BEFORE THE DISTRICT OF COLOMBIA
BOARD OF ZONING ADJUSTMENT

APPLICATION OF
2914 SHERMAN, LLC

2914 SHERMAN AVENUE NW
ANC 1A

STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of 2914 Sherman, LLC (the "Applicant"), the owner of property located at 2914 Sherman Avenue NW, Lot 807 in Square 2852 (the "Property"), in support of its application for variance relief, pursuant to 11 DCMR §3103.2, from (i) the nonconforming structure requirements (§2001.3) regarding lot occupancy (§403.2), open court (§406.1), and lot area (§401.11) requirements; (ii) the story requirement (§400.1); and (iii) the parking requirement (§2101.1) to allow the Applicant to convert a three-story, 18-unit apartment building to a four-story, 20-unit apartment building in the R-4 District at premises 2914 Sherman Avenue NW, Washington DC.

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. BACKGROUND

A. Background Information Regarding the Property

The Property, also known as Lot 807 in Square 2852, contains approximately 6,000 square feet of land area and is located in Northwest Washington D.C. Square 2852 is bounded by Sherman Avenue NW on the east, Harvard Street NW on the south, 11th Street NW on the west, and Colombia Road NW on the north (see Baist Atlas Map, attached hereto as Tab 8). Square 2852 is split between an R-4 District, encompassing residential properties on the northern portion of the square and a C-2-A District, encompassing commercial properties on the southern portion. The lot immediately to the south is the

Pepco Substation. To the southwest is the Concord Alliance of Men. In addition, the Property that is the subject of this Application is unconventional relative to the more traditional rowhouses in the Square. The Property is located within the R-4 District (see Zoning Map, attached hereto as Tab 9), and is located approximately 0.4 miles from the Colombia Heights Metrorail entrance. The Property consists of eighteen apartment units spread throughout three stories. The Property has approximately 50 feet of frontage along Sherman Avenue 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.

B. Description of the Improvements in the Surrounding Area

The Property is located in a large R-4 District. This R-4 District is bounded roughly by 14th Street to the west, Georgia Avenue to the east, Cardozo High School to the south, and Spring Road to the north. Square 2852 is located in the Pleasant Plains Community, which extends from Florida Avenue on the south, Spring Road on the north, Georgia Avenue on the east and 14th Street on the west. The Potomac Electric Power Station, a gas station, market, café, and other commercial entities are located in a small C-2-A District to the south of the Property.

The Property is situated in the Mid-City Area portion of the District of Columbia Comprehensive Plan. Mid-City Area Element §1.1, Guiding Growth and Neighborhood Conservation, has a number of specific recommendations regarding future development in the area. Section 2008.2 supports retaining and reinforcing the historic character of Mid-City neighborhoods, including its older apartment houses. Section 2008.4 encourages redevelopment and the **rehabilitation of abandoned structures** within the community. DDOT's Sherman Avenue Streetscape Project intends to "[r]eshape Sherman Avenue into a residential street and improve safety for pedestrians, bicyclists and motorists" as well as upgrade DC Water lines, improve drainage, and provide new landscaping, lighting, and other aesthetic improvements (see DDOT Press Release, attached hereto as Tab 10).

The Property is also located a block west of the area covered in the December 2004 Georgia Avenue – Petworth Metro Station Area and Corridor Plan Revitalization Strategy (referred to as "Revitalization Plan" herein) issued by the District of Columbia Office of Planning regarding properties with frontage along the Georgia Avenue Corridor and in close proximity to the Georgia Avenue-Petworth Metro Station. Part of the revitalization strategy is encouraging property owners and private investors to **rehabilitate vacant or dilapidated residential properties**. The Revitalization Plan expresses concerns regarding vacant and abandoned properties in the study area including blight, crime, neighborhood instability, decreasing property values, high municipal costs, lost tax revenues for the city, and susceptibility to fire. The Revitalization Plan specifically recommends "encourage[ing] and assist[ing] development entities to target blocks with high vacancies and underutilized land, to foster property assemblage and acquisition for redevelopment (Revitalization Plan, p23)." The Revitalization Plan, DDOT's Streetscape Project and the Comprehensive Plan all focus on vacancies and dilapidated buildings just like the Property here. The proposed project will revitalize a long vacant building on a target block and help effectuate the District's stated goals along Sherman Avenue.

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, Zipcar, and Car2Go. The Metrobus routes along Sherman Avenue NW include routes 63, H1, H2, H3 and H4. A Metrobus stop is located on the northeast corner of the intersection of Sherman Avenue NW and Colombia Road NW. Also within walking distance of the Property are Capital Bikeshare stations including stations located at the intersections of 11th Street and Kenyon Street, 14th Street and Harvard Street, and Colombia Road and Georgia Avenue. Moreover, the Property is located approximately 0.4 miles from the entrance to the Colombia Heights Metrorail station and 0.7 miles from the entrance to the Georgia Avenue Petworth Metrorail station. Car-sharing continues to expand in the nearby area. Zipcar spaces are located nearby including at Howard University (2704 Georgia Avenue NW) and the Colombia Heights Metrorail station (2900 14th Street

NW). Another local car-sharing program, Car2Go, has recently reported that the use of the company's car-sharing service had reached over 6,000 trips per week.

D. Description of the Proposed Development

As shown on the architectural plans (Architectural Plans, attached hereto as Tab 11), the Applicant proposes to convert a three-story, 18-unit apartment to a four-story, 20-unit apartment through construction of an additional floor on top of the existing three-story, multifamily building. The project, as proposed, will rehabilitate a vacant, unused property. The existing structure, built in 1925, does not conform to the lot occupancy, court, rear yard, or lot area requirements. The proposed project does not change the existing footprint of the structure. The building will have a height of 40 feet,[1] permitted as a matter of right. Each of the four floors will have five units. The first floor will have 2 one-bedroom apartments and 3 two-bedroom apartments. The second, third, and fourth floors will each have 1 one-bedroom apartment and 4 two-bedroom apartments. It is our understanding that prior to the Applicant's purchase, the building had been vacant, boarded up and unused for more than 5 years. The Property was listed on November 14, 2007 according to MRIS. The existing building is in a deplorable condition due to extensive deferred maintenance. Due to the age of the building, the existing floor plan is outdated and inefficient. The proposed project seeks to completely renovate the existing structure, returning it to a beneficial use and allowing it to function as an asset to the community rather than a detriment.

IV. NATURE OF RELIEF SOUGHT AND STANDARD OF REVIEW

Variance relief is required from (i) the nonconforming structure requirements under §2001.3 regarding lot occupancy (§403.2), open court (§406.1), and lot area (§401.11) requirements; (ii) the story requirement (§400.1); and (iii) parking requirements (§2101.1). No variance relief is sought for the existing nonconformity of the rear yard because that nonconformity is not being expanded. Under D.C.

[1] In those districts in which the height of the building is limited to forty feet, the height of the building may be measured from the finished grade level at the middle of the front of the building to the ceiling of the top story. 11 DCMR §199.1.

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 Board of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (*quoting Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also, Capitol Hill Restoration Society, Inc. v. District of Columbia Board 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.

V. THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

A. 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 Colubmia 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).

The Property is unusual and affected by an exceptional situation and condition as a result of a confluence of the following factors: (1) the large size of the lot, (2) the nonconformities of the existing structure, (3) the inefficient layout of the existing structure, and (4) the physically deteriorated condition of the building. First, the existing structure on the Property is unusually large. At 6000 square feet, the lot is one of the largest in a neighborhood made up primarily of rowhouses on far smaller lots. The large lot is unique in contrast to the long and narrow rowhouse lots in the area. Second, the existing structure is a nonconforming structure. Existing nonconformities with respect to lot occupancy, rear yard, and open courts limit the ability to expand the footprint of the structure. Thus, expansion must occur through the construction of an additional story rather than expanding the building to the rear or side. The existing structure is also nonconforming with respect to lot area. Third, the existing structure must be reconfigured to achieve an efficient layout, unit size, and design. The existing structure contains a double loaded corridor in the middle of the central hallway with dwelling units on either side. Proper renovation requires significant investment in modifying and modernizing the existing layout.

The physical building has long been deprived of maintenance as evidenced by the deteriorated condition and significant renovation investment necessary to return the Property to a marketable condition. The D.C. Court of Appeals has noted that 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 Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The zoning relief requested in this case will help prevent this Property and existing structure, which has been vacant for five years, from remaining idle and from serving as a fire hazard, structural hazard, and blight on the neighborhood.

In sum, the large lot size and the nonconformity of the existing structure impose a number of significant development constraints on the property and the deteriorated condition of the existing structure requires extraordinary renovation costs to bring the existing structure up to current market standards. The confluence of these factors constitutes a peculiar and exceptional condition.

B. Strict Application of the Zoning Regulations Would Result in Practical Difficulty to the Owner

1. Nonconforming Structure (§2001.3)

Strict application of the nonconforming structure requirements in this case would result in a practical difficulty to the Applicant. Section 2001.3, in reference to nonconforming structures devoted to conforming uses, permits enlargements or additions to the nonconforming structure provided (a) the structure conforms to percentage of lot occupancy requirements and (b) the addition or enlargement itself (1) conforms to use and structure requirements and (2) does not increase or extend any nonconforming aspect of the structure nor create new nonconformity.

i. Lot Occupancy (§403.2)

Pursuant to §403.2 of the Zoning Regulations, the project is required to have a maximum lot occupancy of 40%. Both the existing and proposed structures have lot occupancies of 68%. While the project does not increase or extend the nonconforming lot occupancy of the structure, an addition to this nonconforming structure which does not conform to lot occupancy requires a variance from §2001.3(a). In other words, *any* addition to the existing structure that does not bring the structure into conformity with the lot occupancy requirement would require an area variance. Bringing the structure into conformity with the 40% lot occupancy requirement would require the Applicant to tear down a significant portion of the existing structure. The renovations required to bring this dilapidated structure to a marketable condition are substantial (see Construction Budget, attached hereto as Tab 12). As discussed below, making the needed renovations *without* an addition, while complaint with the nonconforming structure requirements, would be economically infeasible (see Profit and Loss Analysis, attached here to as Tab 13). Therefore, strict application of the lot occupancy requirement would cause practical difficulty for the Applicant.

ii. Open Court (§406.1)

Pursuant to §406.1, the minimum width of an open court in an R-4 District for structures other than one-family dwellings is 4 inches per foot of height of the court, but not less than 10 feet. Both the existing and proposed structures have two courts 9'6'' in width. The project expands the nonconformance of the open courts by increasing the height. Open courts in the existing structure are required to be at least 10'-4'' wide and open courts in the proposed structure are required to be 13'-4'' wide. As discussed below, the increase in height, which triggers the extension of the nonconformance with the open court requirement, is required for the extensive renovations to be economically feasible. Further, to renovate the existing building to comply with the court requirement would include demolishing a portion of the building on each side creating an unusually narrow building. Creating a conforming building would produce a less efficient layout, single loading corridors, and a financially infeasible project. Therefore, strict application of the open court requirement would cause a practical difficulty for the Applicant.

iii. Lot Area (§401.11)

Pursuant to §401.11, an apartment house in an R-4 District may not be renovated or expanded so as to increase the number of dwelling units unless there are 900 square feet of lot area for each dwelling unit. The lot area is 6,000 square feet. The existing structure, with 18 units, would be required to have a lot area of 16,200 square feet. Thus, the structure currently on the Property is an existing nonconforming structure with respect to lot area. By adding two additional units, the proposed project expands the nonconformance by 1800 square feet. Due to the existing structure's dilapidated condition after years of lying vacant, extensive renovations are required (see Construction Budget, attached hereto as Tab12). The increase of only two units is required for the project to remain financially feasible. The financial feasibility of the proposed project is based on the sale of 20 units. Compliance with §401.11 would require the Applicant to maintain the current number of units. Spreading the substantial costs associated with the renovation over 20 units is financially feasible while spreading those costs over 18 units, while in compliance with §401.11, is not (see Profit and Loss Analysis, attached hereto as Tab 13).

2. Story Requirement (§400.1)

Strict application of the story requirement in this case would result in a practical difficulty to the Applicant. Under §400.1, the R-4 District permits a maximum height of 40 feet and three stories. The proposed structure is 40 feet and four stories. The additional square footage from the added story is necessary to cover the renovation costs associated with bringing the structure into compliance with the Building Code.

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 Board of Zoning Adjustment*, 606 A.2d 1362 (D.C. 1992)(internal citations removed)(*Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990)(Reiterating in the context of an FAR and height 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 compiled 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 Applicant will testify, based on the attached Profit and Loss Analysis, that there is no economically feasible alternative for rehabilitation of this property because compliance with the Zoning Regulations with respect to the nonconforming structure, story, and parking requirements will result in an unreasonably small return. The dilapidated condition of the Property is caused by the long time the building has remained idle and vacant. As described, the costs associated with rehabilitating the existing structure will be substantial (see Construction Budget, attached hereto as Tab 12). Financing a matter-of-right project is not economically feasible. Thus, the only way for the Property to no longer remain vacant is to obtain the requested variances. We submit that the Board approved a similar case, BZA Case No. 18163-A of 1444 Fairmont Partners, LLC in which the Board found any compliant project on the property to be economically infeasible and granted variance approval (see Corrected Summary Order and Transcript p145-146, attached hereto as Tab 14).

Compliance with the Zoning Regulations entails limiting the project to interior renovation. As stated, no addition is permitted without zoning relief to an existing structure that does not comply with lot occupancy. Furthermore, any increase in height, even when within the height limit permitted as a matter-of-right, would expand nonconformities with respect to the court requirement. The Profit and Loss Analysis shows an unreasonable return based on the projected sale price of units in a compliant structure relative to the total investment required to bring the building up to Building Code and create marketable units (see Profit and Loss Analysis, attached hereto as Tab 13).

3. Parking (§2101.1)

Strict application of the parking requirements in this case would result in a practical difficulty to the Applicant. An apartment house in an R-4 District is required to have 1 space for every 3 dwelling units. The proposed structure will contain 20 units generating a parking requirement of 7 spaces. The existing apartment house, containing 18 units, generates a parking credit of 6 parking spaces due to the structure's existence prior to May 12, 1958. Accordingly, a variance for 1 space has been requested.

Given the 68% lot occupancy and limited rear yard of the existing nonconforming structure, little space is available for the required parking spot. Compliance with the parking requirement would require a significant reduction in the residential space and adversely impact the location of a number of the building's core features and economic feasibility of the project as a whole. Furthermore, the lot has no alley access and it is highly unlikely that DDOT would grant a curb cut. Given the size and dimensions of the Property, providing the parking space would be practically difficult and would exacerbate the economic infeasibility described above. These resulting practical difficulties provide strong support for the requested variance relief from the parking requirement.

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

1. Nonconforming Structure and Story Requirements

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. The requested variance is in furtherance of the public good and zoning regulations. The addition is modest in nature and not out of scale with the surrounding patterns of development on this stretch of Sherman Avenue. The zoning relief with regard to the number of stories will permit an addition to and renovation of a dilapidated structure, bringing it up to commercial market standards while allowing for an economically viable structure. The footprint of the building will remain unchanged, leaving the lot occupancy, rear yard, and width of the open courts to remain in their current dimensions. With regard to lot area, there will be no negative effect on the density of the square. The Pepco Substation directly to the south of the Property does not add residential density. In addition, the additional residential units help address the well documented shortage of housing in the Washington D.C. area. Over the next 20 years the Washington metropolitan area will need 700,000 new housing units by 2030, or roughly 36,500 each year.[2] However, if the pace of construction over the last 20 years continues, at roughly 28,000 new housing units per year, the region would only add about ¾ that much.

The proposed project will not have a negative impact on the character of the neighborhood. With regard to the number of stories, the proposed structure is on a square in which a number of structures already contain four stories including 2922 and 2920 Sherman Avenue. While the presence of other four-story structures is not a justification in itself, the presence of these structures means that the requested relief adds to the current texture and mix of the block. While the R-4 Zone does not permit apartment buildings as a matter of right, and preservation of existing rowhouse neighborhoods remains a priority in the Mid-City area, the proposed structure seeks to renovate an existing apartment building rather than displace rowhouses. Moreover, retention of the existing structure minimizes demolition and construction impacts on the neighborhood and its reuse supports green building initiatives.

For the reasons stated, the proposed project adequately balances the Zoning Regulations' goals of protecting neighboring properties and modernizing a deteriorating property into a functional, beneficial condition.

[2] Artemel, Agnes and Sturtevan, Lisa. *Washington's Economic Future Depends on More Housing.* October 17, 2012. Greater Greater Washington. Found at: http://greatergreaterwashington.org/post/16470/washingtons-economic-future-depends-on-more-housing/

2. Parking Requirements

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 with regard to the variance for one parking space. As discussed above, the Property is well-serviced by a number of public transportation facilities including Metrobus routes and both the Colombia Heights and Georgia Avenue Petworth Metrorail stations. In addition there are two Capital Bikeshare stations within walking distance. The Capital Bikeshare station at the intersection of 11th Street and Kenyon Street has 25 docks and the Capital Bikeshare station at the intersection of 14th Street and Harvard Street has 18 docks. Furthermore, there are 10 Zipcar spaces available within walking distance including 5 at the Columbia Heights Green location and 2 at the Howard University location. The expansion of Car2Go in the District provides an additional carsharing option in the area. Thus, the Applicant anticipates that existing transit access to the Property decreases the need to fulfill the parking requirement than if the Property were not in such close proximity to public transportation. The proposed project adequately balances the Zoning Regulations' goals of ensuring adequate parking while encouraging walkability and mass transit as well as providing a diverse and adequate housing stock.

VI. 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
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