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September 22, 2015

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

Re: Application No. 19057 – 1851 9th Street NW
Supplemental Submission

Chairperson Lloyd Jordan and Honorable Members of the Board:

On behalf of the Applicant, Hollow Creek Investment Group, LLC, we hereby submit this supplemental submission for the above-referenced case. At the conclusion of our July 28, 2015 hearing, the Board requested updated plans from the Applicant and clarification on which standard to apply to the Applicant's application. The hearing was continued to October 6, 2015.

Thank you for your attention to this matter.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS,
LLP


By: Meredith H Moldenhauer

Enclosures:

CC: Advisory Neighborhood Commission 1B
c/o James Turner, Chair (via email)
Single Member District 1B02, Commissioner Ellen Sullivan (via email)
Office of Planning (via email)

Board of Zoning Adjustment
District of Columbia
CASE NO. 19057
EXHIBIT NO. 45

I. Resolution to Application of ZC Order 14-11

Hollow Creek Investment Group, LLC (“Applicant”) filed an application for area variance relief, pursuant to 11 DCMR §3103.2, from the requirements regarding (i) lot area (§401); (ii) addition to a nonconforming structure (§2001); (iii) roof structure (§411) and (iv) height (§400) to allow the adaptive reuse of the existing nonresidential building into a multiunit residential building in the R-4 District on May 19, 2015.

On June 8, 2015, the Zoning Commission approved Zoning Commission Order 14-11 (“Order 14-11”), authorizing text amendments to chapters 1,3,4,26,31 and 32 of the Zoning Regulations. Order 14-11 became effective on June 26, 2015. At the Applicant’s initial hearing on July 28, 2015, the Board discussed whether Order 14-11 and new section 330.7 applied to BZA applications filed prior to June 26, 2015. Subsequent to the hearing, the Zoning Commission took final rulemaking on a technical correction to Z.C. Order No. 14-11 providing an applicant the option to apply the new law if the applicant elects. *See*, September 10, 2015, Technical Correction to ZC Order No. 14-11 at **Exhibit A**.

The Applicant in BZA Case 19057 hereby chooses for new R-4 regulations adopted in Z.C. Order 14-11 to apply to this case. Order 14-11 has several important implications for the Applicant’s application before the Board and the Applicant seeks to amend its application in the ways enumerated below:

1. Special Exception relief to conversion of a Nonresidential Building under §330.7
2. Variance for an Addition to a Non-Conforming Building under §2001 pursuant to §400 to add a 5th Story
3. Variance for relief from §406.1 to create a nonconforming court¹.
4. Remove relief for roof structure §411.

II. Conversions of a Nonresidential Building in the R-4 to an Apartment Building Now Permitted by Special Exception

Order 14-11 amended the provisions regarding conversions of existing nonresidential buildings to residential buildings. Under §330.7, conversions of a non-residential building or structure existing prior to May 12, 1958, to a residential building or structure are permitted as a matter of right in the R-4 Zone District subject to the following eight conditions. If a proposed conversion does not meet the criteria listed below, conversion of a nonresidential structure to a multiunit dwelling may be **permitted with a special exception** under §337:

- (a) There is an existing non-residential building on the property at the time of filing an application for a building permit;
- (b) The maximum height of any addition to the existing structure shall not exceed thirty-five feet (35 ft.);
- (c) There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per dwelling unit;

¹ The OP recommends support for this area of relief therefore this supplemental will not address that area of relief.

- (d) An addition shall not extend further than ten feet (10 ft.) past the furthest rear wall of any principal residential building or structure on an adjacent property;
- (e) A roof top architectural element original to the structure such as a turret, tower, or dormers shall not be removed or significantly altered, including changing its shape or increasing its height, elevation, or size;
- (f) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code;
- (g) Any addition, including a roof structure or penthouse, shall not interfere with the operation of an existing or permitted solar energy system on an adjacent property, as evidenced through a shadow, shade, or other reputable study acceptable to the Zoning Administrator; and
- (h) An apartment house in an R-4 Zone District converted from a non-residential building prior to June 26, 2015, shall be considered a conforming use and structure, but shall not be permitted to expand unless approved by the Board of Zoning Adjustment pursuant to §§3104.1 and 3104.3 and § 337.

The Applicant's property is a nonresidential structure in the R-4 that does not comply with §330.7 (b) or (c), and can thereby request a special exception to permit the conversion of a nonresidential building to a residential apartment building under §337.

The relief for §330.7(b) arises due to the existing condition of the building. The original building has an existing height of 44 feet and four stories. Given the existing nonconforming nature of the height, relief from the maximum height requirement of 35 feet will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. Furthermore, the Property is a contributing building in the Greater U Street Historic District and as such the nonconforming height cannot be reduced.

Special exception relief is also required for §330.7(c), which requires a minimum of nine hundred square feet (900 sq. ft.) of land area per dwelling unit. The land area per dwelling unit ratio typically translates into a 2,700 square foot lot with a three story 40% or 60% lot occupancy dwelling being converted into three units as a matter of right (or now via special exception). Here, the Property consists of 6,461 square feet of land area with 100% lot occupancy, existing four stories and a 12 foot clear cellar. Given the unique condition of the existing building, OP acknowledges that "some relief from this provision may be justified" however OP will not oppose or support a specific number.

We respectfully submit that the Office of Planning, during the hearings for the proposed R-4 text amendments, specifically acknowledged the challenges nonresidential buildings encounter in trying to satisfy the 900 square feet of land per dwelling unit requirement, and in recognition of that challenge advocated for a reduction in the standard of review for nonresidential conversions. Jennifer Steingasser from the Office of Planning stated:

We were trying to make the development of the nonresidential buildings easier. Right now they have an enormous burden and it comes from the fact that most of these large institutional or

educational buildings aren't easily divided. The walls are thick and they don't move easily. And so there's kind of a – the building tells you how many units are going to go there. And more times than not that eats up all the 900 square foot per land...So we were trying to find a way to incentivize the redevelopment and adaptive reuse of these structures...as we worked through it, we found that the trigger was the 900 square feet. And so rather than make that go through a variance, to try to do that by special exception. See, March 30, 2015 Zoning Commission hearing transcript, page 156.

The Property at issue here, an institutional building (later converted to a school), is exactly the type of nonresidential building the Office of Planning was addressing when it proffered a special exception standard. The situation here is identical to why OP reduced the standard to a special exception. The walls are thick and reduce the useable, sellable, adaptable portion of the building directly leading to the requested relief from 330.7(c).

The Board is authorized to grant special exception when the relief is in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property. Pursuant to §337, the Applicant must demonstrate that the proposed conversion and number of units will not have a substantially adverse effect on the use or enjoyment of abutting property or unduly impact the light and air available to those properties. The Applicant demonstrated in previous submissions and submits in this supplemental submission that the conversion of the Property to residential units will not have an adverse effect on neighboring properties. The Applicant has proffered parking mitigation measures to address any potential adverse impact due to the increased units. The Applicant has received support from the ANC for the proposed 27 units, support from over 21 people in the community and no opposition from DDOT. Notably, in light of the Property's previous use as a school, the adverse impact and intensity of use will be greatly reduced from the existing 300 plus approved in the current certificate of occupancy to 27 units.

III. Variance for an Addition to Non-Conforming Building to Add a 5th Story

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.

As fully articulated in our initial application, prehearing statement, testimony at the hearing and in this supplemental filing, we submit that all three prongs of the area variance test are met in this Application.

A. The Property's Exceptional Conditions Create Practical Difficulty

The Property is unusual and affected by an exceptional situation and condition as a result of a confluence of the following factors: (1) the large size of the lot; (2) the existing nonconformities; (3) the location in a historic district; (4) the historic construction of the building and (5) the existing layout of the structure.

The size of the project, the historic character, expense to convert the high school into residential units and the loss of square footage due to the historic construction all create a practical difficulty for the Applicant if the small, mezzanine like, 5th Floor² is not permitted. The Applicant has provided evidence into the record demonstrating that the proposed number of units, more specifically the additional sellable square footage created by the 5th Floor, is required to allow for renovation of the structure while remaining economically feasible.

The Applicant is working around an existing building, which due to the unusually thick walls creates a loss of 2,385 square feet as testified to during the initial hearing. The 5th Floor adds 1,451 square feet and is connected to the 4th Floor creating two story units. The additional sellable square footage does not increase the overall number of units but increases the critical overall sellable square footage to make the project financially feasible. Furthermore, significant renovation is required to resolve the awkwardly large auditorium, uneven floors, historic location of the windows and location of stairs and elevator. The 5th Floor creates necessary sellable square footage without which the project would not be financially feasible.

B. No Detriment to the Public Good or Zone Plan

The Applicant has proven that 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 project as proposed.

The proposed project renovates an unutilized non-residential school building in the R-4 zone district. Furthermore, the footprint of the existing structure will be left unchanged. In addition, the proposed project adequately balances the zoning regulations' goals of ensuring adequate space for residents, providing a diverse and adequate housing stock, and permitting property owners to create marketable units. The Property is a contributing building located on a corner lot in the U Street Historic District and the proposed project will be enhancing the green space and historic viability of the building. The height and massing of the proposed project are compatible with the location of the Property and do not visibly impact the view of the building since the original roof structures will still be the highest points of the building. Finally, given the existing density permitted under the school use for 347 people, the proposed 27 residential units will be more in keeping with the residential neighborhood.

The Applicant has conducted extensive community outreach, modified the application and proffered elements regarding trash, construction, and parking in response to questions posed by the ANC and community. The ANC voted to support the application which should receive great weight. For these reasons, approval of the zoning relief requested will not cause a detriment to the public good or zone plan.

IV. Exhibits in Support of the Application

² The 5th Floor was originally designed under the concept of a Mezzanine and thus is only 1/3 of the space below.

In response to questions from the Board at the July 28th hearing, the Applicant has updated the plans to clarify the proposed project. *See* Revised Architectural Plans at **Exhibit B**. Since the hearing, the Applicant has continued to evaluate alternatives and the proposed 27 unit scenario with 5th floor addition is necessary for a financially viable project. The Section through the building shows the 4th floor units will be two story units. Units 401, 403 and 405 are proposed 2 bedroom units. Units 403,404,406 and 407 are proposed 3 bedroom units. All seven 4th Floor units will have interior stairs leading to a second or third bedroom on the 5th Floor. These units will also have private access to roof terraces. As shown on the architectural plans at **Exhibit B**, the thick nature of the exterior walls on the cellar, first and second floors are clearly visible. Even though the wall thickness thins out on the third and fourth floor, overall it is clear that this unique structural element, which includes the thick elevator shaft, is a substantial portion of the building that cannot be modified or adaptively reused. The fifth floor balances the loss.

Exhibit A: September 10, 2015 Technical Correction to ZC Order No. 14-11
Exhibit B: Revised Architectural Plans

V. 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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