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BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Statement of Endeka Enterprises LLC
ANC 2B07

BZA Application No.
Hearing Date:

STATEMENT OF THE APPLICANT

This is the statement of Endeka Enterprises LLC ("**Applicant**") for special exception and variance relief to construct an addition to an existing office building at 1337 Connecticut Avenue, NW (Square 137, Lot 55) ("**Property**"). The Property is split-zoned and is located in the C-3-C and SP-1 Zone Districts within the Dupont Circle Overlay Zone. It is a through lot with frontage on both Connecticut Avenue, NW and 18th Street, NW and it is improved with a five story office building with ground floor retail.

The current building owner is would like to add two floors of residential use to the existing office building. The architects, Trout Design, have designed an addition to incorporate the residential use on the property. They have vetted the proposed design with the Historic Preservation Office and have received concept design approval from the Historic Preservation Review Board. Partially in response to comments heard from the Historic Preservation Review Board and partially due to other considerations, the Applicant is seeking special exception relief pursuant to Section 2514.2, which allows the use, height and bulk of structures of a lesser restrictive zone district to be extended into a more restrictive zone district so long as it does not extend further than 35 feet from the zone line. Both the height and the density of the residential use will extend what would otherwise be permitted in the SP-1 Zone District, but is consistent with the zoning parameters of the C-3-C Zone District. The Applicant also seeks variance relief for courtyards on the southern and northern sides of the building.

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18569

EXHIBIT NO. 4

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment (the "**BZA**" or the "**Board**") approve special exception and variance relief pursuant to Sections 2101.1, 2514.2, 3103.1, and 3104.1 of Title 11 of the District of Columbia Municipal Regulations.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Sections 3103.1 and 3104.1 of the Zoning Regulations (11 DCMR § 3104.1).

III. BACKGROUND AND PROJECT DESCRIPTION

The Applicant is a joint venture between Endeka Enterprises LLC, the Property owner, and Valor Development, a successful development team with many projects in the Dupont Circle neighborhood. The building is constructed on a through lot, with the western façade facing the east side of Connecticut Avenue and the eastern façade facing the west side of 18th Street. The portion of the building fronting on Connecticut Avenue was constructed in 1952 and is a contributing building in the Dupont Circle Historic District. The portion of the building fronting on 18th Street, however, was constructed with a brick façade in the mid-1980s. The zone boundary line traverses the lot in a north-south direction, dividing the lot into the western portion that is located on Connecticut Avenue and in the C-3-C Zone District and the eastern portion that is located on 18th Street and in the SP-1 Zone District. Approximately 4,764 square feet of the lot are located in the C-3-C Zone District and 3,035 square feet are located in the SP-1 Zone District. The façade with historic significance is located in the C-3-C Zone District, making it difficult to capture the density and height that the C-3-C Zone District would otherwise afford. Per the comments heard from the HPRB, the Applicant has instead set the addition back from Connecticut Avenue to minimize its effect on the historic façade. In doing this, however, it

straddles the zone line, and adds height and density to the SP-1 Zone District in excess of what would otherwise be permitted. It is, however, well within what is permitted in the C-3-C Zone District.

The addition will be dedicated entirely to residential use. The building is located approximately 300 feet from the Dupont Circle Metrorail Station, making it an ideal location for residential use (as well as density). The units will also have unobstructed views of Dupont Circle, further making it enticing to potential residents.

The building is not providing side yards and the rear yard is measured to the centerline of 18th Street, per the regulations for both the C-3-C and the SP-1 Zone Districts. The building provides a modest garage that is accessed from 18th Street; no changes to the garage or its access are proposed. There are several courts on the Property, two of which will be narrower than the required minimum width of fifteen feet.

IV. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

The Property is located on the east side of Connecticut Avenue between Dupont Circle to the north and N Street to the south. It is on a block that is developed almost exclusively as office use with ground floor retail on both Connecticut Avenue and 18th Street. Residential apartment buildings are located across 18th Street from the building. The west side of Connecticut Avenue, however, is developed with office buildings with ground floor retail. The existing building is dedicated to office and retail uses.

**V. THE APPLICATION MEETS THE REQUIREMENTS FOR SPECIAL
EXCEPTION RELIEF UNDER SECTION 3104.1 OF THE ZONING
REGULATIONS**

The Applicant is seeking special exception relief pursuant to Sections 3104.1 and 2514.2 to allow the extension of the height and density permitted by the C-3-C zoning requirements thirty-five feet into the portion of the lot located in the SP-1 Zone District. In order to obtain the requested relief, the special exception 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 Maps. 11 DCMR Section 3104.1. The Applicant must also demonstrate that the extension is (1) limited to that portion of the lot in the more restrictive use zone district but not exceeding thirty-five feet (35 ft.); (2) that the extension complies with the density restrictions of Section 2514.1(d); (3) the extension shall not have an adverse effect on the present or future character of the neighborhood; and (4) the Board may impose requirements pertaining to design, appearance, screening, location of structures, lighting, or any other requirements it deems necessary to protect adjacent or nearby property.

A. The Requested 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. 11 DCMR Section 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 land values. Id. at Section 101.2. The

relevant sections of the Zoning Regulations provide guidelines by which to evaluate whether a special exception should be granted.

In this case, the Applicant seeks relief pursuant to Section 2514.2 to allow additional density and height on a portion of the Property located in the SP-1 Zone District. As mentioned above, the Applicant is seeking to add a two-story addition to the building, bringing it to a total of 6 stories. The Applicant would ordinarily impose the height and density on the C-3-C zoned portion of the Property, where it would be permitted as a matter-of-right; however, it cannot in this instance because of the historic significance of the Connecticut Avenue façade.

Accordingly, the Applicant must set the addition back from the Connecticut Avenue frontage to minimize its impact on the historic façade. In doing this, however, additional density and height is pushed into the SP-1 portion of the site, exceeding the limits of what would otherwise be permitted in the SP-1 Zone District. Allowing this addition provides the flexibility to reconcile the potential conflict between historically significant buildings, which restrict additional development, being located atop a Metrorail Station, where density should be permitted.

There is a significant difference between the heights and densities permitted in the C-3-C Zone District and the SP-1 Zone District, yet the proposed addition is not simply an attempt to impose the C-3-C parameters on the SP-1 zoned portion. The addition has been thoughtfully designed to minimize its impact (as explained in further detail below): the height and density is a modest increase for a limited portion of the SP-1 portion of the building and it is well within the envelope for a C-3-C Zone District. The density and height that is being transferred to the SP-1 portion of the Property could be accommodated entirely on the western portion of the lot but for the restrictions imposed by the historic significance of the building. The Historic Preservation Review Board specifically favored the approach of setting limiting the density and height in the

C-3-C zoned part of the building and setting it, instead, on the SP-1 portion, where it did not impact the historic building.

The C-3-C Zone District permits a maximum height of 90 feet and the SP-1 Zone District permits a maximum height of 65 feet. With the proposed addition, the building will be eighty-three (83) feet in height: well within the parameters for the C-3-C Zone District, but eighteen (18) feet in excess of what would otherwise be permitted in the SP-1 Zone District. The C-3-C Zone District permits a maximum floor area ratio of 6.5; however, the SP-1 Zone District allows a maximum floor area ratio of 4.0. When completed, the total building will have a FAR of 5.4; more specifically, the eastern portion of the building will have a FAR of 5.01, 1.01 FAR in excess of what would otherwise be permitted. Considering the amount of density and height that the C-3-C Zone District affords, the proposed addition is particularly modest and makes every attempt to comply with the limitations imposed by the SP-1 district.

The proposed addition also complies with the safeguards imposed by Section 2514.2 to ensure that it is not simply an attempt to “rezone” the SP-1 portion of the lot. The C-3-C Zone District will not extend any further than 35 feet from the zone boundary line. The C-3-C Zone will assume just 11% of the development on the SP-1 zoned portion of the lot. The density restrictions of Section 2514.1(d) do not apply to the proposed development since the Applicant is not proposing to extend into a residential zone district.

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

The addition does not adversely affect neighboring property owners. The Applicant is proposing a six-story, 83 foot tall, building along the high-density corridor of Connecticut Avenue, which allows a maximum height of 90 feet. The requested relief results in centering the

two story addition in the center of the building – it is set back 10 feet, five inches feet from Connecticut Avenue and 12 feet, six inches feet from 18th Street. The addition will not be evident to pedestrians at the street level along either Connecticut Avenue or 18th Street. The addition will only be evident to those looking out their office window across Connecticut Avenue or from their apartment window on the upper floors across 18th Street. Even then, the visual impact will be a positive one as the addition consists of high quality masonry materials and it activates the higher planes of the building. It incorporates rooftop terraces, all of which will provide attractive views for those who can see it. Given the extensive setback of the building, it will not affect the light and air of neighboring buildings. Further, the widths of both Connecticut Avenue and 18th Street will minimize any noise impacts use of the outdoor terraces may generate.

The design of the building was developed so as not to have a negative impact on either the current or future character of the neighborhood; in fact, its respect for the historic nature of the building is what dictates the need for this relief. The zoning of the Property and its proximity to Metro mark it as a site appropriate for additional density, yet there are historic considerations that limit the ability to capture the density. The addition is able to add density to a building located within 300 feet of a Metrorail Station, but is set back to such an extent that it does not compromise the historic quality of the building. The addition achieves the goals of both urban planning and historic preservation, both of which dictate the present and future character of the neighborhood.

Finally, the proposed design responds to many comments the HPRB has provided with respect to screening, lighting, and locating the addition. It believes that the attached plans address any concerns that the Board may otherwise have with respect to the location of the

addition. Specifically, the location of the addition was in direct response to HPRB comments to respect the historic fabric of the building and to set the addition back out of sensitivity.

VI. THE APPLICATION MEETS THE REQUIREMENTS FOR AREA VARIANCES UNDER SECTION 3103.2 OF THE ZONING REGULATIONS

The burden of proof for an area variance is well established. The applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition; (ii) that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant; and (iii) that the granting of the variance will not cause substantial detriment to the public good or substantially impair the intent, purpose or integrity of the zone plan. *See, e.g., Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). In examining the first two elements, the BZA may apply a more flexible standard for determining difficulty when a public service or nonprofit entity is the applicant, such as Holy Trinity. *See National Black Child Development Institute v. D.C. Board of Zoning Adjustment*, 483 A.2d 687, 690 (D.C. 1984); *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1098 (D.C. 1979). The D.C. Court of Appeals has applied the more flexible standard to area variances as well as use variances. *See Draude v. D.C. Board of Zoning Adjustment*, 582 A.2d 949, 956 (D.C. 1990). As set forth below, the Applicant meets the three-part test for the requested parking variance.

A. The Property is Affected by an Exceptional Situation or Condition

The D.C. Court of Appeals held in *Clerics of St. Viator v. D.C. 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 293-294. Indeed, the Court repeatedly has rejected the idea that the exceptional situation and practical difficulty justifying a variance must arise from the physical aspects of the land. See *National Black Child Development*, 483 A.2d at 690; *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979). Instead, the BZA may "weigh more fully the equities in an individual case." *National Black Child Development*, 483 A.2d at 690. Further, the characterization of the use as a public service is significant to the determination of uniqueness. In *Monaco*, the D.C. Court of Appeals held:

While a commercial user before the BZA might not be able to establish uniqueness in a particular site's exceptional profit-making potential, we consider that the BZA may be more flexible when it assesses a non-profit organization As Professor Anderson has observed, public need for the use is an important factor in granting or denying a variance"

Monaco, 407 A.2d at 1098.

The Board of Zoning Adjustment has found previously that the Property is unique. In case No. 14000, the Board noted in Findings of Fact No. 2 that the site is irregular in shape. The Property is canted as it stretches between Connecticut Avenue and 18th Street; the Property has 53 feet of frontage on 18th Street but it also narrows as it stretches west to only 45 feet of frontage on Connecticut Avenue. Its unusual shape presents challenges in designing a functional addition to the building. The Property is also split zoned between the Special Purpose Zone District and the Commercial Zone District, presenting some challenges in reconciling the zoning parameters imposed by each zone district. Further, the site is improved with an existing building. A portion of the existing building was constructed in 1952, prior the adoption of the Zoning Regulations in 1958, which further lends to the uniqueness of the Property.

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

To satisfy the second element for an area variance standard, the Applicant must demonstrate "practical difficulty." The D.C. Court of Appeals has established a two part test for determining whether an applicant has met its burden of proof. The applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome" and that the practical difficulty is "unique to the particular property." *Gilmartin*, 579 A.2d at 1170. The Court of Appeals has held 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." *Id.* at 1171. "Increased expense and inconvenience to applicants for a variance are among the proper factors for [the] BZA's consideration." *Id.* 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.* The BZA also may consider the needs of a public service organization that "has inadequate facilities and applies for a variance to expand into an adjacent area in common ownership" *Draude*, 582 A.2d at 956.

The BZA may grant a variance from the court requirements where it is practically difficult to comply with the regulations. In this instance, the Applicant is proposing two courtyards that do not comply with the minimum width standard of 15 feet. Both courtyards are one story tall and only 5 feet wide. The regulations require that the courts be 4 inches wide for every foot of height, or at least 15 feet. While the proposed courts satisfy the first prong of the standard (4 inches wide for every foot of height), they do not satisfy the minimum width requirement of 15 feet. The Applicant is constructing a two story addition to the existing building, including two one-story courts that are only five wide. Providing two courts that

are a minimum of 15 feet wide would reduce the floorplate of the addition significantly, undermining the utility of the addition.

C. Relief Can Be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan

Finally, the Applicant must demonstrate that "granting the variance will do no harm to the public good or to the zone plan." *Gilmartin*, 579 A.2d at 1167. The requested court variance can be granted without causing any adverse impact on the neighboring properties. The courts are located on the sixth story of the building, above the height of the adjacent buildings. The width of the courts is proportionate to the height of the courts, albeit, the width does not meet the minimum standard; the minimum zoning requirements, however, did not envision a two story courtyard located at a height of 60 feet. Further, the courts add definition to the building design, which is beneficial for neighboring property owners

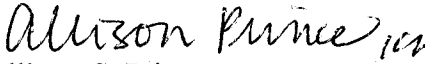
VII. EXHIBITS

1. EXHIBIT A Architectural Plans including Surveyor's Plat of Property and Photographs of Property
2. EXHIBIT B Application Form, Self-Certification and Agent Authorization
3. EXHIBIT C BZA Order No. 14000
4. EXHIBIT D Excerpt of Zoning Map and Plat of Property
5. EXHIBIT E Property Owner List

VIII. CONCLUSION

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

Respectfully submitted,


Allison C. Prince


Christine A. Roddy

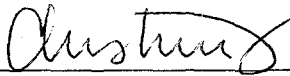
Certificate of Service

I hereby certify that I sent a copy of the foregoing document to the following addresses on March 28, 2013 by first class mail or hand delivery:

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