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November 25, 2013

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Mr. Richard Nero, Jr.
Deputy Director of Operations, Board of Zoning Adjustment
441 4th Street, NW Suite 200-S
Washington, DC 20001

RE: Pre-Hearing Statement for Application No. 18673

Dear Mr. Nero:

Please find the attached statement submitted in advance of our hearing scheduled for December 10, 2013. My hope is that the attached submission will allow me to provide a brief oral statement, saving the Board's time during our proceedings.

If you have any questions or would like to discuss our application, please do not hesitate to contact me using the information above or via e-mail: mhenry@alpinegroup.com

Sincerely,



Michael K. Henry

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18673
EXHIBIT NO. 33

Board of Zoning Adjustment
District of Columbia
CASE NO. 18673
EXHIBIT NO. 33

**PRE-HEARING STATEMENT OF MICHAEL K. HENRY
CO-OWNER AND APPLICANT
BZA APPLICATION NUMBER 18673
DECEMBER 10, 2013**

I. INTRODUCTION

I am submitting this statement and application on behalf of my wife and myself as a last resort with the intent of maintaining ownership of our home, protecting the improvements made to it and for uses consistent with the character of our neighborhood. I appreciate that our application for a use variance, based upon an economic hardship, is unusual. However, I feel that we are bringing forward a strong substantive case and hope that the Board recognizes the spirit of our effort and the benefit their approval would bring to our neighborhood. In addition, we have applied for very limited uses within occupations that one of us currently undertakes. The goal is that we could rent our home for these uses or utilize our home for our own profession. In addition, we specifically protect the residential uses (dwelling use) of our home.

As referenced within our application, our home was originally constructed as a blacksmith shop. The original building permit was issued on May 25, 1880 and is included within our application package. We have owned our home for nearly 14 years and have spent in excess of \$500,000 in performing two significant renovations that have improved our home and neighborhood. However, these historically-minded renovations have also unintentionally changed the economics of our home resulting in our inability to utilize it for the uses allowed by right.

While we have experienced a vocal minority of neighbors opposed to our application, our application enjoys the support of the majority of the 300 block of Maryland Ave., NE. In fact, we recognize 21 letters of support that represent 17 of the 35 homes on our block within the record. Regardless of the support, I recognize that our application will ultimately be dependent upon the Board's decision, based on the technical aspects of our application. I have attended and followed several of the Board's hearings and recognize how well-prepared board members are as they enter a hearing. With the hope of reducing the time I spend describing my application, I am submitting this pre-hearing statement to detail elements I think will aid the Board's decision-making process.

II. TESTS

I believe our application meets the three tests required for the Board's approval. I have broken them down independently below:

- (a) **NEED.** Our application is submitted because the uses allowed within the CAP/R-4 Zone pose a financial hardship, specific to our property. After two significant renovations, our home is now in a single family configuration and totals 3,141 square feet with 5 bedrooms and 3.5 bathrooms.

Before applying for a use variance, we explored the idea of renting our home for residential uses. As we utilized Yarmouth Management (Capitol Hill's largest rental relator) in the past, we began there and spoke to their President, Buck Waller. We have also discussed rental options with John Formant, the founder of John C. Formant Real Estate. Both Mssrs. Waller and Formant have decades of experience in the Capitol Hill rental market and both view our home as uneconomic in its current configuration – as Mr. Waller made clear in his letter of September 9th, included within our application.

On September 9, 2013, Yarmouth Management's largest rental was 3 bedrooms and rented for \$2,650/month. On November 24, 2013, Yarmouth had 29 separate listings (2 three bedroom homes and Formant had 18 listings (2 three bedroom). Neither had anything larger than three bedrooms and the most expensive was listed by Yarmouth Management for \$4,400 + utilities. As Mr. Waller wrote in his September 9th letter, he found it *"nearly impossible for me to envision a scenario where you could generate the \$7-8,000/month needed to make such a rental economic for your property."* In fact, if you total the most expensive three bedroom (\$4,400) with the most expensive two bedroom (\$2,550) listed by Yarmouth on November 24, 2013, that totals \$6,950.

Assume our property is worth \$1.5 million and 80% would be financed. In that scenario, we would have a total debt of \$1.2 million. If financed with a 30-year fixed interest rate loan of 4.167% the monthly payment would be approximately \$7,412. Assume a joint income tax rate of 30% (lower than our true rate), an income on the property would need to be approximately \$10,650 per month to simply make that payment. That number does not include a "rainy day fund" which would be prudent for a residential income property.

In summary, as documented within our application, the Capitol Hill market does not support a rental market for a home of our size. The most expensive three and two bedroom houses totaled generates less than \$7,000/month in revenue. Even taking advantage of current interest rates, the debt on a property of our home's value would require more than \$10,000/month in revenue – a difference of more than \$3,000/month.

The next most attractive by-right use would be to reverse the historically-minded renovations within our home and return it to a flat. Such a process would carry considerable construction costs and require obtaining a certificate of occupancy. Even if affordable and achievable, as the above outlines a rental of our upper three bedroom home and two bedroom basement receiving top of market rates would still be uneconomic. Even if the considerable renovation expenses were internalized, there would still be a monthly debt of \$3,000 incurred by our family.

This economic reality has pushed us towards seeking a limited use variance to utilize our home for lobbying and/or photographic offices. We have not engaged in negotiations with potential tenants, because we felt it would be imprudent to have such conversations before our application is considered by the Board. However, we have had discussions with Cushman & Wakefield who estimates the Capitol Hill rental market could support annual rental rates between \$30 – 60 per square foot. Given our home is 3,141 square feet, the average of that range (\$45) would generate monthly revenues of \$11,779. That figure, as discussed above, is barely economic when considering carrying the debt, paying taxes and generating funds necessary for the care and maintenance of a home more than 130 years old. In addition, the rates Cushman & Wakefield provided are consistent with what others have told us are found within the Capitol Hill rental market. However, the Board likely appreciates that a row home is very different than a typical office building and has significant space that is difficult to use for office functions (e.g., multiple bathrooms, large kitchen). Given that, it appears that if our use variance were approved, it would only be marginally economic.

Other by-right uses such as a child/elderly development center, day treatment facility, community-based residential facility, apartment house, hospital, sanitarium, museum, private club, dormitory, rooming house, temporary circus/fair use, public library, fire station, embassy either require additional approvals from the city or would be found objectionable by our neighbors. While we would be willing to entertain any of these by-right uses, we do not feel that any are currently economic. Further, our application is responsive to many conversations with neighbors regarding the uses they would like to see in our neighborhood.

- (b) PUBLIC GOOD. The Board's decision to grant this application will not create a substantial detriment to the public good. We do not anticipate creating a recognizable increase in traffic. In addition, since our goal is to protect the single-family nature of our home, we do not intend to make any modifications to the lighting and would not utilize any permanent signage at the front of our home.

Parking was anticipated as a significant issue with neighbors. However, very few of our neighbors have expressed a concern over potential parking impacts. That said, parking was an issue brought forward within Hon. Bachus' letter, and something we sought to address before filing our application for a use variance. We have always believed that transit was an attractive feature of our neighborhood and home, as 325 Maryland Ave., NE is less than 200 yards from a bus stop, .4 mile from Union Station and .7 mile from the Capitol South Metro stop. These facts make our property very accessible by bus, commuter rail, Amtrak and three independent metro lines (red, blue and orange lines). However, even with that transit and bike accessibility, we are in discussions to secure as many as four off-street parking spaces as early as January 2014. We would be happy to entertain a reasonable parking requirement as an element of our application, as we intend to ensure parking is not an issue for our neighbors.

As mentioned in the introduction, we have considerable support for our application. As I have watched other variances move through the process, adjacent neighbors and a few other supporters are common. Our application enjoys 21 individual letters (including an adjacent neighbor) and the majority of our block supports our application.

Even with such strong support, a few neighbors have organized themselves into a vocal minority. Several appeared at the ANC meetings and even produced a petition. While they represented their petition as having 59 signatures, it really only held 54 signatures. In addition, this petition asserted itself as being made up of "*concerned neighbors of the 300 block of Maryland Ave., N.E., Washington, D.C. and the adjacent blocks of 200 4th Street, N.E. and 300 Constitution Ave., N.E.*", only 23 signatures actually come from those areas. In fact, I have a letter of support from 308 Maryland Ave., NE from someone I believe to be a tenant. The opponent's petition is signed twice, but with different handwriting and signatures, from the listed owner (Ross Swimmer) and Margaret Swimmer. Giving the organizers of the petition the benefit of the doubt, perhaps the two signatures can be justified by two generations of Swimmers. However, is it possible that a tenant and two generations of another family all live in that home together? In the end, the petition has substantial credibility issues and

does not correspond to the specific areas to which it represents. Flaws I believe should have disqualified it during the ANC process.

In the end, I have gone to every door on Maryland Ave., NE and most within the 200 foot radius that received the notice of our application. All these neighbors have received notice of our application from your office and a letter from us describing our application and intent. I feel that I have a deep appreciation for what neighbors are concerned with and what can be done to address their concerns. I believe our application is sensitive to the public good and if approved our actions will be consistent with the needs of our neighborhood. On that basis, we have received substantial, individual support from neighbors in several mediums that, unlike a petition, provide a clear articulation of their position.

- (c) **CONSISTENCY.** Not only would the board's decision be consistent with the general intent and purpose of the zoning regulations and map, it would be consistent with current uses existing on our block and throughout Capitol Hill. Our application requests two specific uses that would be allowed if we resided in our home and undertook such a use. We are not seeking a use other than for those occupations and do not envision impacts any greater than come from the two similar uses on our block and the several around our home.

At the ANC meetings, several speakers (including at least one Commissioner) raised the idea that our application being granted would set a precedent for future applications. The Board is well aware that each application must stand on its own specifics and not rely upon the Board's past actions. I believe that our application and this additional submission demonstrate the specific elements of our application in a manner to allow your approval. Further, I think there is a positive "precedent" that would come as a result of the Board's approval. As the Board is aware, there are many office uses posing as home offices on Capitol Hill and throughout Washington, DC. Rejecting an application that meets the tests for receiving a use variance would send a clear signal to property owners that there is not a legitimate path to legal use via the variance process and would only incentivize underground uses. We are pursuing this use variance on a factual basis and with openness to our neighbors and interested parties as a result of the public process. At least two signatories to the petition in opposition told me they wished we had just done what we have applied for secretly. We have applied for this use variance because we believe in the process and hope the Board recognizes that your decision could send a signal that use variance requirements are onerous, but fair.

As the Board examines the consistency element of our application, it is important for you to appreciate the make-up of our block. While we agree with some opponents of our application that a more family oriented block would be ideal, that is not the reality of our block nor is a return to less dense, single family homes something city planners are hoping to achieve. The reality of our block, based upon the Office of Tax and Revenue homestead exemptions, is that only 45% of those who own their properties actually live within their home without some other economic activity occurring. That is unusual. For example, just around the corner at 100 4th Street, NE, the owner occupied percentage is 65%. Also, the north side of the 300 block of Constitution Ave., NE has an owner occupied percentage of 60%. In addition, as the map within our application shows, our block is adjacent to a commercial zone that forms a crescent from Union Station around Stanton Park – which is as close as 44 yards to our property. Finally, the 35 homes on our block have diverse uses: 14 single family homes; 6 multi-unit buildings (condos and apartments); 13 are used as group homes, flats, etc.; and 2 are used in office capacities similar to what we have applied for.

All this is not to say our block is a bad place to live or that any commercial use should be allowed there. In fact, we believe our application will keep the current balance on the block and not bring in additional group homes and high density residential use. Like the other two office uses that exist, we envision that our home will continue the appearance and low impact use of a single family home, but allow us a use that accommodates our needs and changes the economics of our property.

III. CONCLUSION

Thank you in advance for your consideration of our application. I appreciate that a use variance has a justifiably high hurdle for approval and feel that our application clears that hurdle. In the end, almost all variances fail when one asks, “Why don’t you just sell your home?” Property ownership carries some right for owners to use and enjoy their property in a manner that does not create harm for others. We love our home and have toiled to make it what it is. We don’t want to be forced to sell it because of the economic hardship created by use limitations of our zoning. Especially, when we believe that a use variance could be granted that is consistent with current and acceptable uses.

I believe that the variance process is intended to provide home owners, in unique circumstances, an ability to stand before an arbiter with the power to provide relief. Washington, DC is unique in the fact a home owner can stand before you on the basis of economic hardship. Economic hardship, while difficult, is what I have presented within our application. It is based upon the specific situation of our home and

substantiated by experts in our local real estate market. Further, the original commercial construction of our home, make-up of our block and overwhelming support are all elements that demonstrate consistency and public good in a manner that demonstrates qualities that cannot be replicated by future applications.

I am appreciative of your time in reviewing our application and other documents made part of the record. I look forward to our discussion on December 10th.