BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPLICATION OF	**1318-1320 HARVARD STREET, NW**
1320 HARVARD STREET, LLC	**ANC 1A**

STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of 1320 Harvard Street, LLC (the "Applicant"), the owner of property located at 1318-1320 Harvard Street NW, Lot 79 in Square 2855 (the "Property") in support of its application for an area variance from the lot area requirement (§401.3) to allow the Applicant to convert a substance abuse treatment facility to a multiunit dwelling in an R-4 District at the Property.

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 79 in Square 2855, contains approximately 7,902 square feet of land area and is located in Northwest Washington, D.C. Square 2855 is bounded by Harvard Street NW on the north, 13th Street NW on the east, Girard Street on the south, and 14th Street on the west. *See* Baist Atlas Map at Tab 8. The Property is located within 3 blocks (.3 miles) of the Columbia Heights Metrorail station. The Property has approximately 57 feet of frontage along 13th Street 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.

The Property is presently improved with a 3-story substance abuse treatment facility with 64 beds and an office and was owned by Second Genesis until recently purchased by the Applicant. Second

Genesis is a private, nonprofit professional treatment agency specializing in the rehabilitation of drug and alcohol abusers. The Property was historically used by Second Genesis as a substance abusers home. Zoning relief was obtained in 1986 to expand the use to private school that also provided educational and therapeutic services for the residents of Second Genesis. The program was "staffed by a professional team including psychiatrists, family therapists, learning disability specialists, and other mental health professionals as was designed as a therapeutic community providing a highly structured, strictly supervised, 24-hour-per-day, chemical free resident environment." *See* BZA Order No. 14473 at Tab 9.

B. Description of the Improvements in the Surrounding Area

The Property is located in Columbia Heights, 3 blocks from the Columbia Heights Metrorail Station. Square 2855 is split zoned, with the western portion zoned C-2-B, the center portion zoned R-5-D, and the eastern portion zoned R-4. *See* Zoning Map at Tab 10. The western portion of Square 2855 is occupied by the Samuel J. Simmons NCBA estates. The southeast corner of the Square is occupied by Easter Seals Child Development Center. The northeast corner of the Square is occupied by the 15-unit Ashburn Apartments. Also on the Square are attached and detached single family homes, flats, and apartments.

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 Metro, Metrobus routes, Capital Bikeshare, and Zipcars. The Property is located approximately 0.3 miles from the Columbia Heights Metrorail entrance. Moreover, Metrobus routes H1, H2, H3, H4 and H8 stop at the intersection of 13th Street NW & Columbia Road NW. Bus routes along 14th Street, with a stop at 14th Street & Harvard Street, include routes 52, 53, and 54. In addition, the Property is within close proximity to a number of the District's bikesharing and carsharing programs. Capital Bikeshare stations are located at 14th & Harvard Street NW (18 docks) and 11th Street & Kenyon NW (26 docks). Five Zipcar spaces are located within walking distance. Four Zipcar spaces are located at 2900 14th Street NW (Columbia Heights Metro) and an additional Zipcar space is located behind 1350 Irving Street NW. Another local car-sharing program, Car2Go, has recently reported that the use of the company's car-sharing service had reached over 10,000 users and 6,000 trips per week.

D. <u>Description of the Proposed Development</u>

As shown on the architectural plans, *See* Architectural Plans and Elevations at Tab 11, the Applicant proposes to convert the Property from a substance abuse treatment facility with 64 beds and office to a16-unit dwelling while working within the existing building envelope. The footprint and exterior of the structure will be left unchanged. Lot occupancy will remain at 56%. The height of the structure will remain at 34 feet and 3 stories.[1] The basement will contain Units 13, 14, 15, 16 and the two bedrooms for Unit 3. The first floor will contain Units 1, 2 and 4, and the living room/dining room for Unit 3. The second floor will contain Units 5, 6, 7 and 9 and the living room/dining room for Unit 8. The third floor will contain Units 10, 11 and 12, and the two bedrooms for Unit 8. In total, the unit mix is 6 one-bedroom units and 10 two-bedroom units. Two of the two-bedroom units will have a study.

Based on the prior use as a substance abuse treatment facility, the Property has 12 parking credits. *See* BZA Order No. 14473 at Tab 9. Pursuant to §2101.1, the proposed project is required to have 5 parking spaces. Because the proposed project provides 6 parking spaces, the Applicant is providing 1 more space than is required by the Zoning Regulations and no parking relief is required.

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[1] In those districts in which the height of a building is limited to 40 feet, such as the R-4 district, the height of the building may be measured from the finished grade to level at the middle of the front of the building to the ceiling of the top story. 11 DCMR 199.1. Thus, the height of the structure for zoning purposes is 34 feet. The height to the top of the structure is 39 feet.

IV. NATURE OF RELIEF SOUGHT AND STANDARD OF REVIEW

Variance relief is required from the lot area requirement under §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. 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 Columbia 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 characterized by an exceptional situation and condition as a result of a confluence of the following factors: (1) the Property was previously used as a substance abuse treatment facility with 64 beds and an office and (2) the Property was previously two separate lots and two separate buildings.

1. Previous Use of the Property as a Substance Abuse Treatment Facility

The Property has historically been used as a substance abuse treatment facility operated by Second Genesis. The presence of a substance abuse treatment facility in an R-4 District is unique. There are no other substance abuse treatment facilities in Square 2855 and none in the immediate area.

The building's existing configuration as substance abuse treatment facility makes adaptive reuse of the Property for residential purposes extremely difficult and presents unique challenges in developing the Property. The existing structure contains long, narrow hallways, awkward triangle-shaped closets, multiple doors, and small rooms. Furthermore, the existing 3rd floor of the 1320 Harvard Street building has a short awkward multilevel section, presumably used as a discussion room that must be demolished entirely to make the space usable. While appropriate for a substance abuse treatment facility use, these features are not appropriate for the residential use and require extensive interior demolition at significant cost to the Applicant. *See* Photographs of Property at Tab 11.

In addition to the layout, substantial investment is required to remove the commercial equipment and other remnants of the prior use. The Property contains an exposed HVAC system, fire doors, large commercial water heaters, exposed commercial fire safety equipment, and communal showers and bathrooms. Furthermore, the existing structure has a large commercial kitchen in the basement with an exhaust hood and gas line. As a result, extra time, labor, and expense is involved in completing the interior demolition. The plumbing and electrical modifications are a substantial but necessary cost required to return the structure to any residential use. *See* Photographs of Property at Tab 11.

2. The Property was Previously Two Separate Lots with Two Separate Buildings

The Property was previously two separate lots with two separate buildings. Second Genesis, previously owning only 1318 Harvard Street NW, subsequently obtained 1320 Harvard Street NW for use as an office affiliated with the substance abuse treatment facility. Because the structure was historically two buildings, two nonconforming open courts and one nonconforming closed court exist on the property. While these courts may remain as existing nonconformities, they present additional challenges in efficiently using the buildings as one structure. At present, the structures are connected in only two places, the existing basement and first floor. Substantial work must go into developing the two buildings as one cohesive residential structure.

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

Strict application of the zoning regulations with respect to lot area 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 apartment unit. In light of the extensive renovations required, a sixteen-unit structure is required for the project to be financially feasible. Thus, as demonstrated in more detail below, strict application of the zoning regulations, which would prevent any structure with more than eight units, constitutes a practical difficulty for the Applicant.

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 based on economic feasibility grounds on a number of occasions.

In this instance, it is not simply that having fewer units would produce less of a profit for the Applicant. Rather, due to the exceptional circumstances at the Property described above *any* renovation of the existing structure that results in rental income from fewer than sixteen units would result in an economically infeasible project. The primary driver of the financial infeasibility is that substantial base renovation costs must be completed regardless of the number of units. The base renovation costs, including interior demolition, basement excavation, structural work and utility service, will cost $665,000, or nearly 28% of the total hard costs. Base renovation costs make up a larger percentage of total hard costs when the structure has fewer units at roughly 30% of hard costs for a 14-unit structure, 32% for a 12-unit structure, and 35% for an 8-unit structure. *See* Profit and Loss Analysis and Construction Budget at <u>Tab 12</u>. Because of the significant base renovation costs required to allow the structure to be used as a residential structure of any kind, the Applicant must spread those costs over the additional units requested to have a financially viable project.

The Applicant will testify, based on the attached Profit and Loss Analysis and Construction Budget, that there is no economically feasible alternative for rehabilitation of this Property because compliance with the Zoning Regulations will result in a loss. Thus, a practical difficulty exists because the existing structure requires such a large investment that renovation becomes feasible only with rental income from sixteen units.

C. <u>No Substantial Detriment to the Public Good Nor Substantial Impairment 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 proposed project replaces a 64-bed substance abuse treatment facility with a residential use. Furthermore, the footprint, height, and exterior of the structure will be left unchanged. In an R-4 District, the residential use is more in keeping with the surrounding neighboring and intention of the zoning code than the existing use. In addition, the proposed project adequately balances the zoning regulations' goals of ensuring adequate space for residents, providing a diverse and adequate housing stock, and permitting property owners to create marketable units. Finally, the additional residential units help address the well documented shortage of housing in the Washington D.C. area.[2] For these reasons, approval of the zoning relief requested will not cause a detriment to the public good or zone plan.

VI. WITNESSES

1. Ryan Samuel, Developer on behalf of Applicant
2. Hugo Roell, Architect on behalf of Roell Architects PC

VII. 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

GRIFFIN, MURPHY,
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By: ______________________

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[2] Over the next 20 years the Washington metropolitan area will need 700,000 new housing units by 2030, or roughly 36,500 each year to keep up with predicted population growth. 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. 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/.