BOARD OF ZONING ADJUSTMENT

Preliminary Statement in Support of Area Variance Relief for 1845 North Capitol Street, NE

APPLICANT: 1845 North Capitol Street NE LLC

I. Introduction.

This Preliminary Statement is submitted on behalf of 1845 North Capitol Street NE LLC (the "Applicant"), owner of the property (the "Property") and improvements (the "Building") located at1845 North Capitol Street, N.E. The Building is an end-unit row structure which, based on available public records, has been used as a 4-unit apartment house from at least 1951 until at least 1985, and thereafter approved as a 2-unit flat; the most recent certificate of occupancy being issued in 1995 for use of the Building as a 2-unit flat.[1]

The Property is located at the southeast corner of North Capitol and T Streets in the City's Eckington neighborhood. The area is characterized by large row dwellings, many of which are used as flats or apartment houses. The Applicant purchased the Property in May, 2012, and promptly undertook a comprehensive restoration of what was then a vacant, neglected, and severely dilapidated structure. When the Applicant purchased the Property, there were three kitchens in the Building – one for each floor – and the Applicant, in good faith, applied for and received approval from the Zoning Administrator and DCRA to renovate the Building as a three-unit apartment house, each unit being about 950 square feet in gross floor area.

After the renovation was fully completed, the Zoning Administrator's office informed the Applicant that the proposed use as a 3-unit apartment house did not comply with the minimum lot

[1] But even this 1995 C of O had conflicting information about the proposed use. While it noted the use as a "Two Family Flat," it also read "1 Unit in Basement, 1 Unit on First and 1 Unit on Second Floor." (Certificate of Occupancy No. B172693.

area requirements for apartment house conversions in the R-4 zone district, and DCRA refused to issue a certificate of occupancy for the Property.

This error committed by DCRA has left the Applicant facing a potentially catastrophic loss for several reasons; among them: (1) the Applicant had additional costs estimated at $150,000 related to the third living unit (which it cannot now redeem in rent collections, without variance relief), (2) undoing the restoration to configure the Building back into a 2-unit flat would incur significant additional costs, and (3) the Applicant now finds itself with three completed units, two of which are already under contract to be leased. The Applicant is in danger of losing these tenants either because of the time lost as a result of the BZA process and/or because the third unit will have to be eliminated if variance relief is not granted.

II. Summary of Relief and the Variance Test.

Pursuant to 11 DCMR § 330.5(e), a building existing before May 12, 1958 may be converted to an apartment house, subject to 11 DCMR § 401.3. Section 401.3 restricts the number of units permitted in such a conversion to one apartment unit for every 900 square feet of lot area. While this Building had been used as a 4-unit apartment house from at least 1951 until at least 1985, it appears that it was converted to a 2-unit flat some time around 1989. The last certificate of occupancy on record from 1995 also identified the use as a flat. There is evidence (building permit description and the Applicant's observation) that the Building was being used as an unapproved rooming house when purchased by the Applicant. There is also some evidence (the three kitchens) that the Building may have still been used as an apartment house until it became vacant a few years before the Applicant's purchase.

The Property has a land area of 1,311 square feet and therefore does not meet the 2,700 square feet minimum of land area required for conversion to a three-unit apartment house. The Applicant is therefore requesting relief from the strict requirements of § 401.3 in order to use the Building as a 3-unit apartment house, which is (i) the configuration that was approved by the Zoning Administrator and DCRA pursuant to Building Permit No. B1211243, and (ii) one unit less than the Building's predominant historical use as a 4-unit apartment house.

A. <u>Extraordinary Condition</u>: The Property is subject to several extraordinary conditions. The Building existed as a 4-unit apartment house from 1951 until at least 1985. The Building appeared to still be configured for apartment use (based on the three kitchens) upon the Applicant's purchase. By far the most unique condition is the fact that the Zoning Administrator approved, and the Applicant undertook in good faith, a comprehensive 3-unit restoration, after which the Zoning Administrator effectively rescinded its earlier approval and denied the Applicant the use of the Property, pending either the grant of the requested variance or reconfiguration to a 2-unit flat.

B. <u>Practical Difficulty</u>: The Applicant is facing a catastrophic financial loss as a result of expending significant additional costs (estimated at $150,000) to restore the third unit, which it cannot redeem through the collection of rent for that unit (or through a sale of the property) (see the Architect's Construction Budget included as <u>Exhibit B</u>). Without variance relief, the Applicant: (i) will lose the tenants currently waiting to occupy the Building, (ii) will not be able to collect rent for the third unit to capture the costs undertaken for the approved restoration, and (iii) will incur significant costs to reconfigure the Building into a flat – which will then command much less rent than the 3-unit layout.

C. <u>No Substantial Detriment to the Public Good</u>: In restoring this Building, the Applicant has brought the Property back into productive use and has taken a neglected nuisance building and created three high-quality rental units, of a size compatible with the current demand. The Applicant has acted in good faith throughout this process, and now finds itself in this position only as a result of DCRA fully and unambiguously approving a three-unit restoration. Finally, use of the Building as three units is actually one unit less than the principal historical use of the Building as a 4-unit apartment house.

D. No Substantial Detriment to the Integrity of the Zone Plan:

This is such a unique condition, and one not caused by the Applicant, that there should be no concern about setting a precedent that might degrade the integrity of the Zone Plan. The Office of Planning and the Board have in the past (as recently as Order No. 18484 issued in January 2013) recognized that it indeed creates an extraordinary condition and a practical difficulty when an Applicant undertakes a significant restoration in good-faith reliance on the actions of city officials.

III. **Conclusion**.

For the reasons stated above, this application meets the requirements for area variance relief, and the Applicant respectfully requests that the Board grant the requested relief.

Respectfully submitted,

Martin P. Sullivan, Esq.
Sullivan & Barros, LLP

Date: 3/28/13

List of Exhibits

Exhibit A - Maps Depicting the Location of the Property

Exhibit B – Budget for Actual 3-unit Construction and Estimated 2-unit Construction

Exhibit C – Building Permit No. B1211243 and Historical Certificates of Occupancy

Exhibit D – Photos of the Subject Property

Exhibit E – Surveyor's Plat and Floor Plans

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