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BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPLICATION OF	**3112 13TH STREET NW**
3112 13TH STREET, LLC	**ANC 1A**

STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of 3112 13th Street, LLC (the "Applicant"), the owner of property located at 3112 13th Street NW, Lot 33 in Square 2848 (the "Property"), in support of its application for variance relief from the lot area requirement (§401.3) and off-street parking requirement (§2101.1) to allow the Applicant to convert a community based residential facility ("CBRF") to a multiunit residential building with four mechanical parking spaces in the R-4 District.

II. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the "Board" or "BZA") has jurisdiction to grant the variance relief requested herein pursuant to §3103.2 of the Zoning Regulations.

III. BACKGROUND

A. Background Information Regarding the Property

The Property, also known as Lot 33 in Square 2848, contains approximately 2,626 square feet of land area and is located in Northwest Washington D.C. The Property has approximately 18.75 feet of frontage along 13th Street NW. The Property is presently improved with a 3-story community residence facility and was previously owned by Community Multi-services, Inc. The Property has been used by Community Multi-services, Inc, since 1979 as a community residence for mentally disabled individual's displaying various levels of mental retardation, psychiatric disorders, and socially maladaptive behaviors. CMS is seeking a new location that can better accommodate its aging population. The individuals at the residence facility, while young children when they began their residency at CMS, are now between the ages of 35 and 55 year old. With some already facing, or soon be facing, mobility issues at the Property, the move to a single-level, ranch style location will help facilitate an easier transition as the individuals age.

The existing building has a number of unconventional features and have been substantially modified to accommodate the community residence facility use. The community residence facility has a certificate of occupancy to house and provide treatment to 8 youth. The facility currently has 6 patients. The facility also has 15 staff members, one employee for each patient, plus an additional 9 staff members for administration, maintenance, and operations. *See* Certificate of Occupancy at Tab 8. The structure has been substantially modified to accommodate the unique needs of Community Multi-Services, Inc over the years. The Property is not located within any historic district, and the existing building on the Property is not listed on the D.C. Inventory of Historic Sites.

B. Description of the Improvements in the Surrounding Area

Square 2848 is bounded by 13th Street NW to the east, Irving Street NW to the south, a public alley directly behind the Columbia Heights metro to the west, and Kenyon Street NW to the north. See Baist Atlas Map at Tab 9. Square 2848 is in the R-4 District and is located in Columbia Heights. *See* Zoning Map at Tab 10. Directly to the west is the large C-3-A District on 14th Street containing DC USA and other commercial uses near the Columbia Heights metro. Across the street from the property on 13th Street is the Tubman Elementary School. The southeast corner of the Square is occupied by the Church of Christ. The northwest corner of the Square is occupied by the Kenyon Street "Yes We Can" Housing Cooperative who purchased the apartment building at 1372 Kenyon Street in June 2010. The southwest corner of the Square is occupied by Victory Heights, a 75-unit Section 8 housing complex for very low income seniors. The remainder of the Square is largely two- and three-story rowhouses and flats.

C. Description of the Traffic Conditions and Mass Transit Options in the Surrounding Area

The Property is well serviced by a number of public transportation facilities and services including Metro, Metrobus routes, Capital Bikeshare, Zipcar, and Car2Go. The Property is located 1 block (approximately 0.2 miles) from the entrance of the Columbia Heights Metrorail station. The Metrobus routes along 13th Street NW include the H1, H2, H3, H4 and H8. Also within walking distance of the Property are Capital Bikeshare stations including stations located at the intersections of Park Road & Holmead Place NW (19 docks), 11th & Kenyon (27 docks) and at 14th & Harvard (19 docks). Car-sharing continues to expand in the nearby area. Zipcar spaces are located nearby including 1 space behind 1350 Irving St. NW and 4 Spaces at 2900 14th Street (Columbia Heights Metro). Another local car-sharing program, Car2Go, reported in July 2013 that the use of the company's car-sharing service in the District had reached over 25,000 and that the fleet was expanded from 300 vehicles to 400 vehicles to accommodate increasing demand. Walkscore.com gives the Property a walkscore of 94 and classifies the property as a "walker's paradise," "very bikeable," and as having "excellent transit."

D. Description of the Proposed Development

As shown on the architectural plans, see Architectural Plans at Tab 11, the Applicant proposes to convert a community residence facility to a four-unit apartment by rehabilitating a structure modified for a CBRF use and returning it to residential use.[1] The four-unit apartment will have one unit on each floor. The basement, second, and third floors will be three-bedroom units. The first floor will be a two-bedroom unit. The proposed project does not change the existing footprint of the structure. The existing structure has a height of 37.5 feet and three stories plus a cellar, which is permitted as a matter-of-right and will remain unchanged. The Applicant is providing four mechanical parking spaces while only 1 off-street parking space is required at the Property.

[1] A community residence facility is a form of CBRF. *See* 11 DCMR 199.1.

IV. <u>NATURE OF RELIEF SOUGHT AND STANDARD OF REVIEW</u>

Variance relief is required from the lot area requirement under §401.3 and parking requirement under §2101.1. Under D.C. Code §6-641.07(g)(3) and 11 DCMR §3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

(1) The property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;

(2) The owner would encounter practical difficulties if the zoning regulations were strictly applied; and

(3) The variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

See French v. District of Columbia Bd. of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (*quoting Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also, Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

Applicants for an area variance need to demonstrate that they will encounter "practical difficulties" in the development of the property if the variance is not granted. *See Palmer v. District of Columbia Bd. Of Zoning Adjustment*, 287 A.2d 535, 540-41 (D.C. 1972)(noting that "area variances have been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden"). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be "unnecessarily burdensome." *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990). As discussed below, and as will be further explained in the Prehearing Statement and at the public hearing, all three prongs of the area variance test are met in this Application.

V. THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

A. The Property is Unusual Because of its Size, Shape or Topography and is Affected by an Exception Situation or Condition

The phrase "exceptional situation or condition" in the above-quoted variance test applies not only to the land, but also to the existence and configuration of a building on the land. *See Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation may arise from a confluence of factors which affect a single property. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

The Property is unusual and affected by an exceptional situation and condition as a result of a confluence of the following factors: (1) the Property was previously used as a community residence facility for the mentally challenged; (2) the Property requires substantial resources to remove the nonresidential components of the existing structure to accommodate the community residence facility use; (3) the Property's existing layout is not that of a residential unit; and (4) the Property has features that are not building code compliant.

First, the Property has historically been used as a community residence facility for the mentally challenged for over 34 years. The presence of a community residence facility for the mentally challenged in an R-4 District is unique. There are no other facilities for the mentally challenged in Square 2848 and none in the immediate area. The structure can no longer be used as a community residence facility because, as a result of the age of the individuals, the structure can no longer accommodate the various mobility needs of the establishment. Furthermore, due to the financing arrangement between the District and CMS, the rental subsidy to operate as a CBRF is no longer available.

Second, the existing structure must be substantially renovated due to major modifications done to the existing structure to accommodate the community residence facility use. A new exterior fire staircase around the side and rear of the structure and fire safety doors have been installed to provide proper fire safety for the commercial licensing and use as a community residence facility for the mentally challenged.

The large exterior metal staircase must be demolished at great expense to the Applicant. The basement has a very low ceiling height at various points and very short door has been installed to accommodate what is presumed to be an HVAC unit. The structure has a visible, commercial grade external sprinkler system as well as exit signs, fire alarms, and exposed piping and alarm systems. A large oil tank is located at the rear of the Property and must be removed in accordance with proper procedure. The stairs at the front of the existing structure, leading to the lower level, are inadequate and do not satisfy the b building code' standards.

Third, the Property's existing layout is not that of a residential property. The room size and layout are that of a CBRF, not a residential use. The existing structure, which contains 6 small bedrooms, one community kitchen and dining room as well as a parlor, patient storage, an exercise room, an office and laundry room, must be reconfigured to achieve an efficient layout, unit size, and design for residential use.

Fourth, the structure has a noncompliant back staircase in the rear of the Property near the kitchen that must be replaced to comply with building code requirements. In addition, as a matter of structural efficiency with respect to plumbing and electric, the stairwell must be relocated so the kitchens and stairwells for each unit will align vertically and the plumbing can be stacked.

In sum, the prior use of the existing structure as a community residence facility for the mentally challenged; the substantial renovation required; the inefficient existing layout; and the need to remove and relocate a noncompliant stairwell create an exceptional condition at the Property.

B. Strict Application of the Zoning Regulations Would Result in Practical Difficulty to the Owner

1. Lot Area (§401.3)

Under §401.3, the conversion of a building or structure to an apartment house in the R-4 district is permitted, but requires a minimum of 900 square feet of lot area per unit. The lot area of the Property is 2,626 square feet. Thus, a four-unit structure requires a 243.5 foot deviation or 27%. As demonstrated in more detail below, strict application of the lot area requirements in this case would result in a practical difficulty to the Applicant.

The Court of Appeals has repeatedly held that "economic use of property may be properly considered as a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty in area variance cases." *Tyler, et. al. v. District of Columbia Bd. of Zoning Adjustment*, 606 A.2d 1362 (D.C. 1992)(internal citations removed)(*Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990)(Reiterating in the context of an area variance that "increased expense and inconvenience to applicants for a variance are among the proper factors for BZA's consideration."). In *Association for Preservation of 1700 Block of N St., N.W. & Vicinity v. District of Columbia Bd. of Zoning Adjustment*, the Court confirmed that at a given point economic harm becomes sufficient, when coupled with a significant limitation on the utility of the existing structure or property, to satisfy the variance standard. 384 A.2d 674 (D.C. 1978)(Finding practical difficulty where a YMCA *could* build a structure that compiled with off-street parking requirements by reducing its size and programming but was not economically feasible or cost-effective). In *Wolf v. District of Columbia Bd. of Zoning Adjustment*, the Court of Appeals upheld a Board decision granting an area variance to permit conversion to a three-unit rental apartment where "marketability" of the property would otherwise be "unfeasible" and investment would yield loss rather than profit. 397 A.2d 936 (D.C. 1979)(Upholding approval of a lot area variance for conversion of a two-family dwelling to a three-unit apartment building where a two-family dwelling was not marketable and monthly expenses would out pace annual rental income). The Board of Zoning Adjustment has granted lot area variances from §401.3 based on economic feasibility grounds on a number of occasions.

In this instance, it is not simply that having fewer units would produce less of a profit for the Applicant. Rather, due to the exceptional circumstances at the Property described above *any* renovation of the existing structure that results in rental income from fewer than four units would result in an economically infeasible project. The primary driver of the financial infeasibility is that substantial base renovation costs must be completed regardless of the number of units. The base renovation costs, including interior demolition, exterior fire staircase removal, basement underpinning and structural support, oil tank removal, lead paint abatement, will cost roughly $220,000 or nearly 33% of the total hard costs. Base renovation costs make up a larger percentage of total hard costs when the structure has fewer units at roughly 39% of hard costs for a 3-unit structure and 45% for a 2-unit structure. *See* Profit and Loss Analysis and Construction Budget at Tab 12. Because of the significant base renovation costs required to allow the structure to be used as a residential structure of any kind, the Applicant must spread those costs over the additional units requested to have a financially viable project.

Moreover, alternative matter-of-right uses are not viable options. For a developer to utilize the structure as community residential facility, the Property must not only find another community residential facility tenant but must also comply with the building code which contributes significantly to the financial infeasibility and practical difficulty. Furthermore, the prior use of the Property as a community residence facility makes it unlikely that an individual would purchase the Property and invest the necessary funds to convert the Property to a single-family home. The purchase price and renovation hard costs alone, whether used as a single-family home or otherwise, would be well over $1,000,000 and no single family home in this area, other than a select few with properly licensed second units, has sold for more than $1,000,000 within the last year. *See* Profit & Loss Analysis and Construction Budget at Tab 12.

The Applicant will testify, based on the attached Profit and Loss Analysis and Construction Budget, that there is no economically feasible alternative for rehabilitation of this Property because compliance with the Zoning Regulations will result in a loss. Thus, a practical difficulty exists because the existing structure requires such a large investment that renovation becomes feasible only with the sale of four units.

2. Parking Requirement (§2101.1)

Pursuant to 2101.1, a four-unit structure in the R-4 District has an off-street parking requirement of one space. In this instance, the Applicant is providing four mechanical parking spaces. At this time, the Zoning Regulations do not recognize mechanical parking spaces as legal spaces for purposes of meeting the off-street parking requirement. Thus, while providing four times the amount of parking required under the Zoning Regulations, the Applicant is requesting zoning relief from §2101.1for the one space off-street parking requirement.

C. No Substantial Detriment to the Intent, Purpose and Integrity of the Zoning Plan

The requested variance is in furtherance of the public good and zoning regulations. The addition is modest in nature and not out of scale with the surrounding patterns of development on this stretch of 13th Street NW. The zoning relief with regard to lot area will permit renovation of a structure previously used as a community residence facility, bringing it up to commercial market standards and returning it to residential use while allowing for an economically viable structure. The footprint of the building will remain unchanged, leaving the rear yard, and other requirements to remain permitted as a matter of right. With regard to lot area, there will be no negative effect on the density of the square. A number of apartment structures are already located on the Square. In addition, the additional residential units help address the well documented shortage of housing in the Washington D.C. area.[2] The proposed project will not have a negative impact on the character of the neighborhood. While the presence of other multiunit dwellings on this block is not a justification in itself, the presence of these structures and proximity to the Columbia Heights Metrorail Station means that the requested relief compliments and adds to the current mix of uses nearby. Moreover, rehabilitation of the existing structure minimizes demolition and construction impacts on the neighborhood and its reuse supports green building initiatives.

[2] The Washington metropolitan area will need 700,000 new housing units by 2030, or roughly 36,500 each year. However, if the pace of construction over the last 20 years continues, at roughly 28,000 new housing units per year, the region would only add about ¾ that much. Artemel, Agnes and Sturtevan, Lisa. *Washington's Economic Future Depends on More Housing*. October 17, 2012. Greater Greater Washington. Found at: http://greatergreaterwashington.org/post/16470/washingtons-economic-future-depends-on-more-housing/

By providing four mechanical parking spaces, the Applicant is providing four times the parking required under the Zoning Regulations. This will help alleviate parking concerns of neighboring Columbia Heights residents.

For these reasons, approval of the zoning relief requested will not cause a detriment to the public good or zone plan.

VI. <u>CONCLUSION</u>

For the reasons stated above, the requested relief meets the applicable standards for variance relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests that the Board grant the application.

Respectfully submitted

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By: ______________________

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