BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

In Re: Application of Stanton Road Housing LLC for (i) R-5-A Review pursuant to Section 353.1 of the Zoning Regulations for the construction of eighteen (18) affordable townhomes, (ii) for variances from the floor area ratio and the lot occupancy requirements of Sections 402.4 and 403.2, and (iii) for approval of twelve (12) theoretical lots in the R-4 and R-5-A Zone Districts under Section 2516.5.

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Subject Property:

Lot 65, Parts of Lots 64, 66, 67, 811, 818, 859 and 861
Square 5870
Stanton and Douglas Roads, S.E.

JORDAN KEYS & JESSAMY LLP
George R. Keys, Jr.
1400 16th Street, N.W., Suite 700
Washington, DC 20036-2217

Dated: February 12, 2001

BZA Application No. 16705

BZA
Case No. 16705
Exhibit No. 8

Board of Zoning Adjustment
District of Columbia
CASE NO.16705
EXHIBIT NO.8

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D. Development Team

Developer:	Stanton Road Housing LLC
Members of Developer:	Banc of America Community Development Corporation East of the River Community Development Corporation
Architect:	Torti Gallas & Partners CHK, Inc.
Civil Engineer:	Maddox Engineers, Inc.
Construction Manager:	Premiere Homes
Land Development Manager:	Maryland Development
Legal Counsel:	Jordan Keys & Jessamy, LLP

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E. Application for R-5-A Review and Variance Relief

Stanton Road Housing LLC (the "Applicant"), the fee owner of Lots 64-67, 811, 818, 859 and 861 in Square 5870 (the "subject property") hereby makes application to the District of Columbia Board of Zoning Adjustment (the "Board") for: (i) R-5-A review of its plans for the subject property pursuant to §353.1 of the District of Columbia Zoning Regulations, 11 DCMR (July 1995) (the "Zoning Regulations") to permit the construction of eighteen (18) affordable townhomes within an R-5-A Zoning District; (ii) permission to allow a variance from the floor area ratio requirements at §402.4 of the Zoning Regulations for twelve (12) of the townhome lots which would otherwise require a floor area ratio of .90 for each of the townhome lots; (iii) grant of a variance from the lot occupancy requirements at §403.2 of the Zoning Regulations for twelve (12) of the townhome lots which would otherwise require that the townhomes occupy no more than forty (40%) percent of the underlying lots; and (iv) permission to subdivide based on twelve (12) theoretical lots pursuant to §2516.5 of the Zoning Regulations along a private street.

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1. Statement of Existing and Proposed Use

The subject property is presently vacant land, zoned R-5-A and R-4 and comprising approximately 1.66 acres (72,457.06 square feet). Approximately 1.28 acres, or 55,756.80 square feet of the subject property is located within the R-5-A zone district, the

balance of the land is zoned R-4. The subject property is part of a larger assembly of land within Square 5870 owned (or under contract) by the Applicant, on which the Applicant intends to erect, in three phases, fifty-six (56) townhomes for sale to low- and moderate-income persons known as Hillsdale Heights Townhomes (the "Townhome Project"). The remainder of the assembled land is zoned R-4 and C-1 which permits the matter-of-right construction of row dwellings. The first phase of the Townhome Project, developed on the C-1 zoned land to the north of the subject property as matter-of-right development, have already been completed of the sixteen (16) townhomes, all except the two model units have been sold. The second phase will shortly be under construction on the R-4 zoned land to the south of the subject property. The Applicant has completed the demolition of the existing structures and rough grading of the land in preparation for construction of the fifteen (15) townhomes of the second phase of the Townhome Project. On the subject property, the Applicant intends to erect twenty-five (25) townhomes with associated private roadways and common areas as the third and final phase of the Townhome Project.

2. Site and Surrounding Area Description

The subject property is part of a larger parcel of 3.1 acres in the shape of a trapezoid, bounded roughly by Howard Road, Stanton Road and Pomeroy Road, S.E. The subject property is in

the middle of this assemblage of land and comprises 1.66 acres of land. All of the structures on the subject property have been demolished and all vegetation removed.

Abutting the subject property to the south and west across Stanton Road, S.E. are the Washington View Apartments, owned by Banc of America Community Development Corporation and which, like the Townhome Project, are undergoing redevelopment under the auspices of the Collaborative. In addition to reducing the density of rental apartments, the owner intends to develop condominium units in two of the former rental buildings. To the northeast of the subject property is an R-4 zone along Howard Road, S.E. which is developed with single-family row dwellings. Directly to the east across Stanton Road, S.E. is the main sanctuary, community center and parking lot of St. John's CME Church. To the south of the subject property across Pomeroy Road, S.E. is the G.C. Wilkinson Elementary School.

3. History and Description of the Townhome Project

The subject property was previously improved by a four-building apartment complex known as Howard Gardens Apartments, which the Applicant acquired in August, 1995, in a sale supervised by the United States Bankruptcy Court. In order to complete the purchase the Applicant had to resolve long-standing arrearages in real property taxes, water and sewer charges and utility service by structuring and facilitating a compromise

agreement among the public and private creditors. In 1995, the Applicant joined with other organizations and community groups to form the Hillsdale Heights Collaborative which set for itself the objective of redeveloping the neighborhood.[1]

The Collaborative actually began in 1994 as a working committee of the Washington Area Housing Partnership ("WAHP"), an affiliate of the Washington Metropolitan Council. WAHP chose four major problem properties in the Washington View neighborhood to concentrate on: Washington View Apartments, Howard Garden Apartments, Sheridan Terrace Public Housing complex and the Howard Road Shopping Center. The process brought together the property owners and the community in a community development planning process that sought to create a feasible redevelopment strategy that was acceptable to all participants. This process culminated in a weekend *charette* that produced the master plan. for the neighborhood. The community then adopted the master plan and formed the Collaborative. The name of the Collaborative, and of the Townhome Project, is based on the historical name of the neighborhood.

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[1]Participants in the collaborative included: Anacostia Economic Development Corporation, East of the River Community Development Corporation, St. John CME Church, Banc of America Community Development Corporation, QUAJ Enterprises, Macedonian Baptist Church, Washington Area Housing Partnership, Washington View Tenants Organization, Anacostia Business and Professional Association, District of Columbia Housing Authority, Capitol City Training and Employment Center.

One of conclusions reached by the Collaborative was to reduce the overall density of rental housing in the neighborhood in order to develop practical opportunities for affordable housing ownership. The first stage of this transformation was accomplished in 1995-1996 when the Applicant relocated the tenants and demolished the apartment buildings.

The Applicant

The Applicant is a limited liability company with two members: Banc of America Community Development Corporation ("BoACDC") and East of the River Community Development Corporation ("ERCDC"). BoACDC is a subsidiary of Bank of America that invests equity in community development projects and partners with communities to develop affordable housing and other real estate that meets community needs. Founded in 1978, BoACDC has developed over 15,000 units of affordable housing across 22 states and the District of Columbia. Bank of America has made a commitment to invest $350 billion in under served communities over the next ten years. BoACDC has invested $1 million in equity financing and Bank of America Home Builders Group is providing $6.5 million in construction financing for the Townhome Project.

ERCDC is a nonprofit corporation established to generate economic and community development in Ward 8. ERCDC has been active fro 12 years in Ward 8 as a developer of single family and

multi-family projects in partnership with the District of Columbia government, the private sector and local, grass-roots community groups. In addition to its real estate ventures, ERCDC has a variety of social program that assist residents of Ward 8 and provides technical assistance to start-up and established businesses in order to strengthen the business community in Ward 8.

The Townhome Project

At the time of the Applicant's purchase, the Howard Gardens Apartments, containing ninety-eight (98) rental apartment units, was occupied by only nine (9) tenants living in substandard conditions. In their dilapidated state, these buildings constituted a dangerous crime condition and a blight on the neighborhood. Consistent with the Collaborative's decision, the Applicant determined to develop the Howard Gardens site with affordable townhomes.

The uniform product for the Townhome Project is a three-story, stick-built, brick-veneer townhome of 1,920 square feet, most of which have a lower level garage accessed from the rear of the townhome unit. The townhome units will be grouped in strings of 5 to 8 townhome units. Variety in the townhome strings will be created by varying color schemes and decorative features like shutters, oval windows and doorway pediments. The site topography dictates that some of the unfinished basements will be

partially out of the ground on the street-side of the units along Stanton and Howard Roads, S.E. A homeowners association composed of all townhome owners has been incorporated and will own the common land, roadways and other infrastructure (such as the storm water management system) of the Townhome Project.

Phases I and II of the Townhome Project, which are located on C-1 and R-4 zoned land, respectively, can be developed as a matter of right. There are two types of variances necessary for Phase III of the Townhome Project on the subject land. The townhome lot areas are small in relation to the gross floor area and footprint of the units and these facts in turn affect both the floor area ratio and the lot occupancy calculations. Typically, in each string the end units; variance relief is sought for the interior units. The twenty-five (25) townhome units in this phase of the Townhome Project are numbered Lots 17-34, 42-48 organized into four strings: lots 17-23 along Howard Road, S.E.; lots 24-29 along Stanton Road, S.E.; lots 30-34 on the north side of the private street; and lots 42-48 on the south side of the private street. The development standard for the zoning districts is a floor area ratio of 0.90 and a lot occupancy not to exceed 40%. The tables below set forth the non-conforming lots, the extent to which each lot is not in compliance with the applicable section of the Zoning Regulations and the particular variance (expressed as a percentage variation

from the applicable standard) necessary to allow the Townhome Project to proceed as designed.

Lot Numbers	FAR	FAR Variance	Lot Occupancy	LO Variance
18-22	0.948	5%	43%	7.5%
25-28	.951-0.955	6%	48%	20.0%
31-33	1.183	31%	54%	35.0%

What the table demonstrates is that all interior units in the three strings north of the private street require varying degrees of variance relief from both the floor area ratio requirement and the lot occupancy requirement. For some of the lots, in particular lots 18-22, the variance required is virtually *de minimis;* for other lots (lots 31-33) it represents allowing the floor area ratio and lot occupancy requirement to exceed the maximums established by the Zoning Regulations by one-third.

In mitigation of the above-referenced development parameters, the Board should recognize that the overall floor area ratio and lot occupancy figures for the entire subject property are well within tolerances for the R-5-A and R-4 zoning districts, demonstrating that the non-compliance is related directly to the size of certain of the individual townhome lots and not to the Townhome Project as a whole. For example, the subject property comprises an land area of 1.66 acres, or 72,309

square feet, while the aggregate building footprint for the 25 townhomes is 16,448 square feet. Therefore, the overall lot occupancy is 22.75% compared with the 40% allowed under §403.2 of the Zoning Regulations. Similarly, the aggregate floor area of all of the townhomes is 34,619.12 square feet, which results in an overall floor area ratio of 0.4787, which is approximately 50% less than the 0.90 allowed under §402.4 of the Zoning Regulations.

Thus, the intent of the zoning scheme for density and open space, which are the planning outcomes expressed in terms of the floor area ratio and lot occupancy minimums are met with the provision of common land and private alleys and streets within the Townhome Project. The overall density of the Townhome Project is about one-half of what it could have been as a matter-of-right.

4. Basis for Special Exception Relief

Section 353.1 of the Zoning Regulations requires that the Board assess all new residential developments (other than single family detached or semi-detached dwellings) in accordance with the standards and requirements set forth in §410 of the Zoning Regulations and the general standards applicable to special exceptions. In this application, the Applicant refers the Board to §410.12, which permits an applicant to satisfy the §410

standards without strict compliance therewith, provided that the provisions of §§410.4 and 410.5 can be addressed satisfactorily.

5. Basis for Variance Relief

The natures of the variances requested --- from the lot occupancy and floor area ratio requirements --- are area variances.[2] In pertinent part, §3107.2 of the Zoning Regulations states that the Board has the power:

> Where, by reason of . . . [an] exceptional situation or condition on a specific piece of property, the strict application of any regulation adopted under D.C. Code sections 5-413 to 5-432 would result in peculiar and exceptional practical difficulties to . . . the owner of the property, to authorize . . . a variance from the strict application so as to relieve the . . . hardship; Provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. (emphasis added)

The test for an area variance then is threefold: whether some condition of the subject property (1) is exceptional or unique; (2) creates a practical difficulty under the Zoning Regulations; and (3) relief from which would not occasion substantial detriment to the public good or impair the intent, purpose, and integrity of the zone plan. Roumel v. D.C. Board of Zoning Adjustment, 417 A.2d 405, 408 (1980); Capitol Hill Restoration Society, Inc. V. D.C. Board of Zoning Adjustment, 398 A.2d 13, 15 (1979). The manner in which the Applicant's

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[2] Ass'n for Preservation of 1700 Block of N Street v. D.C. Board of Zoning Adjustment, 384 A.2d 674, 676 (D.C. 1978).

circumstances and the circumstances of the subject property satisfy these three distinct elements for area variance relief are discussed below.

Application of the Facts to the Variance Standards

i. Exceptional Situation or Condition

The unique condition inherent in the land which necessitates the variance portion of this application lies with the topography, shape and zoning of the subject property. The most visible characteristics of the land on which the Townhome Project, including the subject property, is located, are its irregular shape and changing topography. These conditions are depicted on Exhibit 6, a topographic map of the subject property and proposed adjacent townhomes in Phases I and II. The irregular shape, narrowing from 500' along Pomeroy Road to the south to only 156' at its northern end, is compounded by the topography which varies fifty feet (50') from the high point to the low point on the land making up the Townhome Project.

The Applicant's development challenge was to design this difficult site in such a way as to maximize the number of townhomes as a means of providing an affordable, yet attractive, product. Zoning, too, was an issue affecting the development process. The 3+ acre site comprising the Townhome Project lies within three zoning districts: R-5-A, R-4 and C-1, a highly

unusual development context for any project and particularly one of such a relatively small size.

The subject property, though the last of the three phases to be developed, is a critical link to the other two Townhome Project phases. It will provide the interior circulation connection along new private alleys and a private street servicing all of the townhomes within the Townhome Project. If the Applicant was to develop the interior of the site, it was necessary to locate a private street along which townhomes could be built. Lots 30-34 and 42-48 are the twelve lots arrayed along the private street. Because of the adjacent street grid, the Applicant had no choice in the placement of the private street in order for the site plan to be acceptable to the Department of Public Works. The new private street had to align with 15th Place, S.E. to the north on the subject property.

Once the alignment of the private street was made, the placement of the townhomes was thereby fixed. The Applicant had to develop townhomes in this location in spite of the difficulty presented by the topography.

ii. Practical Difficulty

Marketing considerations and the identified needs of the neighborhood led to the inclusion of lower level garages as a means of meeting the off-street parking requirements. The narrow site with street access along the long axis of the subject

property dictated the site layout to a great extent. The changing topography made it impractical to locate curb cuts on Howard and Stanton Roads, S.E. for the townhomes because of the different elevations of each townhome in a string. Given the topography of the subject property, the only available solution to garage access was to reach the garages through a private roadway at the rear of each lot along a more gradual slope than presented itself along the public adjacent streets.

iii. Compatibility with the Zoning Scheme

The final prerequisite for variance relief is to demonstrate that the requested relief can be granted without adverse impact on the intent, purpose and integrity of the zone plan. The subject property is zoned R-5-A, a bounded by the other two phases of the Townhome Project which are zoned C-1 and R-4. The larger zoning context of the surrounding neighborhood includes R-3, R-4, R-5-A and C-1 zoning districts, all of which are consistent with the "moderate density residential" use depicted on the District of Columbia Generalized Land Use Map for the subject property and the immediate neighborhood.

The development of fifty-six (56) townhomes, clustered together in strings of five to eight single-family row dwellings is harmonious with the underlying zoning, the surrounding neighborhood and the future uses depicted in the maps developed from the Comprehensive Plan process. The Housing Elements of the

District of Columbia Comprehensive Plan, adopted in 1984 and published at Chapters 1-19, 10 DCMR *Planning & Development* (August 1995), recognize as matter of major government priority the provision of more housing priced for sale to low and moderate income households even to the extent of endorsing zoning incentives for developers prepared to build such housing. 10 DCMR § 302.2(a) and (d). More specifically, the Ward 8 housing objectives within the Comprehensive Plan call for the replacement of abandoned and underused private apartment buildings, like the Howard Gardens Apartments, with more appropriate residential uses. 10 DCMR § 1909.1(b)(1).

Noting the changing demographics of Ward 8 and the noticeable trend toward construction of single-family townhomes, the Comprehensive Plan adopts as its first housing objective for Ward 8:

> Increase the number of owner-occupied and single-family housing units in the ward. 10 DCMR § 1908.1(a).

The instant application is clearly in furtherance of the District's articulated housing goals for the city as a whole and for Ward 8 in particular, which has the lowest level of home ownership among all of the wards in the District. The Townhome Project also represents the culmination of a visible, public planning process that has involved all of the relevant stakeholders in this community.

6. Theoretical Lot Subdivision

Lot 30-34 and 42-48 do not front on a public street; instead both strings of townhome units face the 46-foot wide private street bisecting the subject property. Section 2516.5 of the Zoning Regulations provides that in cases where buildings have no street frontage, theoretical lots may be authorized so long as certain front and rear yard requirements are met and the building is properly oriented on its site. In this instance the main entrance of the townhomes erected on lots 30-34 and 42-48 will face the private street and the open space provided meets the requirements of §2516.5(b).

Without going into greater detail in this application, the Applicant asserts that the proposed site plan meets all of the applicable standards of §2516.5. The Applicant intends to prepare and submit supplemental information and testimony from the Applicant's civil engineer and/or project manager by the time of the hearing in this matter to address the satisfaction of the standards set forth in §2516.5.

E. Conclusion

Based upon the foregoing discussion, the Applicant requests that the Board grant: (i) permission to erect the eighteen (18) townhomes within the R-5-A zoning; (ii) the requested floor area and lot occupancy variances for lots 18-22, 25-28 and 31-33; and (iii) authority to erect twelve (12) townhouses on theoretical

lots in the R-4 and R-5-A zone districts, all as depicted on the site plans for the Townhome Project.

Respectfully submitted,

JORDAN KEYS & JESSAMY LLP

By: George R. Keys, Jr.

George R. Keys, Jr.