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November 1, 2012

VIA HAND DELIVERY

Lloyd Jordan, Chairperson  
Board of Zoning Adjustment  
441 4<sup>th</sup> Street, N.W., Suite 210S  
Washington, DC 20001

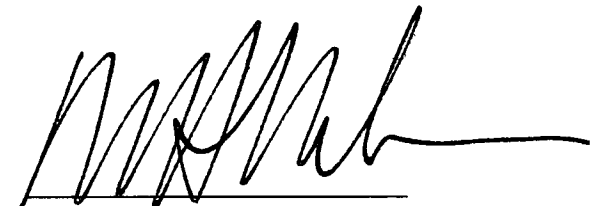
**Re: Application No. 18448 – Supplemental Statement of the Applicant**

Honorable Members of the Board:

The Applicant has retained our firm, Griffin & Murphy, LLP, to represent it in connection with the above stated application. Enclosed please find one original and twenty copies of the Applicant's supplemental Statement of the Applicant in support of Application No. 18448 for a variance from §401.3 regarding lot area to allow the Applicant to convert a two-story, 11-bedroom rooming house to a three-story, four-unit apartment building, in the R-4 District at premises 1221 Otis Place, NW (Square 2829, Lot 0057).

Thank you for your attention to this application.

Sincerely,  
GRIFFIN & MURPHY, LLP



By: Meridith H. Moldenhauer, Esq.

BOARD OF ZONING ADJUSTMENT  
District of Columbia

CASE NO. 18448

EXHIBIT NO. 25

Board of Zoning Adjustment  
District of Columbia  
CASE NO. 18448  
EXHIBIT NO. 25

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

**APPLICATION OF  
3579 WARDER STREET, LLC**

**BZA APPLICATION NO. 18448  
HEARING DATE: November 27, 2012  
ANC 1A**

**STATEMENT OF THE APPLICANT**

**I. NATURE OF RELIEF SOUGHT**

This statement is submitted on behalf of 3579 Warder Street, LLC (the “Applicant”), the owner of property located at 1221 Otis Place, N.W., Washington, DC, 20010, Lot 0057 in Square 2829 (the “Property”) in support of its application for an area variance from the lot area requirement under §401.3 regarding lot area to convert a two-story, 11 bedroom rooming house to a three-story, four-unit apartment building in the R-4 District at the Property.

**II. JURISDICTION OF THE BOARD**

The Board of Zoning Adjustment (the “Board” or “BZA”) has jurisdiction to grant the variance relief requested herein pursuant to §3103.2 of the Zoning Regulations.

**III. EXHIBITS IN SUPPORT OF THE APPLICATION**

Exhibit A: Portion of the Baist Atlas Map plats showing the Property;

Exhibit B: Portion of the Zoning Map showing the Property;

Exhibit C: Certificate of Occupancy;

Exhibit D: Revised Self-Certification Form;

Exhibit E: Photographs of the Surrounding Community;

Exhibit F: Profit and Loss Analysis;

Exhibit G: BZA Case No. 18115 Excerpt, Transcript p22-24;

Exhibit H: Letters of Support from Neighbors;

Exhibit I: Letter of Authorization; and

Exhibit J: Outline of Testimony.

#### **IV. BACKGROUND**

##### **A. Background Information Regarding the Property**

The Property, also known as Lot 57 in Square 2829, contains approximately 1,800 square feet of land area. Square 2829 is bounded by 13<sup>th</sup> Street NW on the west, Spring Road NW on the north, 11<sup>th</sup> Street NW on the east and Otis Place NW on the south (see Baist Atlas plat, attached hereto as Exhibit A). The Property is located within the R-4 District (see Zoning Map, attached hereto as Exhibit B), and is located approximately 0.4 miles from the Georgia Avenue Petworth Metrorail entrance and approximately 0.5 miles from the Colombia Heights Metrorail entrance. The Property is presently improved with an end-unit, 11-bedroom rooming house (see Certificate of Occupancy, attached hereto as Exhibit C) built in 1909. The existing building on the Property has an FAR of 1.61. The Property has approximately 18 feet of frontage along Otis Place NW. The Property is not located within any historic district, and the existing building on the Property is not listed on the D.C. Inventory of Historic Sites.

The initial submission for this Application included a Self-Certification Form that referenced a side yard along the western property line of the Property as an existing nonconformity that would remain unchanged. However, what was initially believed to be a side yard is, in fact, not part of the Property. The structure extends from property line to property line with no side yard. Thus, the structure is a row dwelling and has no side yard requirement. There is no existing nonconformity at the Property. A revised Self-Certification Form is included as an attachment to this supplemental submission (see Revised Self-Certification Form, attached hereto as Exhibit D).

**B. Description of the Improvements in the Surrounding Area**

The Property is located in a large R-4 District that is nestled between a C-2-A District along 14<sup>th</sup> Street NW to the west, a C-3-A District along Georgia Avenue NW to the east, and a C-2-A District along 11<sup>th</sup> Street NW to the south. Across Otis Place to the south are two-and-half story and three-story detached, semi-detached and row dwellings. East along Otis Place are two-and-one-half story row dwellings. West across 13<sup>th</sup> Street is a two-story detached dwelling and a series of three-and-one-half-story row dwellings. Within a ½ mile walk is the DC USA Shopping Center as well as a number of apartment buildings including the Highland Park Apartments, the Park Triangle Apartments, the Allegro Apartments, and others (see Nearby Apartments and Surrounding Community, attached hereto as Exhibit E).

**C. Description of the Traffic Conditions and Mass Transit Options in the Surrounding Area**

The Property is well serviced by a number of public transportation facilities and services including Metrobus routes, Capital Bikeshare, Metro, and Zipcar. Along 14<sup>th</sup> Street, Metrobus routes include 52, 53, and 54. A Metrobus stop is located on the northwest corner of the intersection between 14<sup>th</sup> Street NW and Otis Place NW. Capital Bikeshare Stations are located at 14<sup>th</sup> Street NW & Spring Road NW and Park Road & Holmead Place NW, all of which are within walking distance of the Property. Moreover, the Property is located approximately 0.5 miles from the entrance to the Columbia Heights Metrorail station and 0.4 miles from the entrance to the Georgia Avenue Petworth Metrorail station. Over 10 Zipcar spaces are located within 0.5 miles, including near the intersection of 11<sup>th</sup> Street & Otis Street and the intersection of 11<sup>th</sup> Street & Monroe Street.

**D. Description of the Proposed Development**

The Applicant proposes to convert a two-story plus cellar, 11-bedroom rooming house to a three-story plus cellar, four-unit apartment building. The existing building is an end-unit structure that abuts a string of rowhouses along Otis Place to the east of the Property. The western property line abuts the rear

yards of five rowhouses with frontage along 13<sup>th</sup> Street NW. The rear yards of the 13<sup>th</sup> Street rowhouses are separated by a foot path or easement that abuts the western property line of the Property. The proposed structure will include 4 residential units, one on each story and one in the cellar. Each unit will have 2 bedrooms and 1½ bathrooms. The structure will have a height of approximately 39 feet and the Property will include 2 parking spaces.

**E. NATURE OF RELIEF SOUGHT AND STANDARD OF REVIEW**

Variance relief is required from §401.3 regarding lot area. The Applicant has requested a lot area variance from §401.3 rather than §401.11 because §401.11 does not apply. Section 401.11 addresses renovation or expansion of an existing apartment house in an R-4 District (see Zoning Commission Regular Meeting December 11, 2006, p 9-11). The proposed project is not a renovation or expansion of an *existing* apartment building thus §401.11 does not apply. Accordingly, the Applicant has submitted a request for relief solely under §401.3.

Under D.C. Code §6-641.07(g)(3) and 11 DCMR §3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

- (1) The property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;
- (2) The owner would encounter practical difficulties if the zoning regulations were strictly applied; and
- (3) The variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

*See French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also*,

*Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

Applicants for an area variance need to demonstrate that they will encounter “practical difficulties” in the development of the property if the variance is not granted. *See Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540-41 (D.C. 1972)(noting that “area variances have been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden”). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be “unnecessarily burdensome.” *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990). As discussed below, and as will be further explained at the public hearing, all three prongs of the area variance test are met in this Application.

**F. THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF**

**1. The Property is Unusual Because of its Size, Shape or Topography and is Affected by an Exception Situation or Condition**

The phrase “exceptional situation or condition” in the above-quoted variance test applies not only to the land, but also to the existence and configuration of a building on the land. *See Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation may arise from a confluence of factors which affect a single property. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

In this case the Property is affected by an exceptional situation and condition as a result of a confluence of the following factors: (1) the deteriorated condition of the existing structure and (2) prior use as an 11-room boarding house. The existing structure, in a deteriorated condition due to the prior owners’ failure to maintain the premises, requires significant investment to bring this structure up to code and to construct marketable units. Second, the existing structure’s prior use as an 11-bedroom rooming house leaves the existing structure with a number of unnecessary walls and an unconventional layout.

These unusual circumstances make the structure inefficient if used as anything other than a rooming house, a use which is presently obsolete. As a result, the structure must be renovated and reconfigured at great expense to the Applicant. The likely alternative if no variance is granted is that the Property will continue to lie vacant and continue to physically deteriorate. The combination of these factors results in an extraordinary and exceptional circumstance and condition at the Property.

**2. Strict Application of the Zoning Regulations With Respect to Lot Area Would Result in Practical Difficulty to the Owner**

Strict application of the zoning regulations with respect to lot area would result in practical difficulty to the Applicant. Under §401.3, the conversion of a building or structure to an apartment house in the R-4 district is a permitted use, but requires a minimum of 900 square feet of lot area per apartment unit. Thus, only two units are permitted as a matter of right. In light of the extensive renovations required, a four-unit structure is required to be a financially feasible project. Thus, as demonstrated in more detail below, strict application of the zoning regulations, which would prevent any structure with more than two units, constitutes a practical difficulty for the Applicant.

The circumstances of this case are precisely what the variance and BZA process was designed to address. As the D.C. Court of Appeals has noted, the variance procedure “is designed to provide relief from the strict letter of the regulations, protect zoning legislation from constitutional attack, alleviate an unjust invasion of property rights and **prevent usable land from remaining idle.**” *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972)(emphasis added). The requested relief will do just that. The Court of Appeals has repeatedly held that “economic use of property may be properly considered as a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty in area variance cases.” *Tyler, et. al. v. District of Columbia Bd. of Zoning Adjustment*, 606 A.2d 1362 (D.C. 1992)(internal citations removed)(*Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990)(Reiterating in the context of an area variance that

“increased expense and inconvenience to applicants for a variance are among the proper factors for BZA’s consideration.”).

In *Association for Preservation of 1700 Block of N St., N.W. & Vicinity v. District of Columbia Bd. of Zoning Adjustment*, the Court confirmed that at a given point economic harm becomes sufficient, when coupled with a significant limitation on the utility of the existing structure or property, to satisfy the variance standard. 384 A.2d 674 (D.C. 1978)(Finding practical difficulty where a YMCA *could* build a structure that complied with off-street parking requirements by reducing its size and programming but was not economically feasible or cost-effective). In *Wolf v. District of Columbia Bd. of Zoning Adjustment*, the Court of Appeals upheld a Board decision granting an area variance to permit conversion to a three-unit rental apartment where “marketability” of the property would otherwise be “unfeasible” and investment would yield loss rather than profit. 397 A.2d 936 (D.C. 1979)(Upholding approval of a lot area variance for conversion of a two-family dwelling to a three-unit apartment building where a two-family dwelling was not marketable and monthly expenses would out pace annual rental income). The Board of Zoning Adjustment has granted lot area variances from §401.3 and §401.11 based on economic feasibility grounds on a number of occasions.

In this instance, it is not simply that having two units, as required by the lot area requirement, or three units would produce less of a profit for the Applicant. Rather, *any* renovation of the existing structure that results in income from the sale of only two or three units would result in an economically infeasible project (see Profit and Loss Analysis, attached hereto as Exhibit F). As identified by Zoning Commissioner Turbull in a similar case, renovating a rooming house into a viable project requires a “significant amount of renovation” (see BZA Case No. 18115 Excerpt, Transcript p22-24, attached hereto as Exhibit G). Thus, a practical difficulty exists because the existing structure requires such a large investment that construction and renovation becomes feasible only with the sale of four units.

**3. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zoning Plan**

There will be no substantial detriment to the public good and no substantial impairment to the intent, purpose, and integrity of the zone plan by approving the zoning relief. First, by converting this vacant property to a beneficial, residential use, the public will benefit from the improvement over the existing structure's state of disrepair. Second, the lot area requirement of 900 square feet of lot area for every unit is intended to limit density. This project decreases density by converting a boarding house with a Certificate of Occupancy for 11 rooms, attached hereto as Exhibit C, to a four-unit apartment building. Finally, the proposed third floor, permitted as a matter-of-right, will provide needed privacy to the rowhouses along Otis Place from newly constructed balconies built at the corner of Otis Place and 13<sup>th</sup> Street that allow the residents of those structures to peer onto the roofs and rear yards of the string of rowhouses along Otis Place. The proposed project adequately balances the Zoning Regulations' goals of protecting existing properties in the neighborhood and modernizing a vacant, underutilized property. The Applicant conducted extensive outreach to the neighboring property owners. The Applicant obtained 11 letters of support from residents in the local area (see Letters of Support from Neighbors, attached hereto as Exhibit H) and is scheduled to attend the ANC 1A meeting on November 14, 2012.

**G. WITNESSES**

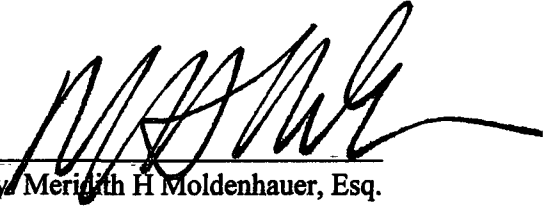
- a. Mohammad Pishvaeian, on behalf of the Applicant
- b. James Killette, Architect on behalf of Killette and Associates
- c. Real Estate Agent, Alan Dalton on behalf of RE/MAX Allegiance

**H. CONCLUSION**

For the reasons stated above, the requested relief meets the applicable standards for variance relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests that the Board grant the application.

Respectfully submitted,

GRIFFIN & MURPHY, LLP



By Merigith H. Moldenhauer, Esq.