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December 8, 2015

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

**Re: Application No. 19145 – 1313-1323 Linden Court NE (Square 1027, Lots 57-61 and 112)
Prehearing Statement of the Applicant**

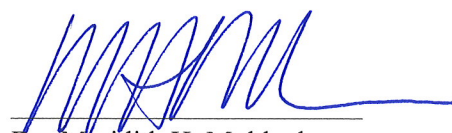
Chairperson Heath and Honorable Members of the Board:

On behalf of Linden Court Partners, LLC, please find enclosed the Prehearing Statement for the above referenced application. The application is scheduled to be heard before the Board of Zoning Adjustment on December 22, 2015.

Thank you for your attention to this matter.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS,
LLP



By: Meredith H. Moldenhauer

Cc: Advisory Neighborhood Commission 6A
c/o Phil Toomajian, Chair (via email)
Single Member District 6A06 Commissioner Stephanie Zimny (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
LINDEN COURT PARTNERS, LLC**

**BZA APPLICATION NO. 19145
HEARING DATE: DECEMBER 22, 2015**

PREHEARING STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of Linden Court Partners, LLC (the “Applicant”), the owner of property located at 1313-1323 Linden Court NE, Lots 57-61 and 112, in Square 1027 (the “Property”), in support of its application for an area variance from the requirements regarding (i) lot occupancy (§772), (ii) rear yard setback (§774), (iii) Commercial FAR¹ (§771), (iv) height (§2507.4), and (v) change of a nonconforming use (§2003). The Applicant seeks variance relief under §3103.2 to create five single family dwellings and a corner neighborhood servicing retail establishment at the Property.

II. EXHIBITS IN SUPPORT OF THE APPLICATION

Exhibit A:	Revised Architectural Plans
Exhibit B:	Land Swap Diagram
Exhibit C:	TTR Sotheby’s Letter
Exhibit D:	Letter from kmG Hauling
Exhibit E:	Letters of Support

III. DESCRIPTION OF PROPERTY

The Property is located in Square 1027. Square 1027 is bounded by 13th Street NE to the west, H Street NE to the north, 14th Street NE to the east, G Street NE to the south and Maryland Avenue NE to the southeast. The Square is divided by a heavily trafficked north-south 15-foot wide alley that runs from H Street NE to G Street NE. The Square also has an interior east-west 30-foot wide alley. *See*, Zoning Map at BZA Exhibit 6B.

The Property is presently comprised of six contiguous, 12-foot wide, alley lots; lots 57-61 and 112. All six lots abut the 30-foot wide east-west interior alley of Square 1027. The corner lot, lot 61, also

¹ In the Statement of the Applicant, the Applicant requested residential and commercial FAR relief. As a result of revisions to the plans, the Applicant was able to eliminate the residential FAR relief request. The proposed project still requires commercial FAR relief.

abuts the 15-foot wide north-south through alley. The Property is currently a body shop, a nonconforming use in the C-2-A zone district.

III. DESCRIPTION OF THE PROJECT

Lots 57-61 were improved in 1891 with 12- foot by 25- foot single family dwellings. Lot 112 was improved in 1892 with a 12- foot by 26- foot single family dwelling. The envelope of these dwellings still remain, but the interior of the dwellings were demolished in order to form one large space. The Applicant proposes to retain a significant portion of the existing envelope; preserve the brick exterior façade of the Property; and subdivide the six existing lots into five more conforming lot sizes: Lot 1, Lot 2, Lot 3, Lot 4 and Lot 5, in order to convert the existing nonconforming body shop into five single family dwelling and a corner neighborhood servicing retail establishment. The project also includes a land swap² with the lot located south of the Property, lot 812, *see*, Land Swap Diagram at **Exhibit B**.

IV. UPDATED PLANS

The Applicant has made significant design and structural changes to the plans since filing the Initial Application. *See*, Revised Architectural Plans at **Exhibit A**. The Applicant had three meetings with ANC 6A's Economic Development and Zoning (EDZ) Committee, one meeting with the Chair and an architect from the EDZ Committee, a meeting with the Office of Planning, and a meeting with District Department of Transportation (DDOT). The EDZ Committee recommended that the Applicant enliven the alley and consider revising the materials to clearly distinguish between the existing façade and the new addition to the Property. Pursuant to those suggestions, the rear of the third floor addition was revised to have metal paneling instead of the brick façade that was originally proposed. The Applicant also revised the façade of the single family dwelling on Lot 5, so that it is consistent with the other single family dwellings. Lastly to address the EDZ Committee's request to enliven the alley, the Applicant added low level planters to the front of each dwelling, overhead lighting at the building face, and is working with DDOT to use pavers that add visual interest to the site. As part of the outreach to the aforementioned agencies and the community, the Applicant revised the plans for the dwelling on Lot 1 in order to eliminate the request for residential FAR relief. These changes demonstrate the Applicant's desire to create a project that will fit in and enhance the local community. Moreover, the feedback received from the EDZ Committee ultimately helped the Applicant design a superior project.

V. APPLICANT MEETS BURDEN OF PROOF FOR AREA VARIANCE

The Board is authorized to grant an area variance where it finds exceptional condition of the Property, practical difficulties to the applicant and no substantial detriment to the public good or substantial impairment to the Zone Plan. *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

² The land swap will be recorded during the subdivision of the Property into five lots.

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 area variances 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).

Importantly, the Courts have conclusively determined that the doctrine of “self-created hardship” does not exist in area variance cases, like this one. Specifically, in the *Assoc. for Preservation of 17000 Block of N Street NW et. Al. v. DC BZA*, 384 A.2d 674 (1978), the District of Columbia Court of Appeals held that, “Petitioners state that whatever hardship faced the YMCA ‘was self-created to the extent of Metro YMCA having full knowledge of all problems with the alleged shape of the land, the type of zoning, and costs of putting in the parking, prior to the purchase of the property in March 1974.’ The YMCA’s self-created hardship is not a factor to be considered in an application for an area variance, however, as that factor applies only to a use variance.” *See also*, *Salsbery v. District of Columbia Board of Zoning Adjustment*, D.C. App., 357 A.2d 402, 404 (1976).

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. *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). As described in the initial submission, the Property is unusual and affected by an exceptional situation and condition as a result of a confluence of the following factors: (1) historically narrow lot width; (2) original construction and use as single family homes; (3) unique C-2-A alley lot with nonconforming use; (4) retention of existing structure; (5) no public space buffer because the existing structure is face on line with the alley; (6) heavily trafficked through alley between H Street NE and G Street NE; and (7) shape of western lot (Lot 1).

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

Strict application of the zoning regulations regarding lot occupancy (§772), rear yard setback (§774), height (§2507.4), FAR (§771) and a change to a nonconforming use (§2003) would result in a practical difficulty to the Applicant.

1. Lot Occupancy (§772)

Under §772, the maximum lot occupancy for dwellings in the C-2-A is 60%. The proposed Lot 1 has a residential lot occupancy of 82%, and Lots 2-5 have a residential lot occupancy of 75%. Thus, the Applicant is seeking zoning relief with respect to lot occupancy. As described in the Initial Application, the Property is comprised of historically narrow and shallow lots, which creates a practical difficulty in returning this Property to its original use as residences. Moreover, since the existing façade is face on line, elements of a rowhome that are typically located in public space, the entry stairs or the vestibule, for example, must all be located on the Property. Further, in order to comply with current building code requirements and to provide a home with basic modern appliances, the construction of a larger home is required. These structural and building requirements, combined with the need to locate parking within the structure, create the need for lot occupancy relief. The Applicant will subdivide the existing six lots into five lots to help address the challenges of returning the Property to its original use. However, without lot occupancy relief it would not be possible to renovate the current structure into homes that satisfy current building code and meet the basic needs of an urban family.

2. Rear Yard (§774)

Under §774, the minimum rear yard in the C-2-A District is 15 feet. In the proposed project, Lot 1 has a rear yard of 7 feet-3 inches, Lots 2-4 have a rear of 11 feet and Lot 5 does not have a rear yard. As explained in the Initial Application, accommodating the needs of modern family homes on historically shallow lots presents design challenges that have resulted in a slight reduction of the rear yard requirement for Lots 1-4. However, because Lots 1-4 provide on-site parking located on the first floor of the dwelling, the entire rear yard will be able to be utilized for green space and not as a parking pad, as so often occurs in the District.

Lot 5 is the corner lot and abuts a very busy through lot. Due to its location as a corner lot, and in order to provide a buffer between the alley and the four interior lots, the Applicant proposes to have Lot 5 serve as a neighborhood servicing retail establishment on the first floor of the structure. Similar to the challenges of providing a home that is designed to current standards and meets the needs of modern families are the challenges of designing a neighborhood servicing retail establishment that has the minimum amount of space for ADA compliant bathrooms, storage, commercial equipment and an interior trash room. Consequently, the Applicant seeks rear yard relief for Lot 5 as well.

3. Height (§2507.4)

The Property is located in a C-2-A alley. Pursuant to §770, the maximum height in the C-2-A is 50 feet, with no limitation on the number of stories. However, as a structure located in an alley, the height of the proposed structure is limited by the width of the alley pursuant to 11 DCMR §2507.4. Section 2507.4 states that the “height of a structure erected or constructed on an alley lot shall not exceed the distance from the opposite side of the abutting alley to the outside wall of the structure nearest the alley.”

The Property is face on line and fronts on a 30-foot alley; therefore the maximum permitted height is 30 feet. The proposed structures have a height of 39 feet. If the Applicant was not maintaining the existing façade, and if the lots were substantially deeper, the Applicant could, as others have done, set the entire structure back 9 feet from the Property line, to achieve increased height. Knowing that increasing the distance from the property line can be used to permit an increase in height, the Applicant designed the third floor addition with a one-to-one setback for every foot above 30 feet. *See, Proposed*

Longitudinal Section-Setback in Exhibit A. This permits the “distance from the opposite side of the abutting alley to the outside wall” to increase proportionately with the increase in height, and allows the proposed design to comply with the intent of §2507.4. Therefore, while the proposed project still requires relief from §2507.4, it is the Applicant’s position that the intent of §2507.4 is complied with by setting the wall back.

As noted above, and in previous filings, the Property is affected by a confluence of factors and without the nine foot deviation in height the Applicant would encounter a practical difficulty. The Property is located face on line with the lot line and there is no public space buffer between the Property and the alley. Therefore, the proposed project must locate structural elements commonly located in public space within the dwellings. Importantly, because the Property is located along an interior alley in Square 1027 and does not have rear yard access, the parking is provided onsite in livable space. Moreover, unlike many properties in the area that have accessible street parking, street parking is not possible in the alley. Without onsite garage parking, the future homeowners of the Property would be required to walk out of Linden Court to G Street NE, 13th Street NE or farther in order to park their car. This would have a significant negative impact on the marketability of the units. See, TTR Sotheby’s Letter at Exhibit C. The additional height balances the loss of livable space due to having to locate stairs, a vestibule and parking onsite and within the building. It is important to note that due to the location and orientation of the Property, the additional height does not have a negative impact on the sunlight or air available to neighboring properties, see Sun Study in Exhibit A. Lastly, as shown in the line of sight diagram included with Exhibit A, the additional height will not have a negative impact on the privacy of use of any adjacent neighbors because the future homeowners will not be able to view directly into their backyards.

4. FAR (§771.2)

Under §771.2, the maximum FAR in the C-2-A District is 2.5 for residential structures and 1.5 for commercial structures. Initially, Lot 1, due to the minor reduction in land area because of the notch in the rear, had a FAR of 2.7, exceeding the maximum permitted residential FAR by 0.2. As shown on the revised architectural plans at Exhibit A, the dwelling on Lot 1 was modified, the proposed FAR for Lot 1 is now 2.46, and the requested variance relief for that Lot has been eliminated.

The only lot that needs FAR relief is the proposed Lot 5. The proposed use for Lot 5 is a mixed use structure with a low impact, neighborhood servicing retail establishment on the first and second floor, and a single family dwelling on the third floor. The total FAR for Lot 5 is 2.3 FAR, which is below the maximum permitted 2.5 FAR. However, the commercial FAR for Lot 5 is 1.7, which exceeds the maximum commercial FAR by 0.2 FAR. The FAR relief needed for Lot 5 is a result of Lot 5’s location as the corner lot along a very busy through alley. The commercial use provides a natural buffer between the heavily trafficked through alley and the remaining single family dwellings. The requested FAR relief also permits the Applicant to activate the alley with a neighborhood servicing retail establishment that serves the needs of those in the immediate vicinity.

5. Nonconforming use (§2003)

The Property, an alley lot, is currently improved with a body shop, a nonconforming use in the C-2-A Zoning District. The Applicant seeks to convert the existing nonconforming body shop under 11

DCMR §2003, Changing Uses Within Structures. In its Initial Application, the Applicant noted that the proposed project would convert a nonconforming body shop into nonconforming single family alley dwellings and a neighborhood servicing retail establishment. The Applicant previously concluded that the proposed dwellings would be nonconforming because they would not comply with §2507.2. In preparation for the hearing before the Board, the Office of Planning informed the Applicant that the appropriate section to request relief under in order to convert an existing nonresidential use to residences on an alley lot is 11 DCMR §2507.3. The Office of Planning further stated that relief under §2507.3 is considered a use variance. For all the reasons discussed below, the Applicant finds that relief from 11 DCMR §2507.3 is not applicable to the present case, that 11 DCMR §2003 is the most appropriate section of the Zoning Regulations to request relief from and the Project converts a nonconforming use in the C-2-A to a conforming use in the C-2-A.

A. Buildings on Alley Lots

Section 2507 of the Zoning Regulations provides very specific rules regarding buildings on alley lots. Sections 2507.1-2507.3 read as follows:

2507.1 Except for use as a one-family dwelling, a structure shall not be erected, constructed, converted, altered, remodeled, restored, or repaired for human habitation on an alley lot.

2507.2 A one-family dwelling shall not be erected or constructed on an alley lot unless the alley lot abuts an alley thirty feet (30 ft.) or more in width and has from the alley access to a street through an alley or alleys not less than thirty feet (30 ft.) in width.

2507.3 An existing one-family dwelling located on an alley lot that abuts an alley less than thirty feet (30 ft.) in width shall not be converted, altered, remodeled, restored, or repaired for use as a one-family dwelling if the cost of the conversion, alteration, remodeling, restoration, or repair exceeds one-half of the value of the structure immediately prior to the time of the conversion, alteration, remodeling, restoration, or repair. Nonresidential structures located on these alleys shall not be converted, altered, remodeled, restored, or repaired for human habitation, regardless of cost.

The only provision of §§2507.1-3 that is applicable to the present case is §2507.1.

B. The proposed project complies with the §2507.1

The Applicant proposes to convert an existing nonresidential structure into five single family dwellings and a corner neighborhood servicing retail on a C-2-A alley lot. Section 2507.1 states that any structure on an alley lot, erected, constructed, converted, altered, remolded, restored or repaired for human habitation, must be a one-family dwelling. The Applicant's project proposes only one-family dwellings for human habitation, and thus complies with this provision.

C. Section 2507.2 does not apply to conversions

OP did not state that the Applicant needed to seek relief under §2507.2; however in an abundance of caution, the Applicant seeks to explain why §2507.2 is also not applicable to the present case. Section §2507.2 states:

A one-family dwelling shall not be erected or constructed on an alley lot unless the alley lot abuts an alley thirty feet (30 ft.) or more in width and has from the alley access to a street through an alley or alleys not less than thirty feet (30 ft.) in width.

Section 2507.2 only applies to one family dwellings that are being erected or constructed on an alley lot. By its clear language, which regulates dwellings being “erected” or “constructed”, §2507.2 is intended to apply to vacant alley lots only, not alley lots presently improved with structures. A careful reading of the first three subsections of 2507 and a thoughtful reflection of the terms used in each subsection reveals that §2507.1 applies to alley lots whether unimproved or improved (note: erected, constructed, converted, altered, remodeled, restored, or repaired); §2507.2 applies to alley lots that are unimproved (note: erected or constructed); and §2507.3 applies to alley lots that are improved (note: converted, altered, remodeled, restored, or repaired). The drafters of the Zoning Regulations were specific about the terms used in each subsection, and it is not appropriate to add terms to subsections that are intentionally omitted.

It is also important to note that only §2507.2 contains an “access provision”, requiring one family dwellings being erected or constructed on vacant alley lots abut an alley 30 feet or more in width *and* have alley access to a street through an alley not less than least 30 feet in width. The access provision was not included in §2507.1 or §2507.3, and thus it does not apply to this project.

D. BZA Application 19145 complies with §2507.3 because the Property abuts a 30 foot wide alley

The Office of Planning (OP) informed the Applicant that the appropriate section of the Zoning Regulations to seek relief under in order to convert an existing nonresidential alley structure into residences is §2507.3. OP correctly noted that the second clause of §2507.3 prohibits nonresidential structures “located on these alleys” from being converted, altered, remolded, restored, or repaired for human habitation, regardless of cost. The second clause does not define “these alleys”; that term can only be understood by reading §2507.3 from the beginning. The first clause of §2507.3 states:

An existing one-family dwelling located on an alley lot that abuts an alley less than thirty feet (30 ft.) in width shall not be converted, altered, remodeled, restored, or repaired for use as a one-family dwelling if the cost of the conversion, alteration, remodeling, restoration, or repair exceeds one-half of the value of the structure immediately prior to the time of the conversion, alteration, remodeling, restoration, or repair.

The restrictions of §2507.3 apply only to structures, whether one-family dwellings as the first clause states, or nonresidential structures as the second clause states, located on an alley lot that abuts an alley less than thirty feet (30 ft.) in width. The Property is located on an alley lot that abuts an alley that is 30 feet wide. Therefore, the proposed project complies with §2507.3 because the Property is an alley lot that abuts a 30-foot wide alley. Notably, §2507.3 does not contain an “access provision”, requiring access

from the alley lot to the street through an alley that is at least 30 feet wide. The Board is the body authorized to interpret the Zoning Regulations, but it does not have drafting authority. Therefore, the Board should not apply words that are clearly, and purposefully, omitted from this provision.

E. Section 2003 is the appropriate section under which to seek relief

Upon consideration of the areas of relief the proposed project requires, the Applicant finds that the most appropriate section of the Zoning Regulations to seek relief from is §2003. Section 2003, permits the Board to authorize a change in a nonconforming use into any other use with a lesser degree of nonconformity pursuant to conditions listed in §2003. The existing use, a body shop, is a nonconforming use in the C-2-A zoning district. The Applicant seeks to eliminate the current nonconforming use found at the Property by converting the Property to residences and a neighborhood servicing retail establishment. The Applicant proffers that the proposed uses comply with §2003 because they eliminate the nonconformity found at the Property and replace it with a permitted C-2-A use that is more compatible with the area and character of the alley.

F. Past Case History and Lot 5

The Applicant contends that the most appropriate section of the Zoning Regulations to seek relief for all five Lots is §2003. However, the Applicant also acknowledges the complex and patchwork history regarding development on alley lots and the relief such development requires. As Lot 5 of the proposed development abuts a 30-foot wide alley and a 15-foot wide alley, the Applicant understands that the Board may find that §2507.3 applies to Lot 5. In light of that, the Applicant seeks to highlight a very recent BZA case in which the Board found that relief under §2507.3 was an area variance not a use variance as suggested by the Office of Planning. *See*, BZA No. 19014. However, unlike the present case, the subject property in BZA No. 19014 did not abut a 30-foot wide alley at all. As explained above, the Applicant concludes that all Lots in present case comply with §2507.3 because the Property abuts a 30-foot wide alley.

If the Board finds that Lot 5 requires an area variance from §2507.3, the Applicant maintains that Lot 5 satisfies the requirements for a variance from this provision. It would be impractical, wasteful and possibly hazardous to convert Lot 1-4 to single family dwellings, but leave Lot 5 undeveloped. Attempting to isolate and keep Lot 5 from the rest of the Property would create a practical difficulty for the Applicant, would necessitate that a section of useable land be unused or remain undeveloped, and would fail to serve any benefit to the community.

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 zoning relief. The proposed project converts a nonconforming body shop into residences and a mixed use structure. The proposed development returns a majority of the lots to their prior use as residences, and buffers those residences from the through alley by constructing a mixed use building on the corner lot. In addition, the proposed project adequately balances the Zoning Regulations' goals for providing a diverse and adequate housing stock, while revitalizing the District's alleys. The single family dwelling use is consistent with the Zone

Plan and conforms with the four adjacent Linden Court residential alley dwellings, 1303-1311 Linden Court NE. In addition to being a more compatible fit with the existing residential dwellings in the alley, the proposed alley project is an appropriate link between the commercial north side of Square 1027 and the residential portion of Square 1027 along G Street NE and 13th Street NE, *see* Existing Land Use Plan Sheet of the Architectural Plans at **Exhibit A**. For these reasons, approval of the zoning relief requested will not cause a detriment to the public good or zone plan.

VI. APPLICANT HAS COMMUNITY AND ANC SUPPORT

The Applicant has conducted extensive outreach in the community and obtained eight letters of support from neighbors, included the adjacent property owners. *See*, Letters of Support from Neighbors at **Exhibit E**. The Applicant has also obtained the support of ANC 6A's Economic Development and Zoning (EDZ) Committee. The Applicant presented to the EDZ three times and as described above revised the architectural plans pursuant to their comments. In addition to their design comments, the Applicant also responded to their comments regarding the neighborhood servicing retail establishment by obtaining a proposal from a trash and recycling operator that currently operates within the alley, *see* Letter from kmG Hauling, Inc. at **Exhibit D**. By working with an existing operator, the proposed development will not increase the number or frequency of trash and recycling trucks using the alley. Most importantly, in full recognition of the parking difficulties the neighborhood faces, the Applicant, as requested by the EDZ Committee, agreed to place a restriction on obtaining residential parking permits (RPP) for Lots 1-4, as each of those dwellings will have on-site parking.

As a result of the community outreach conducted by the Applicant, the changes to the Architectural Plans to activate the alley, the written proposal from kmG Hauling, and the RPP restrictions, the EDZ voted unanimously to support the variance request at their November meeting. The Applicant will present to ANC 6A on December 10, 2015.

VII. WITNESSES

The following witnesses will appear on behalf of the Applicant:

1. Jim Kennerknecht, on behalf of the Applicant
2. Ron Schneck, Architect

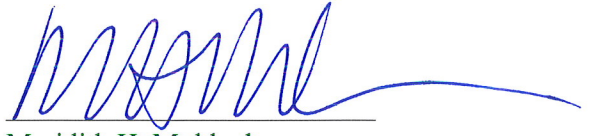
VIII. CONCLUSION

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 area variance relief.

We look forward to presenting our case to the Board on December 22, 2015.

Respectfully submitted,

GRIFFIN, MURPHY,
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LLP



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