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May 6, 2014

Board of Zoning Adjustment
for the District of Columbia
441 4th Street, N W , Suite 210S
Washington, DC 20001

Re BZA Application No 18734
1815 Riggs Place, N W (Square 133, Lot 818)

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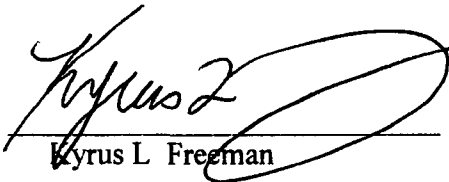
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U.S. OFFICE OF THE ATTORNEY GENERAL

Dear Members of the Board

On behalf of 1815 Riggs LLC, the Applicant in the above-referenced case, enclosed please find one original and ten copies of the Applicant's prehearing submission in support of its application for zoning relief requested for the above-referenced property

Respectfully Submitted,

HOLLAND & KNIGHT LLP

By 
Kyrus L. Freeman

Attachments

cc Paul Goldstein, OP
Advisory Neighborhood Commission 2B
Mike Feldstein, Advisory Neighborhood Commission 2B01

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18734
EXHIBIT NO. 37

Board of Zoning Adjustment
District of Columbia
CASE NO.18734
EXHIBIT NO.37

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

**APPLICATION OF
1815 RIGGS LLC
1815 RIGGS PLACE, N.W.**

**BZA APPLICATION NO. 18734
HEARING DATE: MAY 20, 2014
ANC 2B01**

SUPPLEMENTAL PREHEARING STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This Supplemental Prehearing Statement of the Applicant is submitted by 1815 Riggs LLC (the "Applicant"), the owner of property located at 1815 Riggs Place, N.W., Square 133, Lot 818 (the "Site"), in support of its application pursuant to 11 DCMR section 3103.2 for a variance from the nonconforming structure provisions under subsection 2001.3, a variance from the open court requirements under subsections 406.1 and 2001.3(b)(2), and a variance from the floor area ratio ("FAR") requirements under subsection 402.4, to allow an addition to an existing building for residential use in the DC/R-5-B District at the Site

In its initial prehearing statement, dated March 18, 2014, and at the public hearing on April 8, 2014, the Applicant demonstrated that it satisfied the requirements for a variance from the nonconforming structure provisions of subsection 2001.3 and from the open court requirements of subsections 406.1 and 2001.3(b)(2). However, the Board found that the Applicant did not meet its burden of proof to satisfy the requirements for a variance from the Inclusionary Zoning applicability requirements of subsection 2602.1(c)(iii), as requested. Thus, the Applicant amended its application on April 16, 2014, to seek relief from the FAR requirements of section 402.4.

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 section 3103 2 of the Zoning Regulations.

III.
EXHIBITS IN SUPPORT OF THE APPLICATION

<u>Exhibit A</u>	Architectural Plans and Elevations
<u>Exhibit B</u>	Economic Feasibility Analysis Prepared by Bolan Smart Associates
<u>Exhibit C</u>	Outline of Testimony and Resume of Eric Smart.
<u>Exhibit D</u>	Historic Preservation Review Board Report.

IV.
BACKGROUND

The Site is zoned DC/R-5-B and is improved with an existing building used for residential use. The Site is located in the northern portion of Square 133 in the northwest quadrant of the city and is bounded by S Street to the north, 18th Street to the east, Riggs Place to the south, and 19th Street to the west. The Site is bounded by a 10-foot wide public alley to the north and east, Riggs Place to the south, and private property to the west. The Site includes approximately 3,787 square feet of land area.

The existing building has a height of 22'-6" and includes 6,252 square feet of gross floor area devoted to residential use. The existing building has an FAR of 1.65, whereas the R-5-B District permits a maximum FAR of 1.8 and 2.16 utilizing the Inclusionary Zoning bonus.

As shown on the Architectural Plans and Elevations ("Plans"), attached hereto as Exhibit A, the Applicant proposes to construct a third-story addition to the Site. Upon completion, the

building will have a height of 30'-9" and will include a total of 8,179 square feet of gross floor area devoted to residential use. The building will have an FAR of 2.16. The addition will include three residential units. The proposed residential use for the Site is consistent with the Site's zoning designation and with other uses within the square.

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

Variance relief in this case is required from the non-conforming structure requirements (§ 2001.3), the open court requirements (§§ 406.1 and 2001.3(b)(2)), and the Inclusionary Zoning applicability requirements (§ 2602.1(c)(iii)). 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 Board of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)), *see also, Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). As discussed below, and as will be further explained at the public hearing, all three prongs of the area variance test are met in this application.

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

As described in the Applicant's prehearing statement and at the public hearing, the Applicant meets the first prong of the variance test for the following reasons:

1. The Site is considerably wider than most of the other lots in Square 133 and in the surrounding neighborhood. The majority of the surrounding lots contain single-family homes that are approximately half the width of the Site.
2. The Site is improved with an existing building that creates several exceptional conditions, including
 - a. The building is irregularly shaped on a rectangle lot, with the southern portion of the building occupying the entire width of the lot and the northern portion of the building providing open space along the north, east, and west portions of the Site.
 - b. At a width of approximately 42.2 feet along Riggs Place, the Site is at least two times as wide as the row dwellings located on the north and south sides of Riggs Place. Moreover, with few exceptions, the other multi-family buildings within the Square are all on lots that are either wider or larger than the Site.
 - c. The building was constructed in approximately 1941 and has existing conditions that cannot be altered and must be incorporated into the proposed addition. For example, the stair in the center of the building and the existing plumbing stacks and utilities cannot be relocated, since these facilities already serve the residential units on the lower floors and will be used for the proposed new units. The existing structural bearing lines also cannot be shifted without significantly disrupting the existing building structure.
 - d. The Site is located in the Dupont Circle Historic District. Although the building is non-contributing to the historic district and is not otherwise listed or protected, the specific restraints imposed on the building by the Historic Preservation Office, such as the addition's setback and design, are unique as they relate to this building.
 - e. The building is fully leased, which affects how and where the Applicant can undertake construction on the Site in order to minimize conflict with current residents.

- 3 The existing building is nonconforming with respect to lot occupancy, rear yard, and open court. Given that the existing building was constructed prior to adoption of the current Zoning Regulations, constructing any addition to the existing building would generate the need for zoning relief.

The BZA and the Office of Planning have found in other cases that similar conditions meet the first prong of the variance test. For example, in BZA Case No. 18005, the Board granted relief from the nonconforming structure requirements to allow the renovation of and third story addition to an existing apartment house in the DC/R-5-B District. In granting this relief, the Board found an exceptional or extraordinary condition based on the existing building's non-conformity with respect to lot occupancy. At the public hearing, Vice-Chairman Dettman stated that.

[w]hile the preexisting condition is not in and of itself an exceptional or unique circumstance, it certainly has been entertained by the Board, in many cases, as something contributing to a unique circumstance as part of a kind of confluence of factors. And not only with the property owner, but any property owner, in order to do any kind of addition to this particular building, the strict application of the Zoning Regulations would require some kind of partial demolition of the existing building.

See BZA Public Hearing Transcript from Tuesday, December 8, 2009, pgs 137-139. In BZA Case No. 18660, the Board granted relief from the non-conforming structure requirements to allow an addition to, and renovation of, an existing building for residential use. In this case, the Board found an exceptional condition related to the existing building, which was non-conforming with respect to side yard and had to be incorporated into the design of the proposed redevelopment because it comprised a significant portion of the final residential development. In BZA Case No. 18421, the Board approved the renovation of an existing dwelling into a four-unit apartment house based on an exceptional or extraordinary condition created by an existing building that was non-conforming with respect to lot occupancy, rear yard, and FAR. In BZA

Case No 18646, the Board found an exceptional or extraordinary condition based on an existing building that was non-conforming with respect to height, lot area, and lot width

Similar to these previous cases, the Site's nonconformity with respect to lot occupancy, rear yard, and open court creates an exceptional situation or condition

B. Strict Application Would Result in a Practical Difficulty to the Owner

(a) Variance from Non-Conforming Structure Requirements Pursuant to Section 2001.3

At the public hearing, the Board found that the strict application of the nonconforming structure requirements of section 2001 3 of the Zoning Regulations in this case would result in a practical difficulty to the Applicant.

(b) Variance from Open Court Requirements Pursuant to Sections 406.1 and 2001.3(b)(2)

At the public hearing, the Board found that the strict application of open court requirements of sections 406 1 and 2001 3(b)(2) of the Zoning Regulations in this case would result in a practical difficulty to the Applicant

(c) Variance from the FAR Requirements Pursuant to Section 402.2.

Strict application of the FAR requirements in this case would result in a practical difficulty. The existing building currently has an FAR of 1 6 Pursuant to section 402 2 of the Zoning Regulations, the maximum FAR permitted in the R-5-B District is 1 8, or 2 16 with Inclusionary Zoning Based on the Board's decision not to grant relief from the Inclusionary Zoning applicability requirements under section 2602 1(c)(iii), the Applicant is now requesting relief from the FAR regulations The requested relief would enable the Applicant to construct an addition of 1,927 square feet, consisting of three new residential units

The Applicant could construct a single new residential unit on top of the existing building and still comply with the 1.8 FAR maximum. However, constructing one new unit instead of the proposed three new units would result in an economic hardship and practical difficulty to the Applicant. As explained in *Tyler v. District of Columbia Board of Zoning Adjustment*, 606 A.2d 1362 (D.C. 1992), evidence of economic justification may be considered by the BZA in deciding whether area variances should be granted. In *Tyler*, the Applicant provided evidence that the need to depart from the normal height and FAR limitations was due to economics, and that "additional height was necessary if the project were to be economically sound." *Id.* at 1366. The cost of the restoration of the existing town houses on the property would have far exceeded the income that could have been derived from their resale. The D.C. Court of Appeals held that this type of economic impact is directly relevant to the area variance test. *Id.*

Similarly, in *Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A.2d 1164 (D.C. 1990), the D.C. Court of Appeals explained that "economic use of property" may properly be "considered as a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty in variance cases." The *Gilmartin* Court reiterated that "[i]ncreased expense and inconvenience to applicants for a variance are among the proper factors for BZA's consideration." In *Monaco v. District of Columbia Board of Zoning Adjustment*, 409 A.2d 1067 (D.C. 1979), the D.C. Court of Appeals sustained the grant of a height variance which the BZA had "expressly justified on the grounds of economic feasibility." See also *Wolf v. District of Columbia Board of Zoning Adjustment*, 397 A.2d 936, 943 (D.C. 1979) (Board properly granted area variance to permit conversion to three-unit rental apartment where "marketability" of property would otherwise be "unfeasible" and investment would yield loss rather than profit); *Russell v. District of Columbia Board of Zoning Adjustment*, 402 A.2d 1231 (D.C. 1979) (area

variance properly granted "where the owner could never sell the unimproved lot for a permitted residential use absent a variance"), *see generally* ARDEN H. RATHKOPF & DAREN A. RATHKOPF, *THE LAW OF ZONING & PLANNING* § 38.04, at 38-48 to 38-53 (1991) (discussing need to prove "significant economic injury" in order to show practical difficulty)

The fixed costs associated with constructing one new residential unit at 1.8 FAR would far outweigh any future income generated by that unit, thus creating a practical difficulty to the Applicant. As described in the Economic Feasibility Analysis prepared by Bolan Smart Associates, attached hereto as Exhibit B, constructing a single unit instead of three additional units would result in economic harm to the Applicant including the following:

1. A unit that is 3.7 percent less efficient,
2. A unit that is only 474 square feet, which is 15.4 percent smaller than the typical unit size,
3. Incremental costs that are 15.2 percent more expensive per unit, and an increase in soft costs of 20 percent more per unit,
4. Total development costs that are 40.4 percent more expensive,
5. A unit that would have to be priced at 33.4 percent over market rent in order to support its development costs, and
6. An annual loss to the Applicant of \$6,657.

Based on the foregoing, in order to cover the cost of constructing any addition, the Applicant would have to build three or more new units to the existing building. Building anything less than 2.16 FAR would result in less efficient units, increased development costs per unit, and an investment that would yield a net loss rather than a profit, making development

practically difficult. It is therefore economically infeasible for the Applicant to comply with the FAR requirements of section 402.2, resulting in the need for relief.

C. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan

There will be no substantial detriment to the public good and no substantial impairment to the intent, purpose, and integrity of the zone plan by approving the requested zoning relief. The addition of three new residential units to the existing residential building will contribute to the vibrancy of the neighborhood and is consistent with the Mayor's goals for providing new residential units throughout the city.

With respect to the FAR requirements, the proposed development will not have a substantial detriment to the public good because the building will still be within the height and FAR requirements of the Zoning Regulations. The proposed density is consistent with the matter-of-right development standards in the R-5-B District utilizing the IZ bonus density, which permits the construction of up to 2.16 FAR as a matter-of-right. Thus, the proposed 2.16 FAR for the Site will not result in a building that is larger than what could otherwise be built on the same Site. Moreover, the massing of the building is consistent with the other buildings on Riggs Place, which are primarily three-stories and are taller than the existing building on the Site.

Pursuant to recommendations from the Historic Preservation Office, HPRB approved the proposed massing of the building. As stated in HPRB's Staff Report, dated March 27, 2014, and attached hereto as Exhibit D

[t]he proposed addition brings the height and scale of the building in proportion to the existing row. The horizontal of the projecting cornice aligns with the horizontal ornamentation of the adjacent row house and cleverly conceals the additional height of the flat roof behind the projection. The setback of the third story corresponds to the façade of the rowhouse. . and the light appearance of the addition, both in mass and

color, emphasizes the existing building and establishes it as a base for the modern top

Thus, the proposed addition is compatible with the character of the historic district and will have no detriment to the public good or a substantial impairment to the Zone Plan

Finally, the proposed addition is consistent with numerous policies of the Comprehensive Plan, specifically those dedicated to housing. For example, the project helps to achieve the overarching goals of the Housing Element (Chapter 5) to develop and maintain a safe, decent, and affordable supply of housing for all current and future residents of the District of Columbia. The project also furthers *Policy H-1.1 Expanding Housing Supply*, by producing new housing with improved design and identity that will ensure the future of the District's neighborhoods. Moreover, the project fosters the goals of the Near Northwest Area Element. For example, the proposed addition is consistent with *Policy NNW-1.1.1 Residential Neighborhoods*, since it helps to maintain and enhance the historic, architecturally distinctive mixed density character of the existing neighborhood, and provides infill development that is architecturally compatible with its surroundings and positively contributes to the identity and quality of the neighborhood. The project also helps implement *Policy NNW-2.2.1 Dupont Circle Area Policies*, since the addition is consistent with the nature and character of the Dupont Circle Area in height and bulk, and enhances the residential character of the area by maintaining existing residential uses and controlling the scale and density of residential development.

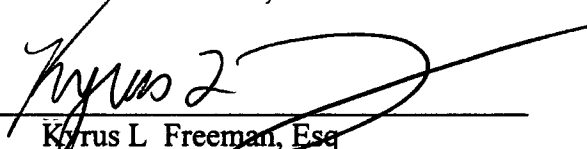
IV.
CONCLUSION

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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