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November 24, 2015

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

**Re: Application No. 19119 – 549 Park Road NW (Square 3037, Lot 48)
Request to Late File and Prehearing Statement of the Applicant**

Chairperson Heath and Honorable Members of the Board:

On behalf of Warder, LLC, and pursuant to 11 DCMR §3100.5 and the attached Form 150 Motion, we respectfully request that the Board waive 11 DCMR §3113.8, and permit the filing of this Pre-Hearing Statement. The Applicant has been engaged in discussion with the community and has agreed to revise the Architectural Plans to address some of their concerns. Please find enclosed the Prehearing Statement for the above--referenced application, which outlines the revisions to the Architectural Plans. The application is scheduled to be heard before the Board of Zoning Adjustment on December 1, 2015.

Thank you for your attention to this matter.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS,
LLP



By: Meridith H. Moldenhauer

Cc: Advisory Neighborhood Commission 1A
c/o Kent Boese, Chair (via email)
Bobby Holmes, SMD Commissioner 1A09 (via email)
Office of Planning (via email)

Board of Zoning Adjustment
District of Columbia

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

**APPLICATION OF
WARDER, LLC**

**BZA APPLICATION NO. 19119
HEARING DATE: DECEMBER 1, 2015**

PREHEARING 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 the application for variance relief, pursuant to 11 DCMR §3103.2, from the requirements regarding lot area (§401), open courts (§406), an addition to a nonconforming structure (§2001); and for special exception relief pursuant to 11 DCMR §3104.1 to permit the conversion of an existing residential building to a three-unit apartment house in the R-4 District.

II. EXHIBITS IN SUPPORT OF THE APPLICATION

**Exhibit A: Architectural Renderings
Exhibit B: Line of Sight**

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 Statement of the Applicant, this Prehearing Statement, and as will be further explained at the public hearing, all three prongs of the area variance test are satisfied.

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). The Property is unusual and affected by an exceptional situation and condition as a result of a confluence of the factors discussed below.

1. Angled Property Line

The Property, unlike other lots along this block of Park Road NW, is affected by an exceptionally angled eastern property line. The angled property line causes the lot to have 29’ of frontage along Park Road, but only 19’ of frontage along the alley. If the eastern property line were perpendicular with Park Road NW, as all the other lots on this section of Park Road NW, the Property would gain over 500 square feet of land area.

2. History of Illicit Use at the Property

The Property is affected by a unique history of illicit use. The Office of Attorney General recently informed the Applicant of the DC Metropolitan’s Police Office investigation focusing on the Property due to drugs, guns and money being found on-site.

3. Timing-Inability to Utilize Minor Flexibility

The Applicant purchased the Property in the midst of the changes to the Zoning Regulations for the R-4, known as ZC 14-11. The Zoning Commission set ZC 14-11 down for public hearing on July 17, 2014, and took proposed action on March 30, 2015. When the Applicant purchased the Property on May 8, 2015, up to 2% minor flexibility, approved by the Zoning Administrator, was permitted for lot area for conversions of single family dwellings to apartment houses. The Property is 9 square feet short of the 900 square feet of lot area per unit requirement. Stated differently, the Property deviates less than ½ % from the lot area requirement under §401.3. Though the Zoning Commission took proposed action on March

30, 2015, it was not until June 1, 2015, almost a year after ZC 14-11 was set down, that the Office of Planning proposed eliminating minor flexibility for conversions in the R-4. The Applicant had no notice that such a provision would be added to the Zoning Regulations, and now seeks relief from the Board for a less than ½ % deviation from the lot area requirement.

B. Strict Application of the Zoning Regulations would Result in Practical Difficulty

Strict application of the zoning regulations regarding lot area (§401.3), open court width (§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, a conversion of a residential structure to an apartment house requires a minimum lot area of 900 square feet per unit. For three units, the Property is required to have 2,700 square feet of lot area; with 2,691 square feet of lot area, the Property is 9 square feet short of the requirement. The requested relief is *de minimis* and equates to less than a ½ % deviation from the requirement. As stated above, it was the Applicant's understanding and the understanding in the community until June 1st that such a *de minimis* request for relief could be granted under minor flexibility by the Zoning Administrator. In *Gilmartin v. District of Columbia Board of Zoning Adjustment*, the D.C. Court of Appeals noted that the Board "may consider whether the variance sought is *de minimis* in nature and whether for that reason a correspondingly lesser burden of proof rest" on the requestor. *See*, 579 A.2d 1164, 1171 (DC 1990). The Court went on further, quoting a case from Pennsylvania, which noted, "infinitesimal deviation [lot a few feet short of one acre] from complete compliance is clearly within the *de minimis* exception for granting dimensional variances." *See*, *Id.* quoting *Stewart v. Zoning Hearing Bd. of Radnor Township* 110 Pa. Commw. 111, 531 A.2d 1180, 1182 (Pa. Commw. 1987).

The present case is analogous to example the Court of Appeals provided in *Gilmartin*; the Property is only 9 square feet short of the 2,700 square foot requirement for a 3-unit conversion.

Moreover, due to the unique timing and lack of notice on the elimination of the ability to utilize minor flexibility on conversions, the Applicant acquired the Property under the financial requirement of a 3-unit conversion. The viability of a 2-unit project at this location is impacted by the Property's location and the history of illicit activities at the Property. The area is subject to drug and crime problems which produce a local market that cannot reasonably support two large recently redeveloped units. Given the *de minimis* request of 9 square feet in contrast with the challenges of being able to reasonably market two large units at the Property, the requirement to provide only two units at the Property due to a shortage of 9 square feet for the lot area requirement creates a practical difficulty for the Applicant.

2. Open Court Width (§406.1)

The Applicant proposes to add a rear addition that extends into the existing nonconforming side yard area. The addition extinguishes an existing nonconforming side yard and replaces it with a nonconforming open court. Under §406.1 the minimum open court width for an apartment house is 10 feet. The proposed dwelling will have an open court width that varies from 7'6 ½" to 1'11" at the narrowest point. The size and shape of the proposed addition is required for an efficient unit layout. The existing non-conforming side yard, which is impacted by angled eastern Property line, creates a practical difficulty for the Applicant in providing an efficient unit layout without the requested variance relief.

3. Addition to a Nonconforming Structure (§2001.3)

As stated above, the Property has an existing nonconforming side yard. Under §2001.3, an addition or enlargement to an existing nonconforming structure is permitted if the structure conforms with the lot occupancy requirements, and the addition does not increase or extend an existing nonconformity nor creates a new nonconformity. The proposed addition converts an existing nonconforming side yard into a nonconforming open court. The proposed addition is necessary to provide an efficient unit layout. As shown on the architectural plans at **BZA Exhibit 6**, the proposed addition is barely visible from Park Road due to the existing bay window projection into the side yard. As the conversion of the existing

nonconforming side yard to a nonconforming open court will be barely visible from the street and the proposed layout is necessary for unit layout efficiency, the Applicant seeks relief from the addition to a nonconforming structure requirement as well.

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 requested variance relief. The requested areas of variance relief are directly related to an existing nonconforming side yard. The proposed project renovates a vacant, single-family home that is a nuisance property on this portion of Park Road NW. 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. APPLICANT COMPLIES WITH GENERAL SPECIAL EXCEPTION CRITERIA

The Board is authorized to grant a special exception where it finds:

- 1) The proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Zone Maps; and
- 2) the proposed use is not likely to adversely affect the use of neighboring property, subject to the conditions specified in the Zoning Regulations for the particular special exception use. 11 DCMR §3104.1.

For a special exception for a conversion to an apartment house in the R-4, the BZA must also find the following:

336.2 The maximum height of the residential building and any additions thereto shall not exceed thirty-five feet (35 ft.), except that the Board of Zoning Adjustment may grant a special exception from this limit under § 3104, subject to §§ 336.3 through 336.11.

336.3 The fourth (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.

336.4 There must be an existing residential building on the property at the time of filing an application for a building permit.

336.5 There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per dwelling unit.

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.

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.

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.

336.9 Any addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

- (a) The light and air available to neighboring properties shall not be unduly affected;
- (b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and
- (c) 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.

336.10 In demonstrating compliance with § 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.

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.* As described in the Initial Submission, supplemented in this Prehearing Statement, and as will be further explained at the public hearing, all except one of the

conditions for a conversion of a residential building to an apartment house are satisfied.

A. The Proposed Conversions Complies with Section 336

The Applicant proposes to convert an existing vacant residential building into a 3-unit apartment house. The lot is exceptionally deep, has 2,691 square feet of land area and will provide two parking spaces for the proposed three units. As shown on the architectural plans in **BZA Exhibit 6**, and the renderings found in **Exhibit A**¹, the Applicant proposes to add a third floor. The proposed third floor will be set back 6 feet in order to preserve the unique architectural rooftop elements that exist at the Property.

The proposed development substantially complies with §336. The proposed project will have a height of 34' 3" which is less than the maximum 35 feet. As shown on the aerial images included in the Initial Application, *see* **BZA Exhibit 7**, the adjacent properties do not have chimneys, or solar energy systems. Moreover, due to the exceptional depth of the lot and the relatively modest addition, the proposed addition will not have a substantially adverse impact on the use or enjoyment of neighboring properties, nor impact the light and air available to those properties. The proposed project has a less than ½ % deviation from the requirement expressed in §336.5, which requires 900 square feet of land area per dwelling unit. As noted above, the Applicant has requested relief from this requirement from the Board.

B. Harmony with the General Purpose and Intent of the Zoning Regulations and Maps

The proposed conversion is in harmony with the general purpose and intent of the Zoning Regulations and Maps. The Property is located on a deep lot with a substantial amount of land area. Furthermore, by setting the third floor back six feet and retaining the unique architectural elements of the front façade, the proposed conversion will not impact the character or feel of the neighborhood.

C. No Adverse Effect on the Use of Neighboring Property

¹ The Applicant has continued to engage ANC 1A and anticipates revising the plans based on further community comments.

The proposed project will result in the improvement of a vacant property. Additionally, as shown above, due to the large lot size, the provision of parking in the rear, and the setting back of the third floor addition, the proposed project will have no adverse effect on the use of neighboring property.

V. COMMUNITY OUTREACH

The Applicant presented the project to Single Member District Commissioner Bobby Holmes on October 6th and November 8th. The Applicant presented to ANC 1A Planning and Zoning Committee on November 10th. SMD Commissioner Holmes and the Zoning Committee were both supportive of this application and the requested areas of relief. SMD Commissioner Holmes is very familiar with this particular area and the need for vacant homes to be thoughtfully redeveloped. Further, he is aware that this Property has been a particular nuisance on this block and the desire by the neighbors to see it inhabited. The Applicant presented to the full ANC on November 12th. During the ANC Meeting, some Commissioners noted that ZC 14-11 is a new regulation, and expressed concern regarding §336 and how it should be applied. Additionally, though the third floor addition is being set back six feet, the ANC raised concerns regarding approval of third floor additions under §336. Ultimately, the ANC voted to neither support or deny the proposed project.

After the ANC Meeting, the Applicant has continued to engage ANC 1A to more fully understand the concerns of the community and how they might be addressed. It was expressed to the Applicant that the visibility of the third floor, no matter how minor, was a big concern. The line of sight diagram, *see **Exhibit B***, which was presented to the ANC, shows that a small portion of the third floor addition is visible from across the street. To address that concern, the Applicant has agreed to slant the roofline of the third floor addition to ensure that it is not visible from the street. The Applicant is currently working with his architect to revise the third floor roofline and respectfully request to late file or submit at the hearing a revised line of sight diagram and front rendering.

IV. WITNESSES

The following witness will appear on behalf of the Applicant:

1. Trent Heminger, on behalf of the Applicant
2. Commissioner Bobby Holmes, on behalf of the Applicant

The Applicant reserves the right to call additional witnesses.

V. 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 variance and special exception relief.

We look forward to presenting our case to the Board on December 1, 2015.

Respectfully submitted,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS,
LLP



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Exhibit A

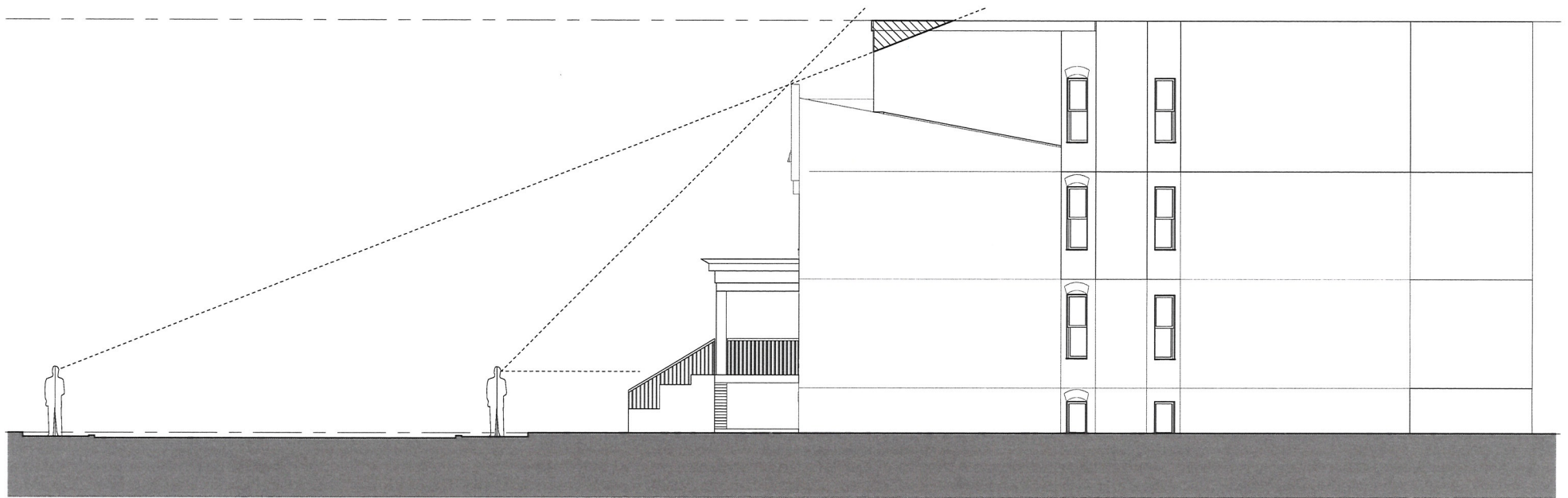


PROPOSED FRONT ELEVATION
1/4" = 1'-0"



3D View - ACROSS STREET

Exhibit B



LINE OF SITE DIAGRAM
 $1/8" = 1'-0"$