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

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Statement of Square 737 LLC
ANC 6D

BZA Application No.
Hearing Date:

STATEMENT OF THE APPLICANT

This is the statement of Square 737 LLC (“**Applicant**”) for variance relief to construct a new mixed-use building at 800 New Jersey Avenue, SE (Square 737, Lot 76) (“**Property**”). The Property is located in the C-3-C Zone District and in Ward 6. The Property has frontage along New Jersey Avenue, SE and H Street, SE. The elevated I-395 Southeast/Southwest Freeway is located immediately to the north of the Property, across H Street. The Applicant is proposing to redevelop the Property with a mixed-use eleven story project consisting of a full service grocery store on the ground floor and approximately 326 residential units above. The Applicant is seeking variance relief from the requirement that parking spaces located within an above-grade structure must be set-back at least 20 feet from all lot lines that abut public streets. The Applicant is proposing two levels of parking above the grocery store, which face H Street and the elevated highway, which are not set-back 20 feet from the property line.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment (the “**BZA**” or the “**Board**”) grant variance relief pursuant to Section 3103.2 from the requirements of 2116.2 which requires that “parking spaces provided within a structure shall be located at least twenty (20) feet from all lot lines that abut public streets, unless the ceilings of all parking levels are at or below the grade of the adjacent public sidewalk at all points along the building frontage.”

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18619
EXHIBIT NO. 4

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II. JURISDICTION OF THE BOARD

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

III. STATEMENT OF EXISTING AND PROPOSED USE

The Property is currently vacant. A portion of Square 737, the Park Chelsea residential project located on Lot 77 immediately to the south of the Property along New Jersey Avenue, is currently under construction. Construction activity associated with the re-introduction of I Street and H Street is also currently occurring. Future development of Square 737 will include another mixed-use building in Square 737 along Second Street from I Street to H Street. The entire development plan for Square 737 is depicted in Exhibit A.

The Applicant is proposing to construct an eleven story mixed-use building¹ with a full service grocery store on the ground floor that includes approximately 35,000 +/- square feet. The grocery store will include a 21 foot clear ceiling height on the ground floor and a café/brew pub, with potential outside seating, at the intersection of New Jersey Avenue and H Street. Access to the grocery store's loading facilities and parking spaces will be provided from H Street. The grocery store will have approximately 188 parking spaces dedicated for its use on floors two and three above the store.

The residential component of the project includes approximately 326 units and approximately 121 parking spaces in one below-grade level of parking. The main residential lobby will be located along the New Jersey Avenue frontage of the building. Residential amenity space will be provided on floors two and three along the New Jersey Avenue frontage of

¹ The Property is located in the C-3-C Zone District and the Capitol South TDR Receiving Zone. The Zoning Administrator has determined that this Property is eligible to achieve a building height of 130 feet and a maximum FAR of 10.0.

the building. The residential units will be located on floors 4-11 of the building. Access to the below-grade parking level will occur via the interior alley which is accessed from S Wood Street. Plans depicting the proposed project are attached as Exhibit A.

The elevated freeway to the north of the Property provides a unique challenge for the design and layout of this building. Residential units on the second and third floors of this building facing H Street and the freeway will be significantly disadvantaged as they face either the underside of the freeway or will be at the same general level as the freeway. The Applicant's design team has turned this problematic situation into a positive one by creating two levels of above-grade parking facing the freeway. The two above-grade parking levels have been designed to maximize their efficiency. This efficiency prohibits the Applicant from setting back the parking spaces inside the building by at least 20 feet along H Street. The creation of these two above-grade parking levels allows for the separation of the grocery store parking from the residential parking, and also allows the residential uses to be raised above the adjacent freeway.

IV. THE APPLICATION MEETS THE REQUIREMENTS FOR VARIANCE RELIEF

As noted above, the Applicant is seeking relief from the requirement that all above-grade parking spaces must be located at least 20 feet from all lot lines that abut public streets. The project proposes parking spaces along H Street at the second and third levels of the building which are adjacent to the building's lot line along H Street. 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 subject to an exceptional situation or condition due to the elevated freeway use immediately to the north of the Property, the unique one block nature of H Street between 2nd Street and New Jersey Avenue and the District ownership of the property to the north of H Street. H Street does not continue either west of New Jersey Avenue or east of 2nd Street. The property located south of the elevated freeway and north of H Street is owned by the District of Columbia and is not expected to be a suitable site for development. These confluence of factors affecting the Property create an exceptional situation or condition.

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

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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 project will include one level of below-grade parking for the residential uses which will create approximately 121 parking spaces. The Applicant believes that separating the residential parking from the grocery store parking is very important for the ultimate success of this mixed-use project. So instead of creating three below-grade parking levels, the design team decided that creating two parking levels above the store is an effective and practical means to separate the parking uses. The required 20 foot set-back has been maintained along the New Jersey Avenue frontage, as this façade will be viewed by pedestrians and vehicular passengers as

they travel along New Jersey Avenue. Maintaining this same 20 foot set-back along the H Street frontage of the property, would cause significant inefficiencies in the layout of the parking spaces on these two levels. Moreover, the presence of the elevated freeway effectively blocks most views of these two levels of parking spaces. Thus, the severity of the variance requested (i.e. providing parking spaces within 20 feet of the H Street lot line at the second and third levels of the building) is quite minimal as the opportunity to even see these parking spaces is very restricted.

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 goal of Section 2116.2 of the Zoning Regulations was to help ensure that the visual impact of parking spaces in above-grade parking structures is minimized. In this instance, the appearance of these parking spaces is minimized due to the high ceiling heights at the ground floor (21 feet), the fact that the elevated freeway blocks most views of the second and third levels of the building, and the façade treatment of these two parking levels along H Street effectively screens and minimizes the appearance of these parking spaces from the surrounding streets. In addition, the creation of two levels of parking spaces above the grocery store allows the residential uses to start at a level which is above the elevated freeway. The Applicant believes that this is an inventive and novel approach to the problematic situation of having an elevated freeway as the adjacent use to the north.

For these reasons, the Applicant believes that the granting of the requested variance relief can be granted without impairing the intent, purpose and integrity of the Zone Plan.

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V. EXHIBITS

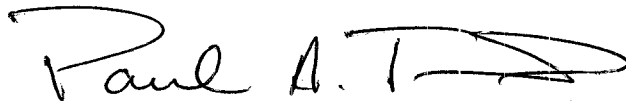
1. EXHIBIT A Architectural Plans including Surveyor's Plat of Property and Photographs of Property
2. EXHIBIT B Application, Fee Calculator, and Self-Certification Forms and Agent Authorization Letter
3. EXHIBIT C Property Owner List

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VI. CONCLUSION

The Applicant will continue to review the plans for this project with representatives of the Office of Planning, District Department of Transportation and Advisory Neighborhood Commission 6D as this case moves towards the public hearing. The Applicant expects to provide additional information regarding this project prior to the public hearing date.

Respectfully submitted,



Paul A. Tummonds