

LAW OFFICES
GRIFFIN, MURPHY, MOLDENHAUER & WIGGINS, LLP

MARK G. GRIFFIN (DC, MD)
BRIAN P. MURPHY (DC, MD)
ASHLEY E. WIGGINS (DC, MD, VA)
MERIDITH H. MOLDENHAUER (DC, MD, VA)
KINLEY R. BRAY (DC, MD)
ERIC M. DANIEL (MD, 202-530-1482)
DIRECTOR (VA, DC) moldenhauer@washlaw.com
*PENDING

March 24, 2015

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

Re: Application No. 18915 – 1330 Pennsylvania Avenue (Square 1044, Lots 802 and 29)
Prehearing Statement of the Applicant

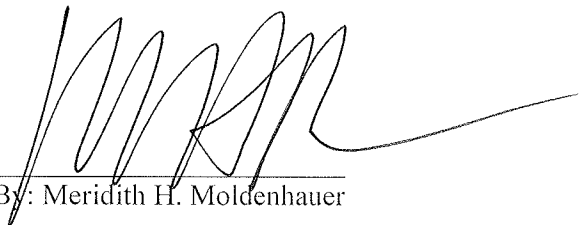
Chairperson Jordan and Honorable Members of the Board:

On behalf of La Lomita, LLC and Aminta, LLC, please find enclosed the Prehearing Statement for the above-referenced application. The application was scheduled to be heard before the Board of Zoning Adjustment on February 10, 2015 and following a request for postponement is now scheduled for April 7, 2015.

Thank you for your attention to this matter.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP


By: Meredith H. Moldenhauer

Enclosures:

Cc: Advisory Neighborhood Commission 6B
c/o Kristen Oldenburg, Chair
Nick Berger, SMD 6B06 Representative (via email)
Office of Planning (via email)

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

**APPLICATION OF
AMINTA, LLC**

**BZA APPLICATION NO. 18915
HEARING DATE: April 7, 2015**

PREHEARING STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of Aminta, LLC (the “Applicant”), the owner of property located at 1330-1336 Pennsylvania Avenue SE, Lots 802 and 29 in Square 1044 (the “Property”) in support of its application for area variance relief from the requirements regarding lot occupancy (§772.1), FAR (§771.2), and parking (§2101.1) to allow the Applicant to develop a mixed use residential structure with ground floor retail in the C-2-A District at the Property.

II. EXHIBITS IN SUPPORT OF THE APPLICATION

Exhibit A:	Updated Architectural Plans
Exhibit B:	TDM Measures
Exhibit C:	Gorove / Slade Transportation Review
Exhibit D:	Petition in 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. The Applicant has utilized the requested postponement time period to obtain substantial support from the community, complete a traffic analysis and update the architectural plans. See Updated Architectural Plans at **Exhibit A**.

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 detail 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 pentagon shape of the Property; (2) the Property is a narrow through lot with street frontage along G Street and Pennsylvania Avenue SE; and (3) the existing nonconforming commercial FAR.

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 §772.1 and §2604, the permitted commercial lot occupancy is 100% and the permitted residential lot occupancy is 75%. The proposed structure has a lot occupancy throughout, both commercial and residential, of 89%. Under §§ 771 and 2604, the total FAR permitted is 3.0 FAR, with up to 1.5 FAR being devoted to nonresidential use. The proposed structure has an FAR of 3.5.

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, corner Property. The Property is able to visually accommodate the

residential lot occupancy and FAR of the proposed structure as a result of the long street frontage and ample open space in public parking to the north and west of the Property¹ as well the entry to an alley along the northeastern portion of the Property. Furthermore, setting the building back on the residential floors would be practically difficult due to the shape of the lot.

The lot occupancy and FAR relief is needed to account for the awkward angular layout, narrowing of the Property toward the west, street frontage on multiple sides, and inefficiency associated with the jagged property boundaries along the alley. Furthermore, the pentagon shape of the lot in combination with the fire code requirements results in two redundant stairwells at the eastern end of the structure. The redundant stairwells, in combination with the elevator, trash area, and corridor, result in a core factor of 27% on the residential floors, which is well above the typical, residential industry standard for a new, multistory, mixed use building of this type. In addition, reducing the FAR by 0.5 would result in an inefficient partial fourth floor and would increase the already-high core factor for the structure. Furthermore, without the requested relief, the smaller floor plan would result in a reduction of the number of units to below 10 and an inability to provide an affordable unit and participate in the District's Inclusionary Zoning program.

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 Applicant has examined various alternative layouts and proposals; however all alternative designs and degrees of relief would result in a greater practical difficulty. The requested lot occupancy and FAR relief are the minimum required to overcome the practical difficulty caused by the size and shape of the lot.

The already high core factor is increased if a setback is provided to meet 75% lot occupancy requirement on the residential floors. The core factor is increased to 32% if the setback is from the west

¹ The triangular corner, Lot 803 in Square 1044, is owned by the United States Government.

corner or along G Street and 33% if the setback is at the rear. See Exhibit A at 4.2. The challenges associated with building on this narrow, corner lot are particularly evident when compared to other recent multifamily projects. The Property, due to the triangular shape, requires a slight increase in bulk with respect to lot occupancy and FAR to achieve a similar development potential.

More specifically, in the absence of a variance, practical difficulties would result in developing units that are too large, with excessive deadspace and awkward edges. Even with the requested relief, the Applicant is forced to build larger units due to the shape and size of the lot and compete with more practical layouts. 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. Reduction or partial development of the fourth floor would exacerbate the inefficiency and impact the viability of the project.

2. Parking (§2101.1)

Pursuant to §2101.1, the parking requirement at the Property is 5 parking spaces. The residential parking requirement for an apartment use in the C-2-A District is 1 space for every 2 dwelling units. The proposed structure has 10 dwelling units. Thus, the parking requirement is 5 parking spaces. It is infeasible for the Applicant to provide parking onsite and therefore the application seek parking relief for 5 parking spaces.

Providing the required parking underground or at grade is not feasible without a significant reduction in the footprint of the building. The development potential of the lot is already substantially limited by the shape and narrowness of this through lot. Providing at grade parking would reduce the already limited buildable area at the Property and eliminate any ground floor retail. 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. The lot's narrow configuration

makes a multilevel underground parking structure that could accommodate the required parking spaces, drive aisles, and access ramps, infeasible. See Exhibit A at 4.1. Furthermore, it is the Applicant's understanding that the ability to excavate is severely limited as a result of the Metro facilities controlled by WMATA directly below the Property.

The Applicant is providing a comprehensive Transportation Demand Management (TDM) Plan. Transportation Demand Management measures include prohibition from residents obtaining residential parking permits (RPP) 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; designation a representative as a point of contact between the Property and neighboring property owners; 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 E**.

C. No Substantial Detriment to Public Good or Inconsistency with 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 zoning relief. The proposed project allows a successful, neighborhood restaurant to remain in its existing location while providing a much-needed update to the existing commercial space. Furthermore, the proposed project provides 10 additional residential units, including space for affordable residential space, in a transit-orientated location near the Potomac Ave Metro. The size of Pennsylvania Avenue supports the proposed structure; especially, with the five story Jenkins Row and Harris Teeter development across the Avenue. The Applicant's proposed TDM measures, nearby metro, and exceptional proximity to available transit options mitigate parking demand generated by the project. In addition, the Property is within close proximity to several underground parking garages and other available parking. See Gorove Slade Report at **Exhibit F**.

Zoning relief from the Board of Zoning Adjustment is the proper method for obtaining relief from the Zoning Regulations. First, the Property is not large enough to meet the minimum area requirement for a Planned Unit Development. Furthermore, based on the current land use recommendation in the Comprehensive Plan, a map amendment would not be appropriate at the Property. The project provides a structure that is more consistent with the Moderate Density Commercial designation in the Future Land Use Map. Again, no height relief is being requested and the project is consistent with the proposed density shown on Pennsylvania Avenue in the Small Area Plan. The issue is not that the property, as it is currently zoned, is inconsistent with the FLUM designations, but rather that development as a matter of right results in a practical difficulty to the Applicant due to the exceptional circumstances at the Property. The variance process is specifically designed to allow a deviation from the zoning regulations, be it rear yard, FAR, setbacks, or otherwise, in such circumstances. Thus, we respectfully submit that the BZA process, and the meaningful public input it has provided in this instance, is the appropriate forum.

The Applicant has entered into a detailed construction management agreement with neighboring residents. Moreover, the owner intends to operate the restaurant on the first story while purchasing one of the units above to live with his family, so this Applicant will be particularly cautious about preventing any impact to the residents above or the surrounding neighborhood.

IV. COMMUNITY OUTREACH

Following the submission the Initial Application, the Applicant has done considerable community outreach. In January, the Applicant presented twice to the ANC 6B Planning and Zoning Committee (“CDC”). On January 13, the Applicant presented to the full ANC 6B, which voted unanimously to recommend support for the project. The Applicant has obtained 154 signatures in support of the Application, *see* Petition in Support at **Exhibit G**. Furthermore, the Property is not located in the historic district but the Applicant has obtained support from the Capitol Hill Restoration Society. *See BZA Case Ex. 34.*

V. WITNESSES

The following witnesses will appear on behalf of the Applicant:

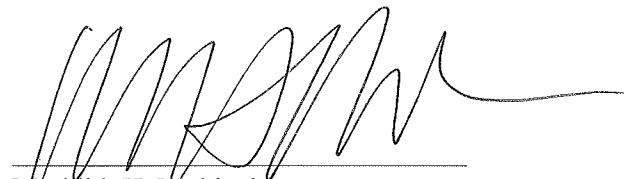
1. Sam Fuentes, on behalf of the Applicant
2. Jeff Goins, on behalf of PGN Architects
3. Erwin Andres, on behalf of Gorove/ Slade

VI. 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 April 7, 2015.

Respectfully submitted,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP

A handwritten signature in black ink, appearing to read 'M. Moldenhauer', written over a horizontal line.

Meridith H. Moldenhauer
1912 Sunderland Place, N.W.
Washington, D.C. 20036
(202) 429-9000