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August 19, 2015

VIA HAND DELIVERY

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

**Re: BZA Application for 549 Park Road NW
Square 3037, Lot 48 (the "Property") – Area Variance and Special Exception
Application**

Dear Chairperson Jordan & Members of the Board:

Please accept for filing the enclosed application of Warder, LLC (the "Applicant"). The Applicant requests variance relief, pursuant to 11 DCMR §3103.2, from the requirements regarding (i) lot area (§401), (ii) courts (§406) and (iii) an addition to a nonconforming structure (§2001); and for special exception relief pursuant to 11 DCMR §3104.1, for the conversion of an existing residential building to an apartment house in the R-4 (§336).

The application package includes the following materials:

1. Agent Authorization Letter;
2. Statement of Intended Use;
3. Plat showing the existing structure on the Property;
4. BZA Form 126, Fee Calculator;
5. BZA Form 135, Self-Certification;
6. Statement of the Applicant;
7. List of names and mailing addresses of owners of all property within 200 feet of the boundaries of the Property;
8. Baist Atlas Map;
9. Zoning Map;
10. Architectural Plans; and
11. Photograph of the Property.

We believe that the application is complete and acceptable for filing, and request that the Board schedule a public hearing for the application as soon as possible. If you have any questions, please do not hesitate to contact me on behalf of the Applicant.

Board of Zoning Adjustment
District of Columbia

Thank you for your attention to this application.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP

A handwritten signature in black ink, appearing to be 'MM', is written over a horizontal line. A long, thin horizontal stroke extends to the right from the end of the signature.

By: Meredith H. Moldenhauer

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

**APPLICATION OF
WARDER LLC**

**549 PARK ROAD, NW
ANC 1A**

STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of Warder LLC (the “Applicant”), the owner of property located at 549 Park Road NW, Lot 48 in Square 3037 (the “Property”) in support of its application for variance relief, pursuant to 11 DCMR §3103.2, from the requirements regarding (i) lot area (§401), (ii) courts (§406) and (iii) an addition to a nonconforming structure (§2001); and for special exception relief pursuant to 11 DCMR §3104.1, for the conversion of an existing residential building to an apartment house in the R-4 (§336).

II. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the “Board” or “BZA”) has jurisdiction to grant the variance relief and special exception relief requested herein pursuant to §3103.2 and §3104.1, respectively, of the Zoning Regulations.

III. BACKGROUND

A. Background Information Regarding the Property

The Property, also known as Lot 48 in Square 3037, contains approximately 2,691 square feet of land area and is located in Northwest Washington, D.C. Square 3037 is bounded by Warder Street NW to the east, Park Road NW to the south, Georgia Avenue NW to the west, and Newton Place NW to the north. *See* Baist Atlas Map at **Tab A**. The Property is not located within any historic District, and the existing building on the Property is not listed on the D.C. Inventory of Historic Sites. The Property has

approximately 29 feet of frontage along Park Road, NW but due to a slanting east property line, narrows to approximately 19 feet in width along the alley. The Property is presently improved with a vacant, semi-detached, 2-story building. As a result of an existing bay projection and the unique tapering of the lot as it proceeds to the rear, the Property has a nonconforming side yard. The side yard is approximately 7 feet-6½ inches at its widest point and 23 inches at its narrowest point.

B. Description of the Improvements in the Surrounding Area

The Property is located in the Park View neighborhood, five blocks from the Georgia Avenue Petworth Metro Station. Square 3037 is zoned R-4 but is within one block of higher density zones. West of the Property, a portion of Square 3038 is zoned GA/C-3-A. *See Zoning Map at **Tab B***. As a semi-detached structure, the Property shares a party wall with 551 Park Road NW. East of the Property is another semi-detached dwelling, 547 Park Road NW. The Square is occupied primarily by rowhomes, with a few semi-detached dwellings, detached dwellings and residential apartment walk-ups.

There are several government, educational and medical buildings located within a half mile of the Property including the Armed Forces Retirement Home, the MedStar National Rehabilitation Hospital, the Veterans Affairs Medical Center, the Children's National Medical Center, The Catholic University of America, Trinity Washington University, Howard University, Basilica of the National Shrine of the Immaculate Conception and McMillian Reservoir.

C. Description of the Traffic Conditions and Mass Transit Options in the Surrounding Area

The Property is well serviced by a number of public transportation facilities and services including Metro, Metrobus routes, Capital Bikeshare, and Zipcars. The Property is located approximately 5 blocks (0.4 miles) from the Georgia Avenue Petworth Metro Station. Moreover, Metrobus routes along Georgia Avenue (70, 79, 60, 62), New Hampshire Avenue NW (63, 64, H8), and Irving Street NW (H1, H2, H3, H4) all serve the Property. A bus stop is located less than one block away on Georgia Avenue NW at Park Road NW. In addition, the Property is within close proximity to a number of bikesharing and

carsharing locations. Four Capital Bikeshare stations are located within .5 miles of the Property. The closest is at Georgia Avenue NW and New Hampshire Avenue NW (which contains 6 docks). Several Zipcar spaces are located within walking distance including one space at Otis Place NW and Georgia Avenue NW. On walkscore.com, the Property received a walkscore of 89 out of 100 and is deemed “very walkable”; walkscore also notes a transitscore of 78 out of 100, which is deemed “excellent transit” availability.

D. Description of the Proposed Development

As shown on the architectural plans, *See Architectural Plans and Elevations at **Tab C***, the Applicant proposes to convert the Property from a vacant, two-story, semi-detached residence into a three-story apartment house, without side yards, with three residential units. The Applicant proposes construct a rear addition and third story addition. The third story addition will be setback six feet in order to preserve the existing rooftop architectural elements.

The proposed structure will have one-bedroom units on the cellar and first floor. The second and the third floor of the structure will house a three-bedroom family sized unit.

IV. NATURE OF VARIANCE RELIEF SOUGHT AND STANDARD OF REVIEW

The Applicant requests variances from the requirements regarding lot area (§401), courts (§406) and an addition to a nonconforming structure (§2001). 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.

See French v. District of Columbia Bd. of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also*, *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

Applicants for an area variance need to demonstrate that they will encounter “practical difficulties” in the development of the property if the variance is not granted. *See Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540-41 (D.C. 1972) (noting that “area variances have been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden”). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be “unnecessarily burdensome.” *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990). As discussed below, and as will be further explained at the public hearing, all three prongs of the area variance test are met in this Application.

V. THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

A. The Property is Unusual Because of its Size, Shape or Topography and is Affected by an Exception Situation or Condition

The phrase “exceptional situation or condition” in the above-quoted variance test applies not only to the land, but also to the existence and 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).

The Property is unusual and affected by an exceptional situation and condition as a result of a confluence of the following factors: the shape and size of the lot and the angled lot line.

1. Angled Lot Line

The Property has 29' of frontage along Park Road, but due to an angled eastern lot line, has only 19' of frontage along the alley. The Property is the only one of two lots in the entire square with an angled lot line and is the only lot in the entire Square that has a lot line that causes a narrowing of the property from front to rear. The angled lot line reduces the overall lot area and causes the side yard to narrow from 7'6 ½" to 1'11" at the narrowest point.

2. The Existing Nonconforming Aspect of the Property

The existing structure has a nonconforming side yard. Pursuant to §405.9 the side yard for this Property should be at least 8 feet in width; the side yard is 7' 6 ½" at its widest point. Without demolition, or drastically changing the existing footprint of the existing structure, both of which would be wasteful and costly, the existing nonconforming side yard is unique and contributes to the practical difficulty.

B. Strict Application of Zoning Regulations Would Result in Practical Difficulty to the Owner

Strict application of the zoning regulations with respect to the requirements for lot area (§401.3); addition; courts (§406.1) and an addition to a nonconforming structure (§2001.3) would result in a practical difficulty to the Applicant.

1. Lot area (§401.3)

Under §401.3, the conversion of a residential structure to an apartment house in the R-4 District is permitted with a special exception, but requires, in part, a minimum of 900 square feet of lot area per apartment unit. The Property has, according to the Office of Tax and Revenue, 2,691 square feet¹; 9 feet short of the requirement or stated differently, less than ½ % deviation from the requirement. The

¹ The architectural plans indicate that the Property has 2,690 square feet of land.

deviation is extremely *de minimis*. The practical difficulty the Applicant faces in complying with the lot area requirement is directly related to the unusual angled lot line. If the angled lot line was perpendicular to Park Road NW, the Applicant would not need to request a lot area variance.

The Applicant is also affected by the recent changes to the Zoning Regulations regarding R-4 conversions. Prior to Zoning Commission order 14-11, the *de minimis* lot area relief requested could have been granted by the Zoning Administrator through the minor flexibility provision of §407.1. The current zoning regulations specifically prohibit minor flexibility on the conversion of structures to an apartment house. As a solo developer without the resources of larger developers, the Applicant was unaware that the R-4 changes would directly impact this project in such a profound way. Consequently, the recent changes to the Zoning Regulations also present a practical difficulty for the Applicant.

2. Courts (§406)

The proposed project requires relief from the court requirement. As described above, the existing structure has a nonconforming side yard. The proposed rear addition converts the nonconforming side yard into a nonconforming open court. Section 406.1 requires that an open court have 4” of width for every foot of height but not less than 10’ of width. Based on the height of the proposed structure, 34’4”, the open court should be approximately 11’ wide. However, due to the existing angled lot line and existing structure, providing a conforming court would require significant demolition of the existing structure. Therefore, relief from the court provision is required.

3. Addition to a Nonconforming Structure (§2001.3)

The proposed project requires relief from the nonconforming structure requirements. The existing structure is nonconforming with respect to the side yard requirement. Section 2001.3 allows enlargements and additions to an existing nonconforming structure if certain conditions are met: (a) the structure must conform to the lot occupancy requirements, and (b) the addition may not increase or extend any existing, nonconforming aspect of the structure; nor create any new nonconformity of

structure and addition combined. The proposed addition complies with the lot occupancy requirement for the R-4 district, but it converts a nonconforming side yard into a nonconforming court. Therefore, the Applicant requests relief from the addition to a nonconforming structure requirement as well.

C. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zoning Plan

There will 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 requested herein. The proposed project renovates a vacant, single-family home. Furthermore, the additions to the existing structure are modest and do not detract from existing architectural elements of the structure. Lastly, the requested variance relief is exceptionally *de minimis*, and will not cause a detriment to the public good or zone plan.

IV. NATURE OF SPECIAL EXCEPTION RELIEF AND STANDARD OF REVIEW

The Zoning Commission, pursuant to Order 14-11, altered the standard for conversions of residential buildings to apartment houses in the R-4. Pursuant to 11 DCMR §3104, and subject to the new 11 DCMR §336, the Board is authorized to grant a special exception to permit the conversion of a residential building into an apartment house where it finds that the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and will not tend to adversely affect the use of neighboring property, subject in each case to the special conditions specified. 11 DCMR §3104.1.

Unlike an area variance, 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.*

APPLICANT MEETS BURDEN FOR SPECIAL EXCEPTION RELIEF

Applicant meets all of the requirements of 11 DCMR §336.2 through §336.11 issued under the Zoning Commission's Notice of Final Rulemaking & Order No. 14-11.

1. §336.2

Pursuant to 11 DCMR §336.2, the maximum height of a residential building and any additions thereto shall not exceed 35', but the BZA may grant a special exception under §3104 subject to §§336.3 through 336.11. The proposed structure will have a height of 34' 9" and thus complies with the height requirement.

2. §336.3

Under §336.3, the 4th dwelling unit and every additional even number dwelling unit thereafter shall be subject to the requirements of Chapter 26, Inclusionary Zoning, including the set aside requirement set forth at § 2603.9. The proposed structure will contain only 3 units, and therefore this subsection is not applicable.

3. §336.4

Section §336.4 requires that there must be an existing residential building on the property at the time of filing an application for a building permit. There is an existing two-story residential building on the Property and it will be there at the time of filing an application for a building permit. The developer intends to renovate the existing residential building.

4. §336.5

Pursuant to §336.5, there shall be a minimum of 900 square feet of land area per dwelling unit. The Applicant seeks to construct 3 units, which requires 2,700 square feet of land area. The Property

contains 2,691 square feet of land area, 9 feet short of the requirement. Consequently, the Applicant will be seeking an area variance for the 9 feet of land area, a .34 deviation from the requirement.

5. §336.6

Pursuant to §336.6, 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. The adjacent properties located at 551 and 547 Park Road do not have chimneys or other external vents. Thus, the third floor addition will not block or impede the functioning of a chimney or other external vent on an adjacent property, and this section does not apply. *See* attached aerial at **Tab D**.

6. §336.7

Under §336.7, 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. The adjacent properties located at 547 and 551 Park Road do not have existing or permitted solar energy systems. Therefore, this section does not apply. *See* attached aerial at **Tab D**.

7. §336.8

Pursuant to §336.8, a roof top architectural element original to the house 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. The Property has a roof top architectural element above the second floor windows. The third floor addition to the property will be set 6 feet back from the front façade and therefore, the roof top architectural element will remain undisturbed.

8. §336.9

Pursuant to §336.9, any addition shall not have a substantially adverse effect on the use or enjoyment of any abutting dwelling or property. In particular, the light and air available to neighboring

property shall not be unduly affected, the privacy of use and enjoyment of neighboring properties shall not be unduly compromised, and the conversion and any associated additions, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street or alley.

The third floor and side yard addition will not unduly affect the light and air available to neighboring properties. The proposed additions are very minor. Moreover, the adjacent properties do not have roof top decks or solar panels that a third floor addition may potentially block. Likewise, the proposed additions will not unduly compromise the use and enjoyment of neighboring properties. The Property will continue to have a residential use and the addition of new residences will not have an undue impact on neighboring properties. Lastly, the proposed additions will not visually intrude upon the character, scale or pattern of houses along Park Road NW. There are many residences along Park Road and nearby that extend from property line to property line or have a rear addition. Therefore, the side and rear additions will have no visual impact on the pattern of houses along Park Road as viewed from the street or the alley. Furthermore, Park Road NW is 30 feet wide and there is a 15 feet wide alley to the rear of the Property, therefore, the third floor addition as viewed from the street and alley will not be visually intrusive.

9. §336.10

Pursuant to §336.10, in demonstrating compliance § 336.9, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the conversion and any associated addition to adjacent buildings and views from public ways. Please see attached photograph at **Tab E**.

10. §336.11

Pursuant to §336.11, BZA may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or

nearby properties, or to maintain the general character of a block. The developer intends to fully comply with any special treatment the BZA requires.

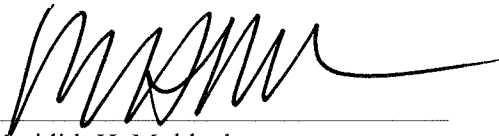
Consequently, for the reasons outlined above, the Applicant has met the requirements for granting special exception relief pursuant to §336.

VI. CONCLUSION

For the foregoing reasons, the requested relief meets the applicable standards for zoning relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests that the Board grant the Application.

Respectfully submitted

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP

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

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