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

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted by 1815 Riggs LLC, 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 an area variance from the nonconforming structure requirements under §2001.3 to allow an addition to an existing building for residential use in the DC/R-5-B District at the Site.

Pursuant to Section 3113.8 of the Zoning Regulations, the Applicant will file its prehearing statement with the Board no fewer than 14 days prior to the public hearing date. In that statement, and at the public hearing, the Applicant will provide testimony and evidence to meet its burden of proof to obtain the Board's approval of the requested relief.

I. Background Information Regarding the Site and Application

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, which is located 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. As indicated on the building plat included with the application, the Site is bounded by a 10-foot wide public alley to the north and to the 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 29'-4" 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

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shown on the plans, the Applicant proposes to construct a third-story addition to the property. Upon completion, the building will have a height of 39'-4" and will include a total of 8,179 square feet of gross floor area devoted to residential use. 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.

II. The Applicant Meets The Burden Of Proof For The Requested Area Variances

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, the Applicant meets all three prongs of the area variance test.

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

The phrase "exceptional situation or condition" in the above-quoted variance test may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2nd 1164, 1168 (D.C. 1990). In this case, the conditions of the Site,

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combined with the size and dimensions of the existing building on the Site, combine to create an exceptional situation and condition.

As shown on the materials included with the application, the Site is bounded by public alleys to the north and east, private property to the west, and has approximately 42.2 feet of frontage on Riggs Place, N.W., all of which impact access to and development of the Site.

In addition, the Site is improved with an existing building that includes two above-grade levels and one cellar level devoted to residential use. The existing building was constructed approximately 1941. The existing building is nonconforming with respect to rear yard and lot occupancy. Although the building is not a historic landmark, the development proposal involves the retention of this structure. However, given that the existing building was constructed prior to adoption of the current Zoning Regulations and is nonconforming with respect to lot occupancy, constructing any addition to the existing building would generate the need for zoning relief.

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

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. The existing building on the Site is presently nonconforming as to the following requirements of the Zoning Regulations:

1. Rear yard - Pursuant to Section 404.1 of the Zoning Regulations, in the R-5-B District, buildings are required to provide a rear yard having a minimum width of 4 inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 15 feet. The existing building has a measured height of 29'-4", and assuming that the height at the rear of the building is approximately the same, 4 inches per foot

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equals 9.78 feet. Therefore, a 15-foot rear yard would be required for the existing building under the current Zoning Regulations. However, the existing rear yard is only 3 feet, 9 1/2 inches.

2. Lot occupancy - Pursuant to Section 403.2 of the Zoning Regulations, the maximum permitted lot occupancy in the R-5-B District is 60%. However, the existing building has a footprint of 3,126 square feet, which equals a lot occupancy of 82%.

Section 2001.3 of the Zoning Regulations provides that enlargements or additions may be made to nonconforming structures if:

- (a) The structure conforms to percentage of lot occupancy requirements, except as provided in § 2001.13; and
- (b) The addition or enlargement:
 - (1) Conforms to use and structure requirements; and
 - (2) Neither increases or extends any existing, nonconforming aspect of the structure; nor creates any new nonconformity of structure and addition combined.

As shown on the plans included with the application, the proposed addition conforms to the use and structure requirements, does not increase or extend the existing nonconformities with respect to rear yard or lot occupancy, and does not create any new nonconformity of structure or addition combined.

However, relief is required from Section 2001.3(a) since the existing building does not meet the lot occupancy requirements. In order to add to the nonconforming building and conform to the 60% lot occupancy limitation, approximately 22% of the existing building footprint at the first floor level (687.72 square feet) would need to be removed. This would theoretically be in the rear portion of the building. However, removing 687.72 square feet of the existing building would be practically difficult and would adversely impact the structural

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integrity of the existing building. Moreover, the first level of the building is leased to tenants, so removing 687.72 square feet of the existing building would require displacement of the existing residents in this portion of the building. In addition, the Applicant only proposes to add approximately 1,927 to the square feet of gross floor area to the building and removing 687.72 square feet of the existing building in order to accommodate this relatively minor addition would be practically difficult for the Applicant.

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 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. Moreover, the existing building has occupied 82% of the lot since the building was constructed, and the Applicant's proposed third-story addition does not increase the existing lot occupancy. Finally, the Applicant has the support of the adjacent property owner for the proposed addition.

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