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DONOHUE & STEARNS, PLC

July 17, 2012

Chairman Lloyd Jordan
District of Columbia Board of Zoning Adjustment
One Judiciary Square
441 4th Street NW, Suite 210S
Washington D.C., 20001

Re: Variance Application No. 18390 - Community Three Development, LLC

Chairman Jordan,

I am writing to provide you with my client, Community Three Development, LLC's ("Community Three"), pre-hearing submission. Attached you will find a pre-hearing statement, outline of testimony for Mr. Grant W. Epstein and the proposed ground floor plan which best depicts the proposed design incorporating the requested relief.

Also attached is a copy of the Form 145-Affidavit of Posting and a photograph of the sign advertising the District of Columbia Board of Zoning Appeals ("BZA") hearing on July 31, 2012 where Community Three's proposal will be considered.

Also, we have provided ANC 2C with a complete copy of this pre-hearing submission packet.

Please do not hesitate to contact me if I can provide anything additional or is if you have any questions concerning the attached submissions.

Thank you for your consideration of this matter,

Edward L. Donohue

Attached:

1. Pre-Hearing Statement
2. Outline of Testimony
3. Proposed Ground Floor Plan
4. Form 145-Affidavit of Posting

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18390
EXHIBIT NO. 25

Attachment 1: Pre-Hearing Statement

Before the District of Columbia Board of Zoning Adjustment
Pre-Hearing Statement of Community Three Development, LLC
Variance Application No. 18390
BZA Hearing date – July 31, 2012

Pursuant to §3113.8 of the District of Columbia Zoning Ordinance Community Three Development, LLC hereby reaffirms and clarifies the statements contained in its application for a variance from the drive aisle width and number of compact parking spaces specified in §2215.2 and § 2117.5 of the Zoning Ordinance respectively.

As detailed in the Statement of Justification submitted as part of the variance application Community Three is proposing to construct a twenty-two (22) dwelling unit, four-story residential building at 435 R Street NW Washington, DC 20001 in the C-2-A Zone on what are currently three (3) separate lots totaling 5,973 square feet. Two (2) of the lots are vacant while the third houses a now defunct dry-cleaner which will be removed upon commencement of the proposed project.

Exceptional Condition/ Practical Difficulty

The detrimental impact of the operation of the dry-cleaning business on the soil on the three (3) parcels has been confirmed by Icor, an environmental consultant. Soil remediation measures including, but not limited to removal and backfill and permanent ventilation techniques will be necessary to prepare the property for the proposed residential use. It is this exceptional condition, unique to the three (3) subject parcels, that imposes upon Community Three the practical difficulty of transforming the property into a healthy and habitable space appropriate for residential use. This practical difficulty, in turn, warrants the Board of Zoning Adjustment's ("BZA") discretion in granting Community Three's variance request pursuant to § 8 of the Zoning Act¹.

Moreover, the relief requested is the absolute minimum required to render the proposed project economically feasible and practical. The width of the combined parcel is approximately fifty-six (56) feet, and as a result, can accommodate a total of eleven (11) parking spaces (nine (9) legal (9' x 19') and two (2) compact (8' x 16')) from the alley side only with a reduction in drive aisle width and provision for compact spaces. The configuration maximizes the utilization of the space of the parcel and provides the greatest number of parking spaces possible so as to approximate as closely as possible the requirements of §2101.1's parking schedule. The reduction in drive aisle by 2.8 feet and the addition of two (2) compact spaces in a lot with less than twenty-five (25) total spaces is more than outweighed by: (1) the fact that such requests will allow for the satisfaction of the requirements of §2101's parking schedule (11=1 space per 2 dwelling units) and (2) the transformation of a vacant parcel into a contributing and useful element of this Northwest community.

The three (3) prong test established by §8 of the Zoning Act² and upheld by the District's courts is clearly met by the present application. As noted in the previously submitted Statement of Justification, the test comprises the following three elements:

¹ D.C. Official Code § 6-41.07(g)(3)(2001) (formerly codified at D.C. Code § 5-424 (g)(3) (1994 Repl.))

² D.C. Official Code § 6-41.07(g)(3)(2001) (formerly codified at D.C. Code § 5-424 (g)(3) (1994 Repl.))

- I. The property is unique because of some physical aspect or other extraordinary or exceptional situation or condition inherent in the property.
- II. The strict application of the zoning regulations will cause undue hardship or practical difficulty to the applicant.
- III. Granting the variance will do no harm to the public good or to the zone plan.

The Applicant's Statement of Justification expounded upon the case law precedent governing area variances. To summarize, the seminal case of Palmer v. D.C. Bd. of Zoning Adjustment articulates that an applicant requesting an area variance must demonstrate practical difficulties uniquely attributable to the specific parcel and not to the area as a whole. Palmer v. D.C. Bd. of Zoning Adjustment, 287 A.2d 535 (D.C. 1972). The Court in Gilmartin v. District of Columbia Bd. of Zoning Adjustment further explains that the requisite uniqueness can result from a "confluence of factors" as in the present case where the size of the parcel and soil contamination limit the parcel's development and design options as evinced by its abandoned status for the past several decades.

In turning to the third prong, the local Advisory Neighborhood Commission provides the best gauge for determining the proposal's potential impact on the surrounding community or its capacity for harm. When Community Three presented this application to ANC 2C on June 6, 2012, it received unanimous support. The area will be happy to see the vacant lots put to a contributive and productive use and to improve the curb appeal of the 400 block of R Street. The present application therefore satisfies the third prong of the test.

In its discussion of the factors available to the BZA in considering an area variance request, the Gilmartin Court listed weight of the burden of strict compliance, the severity of the variance requested and the effect of the proposed variance on the overall zone plan. Gilmartin v. District of Columbia Bd. of Zoning Adjustment, 579 A.2d 1164 at 1170 (D.C. 1990). Taking these in order, strict compliance would negate the possibility of the proposed development, the variance requested is small and provides the total number of spaces required and the project will have no detrimental effect on the overall zone plan – in fact, it is in keeping with the increasingly residential nature of this transit-rich section of Northwest DC. The Court excludes from this list prior knowledge of the condition and conditions arising after 1958. Furthermore, as the Gilmartin Court noted in their support of a BZA ruling, "It is possible that a factor underlying BZA's decision in the instant case was that the requested variances were de minimis in nature. The one foot difference in the size of the parking space is almost negligible, especially where, as here, the Board determined that the grant of the variance would not harm the public good." Gilmartin v. District of Columbia Bd. of Zoning Adjustment, 579 A.2d 1164 at 1171 (D.C. 1990) (Emphasis added).

Both the Palmer and Gilmartin Courts agree that, "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." Gilmartin v. District of Columbia Bd. of Zoning Adjustment, 579 A.2d 1164 at 1171 (D.C. 1990). The Gilmartin Court explicitly states that "increased expense and inconvenience to the applicants for a variance are among the proper factors for BZA's consideration." *Id* (Emphasis added). In Appeal No. 9866, Case No. 16931, Case No. 17431 and Case No. 1692 the BZA has found soil and subsurface conditions and the resulting financial encumbrance to be sufficient grounds for both area and use variances alike.

Conclusion

Community Three has developed a design that, like the one foot discrepancy noted above, requires the smallest possible deviation from the standards set forth in the Zoning Ordinance. Community Three has met the established three-prong test as delineated by the relevant case law and as applied by the BZA in similar cases. Finally, the benefit of a productive use, economic infusion and aesthetic improvement far outweigh impact of the 2.8 foot difference in drive-aisle width and characterization of two (2) parking spaces. In addition, Community Three has reached out to the District of Columbia Department of Transportation (“DDOT”) and committed to providing a minimum of ten (10) covered and easily accessible bicycle spaces on the site. Residents will also receive a one-time, complimentary \$100.⁰⁰ WMATA SmarTrip® fare card as well as a one-time annual membership and registration fee subsidy for participation in carsharing for each residential unit upon move-in, or a one-time annual membership to Capital Bikeshare.

For the above-noted reasons, we believe that the Board should be able to find that this request for a variance falls within the scope of § 8 of the Zoning Act, D.C. Official Code § 6-41.07(g)(3)(2001) and respectfully request that the Board grant Community Three’s variance application.

Attachment 2: Outline of Testimony

Outline of Testimony
For the July 31, 2012 Hearing before the District of Columbia Board of Zoning Appeals
Variance Application – Community Three Development, LLC

At the July 31, 2012 hearing before the District of Columbia Board of Zoning Appeals (“BZA”) I only plan to present the testimony of one witness, Mr. Grant W. Epstein.

Mr. Epstein is the President of Community Three Development, LLC (“Community Three”) and has served as project manager and lead designer for over 40,000 homes and 250 million square feet of commercial space within numerous traditional neighborhoods, towns, and cities. His work includes specializations in urban regulations, transit-oriented-development, mixed-income housing, and military family housing. Throughout his career, Mr. Epstein has also facilitated successful design, rezoning, and implementation of highly-controversial urban revitalization efforts and been instrumental in various Smart Growth initiatives. Mr. Epstein received a Bachelor of Architecture in 1999 from the University of Notre Dame. He also received a Master in Business Administration in 2007 from The McDonough School of Business at Georgetown University. Mr. Epstein is a registered architect and is licensed to practice in Washington, D.C.

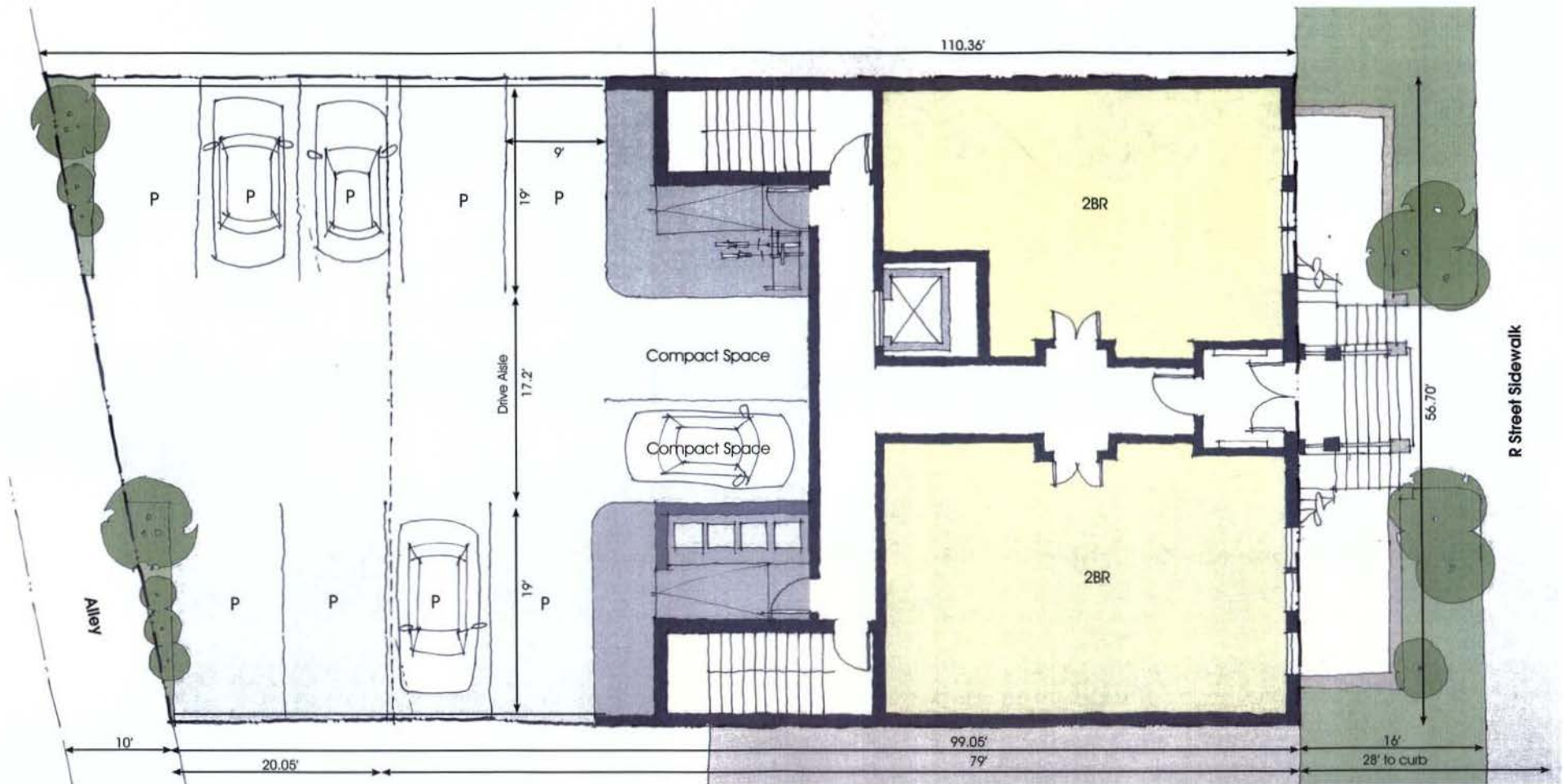
Mr. Epstein’s testimony will cover the following points:

- I. The Property – 435 R Street NW
 - a. 5,973 sq. ft.
 - b. Square 508; Lots 52, 53 & 66
 - c. C-2-A Zone
 - d. 10’-wide alley to the rear of all 3 lots
 - e. Prior use: vacant/ dry cleaners (in operation for 50 years; closed for past 8)
- II. Proposed Use
 - a. 22-unit, 4-story, multi-family residential building
- III. Relief Requested
 - a. Area variance from §2215.2 to allow compact spaces in a lot less than 25 parking spaces
 - i. 9 legal & 2 compact
 - b. Area variance from the drive aisle width of 20’ mandated by § 2117.5
 - i. Drive aisle will measure 17.2’ in width – 2.8’ discrepancy
 - c. §2101’s schedule calls for 11 total spaces (1 per 2 dwelling units) and will be met
- IV. Burden
 - a. Section 8 of the Zoning Act, D.C. Official Code § 6-41.07(g)(3)(2001) – 3-Prong Test
 - i. The property is unique because of some physical aspect or other extraordinary or exceptional situation or condition inherent in the property.
 1. Size of parcel
 2. Soil conditions

Outline of Testimony
For the July 31, 2012 Hearing before the District of Columbia Board of Zoning Appeals
Variance Application – Community Three Development, LLC

- a. Icor Limited – Environmental consultants confirmed that chemical leakage attributable to the operation of the dry cleaning business will necessitate expensive and technically sophisticated soil remediation measures (i.e. removal and backfill) to prepare the property for residential use.
- ii. The strict application of the zoning regulations will cause undue hardship or practical difficulty to the applicant.
 - 1. Parcel is 56' wide – The relief requested is the minimum necessary to allow for the provision of the requisite 11 spaces per §2101.
 - 2. Without a variance, the development of this site is impractical, cost-prohibitive, and burdensome given the configuration, orientation, and environmental constraints of this specific parcel.
- iii. Granting the variance will do no harm to the public good or to the zone plan.
 - 1. Wednesday, June 6, 2012, Community Three received unanimous support from ANC 2C.
 - 2. Community Three has also presented the proposal to the East Central Civic Association.
 - 3. Existence of other condominium developments in the neighborhood place the proposal squarely within the general intent and purpose of the District's Zoning Regulations and Plan for this area.

Attachment 3: Proposed Ground Floor Plan



Existing Parking: 0 Spaces
 Required Parking Spaces: 11 Spaces (1 per 2 dwellings)¹
 Proposed Parking Spaces: 11 Spaces (1 per 2 dwellings)



¹According to DC Zoning Ordinance, Section 2101, one (1) parking space is required for every two (2) dwelling units in an R4 zone. A total of 22 dwelling units are proposed, resulting in a requirement of 11 total parking spaces.

Proposed Ground Floor Plan

© Community Three Development, LLC • 515 Eighth Street, SE • Second Floor • Washington, DC 20003 • 202.543.8002

435 R Street, NW • Washington, DC • 20001

May 21st, 2012

Attachment 4: Form 145-Affidavit of Posting



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

**FORM 145 – AFFIDAVIT OF POSTING**

**Before completing this form, please review the instructions on the reverse side.
Print or type all information unless otherwise indicated.**

(Name of person posting the property)
Grant Epstein

, being first duly sworn, do hereby depose and say that:

On	July 12th, 2012 ^(date)	at	3:00pm ^(time)	I caused	one (1) ^(number of notices)
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Zoning Sign(s) furnished by the Office of Zoning to be posted on private property known as:

435 R Street NW Washington, DC 20001

In plain view of the public on the following street frontages:

I caused to be taken,	(no. of photos) one (1)	photograph(s), attached hereto, of the Zoning Sign(s) in place which fairly depict each
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Zoning Sign as seen by the public. The photographs are numbered and correspond to the following street frontages:

[illegible]

I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this form is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both.
(D.C. Official Code § 22 2405)

Date: July 13th, 2012

Signature:

month) (year) (seal)

Subscribed and sworn to before me this

(date)		(month)	(year)
13 th	day of	July	2012

{sea!}

(Signature)

MWANGI GATHINJI

Notary Public, D.C.

My commission expires on:

Nov 30TH 2014 (date)

