

BEFORE THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

**Preliminary Statement of Compliance with Burden of Proof**

This statement is submitted by Mr. Justin Kitsch and Mrs. Margaret Kitsch, the “Applicants” here and owners of the subject property located at 1330 5<sup>th</sup> Street NW, Washington DC 20001 (the “Property”). The Applicants seek a variance from the lot coverage (§403.2) requirements in the Zoning Regulations.

**I. BACKGROUND INFORMATION REGARDING THE PROPERTY**

The Property is in the R-4 Zone District and is in the boundaries of ANC 6E (specifically ANC 6E03). The Applicants’ lot is improved with a three-story, row dwelling. The property has an external stair way that runs up the side of the building and terminates at the roof. When purchasing the property, it was represented to the Applicants that a roof deck would be possible to build. However, the building was not properly engineered for a roofdeck, hence the reason for this application for a back deck.

**II. DESCRIPTION OF THE DEVELOPMENT PROPOSAL AND ZONING RELIEF**

The Applicants propose to construct a small back deck off the rear of the property on the 2nd floor of the townhouse. The proposal will not increase the internal square footage of the property. In order to facilitate the proposed deck, the Applicant seeks a Variance from the Lot coverage Requirement.

**III. PROJECT MEETS THE STANDARD FOR APPROVING AREA VARIANCES**

The project requires a variance from the lot coverage. Under D.C. Code § 6-202, the Board of Zoning Adjustment may grant a variance from the requirements of the Zoning Regulations if the Board finds that the proposed use is a permitted use in the applicable zoning district and that the proposed use is a variance from the requirements of the Zoning Regulations. The Board of Zoning Adjustment is the final authority on the matter. The Board of Zoning Adjustment may grant a variance from the requirements of the Zoning Regulations if the Board finds that the proposed use is a permitted use in the applicable zoning district and that the proposed use is a variance from the requirements of the Zoning Regulations. The Board of Zoning Adjustment is the final authority on the matter.

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 or exceptional and undue hardship; 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.

As discussed below, all three prongs of the area variance test are met in this application.

**A. The Property is Affected by an Exceptional Situation of Condition**

An “exceptional situation or condition” applies not only to the land, but also to the existence and configuration of a building on the land. And, the unique or exceptional situation or condition may arise from a confluence of factors which affect a single property. In this case, the exceptional condition arises from a number of factors. The property was built to the maximum percentage of lot occupancy of 60% for a row dwelling in the R-4 Zone District. The vast majority of the unbuilt area is dedicated for two parking spaces in the rear of the building. Hence, other than the area for car parking, there is no usable outdoor area on the property.

**B. Strict Application of the Zoning Regulations would Cause Practical Difficulty or Exceptional and Undue Hardship.**

The Applicant would encounter practical difficulties if the Zoning Regulations were strictly applied to the project. As noted above, when the applicants purchased the property,

it was represented that it was possible to construct a roofdeck on the building. However, upon further inspection, it was determined that the building was constructed in a way that would not support a roofdeck. The current roof would need to be modified structurally to accommodate a roof deck. Furthermore, the design of the roofing drainage methods and waterproofing would need redesigned as well. These modifications would constitute significant reconstruction of the existing roof and significant expense.

**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 if the Board grants the requested variance. The proposed deck will not increase the total amount of interior square footage at the property. It will also not encumber any sight lines of the neighbors. The proposed deck would align with but not extend further than the adjacent neighbor (also a rowhouse) to the south. The construction will fit with the neighborhood look and feel, and it will improve the visual image of the back of the property. This improvement to the property will provide partial coverage to the existing (2) parking spaces below. It will also provide additional outdoor access on the property. Granting the application will not be a detriment to the public good. It will have no impact on traffic, lighting, noise, neighborhood parking, or sightlines. The project does not result in additional dwellings or units, it merely seeks to achieve a modest, usable outdoor area.