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November 3, 2015

VIA HAND DELIVERY

Marnique Heath, Chairperson
D.C. Board of Zoning Adjustment
441 4th Street, N.W.
Second Floor
Washington, D.C. 20001

**Re: RP 3701 NW LLC – BZA Application for 3701 New Hampshire Avenue
N.W. (Square 3030, Lot 805) (the “Property”) – Application for Variance
Relief – Fourteen Day Pre-Hearing Filing**

Dear Chairperson Heath and Members of the Board:

Please accept for filing the enclosed fourteen day pre-hearing statement of RP 3701 NW LLC (“**Applicant**”), the applicant under BZA Case No. 19099. The Applicant is requesting variance relief in order to build a mixed-use residential and retail building (the “**Building**”) on the Property, with retail on the ground floor and approximately twenty-one (21) residential units above (the “**Project**”). In order to implement the Project, the Applicant is seeking variance relief pursuant to 11 DCMR § 3103.2 from 11 DCMR §2101.1 relating to parking requirements, and from 11 DCMR §772.1 relating to lot occupancy requirements.

Set forth below is a further discussion of the variance relief relating to the variance request for lot occupancy, information relating to the parking options studied on the Property, information relating to the traffic impact study (and the study itself) and the related Traffic

Board of Zoning Adjustment

Demand Management Plan (“TDMP”), and expert witness resumes and outlines of testimony. Updated architectural plans and drawings are also attached as Exhibit A.

I. Further Discussion of Section 772.1 Variance Relief

Pursuant to 11 DCMR §772.1, a building in the C-3-A Zone District devoted to residential use has a maximum of 80% lot occupancy, with the flexibility afforded by 11 DCMR §2604.2 for Inclusionary Zoning. However, due to the small size and unique shape of the Property, the Project will exceed such 80% threshold. While the ground floor will be in compliance with the Zoning Regulations as it is operated for retail use, and thus has no lot occupancy maximum, the upper residential floors will have a lot occupancy of 96%. Accordingly, the Applicant requests a variance from § 772.1 to permit the construction of a structure that exceeds 80% lot occupancy. In order to obtain area variance relief an applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition, (ii) the strict application of the Zoning Regulations will result in a practical difficulty to the applicant, and (iii) the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the Zone Plan. *Palmer v. D.C. Bd. of Zoning Adj.*, 287 A.2d 535, 541 (D.C. 1972).

a. Exceptional Conditions of the Property

In satisfaction of the first prong of the variance test, the Property is affected by an exceptional situation or condition. The Court of Appeals held in *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990), that it is not necessary that the exceptional situation or condition arise from a single situation or condition on the property. Rather, it may arise from a “confluence of factors.” *Id.* Finally, it is not necessary that the

Property be unreservedly unique. Rather, applicants must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood. The Property is affected by exceptional conditions based on a “confluence of factors.” First, the Property has a very unusual and atypical lot configuration. Because the lot is created by the intersection of Rock Creek Church Road, Georgia Avenue, and New Hampshire Avenue, the lot is the triangular corner of Square 3030. This confluence of streets pinches the Property to a point at the streets’ intersection. With just over 4,770 square feet, the Property is a small lot, which augments the physical effects of the triangular nature of the site. Further, the Property has an atypical extent of street frontage, all within close proximity to a major intersection. Thus, the unique nature of the lot equates to an exceptional set of conditions that create difficulties in compliance with the Zoning Regulations, specifically lot occupancy (and parking).

b. Practical Difficulties Created by Strict Compliance

Second, compliance with the lot occupancy requirement would result in a practical difficulty for the Applicant. In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. App. 1972), that “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. [Footnote omitted.] The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case.” Additionally, it is well settled that the BZA may consider “a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’ Increased expense and inconvenience to applicant for a variance are among the factors for BZA's consideration.” *Gilmartin*, 579 A.2d at 1171 (citing *Barbour v. D.C. Bd. of Zoning Adj.*, 358 A.2d 326, 327

(D.C. 1976)); see also *Tyler v. D.C. Bd. of Zoning Adj.*, 606 A.2d 1362, 1367 (D.C. 1992). The Applicant meets this requirement.

The proposed building's structure conforms to the unusual shape of the lot. The result is a unique small "flatiron" building that yields a relatively low building efficiency. Due to the small, triangular shape of the lot, the core of the building occupies an unusually large amount of each floor plate. However, to decrease the overall footprint of the building to comply with an 80% lot occupancy requirement would make the building exceptionally inefficient, as shown on diagrams attached as Page A3.1 and A3.2 of Exhibit A. Additionally, attempting to move the core to create more contiguous or usable space on each floor or somehow reduce the necessary amount of floor area on each story causes several additional negative consequences. First, such a move would substantially diminish, if not completely eliminate, the retail use at the project, which use is a requirement of the Georgia Avenue Overlay, since it would push the core towards the area currently designated as retail. Further, if any retail was able to remain, it would likely be pushed away from Georgia Avenue. This would undermine the intent of the GA Overlay – to create an active, vibrant, pedestrian-oriented experience along the Avenue. Finally, it also would have a negative impact on creating active street frontages along both Rock Creek Church Road and New Hampshire Avenue. That is, it is possible, if not likely, that the core would likely need to be against one or both of these facades, which would deaden the streetscape and eliminate windows at such areas.

Additionally, decreasing the building footprint to comply with lot occupancy requirements would create poor internal circulation for the building. Such severe hampering of the project's internal circulation would result in a less attractive, less marketable project which

would fall short of the high design standards currently achievable by granting the requested relief.

Also importantly, to achieve an economically feasible project size, a decrease in lot occupancy would cause an increase in height on the building to utilize the same square footage. The building is currently designed to be 64'1" in height, almost six (6) feet below the height limit for the Zone District. The project was designed with a lower height to complement the neighborhood and create an attractive, well-designed transition between the GA Overlay/C-3-A Zone District and the R-4 Zone District near the Property.

c. No Harm to the Public Good or Zone Plan if Relief Granted

The lot occupancy relief will not harm the surrounding community or the Zone Plan. First, while some of the lots to the north of the Property are in the R-4 Zone District, there is an intervening lot between the Property and the R-4 Zone that is also in the C-3-A Zone District. Second, the proposed building height is below the height limit in the GA Overlay / C-3-A Zone District. Part of the reason behind this design is to create a project that fits into the character of the neighborhood and does not diminish or adversely affect the nearby townhouses otherwise used as single-family homes. In fact, as discussed above, if the Applicant were to comply with the lot occupancy requirements, the project would have to increase in height to maintain an economically feasible FAR.

Finally, the project furthers the goals and policies of the Zoning Regulations related to the improved use of space around the Georgia Avenue-Petworth Metrorail Station. Specifically, the GA Overlay's objectives "encourage additional residential uses" and "encourage vertically-mixed uses (ground-floor commercial and residential above) within a quarter mile of the Georgia

Avenue-Petworth Metrorail Station.” 11 DCMR § 1327.3. Thus, the GA Overlay was created to foster exactly this type of development. That is, the GA Overlay was in part created to stimulate residential development on the Property and its vicinity and create an active and lively urban environment. The variance relief requested will allow the Property to further the goals of the Zone Plan by creating a vertical mixed use development and will benefit the public by providing this vibrant new development to the surrounding community.

II. Parking Studies

The Applicant studied several options to provide parking spaces at the Property. A summary of these studies is shown on Pages A3.0 and A3.0a in Exhibit A. As shown on these pages, the Property does not allow sufficient area or an amenable configuration to provide below-grade parking for the Project.

These options demonstrate that a compliant 20 foot wide ramp (required for two way vehicular circulation) would only yield one compliant parking space for either of the shown options. Clearly, the layout of the garage would be a highly inefficient utilization of Property and would come at great cost for minimal benefit. In addition, the turning maneuvers necessary to enter and exit such space would be extensive and potentially dangerous.

It should also be noted that the provision of a curb cut would eliminate street parking at the Property while likely not providing additional compliant parking spaces in the garage. It would also shift the ability to use such spaces from the community-at-large to the project’s residents.

Perhaps most importantly, the ramping introduced into the site would destroy a significant amount of ground floor retail while also creating deadened street walls at the ramp level – both adverse impacts that the Georgia Avenue Overlay is intended to avoid.

The first option shown on Page A3.0 would also require a curb cut that would be disfavored, if not denied, due to its proximity to the intersection of Rock Creek Church Road, New Hampshire Avenue, and Georgia Avenue. Curb cuts along New Hampshire Avenue would likely be discouraged, if not denied.

III. Traffic and Parking Review

Applicant has requested a variance from the parking requirements of Section 2101.1, as the proposed Project will not provide any parking spaces. Attached as Exhibit B, please find the Applicant's parking and traffic assessment memorandum from its transportation consultant, Wells & Associates. Such memo concludes that the Project, with the parking variance requested, is not expected to have a negative impact on the surrounding neighborhood. The study cites the Project's access to alternative modes of transportation due to the close proximity of the Georgia Avenue – Petworth Metrorail station and multiple bus routes, the Applicant's robust TDMP, and the abundance of nearby amenities.

The TDMP will encourage and incentivize residents of the Project to use alternative modes of transportation and has been expanded based on input from DDOT. In addition to the TDMP and in order to alleviate concerns of the neighborhood, the Applicant has agreed to provide off-site parking for residents of the Building for the first three (3) years of operation in other off-street parking facilities in the neighborhood. As shown on Table 6 of Exhibit B, there are ample unused parking spaces in the surrounding area, and the Applicant is in discussions

with the various owners of these parking garages to secure parking in the future. Based on the Transportation Benefits Cost Breakdown prepared by Wells & Associates, attached as Exhibit C, Applicant's TDMP plus the cost of off-site parking will cost the Applicant approximately \$70,480 to implement. Applicant's commitment to such a robust TDMP and provision for offsite parking furthers Exhibit B's conclusion that the parking variance requested for the Project will not result in a negative impact on the neighborhood.

IV. Expert Witness Submissions

By this filing, Applicant is also submitting the resume of Jeff Goins, of PGN Architects as Exhibit D, in order to qualify him as an expert in the field of design and architecture before the Board. Applicant is also submitting the resume of Jami Milanovich of Wells & Associates as Exhibit E, in order to qualify her as an expert in the field of transportation before the Board. Finally, Applicant is filing its outlines of witness testimony as Exhibit F.

V. Conclusion

We look forward to presenting this case to the Board on November 17, 2015. If you have any questions, please do not hesitate to contact Jeff at (202) 721-1132 or Meghan at (202) 721-1138. Thank you for your attention to this application.

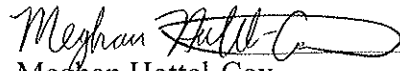
If you have any questions, please do not hesitate to contact the undersigned.

Sincerely yours,



Jeff C. Utz

BZA Case No. 19099 – 3701 New Hampshire Avenue NW
November 3, 2015


Meghan Hottel-Cox

Enclosures

cc: Lex Lefebvre
Jeff Goins
Jami Milanovich

Certificate of Service

The undersigned hereby certifies that copies of the foregoing document were delivered by first-class mail or hand delivery to the following addresses on November 3, 2015.

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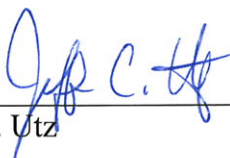
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