BOARD OF ZONING ADJUSTMENT
AREA VARIANCE APPLICATION

APPLICANT'S STATEMENT

Foundation Sweet Success, Inc. (Applicant)
3206 Grace Street, NW, Square 1188, Lot 121

I. Introduction

Foundation Sweet Success, Inc. (the "Applicant") recently acquired the property and improvements located at 3206 Grace Street, NW, Washington, D C , Square 1212, Lot 802 (the "Property"), for the express purpose of allowing the use of the Property by Dog Tag Bakery, Inc. ("Dog Tag Bakery"), as a non-profit bakery and restaurant. Both the Applicant and Dog Tag Bakery are 501(c)(3) charitable organizations Dog Tag Bakery is proposing to use the existing building on the Property (the "Building") as a restaurant and bakery, the primary purpose of which is to provide a vehicle for the employment and business training and mentoring of military veterans with service-connected disabilities

The Property is located in the W-1 zone district The Building, which was constructed prior to 1958, is a two-story brick structure that occupies approximately 93% of the lot, with no basement or cellar space Since at least 1958, the first floor of the Building has always been used for nonresidential purposes, including manufacturing, retail, grocery, and restaurant use The second floor of the Building has, since 1958, been used for manufacturing, retail, and residential use The maximum permitted floor area ratio (FAR) in the W-1 zone district is 2 5 for all uses, but only 1.0 for nonresidential use The Applicant is requesting area variance relief to use 1 86 FAR, both the first and second floor of the Building, for the nonresidential use proposed herein.

II Background on Dog Tag Bakery.

The Mission Statement of Dog Tag Bakery is "To create a bold, new model for transition assistance and job training for veterans with a service-connected disability who served on active duty in the U.S Armed Forces at any time " The objectives of the proposed use here are to

- Produce quality Specialty Breads and Dog Biscuits made by veterans that will service the local Georgetown area

- Help disabled veterans transition from the U S Armed Services to civilian life, including assistance with securing adequate access to quality health care
- Provide veterans with communication and vocational skills that empower them to contribute their communities through interactions at Dog Tag Bakery
- Increase confidence and develop business skills through work at Dog Tag Bakery

Dog Tag Bakery is headed by Father Richard Curry, S.J. Father Curry, resident at the Jesuit residence on the Georgetown campus, founded the National Theatre Workshop of the Handicapped ("NTWH") The NTWH has successfully trained persons with disabilities in professional theatre and in the business of baking Father Curry intends to build on the model created as part of NTWH in operating the Dog Tag Bakery in Georgetown.

III <u>Area Variance Request</u>

The Property is located in the W-1 zone district. Pursuant to 11 DCMR § 931 2, the FAR limit in the W-1 zone is 2.5, only 1.0 of which is available for nonresidential use The total FAR of the Building is 1.86. The Applicant is requesting area variance relief in order to use the full 1.86 FAR for the proposed nonresidential use The Applicant is proposing no addition and no increase in the Building's gross floor area.[1]

This type of variance request – the expansion of a matter-of-right use beyond a building's nonresidential FAR limit - has recently been determined by the Zoning Commission to be a matter of <u>*area*</u> variance relief, rather than <u>*use*</u> variance relief, pursuant to Z C. Order No 12-11, in which the Commission adopted a text amendment including § 3103.5(c), which provides that "Examples of area variances are requests to deviate from· (c) Limitations on the extent to which the gross floor area of a building may be occupied by a matter of right non-residential use;" of the Zoning Regulations This text amendment became effective on June 14, 2013 (D.C. Register, Vol. 60, No 26, June 14, 2013)

The Board has in the past few years granted several variance requests in the C-2-A zone for expanded nonresidential uses within existing buildings (including 2805 M Street and 1328-

[1] The current plans provide for a rooftop deck with a retractable enclosure, which may be provided if it is not included in the gross floor area and subject to the concerns of neighbors

1330 Wisconsin Avenue – which actually included an addition) where it found that the owner could not reasonably provide residential use on the second floor of those buildings. In this case (as a result of the recent text amendment), the burden of proof is considerably lower than in those cases Rather than having to prove that strict compliance with the nonresidential FAR limit of 1 0 would be an undue hardship on the Applicant, the Applicant must merely show that compliance with the 1 0 nonresidential limit would be unnecessarily burdensome as a result of exceptional conditions or situations with this Property.

IV. <u>Description of the Property and Surrounding Neighborhood</u>

The Property is located at 3206 Grace Street, NW, in Georgetown. It is rectangular in shape and approximately 70 75 feet by 31 feet The total land area is 2,193 square feet. The Property is about 70 feet west of Wisconsin Avenue. (A copy of the Zoning Map and photographs are attached as <u>Exhibit A</u>.) As such, the Building is located in an area consisting primarily of retail uses to the north and east, and office and residential condominium uses to the east on Grace Street Adjacent properties include an Eagle Bank branch and its parking lot immediately to the east of the Property, the side of a retail store fronting on Wisconsin Street to the rear, a mixed-use condominium building across a 10-foot wide public alley to the west, and a small office building and retail store (Patagonia) across Grace Street to the north The Georgetown Park condominiums are across Grace Street and further to the west.

The Building has a history of nonresidential use on both floors According to the available C of O history (Attached as <u>Exhibit B</u>), the first floor has always been used for nonresidential use, including retail, manufacturing, grocery, and restaurant uses As of 1958 and for many years after that, the second floor was also used for nonresidential purposes, including manufacturing and office space

V <u>Requested Relief</u>

The Applicant does not intend any changes to the footprint of the Building or any part of the exterior of the Building. Use of the first and second floors of the Building, under a strict application of the zoning regulations related to FAR limits for nonresidential use, would allow the use of all of the first floor and a small portion of the second floor. The Applicant is requesting relief that would allow it to use the entire Building (1 86 FAR) for the proposed use

VI <u>The Application Satisfies the Burden of Proof for Variance Relief</u>

To satisfy the burden of proof for a variance, the Applicant must demonstrate three elements: (1) exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or exceptional topographical conditions or other extraordinary or exceptional situation or condition; (2) such condition results in peculiar or exceptional practical difficulties or exceptional and undue hardship upon the owner of the property; and (3) the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan. (D C Code § 6-641 07(g)(3))(11 DCMR 3103 2)

It is well established that because of the nature of variances and their effects on the zone plan, the stricter "undue hardship" standard applies to requests for <u>*use*</u> variances while the lesser "practical difficulty" standard applies to requests for <u>*area*</u> variances. *Palmer v Board of Zoning Adjustment* 287 A 2d 535 (D.C 1972) The requested relief here is an area variance.

In the past, variance requests for an increase in the permitted nonresidential FAR in a mixed use building have been considered by this Board to be area variances at times and use variances at times As noted above, the Zoning Commission has adopted a text amendment providing that these types of requests shall be considered as area variances and not use variances That action by the Zoning Commission has effectively ended the debate on the question of whether this type of request is subject to the higher standard under the use variance test, or the lower, practical difficulty, standard of the area variance test. To prove practical difficulty, an applicant must demonstrate that compliance with the area restriction would be "unnecessarily burdensome " *A L W Inc v D C Bd of Zoning Adjustment,* D C App , 338 A.2d 428,431 (1975)

A property's uniqueness is not limited to physical aspects of the land and may be determined by "some difficulty not shared by the entire neighborhood." *Id* at 1098 The Court of Appeals held in *Clerics of St Viator v D C Bd of Zoning Adjustment*, 320 A.2d 291 (D.C 1974) that the exceptional situation or condition standard goes to the property, not just the land, and that

"... property generally includes the permanent structures existing on the land" *Id* at 293-94. The Court held that the exceptional situation standard of the variance test may be met where the required hardship is inherent in the improvements on the land (i.e., the building or structure) and not just the land itself

Furthermore, 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 of the property. Rather, it may arise from a "confluence of factors"

A. <u>Exceptional Conditions or Situations</u>

The exceptional conditions and situation with this Property include

(i) the Building existed in its current density and footprint prior to May 12, 1958, and was a nonconforming building at that time and/or when the property was designated W-1. If the Building had continued with nonresidential uses on the second floor, the proposed use would be either a matter-of-right use or approvable as a special exception for a change in a nonconforming use.

(ii) the Building has a history of nonresidential use; always on the first floor, but also on the second floor dating back to at least 1958

(iii) the Property is relatively small, with only 2,193 square feet of land, compared to 4,828 square feet for the Patagonia property across Grace Street, 4,112 square feet for the Eagle Bank property to the east, 4,455 square feet for the retail property to the south, and approximately 15,000 square feet for the 3210 Grace Condominium building to the west

(iv) the Building does not have a basement, which eliminates the ability to have any nonresidential space that does not count against FAR, which for many other properties is the non-FAR space used for storage and administrative functions.

(v) the Building is located in a transitional area, essentially part of the retail section near the intersection of Wisconsin and Grace, and Grace then transitions to residential as it goes to the west

(vi) the Building has been vacant for several years, even though it is in the center of the Georgetown business district

B. Practical Difficulty

Because of the conditions noted above, strict compliance with the FAR requirements of § 931 2 would be unnecessarily burdensome to the Applicant The small relative size of the Property, along with the large relative footprint of the Building (both conditions existing prior to May 12, 1958), limit the use of the second floor to only a few feet for nonresidential purposes This can be compared to the surrounding retail uses, which are either permitted as continuing nonconforming uses, or, in the case of Eagle Bank and Patagonia, have much less lot occupancy than does the subject Property, allowing the use of multiple floors

Also, even though the second floor of the Building has apparently been used for residential use, it was not originally built or configured for nonresidential use, and it was used for nonresidential use for many years In addition, the size of the second floor, which is essentially too large for a typical apartment size in this area, but not configured well to provide two units, makes providing a mixed use in this Building unnecessarily burdensome, as evidenced by the fact that the Building has remained vacant in recent years.

These conditions present an unnecessary burden, or a practical difficulty, to the Applicant, as such concept is understood by the BZA and the D C Court of Appeals· "Increased expense and inconvenience to applicants for a variance are among the proper factors for BZA's consideration " *Barbour v D C Board of Zoning Adjustment*, 358 A.2d 327,327 (D.C 1976) A strict application of the nonresidential FAR requirements for this Property will result in increased expense and inconvenience to the Applicant In addition to this, while the Applicant understands that the validity of any legal nonconforming use on the second floor has most likely expired, this second floor was used for many years as a nonresidential use, and many other buildings in this area also have second floor nonresidential use In that sense, the degree of variance being requested is small. Another factor which the BZA can consider in determining the existence of an unnecessary burden to the Applicant is "the severity of the variance(s) requested" *Gilmartin v D C Bd of Zoning Adjustment*, 579 A.2d 1164 (D.C. 1990).

C. No Substantial Detriment to the Public Good or the Zone Plan.

The Applicant's proposal is compatible with the density and type of uses in the surrounding area. The Building has always been used for nonresidential uses on the first floor, and was used so on the second floor for many years The proposed use is permitted as a matter-of-right in the W-1 zone, and the Applicant is asking for relief only to use the existing gross floor area, which happens to be well below the maximum permitted overall FAR of 2.5

The proposed use is not intensive, and will not attract excessive traffic. In particular, the second floor is proposed to be used primarily for related office and bakery space, and will not necessarily increase the customer occupancy of the Building. Finally, the Applicant and Dog Tag Bakery are non-profit charitable organizations, and the proceeds from this enterprise will be used to further their charitable missions. Any variance relief granted will benefit those organizations and the veterans they serve For these reasons, granting relief will not be a substantial detriment to the public good or to the integrity of the zone plan

VII 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,

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Date 8/16/13