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VIA HAND DELIVERY

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

Re: BZA Application No. 19099 for 3701 New Hampshire Avenue, N.W. (Square 3030, Lot 805) (the "Property") – Application of RP 3701 NW LLC for Variance Relief – Post-Hearing Submission

Dear Chairperson Heath and Members of the Board:

Please accept for filing the enclosed post-hearing submission of RP 3701 NW LLC ("**Applicant**"), the applicant in BZA Case No. 19099. The Applicant is requesting variance relief in order to build a mixed-use building on the Property, with ground floor retail and approximately 21 residential units above (the "**Project**"). In order to construct the Project, the Applicant is seeking variance relief pursuant to 11 DCMR § 3103.2 from the parking requirements of 11 DCMR § 2101.1 and the lot occupancy requirements of 11 DCMR § 722.1 in accordance with the statutory criterion for relief.

Set forth below is a further discussion of certain factors the Board asked the Applicant to study or document at its November 17, 2015 public hearing (the "**Hearing**"). Specifically, the Board asked the Applicant to respond to comments from community members at the Hearing by providing further study or information regarding: (1) the provision of a restriction on Project residents' ability to apply for Residential Parking Permits (the "**RPP Restriction**"); (2) the Project's resident parking; (3) the relocation of the mural currently located on the Property; (4) the rationale behind the number of units proposed for the Project; (5) the integration of local businesses in the Project's retail level and local employees in the Project's construction; and (6) the Project's affordable housing commitment.

I. RPP Restriction for Residents

The Applicant considered the Board's request and further studied public comments related to providing an RPP Restriction in the Project. Based upon this, the Applicant is agreeing to restrict applications for Residential Parking Permits, although its transportation consultant found that the Project's Transportation Demand Management Plan ("**TDMP**") is sufficiently robust to address the parking and traffic mitigation concerns on its own and DDOT confirmed the robustness of the TDMP at the Hearing.

The Project will provide the RPP Restriction, either in the condominium documents (in the event of a condominium building,) or in the leases (in the event of a rental building). As a result, the homeowners or tenants will not be able to apply for a Residential Parking Permit based upon the following conditions:

1. The Applicant shall include in the condominium bylaws, public offering statement, purchase agreement, and deeds a provision prohibiting unit owners from obtaining a Residential Parking Permit ("**RPP**") for the Property from the D.C. Department of Motor Vehicles ("**DMV**"), and shall also include a provision allowing the DMV to release to the Home Owners Association ("**HOA**") any and all records of those owners requesting or receiving an RPP for the Property. The Condominium Bylaws shall include a provision that makes it a violation of the HOA rules and/or bylaws for a resident of the Property to obtain an RPP.
2. If the building is developed as a rental building, the building manager shall obtain written authorization from each resident through a lease provision that allows the DMV to release to the building manager any and all records of that resident requesting or receiving an RPP for the Property.

3. The HOA, if the building is developed as a condominium building, or the building manager, if the building is developed as a rental building, shall monitor resident compliance with the RPP restriction by requesting from the DMV, every twelve months, any and all records of residents requesting or receiving RPPs for the Property.
4. If the building is developed as a apartment building, prior to obtaining a certificate of occupancy for the approved building, the Applicant shall record a covenant against the Property among the Land Records of the District of Columbia prohibiting any resident of the Property from obtaining an RPP for such individual's use of the building as a covenant running with the land for the life of the project.
5. If the building is developed as a rental building, the building manager shall include in its residential leases a provision that prohibits tenants from obtaining an RPP for the Property from the DMV. Each of these parking restrictions shall be prominently featured in each residential lease as a rider that is separately initialed by each residential tenant. Any violations of the above parking restrictions shall be treated as an automatic default under the lease and provide grounds for termination of such lease. Such lease shall set forth that landlord shall use prompt and reasonable efforts, consistent with District of Columbia landlord tenant laws, to terminate such lease and remove the tenant from the premises, in the event of such default.

The Applicant carefully weighed the impact of the RPP Restriction on the Project and believes that the above conditions address the concerns expressed by the community members at the Hearing regarding the parking variance with the viability of the Project itself (although the Applicant believes there will be a chilling effect on the marketability of the Project as a result).

During the Hearing it was clear that the concerns of many community members largely related to commuters from other areas of the City driving to the Petworth Metro station and using their RPP passes to park for the day. Addressing these concerns would require revamping the RPP program and boundaries and would be fair and appropriate for all homeowners within the zone. Although such discussion and solution is outside the scope of the Project or BZA proceeding, the Applicant would support further engagement and discussions of methods to improve the RPP program.

II. Project's Resident Parking

Due to the inclusion of the RPP Restriction and the Applicant's continued belief that the eventual residents in the Project will not own vehicles, along with the encouragement by DDOT at the Hearing, the Applicant will assist up to twelve (12) of its residents to secure parking spaces at market-rate prices in nearby parking garages (rather than offering such spaces for free to residents for three (3) years). The Applicant proposes the related condition of the Order to be as follows:

> The Applicant will secure up to twelve (12) parking spaces in nearby parking facilities for exclusive use by the Project's residents for a period of three (3) years after the issuance of the first certificate of occupancy for the project, as set forth below:
>
> a. The Applicant will negotiate a lease or other contractual arrangement ("Lease") from an operator ("Lessor") of one or more nearby parking garage(s) that provides the Applicant with up to twelve (12) monthly parking passes ("Passes") to the extent that they are available:
>
> i. The Passes shall be dedicated for the exclusive use of project residents or persons affiliated or associated with the Project, to provide access at any time to parking spaces in said garage(s) 24 hours a day, seven days a week, 52 weeks a year.
>
> ii. The Passes shall require the garage operator to grant persons holding such Passes immediate and continuous access to, and use of, a parking space in the garage.
>
> iii. Parking spaces for which the Passes provide access will be located within ¼ mile of the Project.
>
> b. The Applicant will sublease or assign such spaces to residents in the Project at market-rates.

III. Additional BZA Requests

The Board requested the Applicant provide additional information regarding issues which we believe are outside of the scope of the variance relief requested and the standards to be considered when reviewing such request. However, out of deference to the Board and in order to ensure a full record, the Applicant submits such requested additional information as outlined below.

These requests include the relocation of the mural, the provision of additional affordable housing, and local hiring and local retail tenant placement. Such items are typically found in public benefit and amenities packages in Planned Unit Development ("**PUD**") applications (or due to some other type of public assistance) and are not applicable to a BZA variance case. Elements of such a benefits and amenities package are not required to satisfy the elements of variance relief set forth by the Zoning Regulations or case law. The Applicant has demonstrated that the Project meets the required standards of relief in its statement of support submitted with its original application, in its pre-hearing submission, in testimony at the Hearing, and as described in Section IV below.

The Applicant has proposed integrating such items into the Project as described below, to produce a project that is as community-focused and integrative as possible, while still being economically viable. The Applicant does not believe that these elements should be conditions of approval, if the Board chooses to approve the requested relief.

A. Mural Relocation

The Property is the location of the "Chuck Brown Mural" (the "**Mural**"). The Applicant understands the importance of the Mural in the neighborhood and independently began a relocation approach to ensure its preservation immediately upon acquiring the site. The

Applicant has worked with the original Mural artist and the community to set forth a plan to relocate and recreate the Mural on the Property or in the neighborhood, so as to preserve neighborhood character. Currently, one location proposed for the replacement Mural would be the wall of the building along New Hampshire Avenue, abutting the property to the north of the site. This plan would allow for a mural of equal or greater size than the current Mural (350 square feet). The original Mural artist would re-create the Mural in this location.

If the proposed façade of the building is not utilized for the new Mural, the Applicant will work with the original Mural artist and the community to locate the new Mural. The new Mural would not be smaller than the existing Mural (subject to the below paragraph).

The Board requested information relating to the portability of the new Mural if the site to the north is redeveloped, thus potentially blocking the new Mural. The Mural could be created on a medium that is affixed to the façade which would allow it to be moved at a later date, if necessary. However, creating the new Mural on a removable surface may impact its size. The Applicant will continue exploring such panelization of the Mural with the original artist and, if technically feasible and permitted by the adjacent property owner (since it will require projection into neighboring air space), the Applicant is willing to bear the additional expense of such system.

B. Number of Units Proposed

The Project currently proposes 21 units, of an average size of 820 square feet per unit. The units will be one- and two- bedroom units (many with dens that can function as an additional bedroom), which will allow individuals and families, including those with children, to live at the Property. The Applicant plans to provide these larger units in part in response to a market need for housing for families. Projects of similar size in the neighborhood and elsewhere in the

District usually have significantly smaller units which results in a higher number of units within the same density – creating small units suitable for individual tenants or owners. Attached as Exhibit A is a chart showing comparable projects and how many units each provided. As shown on Exhibit A, the number of units for the Project is significantly less than the average units provided at similarly-sized projects.

The Applicant believes that its proposed larger units mitigate the Project's impact and make a material contribution to the diversity of housing available at this location. Typically, smaller unit sizes result in higher per square foot sales or rent metrics, but the Applicant believes that its proposed larger unit size mix provides a better long term fit for this site.

Also regarding the number of units proposed for the Project, it should be noted that the provision of new housing is a policy of the District. The District government has continuously set forth goals to attract and retain more residents in the District. Not only will the Project allow for more residential options for people who want to live in the District, but the Project's intention is to focus on people who want to live and raise families in the District by providing larger, not more, units. Note that this development is happening without displacing any residents. Thus, this project strikes the proper balance between the size of units and bringing residents into the District to such a Metro accessible location.

Additionally, by securing the variances request herein which will allow Applicant to develop 21 units at the Project, the Applicant is able to provide eighteen (18) regular-priced units, which will allow for the construction of three (3) affordable units. As discussed more in Section III(D), the Applicant is providing more affordable housing than would be required by Inclusionary Zoning. Thus, the unit count (and, by extension, the parking variance request) in part allows for the Applicant's commitment to provide additional affordable units, while still creating an economically viable project.

Finally, the Board has granted parking variances in the Petworth area, due to a property's proximity to the Metrorail for more units than proposed in the instant case. In BZA Order No. 18078, the Board granted a parking variance for thirteen (13) parking spaces at a site three blocks from the Metrorail station. In that case, the Board cited the TDMP and the proximity to the Metrorail in its decision to grant the requested variance.

C. Local Employees/Businesses

The Board requested information to address the concepts regarding local hiring and leasing the retail space to local businesses raised by community members at the Hearing.

First, the Board requested a response to the comments regarding local hiring practices (targeting 51% local hiring). The Applicant has offered to work with its general contractor to announce new jobs created by the Project's construction to ANC 1A and ANC 4C. However, since the Project is not a Tax Increment Financing project, a PUD, or tied to an alley closing or other similar public assistance, a First Source Agreement is not required. In addition, the smaller size of the Project would not justify such an agreement or the cost of administering it.

The Board also requested information regarding the comments relating to leasing to local businesses at the Project. The Applicant is targeting a food-related retail tenant – likely a coffee shop or restaurant – for this site in order to deliver as much vitality to this important segment of the Georgia Avenue corridor as possible (in accordance with Georgia Avenue planning concepts and the Georgia Avenue Overlay requirements themselves). Such tenant is likely to be a local business. However, at this time, the Applicant can not commit to lease only to certain retailers or businesses. Such limitation would be a highly unusual condition for a BZA approval, particularly one of this limited size, and potentially would create the type of vacant commercial frontage that the Georgia Avenue Overlay was intended to avoid. Please note that the Applicant has committed not to lease the retail space to a convenience store, in response to objections raised several times at community events.

D. Affordable Units

Finally, the Board asked the Applicant to further study the affordable housing provided by the Project. The Applicant is proposing approximately 2,023 gross square feet of affordable residential use, or three (3) residential units in total, with one (1) unit priced for households earning 50% of the Washington, D.C. Area Median Income ("**AMI**") and two (2) units priced for households earning 80% AMI. Therefore, the Applicant complies with (and actually will exceed) the requirements of Chapter 26 of the Zoning Regulations. Such an affordable set aside is equivalent to 11.1% of the Project's residential component. Over a quarter of such affordable space will be provided for households earning no more than 50% AMI. Such a set aside represents a significant portion of the Project such that the Project is offering affordable housing at a rate atypical for a matter-of-right (i.e., non-PUD) project.

The Applicant studied various methods to increase the affordable housing provided on site – both a greater amount of square footage of affordable units and a lower level of affordability for the square footage of affordable units already set aside. To provide affordable units at such further enhanced affordability levels would have a significant negative financial impact on the Project. In addition to greatly suppressing a return on the Project, such an additional affordability set aside would threaten Project financing. As it is, the Project is already a "thin deal" in terms of the wider development ongoing in the District of Columbia. That is, the construction difficulties associated with the uniquely arranged and narrow site, and the lower number of units being offered by the Project as described in Section III(B) above are already putting significant cost pressure on the Project. Therefore, providing units at a lower AMI rate, or a larger square footage than is being provided above the proposed amount, would have a detrimental impact on the financial feasibility of the Project. Further, any type of enhanced affordable housing proffer has to date never been required as part of a BZA approval of the type requested since it is not related to the standards of the variance relief requested.

Finally, as mentioned above, it is important to note that no residents are being displaced by the project. Instead, an underutilized site will have its retail overhauled and modernized while new residents are brought to the site.

IV. Conclusion

In conclusion, the Applicant believes that it has met the required standards for a variance from both the lot occupancy and parking requirements of the Zoning Regulations. Specifically the Applicant has demonstrated that (1) the Property is affected by a unique shape and size, and that such exceptional condition at the Property creates (2) a practical difficulty on the Applicant's ability to construct the Building within the lot occupancy requirements or to provide parking on the Property. Finally, the Applicant has demonstrated through studies and expert testimony that (3) the proposed Project and relief requested will not harm the surrounding area and will be in harmony with the Zone Plan.

In fact, it is due to the Applicant's satisfaction of all of these requirements that the Applicant garnered the support of the Office of Planning, DDOT, and ANC 1A, as well as partial support from ANC 4C (regarding the lot occupancy relief). At the Hearing, DDOT remarked that the Project proposes a "strong TDMP." ANC 1A provided support for the Project, and as the ANC is located immediately adjacent to the Property and therefore automatically a party to the case, such an opinion is to be afforded the "great weight" of an ANC. ANC 1A conditioned their support on three issues, and as discussed, the Applicant agrees with all three conditions. Finally, a divided ANC 4C approved the lot occupancy variance, and only failed to support the parking variance by one vote. We note in particular that, while persons in opposition and the ANC 4C commissioner (partly in opposition, relating to parking) appeared at the Hearing, ANC 1A and a commissioner from ANC 4C (as a person in support) also appeared in support and there were numerous letters from nearby community members who also support the application but unfortunately were unable to attend the Hearing.

In light of the satisfaction of the variance requirements, the agency and ANC support, and the above provided information, the Applicant respectfully requests that the Board grant the relief requested.

If you have any questions, please do not hesitate to contact either of the undersigned at (202) 721-1132 or (202) 721-1138, respectively.

Sincerely yours,

Jeff C. Utz

Meghan Hottel-Cox

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 December 2, 2015.

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