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November 9, 2015

VIA HAND DELIVERY

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

**Re: BZA Application for 1212-1218 4th Street NW
Square 0513, Lots 0155 and 0156 (the "Property") – Area Variance and Special
Exception Application**

Dear Chairperson Heath & Members of the Board:

Please accept for filing the enclosed application of 1212-1216 4th street, LLC (the "Applicant"). The Applicant requests variance relief, pursuant to 11 DCMR §3103.2, from the requirements regarding (i) lot area (§401.11) and (ii) lot occupancy (§403.2); and for special exception relief pursuant to 11 DCMR §3104.1, to permit the change of a nonconforming use.

The application package includes the following materials:

1. BZA Form 120, Application for Variance/Special Exception
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. Baist Atlas Map;
10. Zoning Map;
11. Architectural Plans; and

Board of Zoning Adjustment
District of Columbia

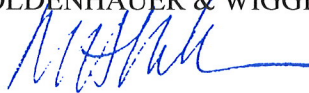
12. Photograph of the Property.

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.

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
1212-1216 4th Street, LLC**

**1212-1218 4th Street, NW
ANC 6E**

STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of 1212-1216 4th Street LLC (the “Applicant”), the owner of the property located at 1212-1216 4th Street NW, Lot 0155 in Square 0513, and the garage/unimproved land located at 1218 4th Street NW, Lot 0156 in Square 0513, (collectively, the “Property”) in support of its application for variance relief pursuant to 11 DCMR §3103.2, from the requirements regarding (i) lot area (§401.11) and (ii) lot occupancy (§403.2) to allow the Applicant to expand the existing residential buildings. The Applicant also requests special exception relief pursuant to 11 DCMR §3104.1 for a change to a nonconforming use (§2003) to allow the conversion of an office use to a neighborhood retail or service establishment in an R-4 District.

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 Lots 0155 and 0156 in Square 0513, contains approximately 9,955 square feet of land area and is the largest non-institutional lot in Square 0513. Square 0513 is bounded by 4th Street to the east, M Street NW to the south, 5th Street to the west, and N Street NW to the north. See

Baist Map at **Tab A**. The Property is located within the Mt. Vernon Square Historic District and the existing buildings on the Property are considered contributing buildings.

The Property is comprised of two contiguous lots, Lot 0155 and 0156. Lot 0155, known as 1212-1216 4th Street, is a uniquely shaped flag lot that extends to Ridge Street. It is presently improved with two adjoining buildings built in succession. The building located at 1212-1214 4th Street NW was constructed in 1939 as a 2-story attached apartment house with six units. See, 1212-1214 4th Street NW Application For Permit to Build at **Tab B**. The building at 1216 4th Street NW was constructed in 1940 as a two story mixed-use building, with two dwellings on the second floor and an office on the first floor. See, 1216 4th Street NW Application For Permit to Build at **Tab C**. Lot 0155 is also improved with a large dilapidated garage, located in the rear.



Image of 1212-1216 4th Street NW.

Lot 0156, known as 1218 4th Street NW, is a rectangular corner lot that is minimally improved with a dilapidated garage that previously served as a gas pump, and storage facility for trucks and cars. See, Certificate of Occupancy for Amato Inc., at **Tab D**. The front of 1218 4th Street, according to a 1961

Certificate of Occupancy, *see* **Tab D**, was previously improved with a building that had a retail beverage, food and tobacco store on the first floor.

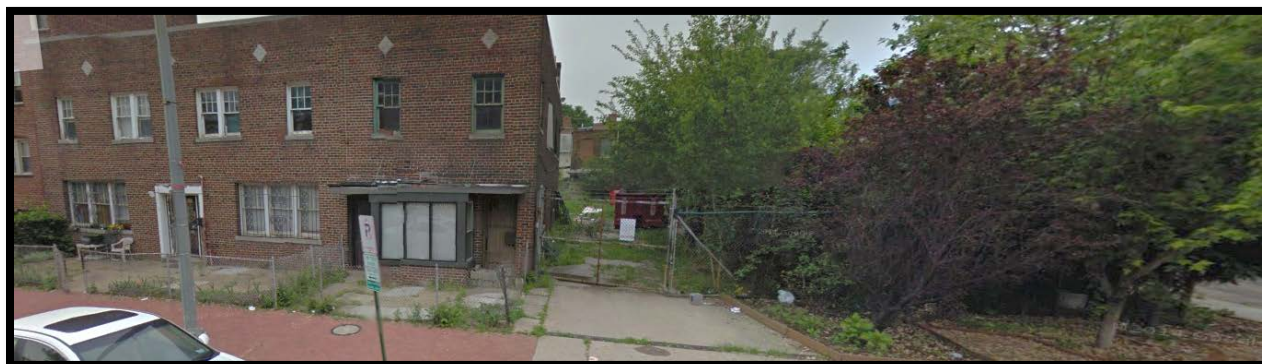


Image of 1212-1218 4th Street NW.

B. Description of the Improvements in the Surrounding Area

Square 0513 is zoned R-4; however, it is bordered on the east and the north by R-5-B zoning districts, and to the south by a DD/R-5-B zoning district. *See*, Zoning Map at **Tab E**. Also, two blocks south of the Property is a DD/C-2-C zoning district. *Id.* There are several multiunit residential buildings in the Square, including the adjacent apartment building at 1210 4th Street NW. Also in Square 0513 are attached and semi-detached single family homes, flats, apartments and a few churches.

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 Zipcar. The Property is located approximately 0.3 miles from the Mt. Vernon/7th Street Convention Center Metro, which has access to the Green and Yellow lines. Union Station, which provides access to the Red line, the MARC, and Amtrack, is only 0.6 miles away. Additionally, Metrobus routes along New Jersey Avenue (96, G2), New York Avenue (96), 7th Street NW (70), and K Street NW (D4, P6) all serve the Property. Also within close proximity to the Property are a number of the District's bikesharing and carsharing programs. The closest, a RelayRides vehicle, is located only one block away. The closest Zipcar facility is only 0.3 miles away and has six

vehicles available for use. Additionally, there are six other Zipcar vehicles located within a 0.5 mile radius of the Property. On walkscore.com, the Property received a walk score of 92 out of 100 and is deemed a “walker’s paradise”. With numerous Capital Bikeshare locations nearby and a bike score of 79, the Property is also located in a “very bikeable” area.

D. Description of the Proposed Development

As shown on the architectural plans, see Architectural Plans and Elevations at **Tab F**, the Applicant proposes to renovate the existing buildings, raze the garages and expand the existing multiunit apartment building. The Applicant also proposes to add a neighborhood retail or service establishment to the ground floor of apartment building based on feedback from the local community. The proposed development (the “Project”) will be three stories and have 26 units with 9 parking spaces. The first floor will have 6 units and the neighborhood retail or service space. The second floor will have 12 units and the third floor will have 8 units. The project will provide 1-three bedroom unit, 4-two bedroom units, 12-one bedroom units, and 9 studio apartments.

IV. NATURE OF VARIANCE RELIEF SOUGHT AND STANDARD OF REVIEW

Variance relief is required from the requirements regarding lot area (§401.11) and lot occupancy (§403.2). 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 Exceptional 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 characterized by an exceptional situation and condition as a result of the confluence of five factors: (1) shape and size of the lot, (2) layout of the existing structure, (3) the existing

dilapidated condition of the Property, (4) the historic character of the existing structures, and (5) the nonconforming office use.

1. Shape and Size of the Lot

The Property is exceptional with respect to its shape and size. Lot 155 is a flag lot with a portion of its rear extending behind Lot 156 to Ridge Street. The Property is also exceptionally large; with 9,954 square feet of lot area. It is significantly larger than any other residential lot in the Square and is the largest non-institutional lot in Square 513. If used solely for residential use, as intended by the R-4 zoning district, the sheer size of the lot and the requirement to preserve the existing structures would present design and programmatic challenges.

2. Layout of the Existing Structure

The existing structures, built in 1939 and 1940, have been transformed over the years to suit the needs of various previous owners. The constant interior renovation has resulted in a layout that is highly inefficient. Though originally two structures with a party wall, 1212 and 1216 4th Street NW now intercommunicate on the first floor. Additionally, the electrical box that controls the entire structure is located in the basement of 1216 4th Street.

3. The Dilapidated Condition of the Property

1212-1216 4th Street is in deplorable condition. The buildings have suffered from water damage and electrical damage. The ceiling has collapsed in many of the rooms and a portion of the stairway has collapsed in 1216 4th Street. See, Photographs of the Interior of the Property at **Exhibit G**. The basement of 1216 4th Street has holes that enable a viewer to see the footing. With so many access points, the building has become home to stray and feral animals. The rear of 1212 4th Street NW has a shed that is full of abandoned mechanical equipment. 1218 4th Street NW also has a derelict shed/garage. The Applicant has tried to improve the condition of the property by boarding the windows on the second floor

of 1216 4th Street and securing the Property with locks. Though, disrepair is not a sole justification for granting variance relief, it is a contributing factor that supports the challenges and practical difficulty associated with putting the Property to productive use.

4. Historic Character of Existing Building

The Property is a contributing property in the Mt. Vernon Square Historic District. The Applicant's initial intent was to demolish all but the façade of the existing structure and construct a third floor addition with a modest set back. However, based on a preliminary discussion with District of Columbia Historic Preservation Office staff indicating that the Historic Preservation Office (HPO) would not support construction of a new structure face on-line with the contributing buildings and would require retention of the entire contributing structure, the proposed addition will be setback 20 feet. The setback reduces the efficiency of the design and creates a practical difficulty for the Applicant.

5. Prior Nonconforming Uses

The Property has always had uses that do not conform with the R-4 Zoning District. The first floor of 1216 4th Street NW received a Certificate of Occupancy for an office in 1961, a taxicab office in 1978 and a general cleaning office in 1979. 1218 4th Street received a Certificate of Occupancy for "3 bulk fuel oil meters, gasoline pump and storage for trucks and cars in rear" in the 1960s. The proposed project will extinguish the prior nonconforming use on 1218 4th Street, while revitalizing and improving the nonconforming use on the first floor of 1216 4th Street.

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

Strict application of the zoning regulations with respect to lot area (§401.11) and lot occupancy (§403.2) would result in a practical difficulty to the Applicant.

1. Lot area (§401.11)

Under §401.11, an apartment house that existed before May 12, 1958, may not be renovated or expanded so as to increase the number of dwelling units unless there are 900 square feet of lot area for each dwelling unit, both existing and new. Therefore, the Property can have 11 units as a matter of right. The Applicant's Project proposes to have 26 units. The Project seeks to renovate and expand the historic use found at 1212-1216 4th Street; revitalizing and transforming the dilapidated building into new residential units. In order to preserve the existing contributing buildings, the existing buildings must be renovated, and the nonconforming commercial garages must be razed. To ensure that this project is financially feasible, a 26 unit structure is required. As demonstrated in more detail below, strict application of the zoning regulations constitutes a practical difficulty for the Applicant.

The Court of Appeals has repeatedly held that "economic use of property may be properly considered as a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty in area variance cases." *Tyler, et. al. v. District of Columbia Bd. of Zoning Adjustment*, 606 A.2d 1362 (D.C. 1992)(internal citations removed)(*Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990)(Reiterating in the context of an area variance that "increased expense and inconvenience to applicants for a variance are among the proper factors for BZA's consideration.")).¹ The Board of Zoning Adjustment has granted lot area variances based on financial feasibility grounds on several occasions.

In this instance, it is not simply that having fewer units would produce less of a profit for the Applicant; having fewer units would create an undue burden on the Applicant and endanger the success of

¹ In *Association for Preservation of 1700 Block of N St., N.W. & Vicinity v. District of Columbia Bd. of Zoning Adjustment*, the Court confirmed that at a given point economic harm becomes sufficient, when coupled with a significant limitation on the utility of the existing structure or property, to satisfy the variance standard. 384 A.2d 674 (D.C. 1978)(Finding practical difficulty where a YMCA *could* build a structure that complied with off-street parking requirements by reducing its size and programming but was not economically feasible or cost-effective). In *Wolf v. District of Columbia Bd. of Zoning Adjustment*, the Court of Appeals upheld a Board decision granting an area variance to permit conversion to a three-unit rental apartment where "marketability" of the property would otherwise be "unfeasible" and investment would yield loss rather than profit. 397 A.2d 936 (D.C. 1979)(Upholding approval of a lot area variance for conversion of a two-family dwelling to a three-unit apartment building where a two-family dwelling was not marketable and monthly expenses would out pace annual rental income).

the Project. The primary reason redevelopment of the Property with only 11 units is financially impractical is that a substantial base renovation must be completed on the existing structure regardless of the number of units in the addition. The base renovation costs include, but are not limited to, site cleanup, removal of obsolete and nonfunctional equipment, removal of a fuel storage tank, rewiring the entire structure with a new electrical system, remediation and prevention of water damage, excavation and earthwork, and foundation and roofing work. Base renovation costs make up a larger percentage of total hard costs when the structure has fewer units. See Profit and Loss Analysis and Construction Budget at **Tab H**. Moreover, this Property must maintain its historic character and comply with the guidelines set forth by Historic Preservation. The units in the addition essentially subsidize the expensive renovation that must take place in the two contributing structures and the site remediation. Additionally, providing fewer units would result in excessively large units with inefficient layouts. As this area has many renovated single family dwellings for those seeking more space, the addition of large inefficiently designed units is unlikely to improve the housing stock of the neighborhood.

The exceptional circumstances at the Property described above, make renovating and expanding the existing apartment house particularly challenging. Consequently, a practical difficulty exists because the existing structure requires such a large investment that renovation and development of the Property only becomes feasible with 26 units.

2) Lot occupancy (§403.2)

The maximum lot occupancy permitted in the R-4 District for an apartment house is 60%. The proposed development has a lot occupancy of 75%. Thus, the Applicant requests lot occupancy relief from §403.2.

Strict application of the zoning code for lot occupancy would result in a practical difficulty for the Applicant. Due to the full retention of the contributing buildings, the addition is being setback from the

front façade 20 feet. If the addition was face on line, the need for lot occupancy relief would be drastically reduced. Additionally, an increase in lot occupancy is needed to provide a sufficient number of reasonable sized units to subsidize the base renovation cost and preservation of the contributing buildings. Though the setback addition increases the lot occupancy it does cantilever over the rear to continue to allow for parking.

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 Property is one of the last properties in Square 513 that has not been redeveloped. Across the street on 4th Street and all along Ridge Street are beautifully renovated single family homes and condominiums. The Project eliminates a community eyesore and transforms it into a property that compliments the neighboring structures. The proposed project also revamps a long standing nonconforming use in the R-4 zoning district by converting it to a neighborhood servicing retail use- something the community desires. By improving the underdeveloped lot, the Project completes the block and anchors the east side of the neighborhood with a beautiful property. The Project adequately balances the zoning regulations' goals of ensuring adequate space for residents, providing a diverse and adequate housing stock, and permitting property owners to create marketable units. Finally, the additional residential units help address the well documented shortage of housing in the Washington D.C. area. Unlike many new projects in the area that only construct studio and 1-bedroom apartments, this Project will have 4 two-bedroom units and 1 three-bedroom unit. For these reasons, approval of the zoning relief requested will not cause a detriment to the public good or zone plan.

VI. NATURE OF SPECIAL EXCEPTION RELIEF AND STANDARD OF REVIEW

The Applicant seeks special exception relief pursuant to §2003 to establish a neighborhood retail or service use in a portion of the first floor and cellar of the Property. Under D.C. Code §6-641.07(g)(2) and 11 DCMR §3104.1, the Board is authorized to grant a special exception where it finds that the special exception will be in harmony with the general purpose and intent of the Zone Plan and will not tend to adversely affect the use of neighboring property, subject in each case to the special conditions specified. 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 discussed below, and as will be further explained at the public hearing, the special exception standard has been met in this Application.

VII. APPLICANT COMPLIES WITH GENERAL SPECIAL EXCEPTION CRITERIA

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

The Property is located in a neighborhood that has historically contained a mix of residential and commercial uses. 1216 4th Street is a perfect example of that; it was designed and constructed in 1940 to have a commercial use on the first floor and a residential use on the second floor. Through the years, the commercial floor of 1216 4th Street has always been used as an office, a use no longer needed or desired

in the community. The change from an office use to a retail or service establishment will be an improvement to the existing pattern of uses at the Property.

B. No Adverse Effect on the Use of Neighboring Property

The proposed conversion of the nonconforming office to a retail or service establishment will not adversely affect use of the neighboring property. In fact, the proposed use was requested by community members at a single member district meeting held to engage the community regarding the potential development. The Project will enhance the surrounding area and provide a neighborhood service that will enhance the feeling of community.

**VIII. APPLICANT COMPLIES WITH SPECIFIC SPECIAL EXCEPTION CRITERIA FOR
CHANGING USES IN STRUCTURES**

Section 2003 governs changing uses in structures. Specifically, the Board of Zoning Adjustment may approve changing a nonconforming use into any 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 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.

An office is first permitted in the C-1 District as a matter-of-right. 11 DCMR §701. The Applicant proposes to convert the nonconforming office use into a retail or service establishment like a

café², bakery, shoe repair shop, dry-cleaners, bookstore, bike store, or florist; all uses permitted in the C-1. See, §§701.1 and 701.4. Therefore, under §2003.1, the nonconforming office use at the Property may be changed to a retail or service establishment, like those listed above, subject to the conditions set forth in §2003.

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 neighborhood retail or service establishment will have a positive effect on the present character and future development of the surrounding area. Currently, the Mt. Vernon Square Historic District is experiencing a spur of redevelopment. Many of the rowhomes have been renovated and many other projects are in the pipeline. Unfortunately, the only two neighborhood retail or service establishments in the Square are 1) a wine and spirit store at the corner of M Street NW and 5th Street NW, and 2) a dollar food and grocery store at the corner of N Street N.W. and 5th Street NW. The proposed retail or service establishment will add desired diversity to the existing neighborhood servicing retail stock.

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 neighborhood retail or service use will not create any deleterious external effects. This corner Property has a long history of nonresidential uses. The neighborhood retail or service establishment will have a positive impact on the neighborhood as compared to the prior uses. The office use offered no benefit to the surrounding community. In contrast, the proposed use will enhance the surrounding area by providing a community-oriented gathering place for neighboring residents. The expectation is that most patrons will arrive by foot, thereby alleviating any potential parking concerns.

² A café is not specifically defined in the Zoning Regulations; however a café use is encompassed under restaurant use, a permitted use in the C-1 Zoning District.

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. The Applicant and prior owner always intended to retain the nonconforming use and never abandoned it.

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

The proposed use will be a neighborhood facility. The Applicant seeks to establish neighborhood retail or service establishment because members of the community have requested one. It is the Applicant's intent that the neighborhood retail or service establishment will be a place where the community can gather, meet and get to know one another. The use would not be for the exclusive use of any one group, rather it would be a welcoming, local establishment. The small size of the proposed retail or service space will help assure that the use is community-oriented.

The proposed use will have a minimal impact on the surrounding residential development, as it will cater primarily to its neighbors and not the District of Columbia at-large.

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

As described in detail, both the existing and proposed uses are first allowed as a matter of right in the C-1 District.

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.

At this time, based on the fact that the proposed neighborhood retail or service use will occupy a small space and cater almost exclusively to patrons who live or worship within walking distance of the

Property, we submit that no additional restrictions or safeguards are necessary to protect the neighborhood.

IX. CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for variance relief and special exception 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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