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

**Application of
Peter J. FitzGerald
Rear of 319 and 321 A Street, NE
Square 786, Lots 22 and 827**

**BZA Application No. _____
ANC 6C, SMD01**

STATEMENT OF THE APPLICANT

This statement is submitted on behalf of Peter J. FitzGerald ("Applicant") and his agent, John H. FitzGerald, by their attorneys, Greenstein DeLorme & Luchs, P C, by John Patrick Brown, Jr., Esquire and Kate M. Olson, Esquire, in support of an application for Board of Zoning Adjustment ("BZA") approval for the subdivision of an existing 3-unit apartment building and the construction of a two-story alley dwelling within the CAP/R-4 Zone District at 319 A Street, NE and the Rear of 321 A Street, NE (Lots 22 and 827 in Square 786) ("Property")

I. NATURE OF RELIEF SOUGHT

In order to construct a new single-family alley dwelling, this application seeks BZA approval pursuant to 11 DCMR Sec. 3103.2 to: a) allow proposed subdivision of Lot 827 with an existing three-unit apartment building requiring variances from the minimum lot area under subsection 401.3, maximum lot occupancy under subsection 403.2, and minimum required parking under subsection 2101.1 in the CAP/R-4 District at 319 A Street, NE (Square 786, Lot 827), and b) allow proposed subdivision of part of Lot 827 and Lot 22 and construction of a new single-family dwelling on an alley lot requiring variances from minimum lot area under subsection 401.3, maximum lot occupancy under subsection 403.2, minimum rear yard under subsection 404.1, and minimum alley width under subsection 2507.2 in the CAP/R-4 District at Rear of 319 A Street, NE and Rear of 321 A Street, NE (Square 786, part of Lot 827 and Lot 22).

**BOARD OF ZONING ADJUSTMENT
District of Columbia**

CASE NO. 18651

EXHIBIT NO. 4

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Board of Zoning Adjustment
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II. JURISDICTION OF THE COMMISSION

The Board has jurisdiction to grant the requested variance relief pursuant to Section 3103.2 of the Zoning Regulations.

III. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

The Property is zoned CAP/R-4 (See Exhibit A, Zone Map) and includes: a) Lot 827 which is improved with a 3-unit apartment building constructed in 1890 with a dilapidated and vacant one-story block garage located at the rear, and b) Lot 22 which is improved with a one-story brick garage which is also vacant and dilapidated (See Exhibit B, Photos). Both garages face out on a 30-foot wide portion of the Public Alley named “Millers Court” and the construction of both are thought to pre-date the current version of the Zoning Regulations. There are several other alley lots within the square, including three original alley dwellings immediately to the west of the garages and a series of carriage houses located both to the east and west. The Property is located within the Capitol Hill Historic District. The two vacant, dilapidated, single-story garages are currently used for storage and are accessible by vehicles from a 15-foot wide public alley from A Street. Square 786, which includes the Property, is bordered by A Street to the north, 4th Street to the east, East Capitol Street to the south and 3rd Street to the west.

IV. PROPOSED REDEVELOPMENT OF THE PROPERTY

The Applicant proposes to redevelop the area currently occupied by the two garages with a two-story single-family alley dwelling unit with internal parking for one vehicle. The new construction is proposed to be 22 feet in height, which as the Historic Preservation Office Staff pointed out in its report (see below), is roughly comparable with the high point of the other alley dwellings in this square and in Capitol Hill’s other historic alleys. (See Exhibit C, pages A8 and

A9) See site plan of proposed use attached as page A0 of Exhibit C. In order to create a suitable site for the new alley dwelling unit, the Property will need to be reconfigured by subdivision.

The existing Lot 827, with the 1890 apartment building will be resubdivided to carve out the area occupied by the garage (482 sf). The remainder of Lot 827 will be 1722.38 sf and as a result will not comply with lot area, lot occupancy, and off-street parking.¹

The former area of the Lot 827 garage will be combined with Lot 22 (490 sf) to create a new alley lot with 37.21 feet of frontage on Millers Court and a lot area of 971 3 sf. The two-story single-family dwelling unit will have a front entrance and interior garage accessed from Millers Court. The dwelling unit will have 3 bedrooms and 2-1/2 bathrooms with approximately 1,912 sf of gross floor area and 100% lot occupancy

V. STATEMENT OF SATISFACTION OF BURDEN OF PROOF FOR ZONING RELIEF SOUGHT

The Applicant submits that, based upon (i) its Application and the materials submitted in conjunction herewith, (ii) the evidence to be presented at the public hearing and (iii) other evidence to be submitted hereto, it will satisfy and comply with the applicable legal standards and burdens for the variances requested.

V. JUSTIFICATION FOR REQUESTED AREA VARIANCES

The Property is zoned CAP/R-4, which allows for single-family residential uses. However, no single-family dwellings are permitted to be “erected or constructed on an alley lot unless the lot abuts an alley thirty (30) feet or more in width and has from the alley access to a street through an alley or alleys not less than thirty (30) feet in width. 11 DCMR 2507.2 In addition to needing relief from the alley width, the Applicant requests relief from lot area, lot

¹ One off-street parking space is provided at the rear of the apartment building, but its dimension (12.58 feet x 17.33 feet) does not meet the minimum standard of 9 feet x 19 feet, but is large enough to accommodate at least one vehicle.

occupancy, rear yard and parking since the proposed new construction will not comply with these zoning requirements

An Applicant must satisfy three requirements to obtain approval of a variance (i) a unique physical aspect or other extraordinary or exceptional situation or condition of a specific piece of property; (ii) undue hardship to the owner; and (iii) no substantial harm to the public good and no substantial impairment of the zone plan. Monaco v. BZA, 407 A.2d 1091, 1096 (D.C. 1980), National Black Child Development Institute v BZA, 483 A. 2d 687, 690 (D.C. 1984). The subject Application meets these legal tests, as discussed below.

A. Unique Physical Aspect or Other Extraordinary or Exceptional Situation or Condition of a Specific Piece of Property.

Here, the Property is subject to an extraordinary or exceptional situation or condition. The Court of Appeals stated that “[t]he statute does not preclude the approval of a variance where the uniqueness arises from a confluence of factors. The critical point is that the extraordinary or exceptional condition must affect a single property.” Gilmartin, 579 A.2d at 1168 (quoting Capitol Hill Restoration Society v. District of Columbia Bd of Zoning Adjustment, 534 A.2d 939, 942 (D.C. 1987)).

It is the confluence of the following factors.

1. Both existing garages are no longer suitable or usable for garage or other permitted purposes and have been approved for demolition. Given the existing zoning limitations, neither garage could be replaced,
2. Lots 827 and 22, in the current configuration, are non-conforming for at least lot area, lot width and lot occupancy,
3. Lot 22 does not have any required street frontage;
4. Lot 22 does not have access from the required 30-foot wide public alley;

5. Lot 22 is only 490 sf and is not large enough, by itself, for any permitted residential or accessory use in the R-4 zone,

6. The creation of a new alley lot combining part of Lot 827 and Lot 22 provides a site large enough and appropriate for a dwelling unit, but does not comply with all the applicable restrictions; and

7. Lots 827 and 22 are located in the Capitol Hill historic district and directly abut Millers Court, which is one of the area's most important historic alleys, in which alley dwelling units are commonplace and historically significant.

B. Undue Hardship to the Owner.

Based on the numerous unique conditions and circumstances for Lot 22 and its physical relationship to Lot 827 and the existing garages, the owner would be deprived of any reasonable use of a substantial portion of the Property if the requested variances are not granted for this creative and appropriate redevelopment proposal. Such a deprivation of any reasonable use would constitute an extreme hardship to the owner and a missed opportunity for providing new housing consistent with the historic district.

C. No Substantial Harm to the Public Good and No Substantial Impairment of the Zone Plan.

Relief can be granted without the detriment to the public good. In fact, the construction of a two-story alley dwelling offers substantial benefits and is consistent with the limited residential purposes of the R-4 zone and in keeping with the character of the historic district and more specifically the historical use and context of Millers Court. The Applicant increases the safety of the alley by making the rear portion of the Property habitable, but without negative impacts on the surrounding properties. Residential use will not adversely impact the privacy of neighboring property owners. As shown on the Plans, there will be no windows facing the

adjacent property owner at 321 A Street. (See A2 east elevation A3 north elevation). The owner of 321 A Street does not object to the Project Nor will the Project have an effect on any other properties within the square The Applicant conducted a shadow study comparing the existing shadows with the shadows to be cast as a result of the Project and there was no noticeable difference. (See Exhibit C, pages A4-A6)

VI. HISTORIC PRESERVATION SUPPORT

Since the Property is located within the Capitol Hill Historic District, the Applicant has worked closely with the staff of the Historic Preservation Office (“HPO”) on the design of the new alley dwelling. The Applicant sought and received concept approval from the Historic Preservation Review Board (“HPRB”). The staff report stated that the HPO looked closely at the existing garages in terms of both their individual significance as well as their relationship to the surrounding context. The HPO indicated that, “[t]he Project is compatible with the character of Millers Court and with the Capitol Hill Historic District as a whole. The project is a good example of how to introduce new alley structures in a manner that respects and responds to the surrounding context, the generally low height and simple design of alley structures, and the pattern of overall development typical of rowhouse neighborhoods.” (See Exhibit D, HPO Staff Report) On November 29, 2012, the HPRB found the proposed demolition of the existing garages, the new construction of the alley dwelling and the subdivision to be consistent with the purposes of the preservation act and delegated final approval to the HPO staff. (See Exhibit D, HPRB Actions)

VII. EXHIBITS

Exhibit A: Zoning Map (with the Property outlined in red).

Exhibit B Site Photographs.

Exhibit C Plans

- Exhibit D. HPO Staff Report and HPRB Actions.
Exhibit E. Certificates of Occupancy.
Exhibit F. List of property owners within 200 feet of the Property.

VIII. CONCLUSION

For the reasons set forth above, the Applicant is entitled to, and respectfully requests approval of, the grant of variance relief to allow for the new construction of an alley dwelling at the Property.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.



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