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

1717 E Street, LLC

**APPLICANT'S PRE-HEARING STATEMENT
October 28, 2013**

This Pre-Hearing Statement ("Statement") outlines the existing and proposed use of the property and the manner in which the application ("Application") complies with the specific tests and burden of proof for the variances sought in this application before the Board of Zoning Adjustment (BZA)

NATURE OF RELIEF SOUGHT

This is an application pursuant to 11 DCMR § 3103.2 for a use variance under § 330.5 to allow the construction of a new eight (8) dwelling unit apartment building at the subject property of application.

SUMMARY OF APPLICATION

The applicant seeks variance pursuant to 11 DCMR § 3103.2 to allow the new construction of a 8-unit apartment building at subject premises, which comprises three vacant lots, lot numbers 165, 166 and 167, to be consolidated through subdivision such that the constructed building will eventually be located on a single lot of record in compliance with a specific provision of the zoning regulations.

The proposed project will provide six on-site parking spaces, two times the minimum number prescribed in the parking schedule of the Zoning Regulations, as set forth in § 2101.1.

The proposed project complies with all other applicable provisions of the Zoning regulations with respect to maximum permitted height and number of stories, percentage of lot occupancy maximum and pervious surface minimum.

The proposed number of dwelling units - eight (8) - are two more than the six (6) dwelling units - two (2) dwelling units for each lot of record – which would otherwise have been allowed as a matter of right, absent the public utility easement encumbering the subject property of application.

**BOARD OF ZONING ADJUSTMENT
District of Columbia**

CASE NO. 18692

EXHIBIT NO. 4

Board of Zoning Adjustment
District of Columbia
CASE NO.18692
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JURISDICTION OF THE BOARD

The application is properly before the BZA. The Board is authorized to grant the requested variances under § 8 of the Zoning Act, DC Official Code § 6-641.07 (g) (3) (2001), as further set forth in 11 DCMR § 3103.2

PROPERTY LOCATION AND DESCRIPTION

The property is located the northeast quadrant in the 1700 block of E Street and comprises three lots of record – lots 165, 166, and 167 situate in Square 4546.

The three lots are rectangular in shape and are interior lots by definition, with street frontage on the north where they abut E Street NE and a public alley running parallel to the south. The alley merges into a 40 feet alley running southerly and eastward. These two alleys abut the subject property partially at their intersection to the eastern side of the rear property lot line.

Combined, the three lots are a total 8,246.50 square feet in lot size or area, and lot width fronting on E Street computes to a total 68.72 feet

The subject property is located in the R-4 zone district, which requires a minimum lot area of one thousand eight hundred square feet (1800 sf.) and eighteen feet (18 ft.) for matter of right development of row dwellings and flats, as otherwise further amended by other provisions.

Applicant notes that each of the three lots involved in the instant application meet and exceeds these prescribed minimums

STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

The Applicant seeks variance relief pursuant to the Zoning Regulations, 11 DCMR § 3103.2, under §330.5, specifically to allow the new construction of an eight-unit apartment building at subject premises.

The Applicant, by preponderance of the materials submitted with this Application, facts to be presented in the course of the public hearing and further evidence to be submitted fourteen days prior to the hearing date, will prove compliance with the three prong test necessary for the granting of an area variance as outlined below.

The Board is authorized to grant a use variance where a property demonstrates three characteristic elements:

1. The subject property must demonstrate a unique physical characteristic of shape or size, exceptional narrowness or shallowness which existed as of the time of the original adoption of the Zoning Regulations, or that there exists exceptional topographical conditions or other extraordinary or exceptional situation or condition of property;
2. That the physical characteristic(s), or extraordinary or exceptional situation or condition of the property makes the strict application of the Zoning Regulations result in exceptional and undue hardship upon the owner of the property;
3. That the Board is able to grant the variance without substantial detriment to the public good and without substantial impairment of the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

EXTRAORDINARY OR EXCEPTIONAL SITUATION OR CONDITION OF PROPERTY

The Applicant submits that the Subject Property demonstrates extraordinary or exceptional situation or condition of property by virtue of the encumbrance of the location of a public utility main which traverses diagonally approximately one-third of lots, excluding its critical zone of influence. The effect of the location of the public utility main and its critical zone of influence restricts significantly such that lots 166 and 167 are undevelopable independently.

These lots are uniquely affected by the encumbrance of location of a public utility main as the only vacant lots in their square which would otherwise have been developable as matter of right lots, excluding alley lots.

Further, the lots were marketed together for good cause, hence although lot 165 could conceivably be improved independently, that opportunity is foreclosed by the good cause reason the sellers marketed and sold the subject property in tandem.

The applicant will provide to the record as part of final submissions prior to the hearing, evidence of and documents pertaining to the encumbrance of the public utility main and its critical zone of influence from the DC Water, the stakeholder responsible for maintenance and protection of the sewer main.

EXCEPTIONAL AND UNDUE HARDSHIP UPON OWNER OF PROPERTY

The encumbrance and location of the public utility main on subject property results in exceptional and undue hardship upon the owner because the development rights are significantly impacted by the restriction imposed by the critical zone of influence as to affect reasonable return in investment.

The "Site Building Footprint" is a graphic illustration of the comparative empirical limitation imposed on site development as a direct result of the location of the public utility easement on subject property.

Whereas the subject property at the sixty percent (60%) lot occupancy could potentially have constructed 4,947 square feet of building footprint and 19,788 square feet of gross and cellar floor area in the aggregate, the utility easement restriction imposes an approximate fifty percent (50%) reduction in improvement rights.

The proposed footprint is as restricted based on what DC Water will allow as a result of the encumbrance of the public utility main and its critical zone of influence. As evident, that portion of lots 166 and 167 to which the footprint is restricted results in a size and shape of structure as to render those two lots undevelopable, for all intents and purposes.

The applicant is therefore constrained to constructing one building which crosses property lot lines, and which is restricted to use as a two-family flat, if the strict application of the Zoning Regulations were applied.

Further, in accordance with the provision set forth in § 3202.3, each building is required to be located on a single lot of record. Hence the applicant is consigned to combining the three lots into a single lot of record to be compliant.

The attached project pro forma for subject property attests that the expected return on investment at approximately twenty three percent (23%) is proof of the infeasibility of a proposed project less than the eight (8) dwelling units proposed, and most certainly for the two-family flat to which the strict application of the Zoning Regulations restricts the subject property.

The burden imposed on subject property is not limited to restricted development rights, but extends to marketing of the completed project. It is not unreasonable to expect that price incentives will have to be extended to potential purchasers to offset concerns about the infrastructure beneath the common area.

SUBSTANTIAL DETRIMENT TO PUBLIC GOOD AND SUBSTANTIAL IMPAIRMENT OF INTENT, PURPOSE AND INTEGRITY OF THE ZONE PLAN

The applicant seeks to establish an apartment house use that the unique circumstances affecting the property as described above consigns it. The proposed use is a permitted use

in the underlying R-4 zone district, albeit only virtue of conversion of a structure in existence prior to May 12, 1958, subject to minimum lot size prescribed. Therefore the proposed use is not foreign to the R-4 zone district.

The proposed structure is architecturally compatible in scale and massing to existing neighboring properties. The surrounding buildings are predominantly row dwellings, Flats, and row structures that have undergone conversions to apartment houses.

The proposed use will provide twice the number of parking spaces required for the use in the underlying R-4 zone district therefore the use will not impose any significant adverse impact upon the surrounding neighborhood.

For the foregoing reasons, the applicant submits that the instant relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map

WITNESS

The following witness will testify in support of the Application:

1. Reza Damani.
2. Faraz Khan

CONCLUSION

The Applicant submits that the subject property exhibits all the characteristics which merit the granting of the use variance or relief sought in this application. As will be further documented the subject property is demonstrably impacted by the unique encumbrance of a public utility and associated zone of influence and attendant development restriction, over which the applicant has no control.

The proposed construction will not significantly adversely affect neighboring properties because parking spaces in excess of that required for the use will be located on site, and the density proposed is in keeping with the predominant architectural scale such that the proposed structure will not be incompatible with the surrounding neighborhood.

The proposed new construction puts in habitable use, property that is likely to remain vacant and unimproved absent the relief sought for reasons of economic infeasibility.

For all the foregoing reasons, the applicant respectfully request that the Board grant the relief sought in this application.