.58 feet of frontage on I Street, NW. The total area of the Property is approximately 20,614 square feet. The Property is depicted on the plat attached as Tab 2 to the application packet.

The Property is located the Mount Vernon Triangle Historic District. The Project (as defined below) has already been reviewed by the Historic Preservation Review Board (“**HPRB**”) and staff at the Historic Preservation Office (“**HPO**”). Although the lots comprising the Property are not listed as individual historic landmarks on the District of Columbia Inventory of Historic Sites or the National Register of Historic Places, 443-451 I Street and 453 and 455 I Street are listed as “contributing” to the Historic District. The Project will retain and restore such properties while constructing an addition to the north and to the west of such buildings.

The Property is currently improved with:

1. 443 – 451 Eye Street, NW – a two (2) story light industrial building currently occupied with an auto repair shop at the street level and studios in the upper floors. It is located on Lot 876, which has a lot area of 9,920 square feet. The structure (“Central Auto Works”) is listed as “contributing” to the Mount Vernon Triangle Historic District. It will be retained as part of the Project.
2. 453 – 455 Eye Street, NW – two (2) three (3) story townhouse buildings currently vacant. They are located on Lots 812 and 813, which have a lot area of 4,279 square. The structures are listed as “contributing” to the Mount Vernon Triangle Historic District. These lots will be retained as part of the Project.
3. 459 Eye Street, NW – a one (1) story light industrial building currently occupied with a bike shop. It is located on Lot 815, which has a lot area of 6,417 square feet. The structure is not listed as “contributing” to the Mount Vernon Triangle Historic District. It would be demolished as part of the Project.

Such configuration has been approved by HPRB.

The Property's western edge abuts a vacant lot owned by the District of Columbia that was previously subject to a Request For Proposals to develop a hotel and arts-related project. To the immediate north of the project is the 30 foot wide public street Prather Court and to the immediate east of the project the fifteen (15) foot wide public street 4 ½ Street, NW. To the north of the property, across Prather Court, are vacant and underutilized commercial buildings. To the east of the Property is the seven (7) story office building, the Chester A. Arthur building at 425 I Street, NW. To the south and southeast, across I Street, NW, are the high density residential buildings of 401 and 425 Massachusetts Avenue, NW.

B. Description of the Surrounding Area

The area surrounding the Property is an area in flux. The neighborhood is a patchwork of properties generally able to be categorized as recently redeveloped with high density office or residential or underutilized and former heavy commercial or industrial that has largely fallen into disrepair and disuse. The neighborhood is known as the Mount Vernon Triangle, which recently was created as its own subarea of the DD Overlay.

The Property is located in the Central Employment Area ("CEA"), as defined by the Comprehensive Plan, 10 DCMR § 199. The CEA is the core area of the District of Columbia, where the greatest concentration of employment in the city and region is encouraged. Plans are in development for the construction of significant projects on each of the squares surrounding the Property. The area surrounding the Property will soon support a dense concentration of residential, commercial, and retail uses befitting of the urban core in which it is situated.

The Applicant intends to participate in the rejuvenation of the Mount Vernon Square area by morphing the Property from a blight to a high-quality architectural statement that blends the new with the historic.

C. Existing Zoning

The Property is located in the Downtown Development District (“DD”)/Mount Vernon Triangle (“MVT”) Overlay/C-2-C Zone District, as depicted on the portion of the Zoning Map attached as Tab 3 to the application packet. The C-2-C Zone District is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District outside the central core but includes office employment centers. The C-2-C zone is located in, or near, the CEA, and provides for higher density residential and mixed uses. Office, hotel, most retail, service, and residential uses are permitted as a matter-of-right in the C-2-C Zone District.

Since the Property is located in the DD/MVT Overlay/C-2-C Zone District, a maximum floor area ratio (“FAR”) of 8.0 is permitted; however, a minimum of 4.5 FAR of residential use is required. This required residential use may be accounted for off-site in a Combined Lot Development (“CLD”). The maximum permitted FAR in the DD/MVT/C-2-C Zone District may be increased to 8.5 when preferred retail uses are provided on site or Transferable Development Rights (“TDRs”) are utilized. The FAR can also be increased above 8.5 pursuant to the CLD program.

Further, the maximum permitted building height in the DD/MVT/C-2-C Zone District is based on the Act to Regulate the Height of Buildings in the District of Columbia (“**Height Act**”). Under the Height Act, the maximum allowable building height on the Property is 110 feet. A maximum lot occupancy of 80% is allowed if a building provides residential use.

The Property also has several design requirements due to its location in the MVT Overlay, including the inclusion of display windows and entrances for 50% or more of the streetwall surface area and providing floor-to-ceiling heights of 14 feet for portions of a project’s

ground floor. DD Overlay streetwall design guidelines also apply to the Property. At least 75% of the surface area of each streetwall over fifteen (15) feet must be constructed to or within four (4) feet of the property line along I Street.

Typically, a rear yard of at least 15 feet is required for all uses. However, under Section 1707.6, the rear yard requirement does not apply to the Property due to its historic nature. This interpretation of Section 1707.6 has been confirmed by the D.C. Zoning Administrator.

The C-2-C Zone District requires parking in varying amounts, depending upon the precise use mix for the building. The parking requirement for residential use is one (1) parking space for each four (4) residential units. The parking requirement for retail use is one (1) parking space for every 750 square feet of gross floor area in excess of 3,000 square feet. Parking regulations for historic structures allow more flexibility from requirements for parking spaces such as the size of parking spaces and the width of drive aisles. Typically, the C-2-C Zone District would require loading in varying amounts, depending upon the precise use mix for the building. However, since the Property contains buildings deemed contributing to the Historic District, loading is not required at the Property under Section 2200.5 of the Zoning Regulations.

IV. Description of the Project

The project will create a 110 foot, eleven (11) story residential and retail building that will renovate three and incorporate (3) historic buildings into the project design (“**Project**”). The Project will have an FAR of 8.0 and approximately 164,912 square feet.

The building will include a maximum of approximately 164,000 square feet of gross floor area including a minimum of 2,800 square feet of ground floor retail. Four (4) levels of below grade parking are also proposed.

As a result of the existence of the historic buildings on the Property and the HPRB review of the Project, three (3) existing buildings will be retained and incorporated into the design of the Project. Tab 8 and Page 1C of Tab 7 also show pictures of such historic structures. The upper floor levels of the proposed new construction will be significantly setback from the facades of the three (3) existing buildings, allowing those structures deference along the streetscape while creating a higher density backdrop featuring similar yet updated design elements. The new portions of the Project will be comprised of glass, steel and brick in a manner that will accentuate and complement the existing historic structures.

The retail space will be located at the southeast corner of the Property along I Street. In addition, the residential amenity space, including a courtyard, will be located on the first floor. Most of the building core and backhouse service functions will be located along the western wall and northwest portion of the Property to maximize the enlivening of the streetscape of the Project. All parking and loading will take place from the Prather Court in Square 516.

V.

Relief Requested – Special Exception from the Roof Structure Setback Requirements

Pursuant to 11 DCMR §§ 770.6(b) and 771.1 (which references 11 DCMR §411), a roof structure is required to be set back from the exterior walls of a building by a distance equal to its height. In addition, under § 411.5, a roof structure must maintain a uniform height. However, the Project proposes a roof structure that does not setback from the rear exterior wall for the required 1:1 distance and is comprised of two (2) different heights, a “low penthouse” of nine (9) feet and a “high penthouse” of eighteen (18) feet six (6) inches. Such roof structure configuration is shown on page 3 of Tab 7. Thus, a special exception is required under § 411.11 from §§ 770.6(b) and 411.5.

VI.

Relief Requested – Variance from the Lot Occupancy Requirement

Pursuant to 11 DCMR § 774.1, a building with residential uses should not exceed 80% lot occupancy. However, due to the historic nature of the properties and the buildings that the Applicant is incorporating into the Project, three stories of the Project will exceed such 80% threshold. For the first three (3) floors, the project will have the following lot occupancies: 93.8% (first floor), 93.5% (second floor), and 93.3% (third floor). All other floors will comply with the lot occupancy requirement in the C-2-C Zone District. Accordingly, the Applicant requests a variance from § 774.1 to permit the construction of a structure that exceeds 80% lot occupancy.

VII.

Relief Requested – Variance from the Closed Court Requirement

Pursuant to 11 DCMR § 776.5, a closed court for a building devoted to residential uses must provide a minimum area of at least twice the square of the required width of the court based upon the height of the court, but not less than 350 square feet. The width of a residential court is required to be four (4) inches per foot of height. However, due to the historic nature of the properties and the buildings that the Applicant is incorporating into the Project, the Project will provide two (2) closed courts that will not satisfy such area requirements. Accordingly, the Applicant requests a variance from § 776.5 to permit the construction of a structure that provides two (2) smaller than required closed courts.

VIII.

Relief Requested – Variance from the Historic FAR Limitation Requirement

Pursuant to 11 DCMR § 1707.4, a building subject to the historic preservation regulations of the DD Overlay should not exceed 6.0 FAR. Although such lots will be combined through subdivision into one (1) record lot prior to submission for building permits, for the purposes of reviewing compliance with § 1707.4, the Applicant calculated the FAR for each of the three (3) historic lots. Such analysis reveals that the FAR for one of the historic lots exceeds 6.0. Although this relief is more technical than functional, the Applicant wanted to submit a complete application. Accordingly, the Applicant requests a variance from § 1707.4 to permit the construction of a structure that exceeds 6.0 FAR on Lot 876; the overall composite FAR for the Property complies with the Zoning Regulations.

IX.

Satisfaction of Standards for Special Exception Relief

In order to obtain special exception relief, the proposed special exceptions must be “in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps” and must not “tend to affect adversely” the “use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.” 11 DCMR § 3104.1. The relevant sections of the Zoning Regulations provide guidelines, which are described in more detail below, by which to evaluate whether the individual special exception requested herein should be granted.

A. The Requested Special Exception Relief is in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps

The general purpose and intent of the Zoning Regulations and Zoning Maps is to promote the public health, safety, morals, convenience, order, prosperity, and general welfare. *Id.* § 101.1. Specifically, the requested relief must take into consideration the character of the

respective districts as well as the suitability of each district for the uses permitted, and must be designed to encourage the stability of districts and of land values. Id. § 101.2.

Permitting the roof structure special exception is “in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps,” since there will be no perceptible loss of amenities (light, air, privacy, and off-street service functions) as a result of such special exception – given that the roof structure at that location would face the 30 foot-wide Prather Court. Further, the Property is located in a high-density commercial Zone District and in the CEA. The relief requested for the roof structure does nothing to compromise the public health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia.

In fact, as described below, the building efficiency and historically-deferential design allowed by the roof structure special exception actually achieves planning elements of the District of Columbia. The provision of the roof structure in its proposed location is the result of being limited in the ability to place the building’s elevator and building core. Since the historic structures are located along the south and eastern portions of the site, the only remaining place to efficiently locate such core would be against the western wall of the project and towards Prather Court. The historic review process resulted in such placement of the roof structure massing. Such requirement for relief is typical for historic renovations and additions to those projects of this nature. Essentially, the Applicant is asking the Board of Zoning Adjustment to exchange the setback and uniform height requirements for the roof structure to allow the design that has been approved through an extensive review process with HPRB and HPO staff.

Further, the lack of a uniform height for the penthouses actually “steps down” the roof structure as it approaches the exterior walls of the project. Therefore, the appearance of roof structure height is lessened. The main massing of the penthouse will be set back than the required 18.5 foot distance from any other exterior wall of the Building. Therefore, the only portion of the penthouse creating the adverse condition will face the northeast. As a result, the roof structure will not overshadow nor negatively impact a residential building or any pedestrians on any surrounding street, nor affect any other property’s light and air. Thus, the “intent and purpose” of the chapter as applied to commercial buildings in the C-2-C Zone District—to prevent unsightly penthouses from increasing the apparent height of the building—will be fulfilled.

B. The Requested Relief Will Not Adversely Affect the Use of Neighboring Property

Neither the reduced roof structure setback from the edge of the building or the lack of a uniform height will adversely affect neighboring properties. The penthouse will be no taller than 18.5 feet, which is permitted by the Zoning Regulations and will only encroach on the required roof structure setback in the northeast portion of the building. Granting this special exception will not adversely affect light and air or other conditions for adjacent structures, and thus will create no adverse effect on the “use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.” In addition, the non-uniform nature of the roof structure will reduce the appearance of roof structure height from adjacent properties and public space. Therefore, the non-compliant feature of the roof structure will not be visible from the large majority of the surrounding neighborhood or the surrounding streets and even where visible, the impact of such roof structure will be reduced.

The negative impact of the special exception is negligible, particularly in light of such an effort to augment the positive impact of other characteristics required by the Zoning Regulations. It is important to note that the Project actually advances the intent and goals of the Zone Plan for this area as defined in the Comprehensive Plan. The requested relief will not change the overall permitted density on the Property or the total size of development. The only effect will be that the Property will be developed with a roof structure with a slightly less than required setback and with two heights.

C. The Application Meets the Requirements for Special Exception Relief under §§ 3104.1 and 411.11 of the Zoning Regulations

Pursuant to 11 DCMR § 770.6(b), mechanical equipment, stairway, and elevator penthouses must be set back from all exterior walls a distance at least equal to its height above the roof. Pursuant to 11 DCMR § 411.5, a roof structure is required to be of uniform height. Under § 411.11 of the Zoning Regulations, the Board of Zoning Adjustment is authorized to grant a property relief from strict compliance with the Zoning Regulations requiring certain design characteristics for roof structures such as § 770.6(b). § 411.11 of the Zoning Regulations states:

Where impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable, the Board of Zoning Adjustment shall be empowered to approve, as a special exception under § 3104, the location, design, number, and all other aspects of such structure regulated under §§ 411.3 through 411.6, even if such structures do not meet the normal setback requirements of §§ 400.7, 530.4, 630.4, 770.6, 840.3, or 930.3, when applicable, and to approve the material of enclosing construction used if not in accordance with §§ 411.3 and 411.5; provided, that the intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.

As will be discussed below, the Applicant meets the standards set forth in § 411.11 of the Zoning Regulations.

1. Strict compliance with the uniform height of roof structure requirements would be impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area

The Property is affected by several factors that make the full compliance with the roof structure requirements impracticable.

The Project's location and layout, as well as the need to retain and incorporate three (3) of the existing buildings on the Property, make it impossible to set the penthouse back from the rooftop edges by the required amount on the exterior wall at the northwest of the Property. Further, HPRB and HPO have approved the design set forth by the Project since the building's massing sets backs significantly, in deference to the historic buildings, and therefore creates the need for the instant relief. The inclusion of the historic buildings constrains development on the Property in a manner that would not typically be required for projects of this nature. As a result of such shifting, the building's core is required to be shifted towards the west and northwest of the Property, where the building has its most substantial, but still narrow, width. Such area is the only portion of the Property on which to locate the roof structures.

2. Strict compliance with the uniform height of roof structure requirements would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable

There is no practical way to push the elevator roof structure further into the middle of the building without drastically altering the efficiency of the floor plates and significantly shifting the service core. Since the building will have an irregular shape, the development is already

significantly limited in its ability to deliver efficient floor plates. The Applicant requires as much contiguous residential space as possible. To strictly adhere to the rooftop setback requirements would force the core and service functions further into such space and unnecessarily detract from the Project.

The strict compliance with the 1:1 setback and uniform height requirements of the roof structure would also have negative consequences on the aesthetics of the Project. If the roof structure is required to setback from Prather Court, the entire roof structure would be shifted forward which would increase the sense of mass from I Street, NW. Similarly, if the two heights of the roof structure are not permitted, then the massing of the roof structure will appear greater than necessary both from I Street, NW and from Prather Court. The entire building design would be adversely affected.

3. The intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.

The requested relief would have no negative impact on the intent and purpose of the Zoning Regulations or the light and air of adjacent buildings, as described above.

X.

Satisfaction of the Standards for Variance Relief

The Applicant is seeking variance relief from 11 DCMR § 772.1 relating to lot occupancy requirements, from 11 DCMR § 776.4 relating to closed court area requirements, and from 11 DCMR § 1707.4 relating to FAR limitation of historic lots, in order to restore historic buildings and construct an addition to create a residential and retail building with below grade

parking. In order to satisfy the standards for area variance relief, the Applicant must satisfy a three part test:

- i. the property must be subject to an extraordinary or exceptional situation or condition;
- ii. a practical difficulty will result if the applicant is required to satisfy the strict application of the Zoning Regulations; and
- iii. no harm to the public or to the zone plan will occur as a result of the approval of the variance application.

See Gilmartin v. District of Columbia Bd. of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990).

The Applicant meets the test as follows:

A. An extraordinary or exceptional situation or condition is inherent to the Property

The Court of Appeals held in Clerics of Saint Viator v. District of Columbia Board of Zoning Adjustment, 320 A.2d. 291 (D.C. 1974), that the exceptional situation or condition standard goes to the property, not just the land; and that "... property generally includes the permanent structures existing on the land." Id. at 293–94 (citation omitted).

Further, it is not necessary that the uniqueness arise from a single situation or condition on the Property. Rather, it may arise from a "confluence of factors." Gilmartin v. D.C. Board of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990). For example, in French v. Board of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995), the Court of Appeals upheld the granting of a variance from 11 DCMR § 217.1 based on the Board's findings that several circumstances existed which, when considered together, made the property unique. In French, the circumstances cited by the Board were the site's "irregular shape, steeply sloping grade, the large size and physical configuration of the existing building, and its previous history of chancery use." Id. The Board determined "it is not reasonable to consider the building for single-family

purposes due to its size, configuration, and history, and that the variance will ensure the preservation of and continued use of the existing structure.” Id.

In Capitol Hill Restoration Society v. District of Columbia Board of Zoning Adjustment, 534 A.2d 939 (D.C. 1987), the Court also held that in order to demonstrate such an exceptional situation or condition, “the property owner must present proof that ‘the circumstances which create the hardship *uniquely* affect the *petitioner’s property*....’” Id. at 941–42 (quoting Taylor v. D.C. Bd. of Zoning Adj., 308 A.2d 230, 234 (D.C. 1973)) (emphasis in original). However, it is not necessary that the property be unreservedly unique. Rather, applicants must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood. In Gilmartin, the Court of Appeals rejected the idea that a property was not unique because the asserted exceptional condition was common to other types of properties in other zoning districts. Gilmartin, 579 A.2d. at 1167. The Court explained:

the rationale behind the uniqueness test is that difficulties that are common to or affect an entire neighborhood, or a substantial portion thereof, are properly addressed by seeking amendment of the regulation themselves from the Zoning Commission. If such problems were addressed through individual variances, the effect would be a *de facto* amendment of the zoning regulations by the BZA because requests by other owners similarly situated would have to be granted.... [...] The test follows from its rationale. To support a variance it is fundamental that the difficulties or hardships [be] due to unique circumstances peculiar to the applicant’s property and not to the general conditions in the neighborhood.

Id. at 1169 (internal quotations and citations omitted; alterations in original).

The Property meets the "exceptional conditions" element of the variance test. The exceptional condition is the result of the size, shape, location and configuration of the existing historic buildings on the Property. The Applicant is incorporating the three (3) existing historic buildings into the Project design in an approach that has been approved by HPRB and reviewed

by HPO. Retention of those historic buildings, which is desirable from a design, sustainability, and cultural point of view, means that the Applicant is inheriting a set of physical constraints that cannot be altered. Indeed, the Historic Preservation Office and HPRB requested that the entirety of fabric of the three (3) historic structures that are being included in the Property. Such existing structures have an effect on the ability to include compliant closed courts on the first two levels, compliant lot occupancy for the first three levels, and compliant historic FAR on Lot 876. Lot 876 is the largest lot comprising the Property and it contains an existing two (2) story building that occupies almost the entirety of the lot. For preservation reasons, the addition is pushed back from the front of Lot 876 resulting in an FAR on only that historic lot of greater than 6.0 FAR. Unlike a situation without any historic structures, the FAR cannot be uniformly shifted across the site, resulting in a unique situation.

The setback from the historic structures requires that the additions are constructed elsewhere on the lot. Therefore, the footprints of the new portions of building exist in areas of the lot beyond those footprints of the historic buildings. The result is that the additions are located in the only areas on the Property where they can be located, and the lot occupancy exceeds 80%. Plus, on the first floor, the Project includes ground floor retail which adds to the lot occupancy on that level, even though it is not residential.

The existence of and deference to the historic structures also results in an interior courtyard within the Project. Such courtyard creates two courts that do not comply with the required square footage for closed courts.

B. A practical difficulty exists in satisfying the strict application of the requirements of the Zoning Regulations

It is important to note how the DC Court of Appeals has defined “practical difficulty”. In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in Palmer v.

D.C. Bd. of Zoning Adjustment, 287 A. 2d 535, 542 (D.C. 1972) that, “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. [Footnote omitted.] The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case.” In area variances, applicants are not required to show “undue hardship but must satisfy only “the lower ‘practical difficulty’ standards.” Tyler v. D.C. Bd. of Zoning Adjustment, 606 A.2d 1362, 1365 (D.C. 1992), citing Gilmartin v. D.C. Bd. of Zoning Adjustment, 579 A.2d 1164, 1170 (D.C. 1990).

It is well settled that the BZA may consider” a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’ “. Gilmartin, 579 A.2d at 1171, citing Barbour v. D.C. Bd. of Zoning Adjustment, 358 A. 2d 326, 327 (D.C. 1976). See also, Tyler v. D.C. Bd. of Zoning Adjustment, 606 A.2d 1362, 1367 (D.C. 1992). Some other factors that the BZA may consider are “the weight of the burden of strict compliance”, “the severity of the variance(s) requested”, and “the effect the proposed variance(s) would have on the overall zone plan.” *Id.* Thus, to demonstrate practical difficulty, the Applicant must show that strict compliance with the regulations is burdensome, but not necessarily impossible. The Applicant, as demonstrated below, meets this standard.

Thus, to demonstrate practical difficulty, the Applicant must show that strict compliance with the regulations is burdensome, not impossible. In summary, the practical difficulty inherent in providing the required rear yard results from the unique and exceptional circumstances related to the existence of the history structures on the Property.

As mentioned, due to the configuration of the existing “historic” buildings, the provision of fully-compliant lot occupancy, closed court areas and historic FAR on Lot 876 would be unduly burdensome. It would not be possible to provide a fully-compliant lot occupancy without

severely restricting the amount of square footage allowable on the site. The additions are constructed on the portions of the Property where the historic footprints are not located. Therefore, since such portions of the historic structures already occupy a significant amount of the Property, the additions will cause the Project to have a lot occupancy greater than that allowed under the Zoning Regulations. In addition, the first floor includes retail square footage.

Similarly, the existence of the historic buildings creates a practical difficulty to furnish compliant closed courts. To provide a fully compliant court would require either the demolition of portions of the historic buildings, which is obviously an undesirable step, or pulling back the footprint for the addition to the west of or behind the rowhouses, which would create undesirable floor layouts and complications. Such alteration would make the upper floors an inefficient floor plan and less desirable for the ultimate users of such space.

Further, if the applicant filled in the courts, which would be allowable under the remaining allowable FAR on the Property after the Project, the residents and guests would not be able to benefit from such open green area. The provision of such space is an amenity for the residents and guests. Further, it offers a view of the rear of the historic townhouses that would otherwise be lost by inclusion into the addition. Such configuration of the courts was recommended through the historic review process at that location.

The configuration of the existing historic buildings also creates a practical difficulty for the Project to comply with the limitation for historic properties under Section 1707.4. Since the historic lots comprise so much of the Property, particularly the two-story structure on Lot 876, and the HPRB approval requires a setback from the rears of the existing townhouses, the limitation of 6.0 FAR for the historic lots is exceedingly difficult. The configuration of the historic structures dictates where the addition may be located. Due to the large area of the

historic building on Lot 876, the rear of Lot 876 is one of two places on the Property (besides Lot 815) where the Applicant may focus the mass of the Project.

Due to the exceptional and extraordinary situations and conditions of the Property, notably the fact that the Property contains existing “historic” structures, the Applicant is faced with a practical difficulty in creating a development that presents itself to the surrounding community as a single integrated and cohesive development yet defers to the “historic” structures and satisfies the zoning requirements.

C. No harm to the public good or to the zoning plan will occur as a result of the approval of the variance application

Relief can be granted without detriment to the public good. The Project will create a safer and more vibrant environment for the residents of the Mount Vernon Square neighborhood compared to the vacant, underutilized, and abandoned site that currently exists. The proposed development is consistent in scale and bulk with the zoning and Comprehensive Plan designation for the surrounding buildings and properties.

The Project furthers the goals and policies of the Zoning Regulations and Comprehensive Plan that focus on design in the DD Overlay. The Project is the type of well-designed residential building that was envisioned for this portion of the DD Overlay (and CEA) and that the Zoning Regulations are intending to foster. The Project both renovates and incorporates existing historic fabric in the DD Overlay.

Further, the variance related to the lot occupancy, closed courts, and historic FAR on Lot 876 will not harm the public good or Zone Plan. Rather, these variances will allow a more efficient reuse of the Property. It will also allow for the Project to retain the three (3) existing historic buildings and incorporate the design of such structures. Historic preservation,

particularly of the fabric on property such as this, is highly encouraged by the Comprehensive Plan.

Since the Property is located in the CEA, the noncompliance with the lot occupancy requirements will not create issues with adjacent residential properties, concerned about light and air. Rather, the Property is located in the densest portion of the City where such density and efficient use of the Property is encouraged. Similarly, the noncompliance with the close court area requirements will not cause any issues for any adjacent property. The non-compliance is located completely in the interior of the Project. Further, since such area is largely open on two sides, the light and air into the closed court would not be eliminated. The first floor of the project also includes retail space.

In addition, the FAR on the historic lot is a technical request under the Regulations. Since Lot 876 will be combined into the remainder of the Property by subdivision, the Project FAR complies with the Zoning Regulations as permitted under Chapter 17.

Therefore, for all the reasons stated above, the Project will not impair the intent, purpose and integrity of the Zone Plan, but will actually create positive benefits for the public good. The Applicant will work with Advisory Neighborhood Commission (“ANC”) 6C and any potentially-interested community parties to discuss the proposed Project and requested relief.

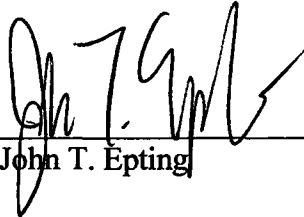
XI.

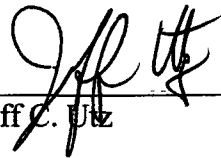
Conclusion

For all of the above reasons, the Applicant is entitled to special exception relief in this case.

Respectfully submitted,

GOULSTON & STORRS, P.C.

By: 
John T. Epting

By: 
Jeff C. Utz

August 10, 2011