BEFORE THE DISTRICT OF COLOMBIA
BOARD OF ZONING ADJUSTMENT

APPLICATION OF
3545 13TH STREET, LLC

3545 13TH STREET NW
ANC 1A

STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of 3545 13th Street, LLC (the "Applicant"), the owner of property located at 3545 13th Street NW, Lot 120 in Square 2833 (the "Property"), in support of its application for variance relief, pursuant to 11 DCMR §3103.2, from the lot area requirement (§401.3) to allow the Applicant to convert a flat to a four-unit apartment building in the R-4 District.

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 120 in Square 2833, contains approximately 2,936 square feet of land area and is located in Northwest Washington D.C. The Property has approximately 20 feet of frontage along 13th Street NW. The Property consists of two stories plus a cellar. 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

Square 2833 is bounded by 11th Street NW to the east, Monroe Street NW to the south, 13th Street NW to the west, and Otis Place NW to the north (see Baist Atlas Map, attached hereto as Tab 8). Square

2833 is in the R-4 District (see Zoning Map, attached hereto as Tab 9) and is located in Columbia Heights. On 11th Street NW, from Otis Place NW to Kenyon Street NW is a C-2-A District. The southwest corner of the Square, near the intersection of Monroe Street NW and 13th Street NW, is a series of five multi-unit dwellings including The Crest, at 3517 13th Street NW, with 9 one and two level units, and a 19-unit apartment building at 3519 13th Street. The southeast corner of the Square, near the intersection of Monroe Street NW and 11th Street NW is newly renovated Trolley Turnaround Park. The remainder of the Square is largely rowhouses and flats.

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 14th Avenue NW include routes 52, 53, and 54. The Metrobus routes along New Hampshire Avenue NW include routes 63, 64, and the H8. Also within walking distance of the Property are Capital Bikeshare stations including stations located at the intersections of Park Road & Holmead Place NW (19 docks) and at Georgia & New Hampshire Avenue NW (15 docks). Moreover, the Property is located approximately 0.5 miles from the entrance of the Georgia Avenue-Petworth Metrorail station and 0.5 miles from the Columbia Heights Metrorail station. Car-sharing continues to expand in the nearby area. Zipcar spaces are located nearby including 1 space at 11th & Otis Place NW; 1 space at 11th & Monroe Street NW; and 5 spaces at the Columbia Heights Green (behind 3534 11th 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 and over 10,000 users.

D. Description of the Proposed Development

As shown on the architectural plans (Architectural Plans, attached hereto as Tab 10), the Applicant proposes to convert a flat to a four-unit apartment and rehabilitate a dilapidated, underutilized property. The four-unit apartment will have one unit on each floor. The proposed project does not change the existing footprint of the structure. The building will have a height of 38 feet, permitted as a matter of right. 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. The existing structure could be converted as a matter of right to three units. The Applicant seeks variance relief to add a fourth unit.

IV. NATURE OF RELIEF SOUGHT AND STANDARD OF REVIEW

Variance relief is required from the lot area requirement (§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.

V. <u>THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF</u>

A. <u>The Property is Unusual Because of its Size, Shape or Topography and is Affected by an Exception Situation or Condition</u>

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 inefficient layout and unique history of the existing structure; (2) the second floor stairwell is not compliant with the building code; and (3) the physically deteriorated condition of the building. First, the existing structure must be reconfigured to achieve an efficient layout, unit size, and design. The Property's existing layout is not that of a residential unit. While the Certificate of Occupancy is for a two-family flat occupying the cellar through third floor, the Property has been used in a unique manner. Based on the small size and large number of rooms as well as the lack of a kitchen on the first floor, the structure is not a conventional flat. During a site visit, it was discovered that the structure was being used for nonresidential uses. The structure has a long bar on the first floor and appears to be being used as a hookah bar and lounge. The rear of the first floor, past the bar, was divided into small rooms in which the prior owner had pillows for customers to sit and smoke hookah. Proper renovation requires significant investment in modifying and modernizing the existing layout.

Second, the stairwell and landing from the first floor to the second floor is wider than necessary and creates wasted space. In order to modernize the units a new stairwell must be built to provide a more efficient layout and use of the building. Additionally, the stairwell from the second floor to the third floor must be demolished and relocated. The stairwell is not compliant with the building code. In addition, as a matter of structural efficiency with respect to plumbing and electric, the stairwell must be relocated so the kitchens and stairwells for each unit will align vertically and the plumbing can be stacked.

Third, the Property is in a physically deteriorated condition. The physical building has long been deprived of maintenance. The result is that the Property is in a deteriorated condition. Significant renovation investment is necessary to return the existing structure to a marketable condition. In addition, the garage structure is rotten and collapsing. (See Photographs of Property, attached hereto as Tab 10).

In sum, the existing layout, prior uses, noncompliance with respect to the building code, and a lack of structural efficiency 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

Strict application of the lot area requirements in this case would result in a 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 permitted, but requires a minimum of 900 square feet of lot area per unit. Thus, only three units are permitted as a matter of right. However, a variance of only 166 square feet per unit, equaling 18%, is needed for a four-unit structure. In light of the extensive renovations required, a four-unit structure is required for the project to be financially feasible. Thus, as demonstrated in more detail below, strict application of the zoning regulations constitutes a practical difficulty, particularly in light of the limited relief being requested.

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 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 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.

The Board has found compliance with the zoning code to be economically burdensome in a number of cases when investment in a matter-of-right development would result in a small profit but not a fair and reasonable profit. The Court in *Palmer* states that to demonstrate hardship based on economic infeasibility, an applicant must prove that the property cannot be "put to any conforming use with a fair and reasonable return arising out of the ownership thereof." *Palmer,* 287 A.2d at 541-42 (emphasis added). In BZA Case No. 17989, the Board approved a variance to convert an existing non-residential structure on an alley lot to a one-family dwelling. The Board found that "[n]o permitted use would provide the Applicant with a fair and reasonable return on his investment." BZA Order No. 17989, p6.

In this instance, the Applicant has demonstrated that without a variance the Property will not generate a fair and reasonable return on investment. It is not simply that having three units, as required by the lot area requirement 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 three units would result in an economically infeasible project (see Profit and Loss Analysis, attached hereto as <u>Tab 11</u>). 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.

Furthermore, the prior noncompliant use of the Property creates a limited likelihood that an individual would purchase the Property and invest the necessary funds to convert the Property into a single-family home. For a developer to utilize the structure as a three-unit apartment or condominium, the Property would need to comply with the building code thus contributing to the financial feasibility and practical difficulty.

C. <u>No Substantial Detriment to the Intent, Purpose and Integrity of the Zoning Plan</u>

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 13th Street NW. The zoning relief with regard to lot area will permit renovation of a dilapidated structure, bringing it up to commercial market standards while allowing for an economically viable structure. The footprint of the building, other than a small rear deck, will remain unchanged, leaving the lot occupancy, rear yard, and other requirements to remain permitted as a matter of right. With regard to lot area, there will be no negative effect on the density of the square. A number of apartment structures are already located on the Square. In addition, the additional residential units help address the well documented shortage of housing in the Washington D.C. area. The Washington metropolitan area will need 700,000 new housing units by 2030, or roughly 36,500 each year. 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. [1]

The proposed project will not have a negative impact on the character of the neighborhood. While the presence of other multi-unit dwellings 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. Moreover, rehabilitation 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.

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.

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[1] 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/

Respectfully submitted

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