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December 22, 2014

Lloyd Jordan, Chairperson
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

Re: Application No. 18891 – 14th & H Street NE (Square 1049N, Lots 5, 6, 802, 803, and 804)
Prehearing Statement of the Applicant

Chairperson Jordan and Honorable Members of the Board:

On behalf of 14 & H Street, LLC, please find enclosed the Prehearing Statement for the above-referenced application. The application is scheduled to be heard before the Board of Zoning Adjustment on January 6, 2014.

Thank you for your attention to this matter.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP



By: Meredith H. Moldenhauer

Enclosures:

Cc: Advisory Neighborhood Commission 6A
c/o Nicolas Alberti, Chair
Andrew Hysell, SMD 6A06 Representative (via email)
Office of Planning (via email)

Board of Zoning Adjustment
District of Columbia
CASE NO. 18891
EXHIBIT NO. 35

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

**APPLICATION OF
14 & H, LLC**

**BZA APPLICATION NO. 18891
HEARING DATE: JANUARY 6, 2014**

PREHEARING STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of 14 & H Street, LLC (the “Applicant”), the owner of property located at 1401 Florida Avenue NE and 1402, 1404, 1406 and 1410 H Street NE, Lots 5, 6, 802, 803, and 804 in Square 1049N (the “Property”) in support of its application for area variance relief from the requirements regarding lot occupancy (§772), FAR (§771), and parking (§2101.1); and special exception relief, pursuant to 11 DCMR §3104, regarding new construction on a lot greater than 6,000 sq. ft. (§1320.4), to allow the Applicant to construct a multifamily residential building with ground floor retail in the C-3-A/HS-A Zone District at the Property.¹

In response to feedback from the ANC, the Applicant has reduced the height, FAR, lot occupancy, and number of residential units for the proposed project. The height has been reduced from 75 feet to 70 feet. The FAR has been reduced from 6.0 FAR to 5.26 FAR. The residential lot occupancy has been reduced on several residential floors. The Applicant has also reduced the number of residential units from 34 to 28 units, which reduces the parking relief sought from 29 to 21 parking spaces. *See* Revised Architectural Plans at **Exhibit A**. While loading is not required at the Property the Applicant has, and will continue, to work with DDOT to address loading at the Property. DDOT has expressed concerns, unrelated to the zoning relief requested, which will be fully vetted with DDOT and the Public Space Committee.

¹ In the Initial Application, the Applicant sought height relief and a special exception regarding roof structures. The Applicant has revised the Architectural Plans such that this relief is no longer needed.

II. EXHIBITS IN SUPPORT OF THE APPLICATION

Exhibit A: Revised Architectural Plans and Renderings

Exhibit B: TDM Measures

Exhibit C: Letters of Support

III. APPLICANT MEETS BURDEN OF PROOF FOR VARIANCE RELIEF

The Board is authorized to grant an area variance where it finds that the Applicant fulfills the three-prong area variance standard. As described in the Initial Submission, supplemented in this Prehearing Statement, and as will be further explained at the public hearing, all three prongs of the area variance test are satisfied.

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 variance test applies not only to the land, but also to the property’s history and the 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). As described in the initial submission, 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 has a long, narrow, triangular shape; (2) the Property has street frontage on all sides; (3) the Property has an exceptionally large “public parking” area along Florida Avenue NE; (4) the Property has no alley access; and (5) the location of the Property at the easternmost end of the H Street Corridor and adjacent to a Starburst Intersection.

B. Strict Application of the Zoning Regulations would Result in Practical Difficulty

Strict application of the zoning regulations regarding lot occupancy, FAR, and parking would result in a practical difficulty to the Applicant.

1. *Lot Occupancy and FAR*

Under §772 and §2604, the maximum permitted commercial lot occupancy is 100% and the maximum permitted residential lot occupancy is 80%. Under §771 and §2604, the maximum permitted FAR at the Property is 4.8 FAR. In the Initial Application, the proposed project had a residential lot occupancy of 99% and a total FAR of 6.0. In working with the ANC, which now unanimously supports the project, the Applicant has revised the plans to reduce the lot occupancy on several residential floors and reduce the total FAR to 5.2. The lot occupancy and FAR reductions were achieved by making strategic reductions in the massing on the upper floors, particularly toward the west along H Street NE; more substantial modifications were evaluated but determined not to be feasible. The revised pull back provides a visual transition from the larger structures to the east, such as the Delta Towers, to the structures on H Street NE. Due to the exceptional circumstances at the Property, strict application of the lot occupancy and FAR requirement results in a practical difficulty to the Applicant. The practical difficulty associated with the lot occupancy relief and FAR relief go hand-in-hand, both relating the extreme inefficiency associated with developing on this narrow, cone-shaped Property.

Due to the size, shape, and street frontage of the lot, the options for designing a functional structure are extremely limited. The orientation of the structure is driven primarily by the size and location of the core of the structure. The core of the structure, made up of the elevator shaft and two required stairwells, occupies 17% of the structure. This is well above the typical, residential industry standard for a new, multistory, mixed use building. In addition, complying with the fire code provision requiring that habitable space be within a ¼ diagonal of a means of egress, is particularly difficult to comply with on a narrow, triangular lot without sacrificing a considerable amount of the usable space of the structure. For these reasons, alternative locations or orientations for the core of the structure are extremely limited.

The size of the building's core, and the limitations on its location, present design challenges such that strict application of the lot occupancy and FAR requirement would result in a practical difficulty to the Applicant. The need for lot occupancy and FAR relief is a direct result of the inefficiency of the structure, particularly toward the corners of the triangular lot, and the resulting challenges to the unit layout and design. Any attempt to comply with lot occupancy or FAR creates practical difficulty in designing efficient double loaded corridors and layouts with plausible unit configurations. The cone-shape toward the eastern end of the Property, the point where H Street and Florida Avenue intersect, reduces the useful square footage that can be provided by the Applicant. While square footage at the point of the triangle contributes to toward both lot occupancy and FAR, it has limited practical use or marketability to potential residents. The triangular shape produces awkward units, layouts, and dead space on all three units facing Florida Avenue, NE.

The challenges associated with unit layout would be magnified by strict compliance with the lot occupancy or FAR requirement. Compliance with the lot occupancy requirement, on this triangular lot with street frontage on three sides, requires a substantial setback from H Street, 14th Street NE, Florida Avenue NE, or the east corner of the structure. The HS-Arts Overlay, seeking to promote a positive pedestrian experience, requires 75% of the street wall to be constructed to the property line at a height of not less than 25 feet. On this lot, with street frontage on three sides, it is practically difficult to design a functional structure that meets the street wall requirement for two stories while limiting the residential lot occupancy to 80%. *See Exhibit A, A 4.2.* The already high core factor is increased to over 20% if there is a setback from 14th Street, Florida Avenue, or the east corner of the structure. *See Id.* at A. 4.1. Furthermore, a setback from the street frontage, particularly along H Street, would run counter to the intention of the HS-Arts Overlay. Furthermore, a 4.8 FAR structure is not practical because of the inability to construct a partial floor. A 4.8 FAR structure results in a top floor with a gross floor area of just 475 square feet and an awkward partition due to the size and location of the building's core. *See Id.* at A. 4.3.

The challenges associated with building on this narrow, triangular lot are particularly evident when compared to building on a rectangular lot of the same size. If the Property were a rectangular shape, with the same lot area of 6,648 square feet, the project could be built to the FAR and lot occupancy anticipated by the Zoning Regulations as a matter of right without issue. *See Id.* at A. 4.4. The Property, due to the narrow, triangular shape, requires a slight increase in bulk with respect to lot occupancy and FAR to achieve a similar development potential. A rectangular lot can produce efficient double loaded corridors, standard unit sizes, and the core can be evenly distributed in contrast to the practical difficulty associated with the Property.

More specifically, as evidenced by Architectural Plan 4.5, in the absence of a variance, "practical difficulties" would result in developing units too large, with excessive deadspace and awkward edges. Even with the requested relief, the Applicant will be forced to build larger units due to the shape and size of the lot and compete with more practical layouts. The Applicant illustrated the practical difficulty of this triangular lot in comparison to other project in the area, the same one bedroom with den at this Property requires more square footage per unit while provide less functional space. Here as in *1700 Block*, harm becomes sufficient to satisfy the variance test especially when coupled with a significant limitation on the utility of the property as we have illustrated is the circumstance here.

Zoning relief from the Board of Zoning Adjustment is the proper method for obtaining relief from the Zoning Regulations. A map amendment would not be appropriate at the Property. The Property is designated a Low Density Commercial/Moderate Density Residential on the Future Land Use Map ("FLUM"). The Property, zoned C-3-A, is already consistent with the FLUM designations. 10 DCMR 225. Furthermore, rezoning this Property independently would likely be considered spot zoning. More importantly, a map amendment changes the underlying zone without requiring that an applicant provide proposed plans for review by the Zoning Commission or by the general public. The Property is not large enough to qualify for treatment as a PUD. Thus, we respectfully submit that the BZA process, and the meaningful public input it has provided in this instance, is the appropriate forum.

2. Parking (§2101.1)

Pursuant to §2101.1, the Applicant has reduced the parking requirement to 21 parking spaces, down from 29 spaces, by removing 7 residential units and reducing the retail square footage. Providing the required parking underground or at grade is not feasible. The development potential of the lot is already substantially limited by the triangular shape and narrowness of this lot. Providing at grade parking would reduce the already limited buildable area at the Property and would be in direct conflict with specific H Street Overlay requirements. Similarly, providing underground parking would be extremely burdensome, if not impossible, for the Applicant. Underground parking at the facility would be extremely inefficient with respect to use of space and on a cost-per-parking space basis as a result of the size and dimensions of the Property. As shown on the attached diagram, due to the triangular shape of the lot, in combination with the location of the existing curb cut and need to provide a compliant ramp and drive aisles, underground parking cannot be provided at the Property or would yield at best two spaces. *See Id.* at A. 3.1. For these reasons, an underground parking structure or surface parking would be infeasible.

The Applicant is providing a comprehensive Transportation Demand Management (TDM) Plan. Transportation Demand Management measures include prohibition from residents obtaining residential parking permits (RPP) or visitor parking passes (VPP) by including such restrictions in a lease or condominium documents recorded against the Property; providing each resident financial incentives such as a \$100 car sharing membership, \$150 Capital Bikeshare Membership, or \$200 SmartTrip Card; and installing more than the required number of bicycle parking spaces in a covered and secure location within the building. *See* TDM Measures at **Exhibit B**.

C. No Substantial Detriment to Public Good or Inconsistency with Zone Plan

The requested variance is in furtherance of the public good and zoning regulations. The existing unkempt commercial structures and fenced in concrete will be replaced with a stunning, mixed-use

structure that is in keeping with the surrounding pattern of development on this stretch of H Street NE. The proposed structure suits the prominence of this corner as the gateway onto H Street.

Based on the location of the Property adjacent to the complicated Starburst Intersection and with street frontage on all three sides, including two wide commercial avenues, the requested flexibility with respect to lot occupancy and FAR will not be a substantial detriment to the Zone Plan or neighboring properties. The Property is uniquely capable of accommodating the structure with the surrounding public space along 14th Street and Florida Avenue NE accounting for roughly 39.75% of the Square. *See Id.* at A. 3.2. Specifically with respect to lot occupancy, a reduction of the relief requested would create an aesthetically awkward break in street frontage, which the H Street Overlay's design requirements specifically try to prevent. While the Applicant is seeking parking relief at the Property, the exceptional proximity to available transit options, including the new DC Streetcar, and TDM Plan mitigate parking demand generated by the project. For these reasons, approval of the variance relief requested will not cause a detriment to the public good or zone plan.

IV. SPECIAL EXCEPITON RELIEF AND STANDARD OF REVIEW

Special exception relief is required to allow flexibility from the one-to-one setback requirement for a roof structure. *See* 11 DCMR §§ 770.6 and 411.11. Under D.C. Code §6-641.07(g)(2) and 11 DCMR §3104.1, the Board is authorized to grant a special exception where it finds that the special exception will be in harmony with the general purpose and intent of the Zone Plan and will not tend to adversely affect the use of neighboring property, subject in each case to the special conditions specified. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested relief are met. In reviewing an application for special exception relief, "[t]he Board's discretion . . . is limited to a determination of whether the exception sought meets the requirements of the regulation." *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 706

(D.C. 1981 (*quoting Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973))). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

V. APPLICANT MEETS BURDEN OF PROOF FOR SPECIAL EXCEPTION

The Applicant meets the burden of proof for special exception relief regarding new construction on a lot greater than 6,000 sq. ft. (§1320.3). Under §1325.1, the buildings, structures, and uses listed in §1320.4 and exceptions from the requirements of the H Street Overlay District are permitted by special exception if approved by the Board of Zoning Adjustment after public hearing, based on §3104, provided that several criteria are met. The Applicant described in detail in the Initial Application how the project meets the prescribed special exception criteria, including (a) consistency with the design requirements of §1324 and H Street NE Strategic Development Plan; (b) enhancement of urban design features; (c) promotion of safe and efficient vehicular movement; (d) management of traffic and parking; (e) adequate noise control; and (f) compatibility with the surrounding neighborhood. *See* Statement of the Applicant, p. 9-11, **Initial Application, Tab 7.**

VI. COMMUNITY OUTREACH

Following the submission the Initial Application, the Applicant has done considerable community outreach. In October and November, the Applicant presented to the ANC 6A Community Development Committee (“CDC”). On December 11, the Applicant presented to the full ANC 6A, which voted unanimously to recommend support for the project. During the process, the Applicant participated in several meetings with the Chair of the CDC to modify and revise the relief and detailing of the building to enhance the pedestrian experience and alter the massing. The Applicant contacted the adjacent neighbors and is not aware of any opposition to the Application. The Applicant has obtained 9 letters in support of the Applicant. *See* Letters of Support at **Exhibit C.**

VII. WITNESSES

The following witnesses will appear on behalf of the Applicant:

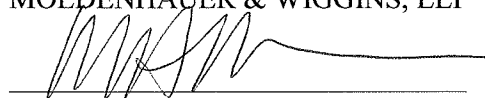
1. Mehari Sequar, on behalf of the Applicant
2. Jeff Goins, on behalf of PGN Architects

VIII. CONCLUSION

For the reasons stated above, and for the reasons enumerated in the Applicant's prior filings in this case, we hereby submit that the application meets the requirements for area variance relief. We look forward to presenting our case to the Board on January 6, 2015.

Respectfully submitted,

GRIFFIN, MURPHY,
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