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September 21, 2015,

VIA HAND DELIVERY

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

**Re: 1313-1323 Linden Court NE
Square 1027, Lots 57-61 and 112 (the "Property") – Variance Application**

Dear Chairperson Jordan & Members of the Board:

Please accept for filing the enclosed application of Linden Court Partners, LLC (the "Applicant"). The Applicant requests variance relief pursuant to 11 DCMR §3103.2, to permit the construction of five single family dwellings and a corner neighborhood servicing retail establishment (the "Project") in the C-2-A District.

The application package includes the following materials:

1. BZA Form 120, Application Form
2. Agent Authorization Letter;
3. Statement of Intended Use;
4. Plat showing the existing structure on the Property;
5. BZA Form 126, Fee Calculator;
6. BZA Form 135, Self-Certification;
7. Statement of the Applicant;
8. List of names and mailing addresses of owners of all property within 200 feet of the boundaries of the Property;
9. Zoning Map;
10. Baist Map; and
11. Architectural Plans

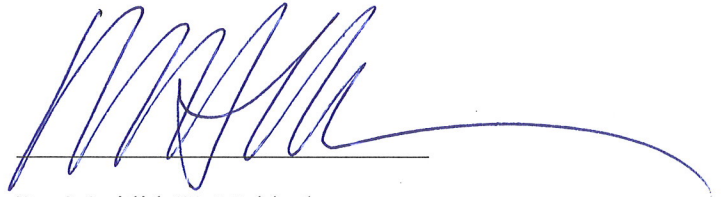
We believe that the application is complete and acceptable for filing, and request that the Board schedule a public hearing for the application as soon as possible. If you have any questions, please do not hesitate to contact me on behalf of the Applicant.

Board of Zoning Adjustment
District of Columbia

Thank you for your attention to this application.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP



By: Meredith H. Moldenhauer

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

**APPLICATION OF
LINDEN COURT PARTNERS, LLC**

**1313-1323 LINDEN COURT NE
ANC 6A06**

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 variance relief, pursuant to 11 DCMR §3103.2, from the requirements regarding (i) change of a nonconforming use (§2003); (ii) lot occupancy (§772); (iii) rear yard setback (§774); (iv) FAR (§771); and (v) height (§2507.4) to allow the Applicant to construct five single family dwellings and a corner neighborhood servicing retail establishment (the “Project”) in the C-2-A District at the Property.

II. JURISDICTION OF THE BOARD

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

III. BACKGROUND

A. Background Information Regarding the Property

The Property is comprised of lots 57-61 and 112 in Square 1027. The aggregate land area is approximately 3,224 square feet. *See*, Baist Map at **Tab A**. 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 Property is located in the interior of the Square; with frontage along Linden Court NE, an alley street. The Square has four Zoning Districts within its boundaries. The

Property is located in the C-2-A Zoning District. The north and a small portion of the southeast of the Square are zoned HS-A/C-2-A. The majority of the southern and western portion of the Square is residential and zoned R-4. The east of the Square is zoned HS-A/C-3-A. The Property is not located within any historic district nor is it located within the H Street Overlay. *See*, Zoning Map at **Tab B**.

The Property was originally improved with six single family homes constructed in the late 1800s. The existing brick envelope of the homes remains intact but the interior of the homes were demolished to form one large commercial space. The Property has been used as a body shop, a nonconforming use in the C-2 zone district.

B. Description of the Improvements in the Surrounding Area

Square 1027 is in the recently revitalized Atlas District neighborhood. The Property is directly behind the historic Atlas Movie Theater, which has been repurposed into the Atlas Performing Arts Center, a multiple space performing arts facility. The Square is occupied by a variety of uses-churches, an art gallery, restaurants, a gym, auto body shops, the Rock N Roll Hotel, an apartment building, flats and single family homes.

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 1 mile from the Noma-Gallaudet University and Stadium Armory Metro stations which provides access to the Red, Blue and Silver Lines. In addition to rail lines, the Property is very accessible by bus. Metrobus X1, X2, X8, X9, X3, B2, D8, D3 and D4 stops mere feet away from the Property on Florida Avenue NE, Maryland Avenue NE and 14th Street NE.

Also in close proximity to the Property are a number of the District's bikesharing and carsharing programs. There are six Capital Bikeshare stations located within 0.5 miles of the Property. The closest

Capital Bikeshare station is in front of the Property at the corner of 13th Street NE and H Street NE. There are five Zipcar facilities within 0.5 miles of the Property. The closest, a Zipcar facility at 817 11th Street NE has two vehicles available for use. Walkscore.com gives the Property a walk score of 91 and a bike score of 94, and designates the property as both a “walker’s paradise” and “biker’s paradise,” the highest possible designations. Though not yet in operation, the DC Street Car will run just a few yards from the Property, along H Street NE. A stop is located at 13th Street NE and H Street NE, a mere 0.1 miles from the Property.

Description of the Proposed Development

The Applicant seeks to convert the existing nonconforming body shop into five single family residential homes and one commercial space. As shown on the architectural plans, *see* Architectural Plans at **Tab C**, the Applicant proposes to retain the historic envelope of the building, subdivide the narrow six record lots into five lots: Lot 1, Lot 2, Lot 3, Lot 4 and Lot 5. Lot 1 through Lot 4 would be improved with single family dwellings and each dwelling would have 2 bedrooms, 2 ½ bathrooms and on-site parking located inside the building on the first floor. Lot 5, the corner lot, would be improved with a neighborhood servicing retail establishment on the first and second floors, and a single family dwelling on the third floor.

IV. NATURE OF VARIANCE RELIEF SOUGHT AND STANDARD OF REVIEW

The Applicant requests variances from the requirements regarding (i) change of a nonconforming use (§2003); (ii) lot occupancy (§772); (iii) rear yard setback (§774); (iv) FAR (§771); and (v) height

(§2507.4)¹. 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.

¹ The Applicant is providing parking spaces that are 8’x 16’. A parking variance is not required for the residential units because of the grandfathered parking credits from the nonconforming body shop. As stated in BZA order 17615, only required parking spaces must meet the dimensional requirements.

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 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: (1) historically narrow and shallow lots; (2) originally single family homes; (3) unique C-2-A alley with nonconforming bodyshop use; (4) through alley between H Street NE and G Street NE; and (5) the shape of the Lot 1.

1. Historically Narrow Lots

The Property is comprised of six exceptionally narrow lots; each lot is only 12 feet wide. The lots are also exceptionally shallow. Lots 57-61 are only 41 feet-3 inches deep, and lot 112 is only 55 feet deep. The new proposed Lots 1-5 will be 45 feet-3 inches deep. The majority of lots on the square are 70-120 feet deep. The lots are narrower and shallower than any other existing lots in the Square.

2. Originally Single Family Homes

The Property is improved with an existing brick structure that was previously six single family homes. The largest lot, lot 112, was improved in 1892 with a single family dwelling that was 12 feet by 26 feet. The other lots were improved with single family dwellings that were 12 feet by 25 feet, constructed in 1891. *See*, Building Permit Records at **Tab D**. At the time the homes were developed, the building code did not require the numerous standards we have today.

3. Unique C-2-A Alley With Nonconforming Use

The Property is located in the C-2-A zoning district. The C-2-A Zone District permits medium bulk mixed use and residential developments, offices, and shopping centers. However, the Property's location in an alley restricts the possible uses permitted on the lot and presents design challenges. Furthermore, though the Property is in the C-2-A Zoning District, it abuts residential R-4 Zone Districts to the south and the west. The Property is directly adjacent to a dwelling on Linden Court NE.

The Property is presently being used as a body shop. The C-2-A zone does not permit body shops as a matter of right.

4. Through Alley between H Street NE and G Street NE

The Property abuts a through alley on the east. The through alley connects the H Street corridor with G Street NE. The through alley also services the many commercial establishments that front on H Street, including the Atlas Theater and the Rock N Roll hotel. The location of Lot 5, the corner lot, which directly abuts the alley, creates unique development challenges as it will be uniquely susceptible to noise and adverse impacts associated with the commercial use of the alley and H Street NE.

5. Shape of the western lot

Proposed Lot 1 has a notch that reduces the land area and creates a narrow jut at the rear of the lot. This notch increases the challenges of attempting to return the lot to its prior use as residential lot with a single family dwelling.

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

Strict application of the zoning regulations with respect to requirements for nonconforming use (§2003), lot occupancy (§772.1), rear yard (§774.1), FAR (§771.2), height (§2507.4) would result in a practical difficulty to the Applicant.

1. Nonconforming Use (§2003)

The Property is currently improved with a body shop, a nonconforming use in the C-2-A Zoning District. Section 2003 governs changing uses in structures. Specifically, the Board may approve changing a nonconforming use into any other nonconforming use, as long as the new use has the same degree or a lesser degree of nonconformity as the existing nonconforming use, subject to the conditions set forth in 11 DCMR §2003.

2003.1 *If approved by the Board of Zoning Adjustment, as authorized in §§ 3103 and 3104 for variances and special exceptions, a nonconforming use may be changed to a use that is permitted as a matter of right in the most restrictive district in which the existing nonconforming use is permitted as a matter of right, subject to the conditions set forth in this section.*

A body shop it is not a permitted use in the C-2-A Zoning District. The Applicant proposes a reduction in the nonconformity of use at the Property by changing the nonconforming body shop use to nonconforming single family alley dwellings and a neighborhood servicing retail use. Both proposed uses substantially reduce the nonconforming nature of the site.

2003.2 *The proposed use shall not adversely affect the present character or future development of the surrounding area in accordance with this title. The surrounding area shall be deemed to encompass the existing uses and structures within at least three hundred feet (300 ft.) in all directions from the nonconforming use.*

The proposed residential and neighborhood servicing retail use will have a positive effect on the character and future development of the surrounding area. The surrounding area comprises a commercial corridor on H Street NE, north of the Property, but is primarily residential to the west and south of the Property. As the Property is located to the rear of the commercial corridor on H Street, the proposed residential and neighborhood servicing retail use will not have an adverse impact on the character of that corridor. Furthermore, since a majority of the area to the west and south of the Property is residential, the proposed residential and neighborhood servicing retail use will complement the existing residential areas near the Property.

2003.3 *The proposed use shall not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects.*

The proposed residential use and neighborhood servicing retail use will not create deleterious external effects. The proposed use will have a far more positive effect on the neighborhood than the existing body shop use. The body shop use is wholly inconsistent with the C-2-A zoning district. Also, it is not a use that should be located so close to residential districts. The C-2-A zoning at the Property permits other more intensive uses than residences, however due to the close proximity and abutting nature of existing residential structures to the south and west of the Property, such commercial uses could potentially have deleterious effects. In contrast, the proposed primarily residential use will enhance the surrounding area by adding more residents to the community and by providing a community oriented place for the use and enjoyment of neighboring residents. It is expected that the neighborhood servicing retail establishment will cater and fill a need in the local community. Furthermore, since Lots 1-4 provide onsite parking, the addition of residences to the neighborhood is unlikely to impact the current parking conditions in the area. Lastly, as a body shop is an intense use compared to the proposed use, a reduction in noise, vibration, odor and other conditions associated with a body shop is expected.

2003.4 *When an existing nonconforming use has been changed to a conforming or more restrictive use, it shall not be changed back to a nonconforming use or less restrictive use.*

Because the existing nonconforming use has not been changed to a conforming use or more restrictive use, this standard is not applicable in this case. However, if the proposed change to the nonconforming use is approved, a more intensive use will not be able to return to the Property.

2003.5 *In Residence Districts, the proposed use shall be either a dwelling, flat, apartment house, or a neighborhood facility.*

The Property is located in the C-2-A Zoning District. Consequently, this provision does not apply.

2003.6 *For the purpose of this section, the districts established by this title are listed in the following order of decreased use restriction:*

- a) W-0, R-1-A, R-1-B, R-2, R-3, R-5-A, R-4, R-5-B, R-5-C, R-5-D, and R-5-E;*
- (b) SP-1 and SP-2;*
- (c) C-1, C-2-A, C-2-B, C-2-B-1, C-2-C, C-3-A, C-3-B, C-3-C, C-4, and (PAD);*
- (d) W-1, W-2, and W-3;*
- (e) CR; and*
- (f) C-M-1, C-M-2, C-M-3, and M.*

As described above, a body shop is not permitted in the C-2-A. The proposed non-conforming single family alley dwelling is a residential use permitted in the most restricted use category. The proposed use will be nonconforming as to alley width. Section 2507.2 states that a one-family dwelling shall not be erected or constructed on an alley lot unless the alley abuts an alley 30 feet or more in width, and is accessible to a street through an alley at least 30 feet in width. Linden Court is a 30 foot alley, but the through alley from H Street NE to G Street NE, which provides access to Linden Court, is 15 feet wide. Even though the proposed use will be nonconforming with respect to §2507.2, it is a permissible change of use within the meaning of §2003 because it will be a decrease in the use category. Notably, residential uses are permitted in the most restrictive zoning districts and will return the Property to the original use.

2003.7 *The Board may require the provision of or direct changes, modifications, or amendments to any design, plan, screening, landscaping, type of lighting, nature of any sign, pedestrian or vehicular access, parking and loading, hours of operation, or any other restriction or safeguard it deems necessary to protect the value, utilization, or enjoyment of property in the neighborhood.*

The proposed use is a significant decrease in the intensity of use at the Property. The proposed use is also a use that is more compatible with the existing residential properties to the west and south of the Property. To ensure that the transition from a body shop use to a residential and neighborhood servicing retail use does not adversely impact the surrounding properties, the Applicant has engaged the ANC in preliminary meetings. In response to some of their questions, the Architectural Plans, *see **Tab C***, includes sun studies showing no impact on the light and air available to neighboring properties.

Furthermore, the Architectural Plans show no adverse impact on privacy as the line of sight goes over G Street homes and is obstructed by the parapet when looking down. The Applicant has also obtained an opinion letter from Environmental Consultants and Contractors regarding the environmental condition of the Property. *See*, ECC Opinion Letter at **Tab E**. Additionally, ever mindful of the needs of the community, the proposed dwellings will have on-site parking and will be fully sprinkled. Consequently, we respectfully submit that no design modifications, additional restrictions or safeguards will be necessary for the Board to support this change in use back to the original single family use.

2. Lot occupancy (§772.1)

The Property consists of six narrow and shallow lots. To address some of the development challenges of returning these lots to residences, the Applicant will be subdividing the six record lots into five lots. However, the Project still requires relief from lot occupancy requirements. Under §772.1, the maximum lot occupancy for dwellings in the C-2-A is 60%. Lots 2 through 5 of the proposed development have a residential lot occupancy of 75% while Lot 1 has a lot occupancy of 82%. The request for lot occupancy relief directly reflects the impact the historically narrow and shallow lots have on returning these lots to single family dwellings.

When the Property was originally developed with single family dwellings in 1891 and 1892, the building code did not require the numerous standards we have today. Homes constructed today must have compliant stairs and landings, compliant egress and access points, and compliant venting, all of which requires space. Furthermore, modern homes must have basic appliances and facilities. Without lot occupancy relief, the construction of homes that satisfy current building code and meet the basic needs of an urban family would not be possible.

Lot 5 only requires relief for lot occupancy for the residential portion of the structure. Commercial uses in the C-2-A do not have a lot occupancy requirement.

3. Rear Yard (§774.1)

The minimum rear yard for all structures in the C-2-A Zoning District is 15 feet. In the proposed plans Lot 1 has a rear yard of 7 feet-3 inches, and Lots 2-4 have a rear yard of 11 feet. Lot 5 has no rear yard. Accommodating the needs of a modern family on historically shallow lots presents design challenges which resulted in a slight reduction in rear yard. Additionally, the provision of on-site parking via a garage impacted the size of the rear yard. Even though there is a slight reduction in rear yard space, the rear yard will be able to be fully utilized as green space and not as a parking pad or a storage shed as very often occurs.

Lot 1 has slightly smaller rear yard due to the jag in the rear of the lot. However, because the abutting property cannot be built on, the perceived depth of the rear yard will be similar to the remaining lots. To ensure the residential quality of the interior lots, the Applicant seeks to have the corner lot, Lot 5, serve as a neighborhood servicing buffer between the busy through alley, which serves multiple commercial uses in the alley and along H Street NE, and the residential lots. The shallowness of the lot, the location of the lot as the corner lot abutting a highly trafficked through alley create a practical difficulty for the Property. The proposed neighborhood servicing retail establishment will serve as a physical barrier between the residential homes on the remaining lots. Lot 5's rear yard relief mitigates the practical difficulty, noise, and reduced privacy for the other residential lots. Furthermore, a neighborhood servicing retail establishment requires a minimum amount of space for ADA bathrooms, storage, commercial equipment and an interior trash room. Therefore, the Applicant requests rear yard relief.

4. Floor Area Ratio (FAR) (§771.2)

Strict application of the zoning code for FAR would result in a practical difficulty for the Applicant. The maximum FAR in the C-2-A District is 2.5 for residential structures and 1.5 for commercial structures. Lot 1 has an FAR of 2.7, which exceeds the maximum permitted residential FAR

by 0.2 FAR. Lot 5 does not exceed the maximum total FAR but does require relief for the commercial FAR of 1.7.

Lot 1 has an unusual notch in the rear of the lot which reduces the overall land area by 55 square feet as compared to lots two through four. The minor reduction in land area increases the FAR of lot one above the maximum, although the dwelling on Lot 1 will be the same size as the dwellings on Lots 2-4. But for the notch in the rear of lot one, which creates a practical difficulty, this lot would not need FAR relief. Reducing the proposed dwelling creates a practical difficulty.

Lot 5 has a total FAR of 2.3 which is below the maximum permitted FAR of 2.5. However, Lot 5 surpasses the commercial FAR limit by just 0.2 FAR. The minor 0.2 FAR relief needed for this lot is a result of Lot 5's location. As the corner lot on a busy through alley the proposed structure that improves Lot 5 will be a mixed use structure with a low impact, neighborhood servicing retail on the first and second floor and a studio on the third floor. Without the FAR relief, it would be extremely difficult to construct a building that could be used by a neighborhood servicing, low impact retailer.

5. Height (§2507.4)

The maximum permitted height in the C-2-A is 50 feet. 11 DCMR §770.1. However, as a structure located in an alley, the height of structures is restricted by 11 DCMR §2507.4. Section 2507.4 states, "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 fronts on a 30 foot alley. The proposed structures have a height of 39 feet. However, as shown in Architectural Plans at **Tab F**, the walls of the structure are set back on a one-to-one ratio for every foot above 30 feet. The additional 9 feet above 30 feet is angled and is not felt from the alley.

Setting back the wall line on a one-to-one ratio complies with the intent of §2507.4. Moreover, without the 9 foot relief the Applicant would encounter a practical difficulty. The rear of the Property is

not accessible from an alley; therefore parking is provided on-site in livable space. The additional 9 feet of height balances the loss of livable space due to the onsite parking. Additionally, the historical lots are narrow and shallow; the additional height permits the Applicant to offset the practical difficulty created by the shallow lots, and allows each dwelling to have a mezzanine with outdoor living space. The dwellings are modest, efficiently designed homes which fully account for the unique location and size of the lots. Without the requested height relief, the provision of homes that an urban family could use and enjoy would be extremely difficult.

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

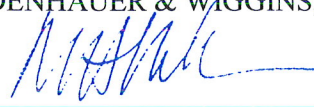
There will be no substantial detriment to the public good and no substantial impairment to the intent, purpose, and integrity of the zone plan by approving the zoning relief. The proposed project converts a nonconforming body shop into residences and a neighborhood servicing retail establishment. The 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. Finally, as an alley project in a commercially zoned district, the development is an appropriate link between the C-2-A/HS zoned commercial north side of the Square along H Street NE and the R-4 zoned residential portion of the Square along G Street NE and 13th Street NE. For these reasons, approval of the zoning relief requested will not cause a detriment to the public good or zone plan.

VI. CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for variance relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests that the Board grant the application.

Respectfully submitted

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP



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