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

Statement of Fort Lincoln Banneker
Townhouse, LLC
ANC 5C03

BZA Application No.
Hearing Date:

STATEMENT OF THE APPLICANT

This is the statement of Fort Lincoln Banneker Townhouse, LLC ("**Applicant**")¹ for special exception and variance relief to construct 42 townhouses along Fort Lincoln Drive, NE and Banneker Drive, NE (Square 4325, Lots 29, 31, 813 and 814) ("**Property**"). The Property is located in the R-5-D and C-2-B Zone Districts in the Fort Lincoln neighborhood of Ward 5.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment (the "**BZA**" or the "**Board**") approve special exception relief pursuant to Section 3104.1 of Title 11 of the District of Columbia Municipal Regulations in order to construct more than one building on a record lot pursuant to 11 DCMR Section 2516. The Applicant also requires variance relief pursuant to Section 3103.2 from the requirements of Section 2516.5 that each lot which does not have street frontage must provide open space in front of the entrance to the building that is equivalent to the required rear yard. Eleven of the proposed lots have open spaces in front of their entrances that range from 10 feet to 12.25 feet, rather than the required 15 feet.

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District of Columbia
CASE NO. 18576
EXHIBIT NO. 3

¹ The Property is under the jurisdiction of the District of Columbia, acting by and through the Office of the Deputy Mayor for Planning and Economic Development (DMPED). An agent authorization letter signed by DMPED is included in the BZA Application materials.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Sections 3103.2 and 3104.1 of the Zoning Regulations (11 DCMR §§ 3103.2 and 3104.1).

III. DESCRIPTION OF THE PROPERTY AND THE SURROUNDING AREA

The Property is located in the Fort Lincoln neighborhood on the eastern edge of the District of Columbia. As shown in the pictures included in the attached Exhibit A, the Property is currently vacant and heavily wooded. The Property is irregularly shaped and includes approximately five acres. The grade of the Property drops off significantly, approximately 70 feet, from its highest point along Fort Lincoln Drive down to Banneker Drive. Numerous two, three and four story condominium buildings are located to the north, west and south of the Property. The Thurgood Marshall Elementary School and the Theodore Hagens Cultural and Recreation Center are located to the east of the property across Fort Lincoln Drive. The Dakota Crossing townhome community is located to the southeast of the Property. A vicinity map depicting the Property in relation to its surroundings is included in Exhibit A.

IV. STATEMENT OF EXISTING AND PROPOSED USE

As shown in the plans and materials included in Exhibit A, the Applicant is proposing to redevelop the site with 42 townhouses. The project will include twenty-two townhouses that are 20 feet wide (each consisting of 2,800 square feet); and twenty townhouses that are 24 feet wide (each consisting of 3,360 square feet). All of the townhomes will have three bedrooms and two bathrooms and have an additional loft option. The townhomes will be 45 feet tall, measured to the highest point of the roof. The overall lot occupancy of the project is only 20.23% and the

overall FAR of the project is only 0.66². The project will satisfy all Inclusionary Zoning (“IZ”) requirements, as well as the requirements of an Assignment and Assumption Agreement (dated July 31, 2012) between the Applicant and DMPED.

All of the townhouses will have front doors that face to the east. Proposed Lots 21-42 will front on Fort Lincoln Drive and will have front steps that lead from the sidewalk along Fort Lincoln Drive to the front door. These units will have garages that are loaded from the rear. The townhouses on proposed lots 1-20, which do not have frontage on Fort Lincoln Drive, will have front-loaded garages. Each townhouse will include two parking spaces in the garage. An initial rendered elevation of the townhouses along Fort Lincoln Drive is included in Exhibit A.

Vehicular access to all of the units will be provided from two driveways on Fort Lincoln Drive and an interior private drive which maintains a 25 foot width throughout the Property. Each of the driveways will be right-in/right-out only. In addition, the Applicant is also proposing the relocation of a pedestrian cross-walk across Ft. Lincoln Drive, which is currently not ADA compliant, to a location adjacent to the southern driveway. The new pedestrian cross-walk will be ADA compliant. A total of 93 parking spaces will be provided on the Property for residents and their guests, 84 spaces in the townhouses and 9 parking spaces for guests in areas adjacent to the internal private drive. Signage for the project will be provided near the southern entrance/exit drive of the Property.

A series of segmental block retaining walls will be created on the western portion of the Property. These retaining walls will vary from four feet tall to eight feet tall. Cross-sections depicting these retaining walls are included in Exhibit A. The project also includes a bio-retention/park area at the lowest point of the Property, adjacent to Banneker Drive. The bio-

² For purposes of these calculations, the area of the private drive and guest parking areas have not been included in the calculation of FAR and lot occupancy.

retention/park has been situated where site grading and sufficient drainage allows for a reduction in peak flow rate of stormwater and also helps treat the stormwater prior to it leaving the Property. The bio-retention area includes a mulch layer, an engineered soil media, a gravel layer, an underdrain connected to the storm drain system, and an overflow drain to prevent localized flooding during large storm events. Water quality control occurs as the storm water filters through the various material layers, through biological and chemical reactions in the various layers, and through the natural process of nutrient uptake into the plants.

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 2516 in order to create more than one building on a single subdivided lot. 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.

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.

As shown in the plans and materials included in Exhibit A, the project has been thoughtfully designed to account for the topographical challenges of the Property and to fit in seamlessly with the present character and future development of the surrounding area. This project replaces a vacant property with 42 high-quality townhomes that will help knit together the residential communities that currently exist on the west side of Ft. Lincoln Drive. While the R-5-D Zone District permits multi-family residential buildings of up to 90 feet in height, the Applicant believes that a townhouse community of 45 foot tall structures is more in keeping with the surrounding properties. The Applicant believes that there are other development parcels in the Fort Lincoln neighborhood that are better suited to higher density multi-family buildings.

As noted in the Traffic Impact Analysis prepared by Wells & Associates (attached as Exhibit C):

The site trip generation analysis indicates that the vehicular traffic anticipated to be generated by the proposed residential development would be minimal. Therefore, this development would have little to no impact on the surrounding vehicular network. The existing and proposed sidewalks would adequately accommodate the pedestrians generated by the site.

The creation of 93 parking spaces for the 42 townhomes will be sufficient to satisfy the expected parking demand.

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

The residential unit type, height, and siting of the proposed project was carefully studied in order to minimize any potential adverse impacts on neighboring properties. The creation of 42 townhomes that are only 45 feet tall is ideally suited for this large sloping property which is surrounded by 2-4 story condominium buildings. The proposed project will not create adverse impacts on neighboring properties.

VI. THE APPLICATION MEETS THE REQUIREMENTS FOR VARIANCE RELIEF

The Applicant is seeking relief from the requirement (Section 2516.5(b)) that each of the lots which do not have street frontage, Lots 1-20, provide an area in front of the entrance which is equal to the required rear yard (15 feet). Lots 1-11 have “front yards” ranging from 10 feet – 12.25 feet. Therefore, variance relief is necessary.

The burden of proof for area variance relief is well established. The Applicant must demonstrate that the property is affected by an exceptional or extraordinary situation or condition, that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant, and that the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan. Palmer v. D.C. Bd. of Zoning Adj., 287 A.2d 535, 541 (D.C. 1972). As outlined below, the application satisfies the three-part test for area variance relief.

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

The Court of Appeals held in Clerics of St. Viator v. D.C. Bd. of Zoning Adj., 320 A. 2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land. The Court of Appeals held in Gilmartin v. D.C. Board of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990), that it is not necessary that the exceptional situation or condition arise from a single situation or condition on the property. Rather, it may arise from a “confluence of factors.” Id. Finally, it is not necessary that the Property be unreservedly unique. Rather, applicants must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood.

Here, the Property is unique because it is an irregularly shaped lot with a significant change in grade. Moreover, Lots 1-11 are located on a portion of the Property which has a very

significant grade change at the rear of these proposed lots. This grade change results in the need to provide a series of retaining walls in the required rear yard for these Lots (see Overall Concept Plan and Cross-Sections in Exhibit A).

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

The requested relief is for an area variance, and the appropriate test is whether the strict application of the zoning regulations results in a “practical difficulty.” In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in Palmer v. Board of Zoning Adjustment, 287 A.2d 535, 542 (D.C. App. 1972), that “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. [Footnote omitted.] 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.” In area variances, applicants are not required to show “undue hardship” but must satisfy only “the lower ‘practical difficulty’ standards.” Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1365 (D.C. 1992) (citing Gilmartin v. Bd. of Zoning Adj., 579 A.2d 1164, 1167 (D.C. 1990)). Finally, it is well settled that the BZA may consider “a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’ Increased expense and inconvenience to applicant for a variance are among the factors for BZA's consideration.” Gilmartin, 579 A.2d at 1171 (citing Barbour v. D.C. Bd. of Zoning Adj., 358 A.2d 326, 327 (D.C. 1976)); see also Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1367 (D.C. 1992). Other factors to be considered by the BZA include: “the severity of the variance(s) requested”; “the weight of the burden of strict compliance”; and “the effect the proposed variance(s) would have on the overall zone plan.” Gilmartin, 579 A.2d at 1171. Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome, not impossible. The Applicant meets this standard.

The Applicant is providing “front yards” ranging from 10 feet to 12.25 feet in length for proposed Lots 1-11. As noted in the previous section, the rear yard of these lots already includes a series of retaining walls. If the Applicant were required to provide an additional 2.75 to 5 feet of “front yard” for these Lots, additional or taller retaining walls would be necessary in the rear of these lots. Thus, the Applicant is faced with a practical difficulty in providing a 15 foot “front yard” for Lots 1-11.

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

The requested variance relief can be granted without impairing the intent, purpose and integrity of the Zone Plan. The amount of relief that the Applicant is requesting is not significant. The “front yards” of these units are not adjacent to other theoretical lots, rather they abut the 25 foot wide private drive. This spatial relationship helps provide an appropriate buffer between the fronts of these buildings and the rear of the buildings of Lots 21-42. Granting this rather small amount of relief will have no detrimental impact on the surrounding properties, or any of the residents of this project.

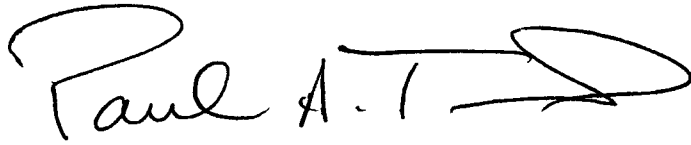
VII. EXHIBITS

1. **EXHIBIT A** Plans and Materials Depicting the Proposed Project, Plat of Property Prepared by Licensed DC Surveyor, Conceptual Landscape Plans, Vicinity Map, and Photographs of Property
2. **EXHIBIT B** Application Form, Self-Certification and Agent Authorization
3. **EXHIBIT C** Traffic Impact Analysis prepared by Wells & Associates
4. **EXHIBIT D** 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,

A handwritten signature in black ink, appearing to read "Paul A. Tummonds". The signature is fluid and cursive, with a large initial "P" and a stylized "T" and "M".

Paul A. Tummonds