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April 25, 2002

D.C. Board of Zoning Adjustment
441 4th Street, N.W., Suite 200
Washington, DC 20001

D.C. BOARD OF ZONING
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Re: BZA Application No. 16869
Waiver of 11 DCMR §3113.8

Dear Members of the Board:

The Applicant in the above referenced matter hereby requests a waiver to allow for the filing of an additional statement in support of its application. As reason therefore, Applicant states that it has been engaged in a series of continual meetings with the ANC and other interested community representatives and was attempting to acquire additional material for submission to the Board. However, such material will be submitted independently by the ANC and the community groups and rather than risk further delay Applicant will proceed to file its statement. Thank you for your time and consideration.

Sincerely yours,

GRIFFIN, FARMER & MURPHY, LLP

By _____
Jonathan L. Farmer
Counsel for Applicant
King's Creek, LLC

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BZA
Case No. 16869
Exhibit No. 24

Board of Zoning Adjustment
District of Columbia
CASE NO.16869
EXHIBIT NO.24

Before The Board of Zoning Adjustment of the District of Columbia

Application of King's Creek, LLC
for Variance and Special Exception Relief
at 2329 Champlain Street, N.W.
(Square 2563, Lot 103)

BZA Application No. 16869
Hearing Date: April 30, 2002
ANC-1C

I. Action Requested

King's Creek, LLC (hereinafter "King's Creek") requests relief under Subsection 3103.2 for a variance from the floor area ratio requirements under Section 402, a variance from the lot occupancy requirements under Section 403, and a variance from the non-conforming structure provisions under Section 20013. King's Creek also requests relief under Subsection 3104.1 for a special exception to exceed the height provisions (Section 1402) of the Reed-Cooke Overlay District under Section 1403 to construct an addition to an existing building for a mixed-use (residential and existing retail) development in the RC/R-5-B District at premises 2329 Champlain Street, N.W. (Square 2563, Lot 103). This case comes to the Board because the design of the proposed building and addition requires both variance and special exception relief.

The Reed-Cooke Overlay District was created by the Zoning Commission in 1991 to improve the defined area by protecting existing housing and providing for new housing development, maintaining heights and densities at appropriate levels, ensuring that non-residential services serve the local community, encourage small scale business development and

protecting the existing residences from any adverse impacts.

King's Creek has proposed a new development that meets the stated purposes of the Reed-Cooke Overlay District by developing new housing and ensuring the retention of a small scale business that serves the needs of the Reed-Cooke and Adams Morgan communities without any adverse impact on said communities.

A. Authority of the Board of Zoning Adjustment to Grant the Requested Relief

The subject property is located in the RC/R-5-B District. A mixed use, multifamily building is permitted in the RC/R-5-B District if, like here, that use is approved as a special exception in accordance with Section 1403 of the Zoning Regulations.

Pursuant to 11 DCMR Section 3107.2 of the Zoning Regulations, the Board is authorized to grant variances if the applicant can show that by reason of an extraordinary or exceptional situation or condition of a specific piece of property, strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties, and that the relief can be granted without substantial detriment to the public good and without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan embodied in the Zoning Regulations.

B. The Reed-Cooke Overlay District

The Reed-Cooke Overlay District applies to that non-residential portion of Square 2563 in the Reed-Cooke Special Treatment area, as described in the District of Columbia Comprehensive Plan. The Overlay was designed to promote housing while maintaining the appropriate heights and densities. In addition, the Overlay was intended to encourage the retention of small scale businesses which served the immediate needs of the Reed-Cooke and Adams Morgan community. It was the intention of the Zoning Commission to abet the improvement of a viable self sufficient residential community by providing a phase out of the many then existing industrial units and to supplement the then limited supply of housing units in the immediate area. The Zoning Commission stated that it intends to "provide a favorable zoning environment for continued residential and new residential development" in Zoning Commission Order No. 523-A. Such development was deemed to be compatible with the Land Use Element of the Comprehensive Plan for the National Capital.

II Description of the Project

King's Creek will construct a three story addition to the existing structure known as 2329 Champlain Street, N.W. (Square 2563, Lot 103). The improved structure will be located with its main entrance on the east side of Champlain Street between Kalorama Road and Euclid Street, N.W. Immediately across the street, on the west of Champlain Street is a newly constructed 57 unit condominium project. The applicant's site is abutted to

the north by a small electroplating business and large parking lot and to the south by a auto repair shop and another large parking lot.

A. The Site

The site of the proposed consists of a 9,652 square foot lot occupied with a two story building with a footprint of 9,395 square feet. Lot occupancy is approximately 97 percent. The height of the existing structure is 24.5 feet. The total existing building area is 18,401 square feet. The site is improved with a stone, steel, concrete and brick structure that was erected as an automobile garage in 1924. The site is currently used as retail, office and storage space.

B. Area Description and Building Design

1. **Area Description and Character**. The proposed project is located in the Adams-Morgan neighborhood in the area known as Reed-Cooke. The Reed-Cooke area is predominantly residential but has many businesses remaining from its formerly industrial past. The Reed-Cooke Overlay District has been in place for approximately ten years and has spawned a significant amount of additional housing in the immediate area. Champlain Street, site of the proposed King's Creek project is predominantly residential but retains a significant office, retail and service element. A significant number of housing units have been retained or created since the implementation of the Reed-Cooke Overlay. Additional units are planned and would further implement the stated

purposes of the Reed-Cooke Overlay. Champlain Street is the location of local paper offices, auto repair, parking and graphic design offices as well. A significant number of restaurant and entertainment venues exist on the west side of the opposite square (Square 2580) but the east side of the square is predominantly residential. Square 2563 is also predominantly residential and possesses a significant number of single and multifamily dwellings.

2. Building Design. The proposed structure consists of the original two story stone garage structure with an additional three stories of residential dwelling units with associated pavilions for the units. While the original structure is not a designated landmark, it is a unique example of an early automotive age building. The stone front is an attractive presentation that reflects the strength characteristic of early 20th century industrial buildings. King's Creek will restore the facade during the course of construction. The materials chosen for the addition to this building compliment the original structure in both density and color.

The proposed design provides thirteen additional units of housing in the Reed-Cooke area. A parking space is provided for each unit. Because of its original configuration, King's Creek has chosen to utilize the garage structure as built with primary access from the alley in the rear of the building. The limited amount of traffic produced by the project will not significantly affect current traffic levels and will not produce any adverse

affect on the surrounding community.

The strength of the original building also allows the building to be developed within its own envelope with unduly burdening the surrounding public areas or blocking the streets. King's Creek has chosen to recognize the sensitivity of the community to recent construction and will endeavor to minimize any possible disruption of neighborhood life.

The proposed structure is also designed to minimize visual impact from the street level by setting back the residential elements from the parapet line. This design feature also produces additional benefits by allowing natural light to reach the street as well as provide natural light for each individual unit in the project. The setbacks further minimize the effect the additional height needed by the housing addition and keeps the height consistent with the other structures along Champlain Street. The setbacks also minimize the canyon effect that other developments have created on Champlain. Because of the area's topography, the proposed structure is consistent with the new condominium structure located directly across the street. The proposed structure is visible from 18th Street through the pedestrian walk of the nearby condominium project.

The additional height of the proposed project combined with the setbacks is utilized to produce additional outdoor recreational space in a unique manner. Each unit will have access to outdoor

patios and walkways that will hold plantings to create unique urban gardens. These gardens will provide additional fresh air and a positive visual aesthetic for the Reed-Cooke area.

Entry to the project will be provided through the original entrances to the building located on Champlain Street. The original street frontage remains unchanged. The applicant is able to utilize the lobby to the existing office space as the primary entry for the added residential portion of the building. King's Creek has also recognized the importance of the existing retail use, a residential renovation supply unit known as The Brass Knob, and will maintain the storefront as a means of providing appropriate street life. The Brass Knob has been an integral part of the community for over twenty years and its continual presence is much desired by the local community.

The design of the project reflects the eclectic nature of the community at large. The open spaces are capable of evolving through design to reflect the attractive vibrancy of the community and enhances the desired residential character of the area.

C. **Applicant is Entitled to Zoning Relief Under Section 3103.2 of the Zoning Regulations**

1. Practical difficulty and uniqueness. The D.C. Court of Appeals

has repeatedly stated that the nature of the burden that will warrant a variance is best left to the facts and circumstances of each particular case. Palmer v. Board of Zoning Adjustment, 287 A. 2d 535 (D.C. App. 1972). In the instant case, it is a confluence of factors which serve to create practical difficulties for the development of the subject site. Gilmartin v. D.C. Board of Zoning Adjustment, 579 A. 2d 1164, 1168 (D.C. App. 1990).

The first factor which, when combined with the other facts and circumstances of this case, creates a practical difficulty, is the size and shape of the lot on which the proposed structure will be constructed. The lot is irregularly shaped in the extreme and is fully occupied by a unique structure of some historical importance. The lot has a relatively straight street frontage along Champlain Street but the sides and rear of the lot are constricted by other buildings and an angular alley respectively. As originally built, the lot is fully occupied and in order to provide additional housing King's Creek had to design its project according to the contours of the lot and can only utilize the vertical envelope of the site. In addition, the only practical method of providing parking for the site is to take advantage of the structure's original rear entrance and configuration for parking.

The Board of Zoning Adjustment has repeatedly found practical difficulty and granted where the shape and topography of a lot

were unique. In BZA Case No. 16104 (May 1, 1996), for example, the Board found practical difficulty when the characteristics of an adjacent property put the applicant's property in a "hole - like" situation such that strict compliance would have resulted in decreased light and air to the applicant's building. Such is clearly the case here. Without the required variances for height and FAR, the applicant would be unable to provide necessary light and air for the individual units nor could additional light be provided for Champlain Street. In BZA Case No. 15461 (June 9, 1993), the Board found practical difficulties in the physical characteristics of an irregularly shaped building on an irregularly shaped lot. In so finding, the Board ruled that there was no practical way to develop a building according to the Zoning Regulations. The D.C. Court of Appeals has on several occasions, upheld the BZA in finding practical difficulty in granting variances on irregularly shaped lots that present structure and design problems to the owner. Association for Preservation of N Street N.W. v. D.C. B.Z.A., 384 F. 2d 674 (D.C., 1978). Thus there is practical difficulty in the unusual shape in King's Creek's lot and its fully occupied nature.

The BZA has also found practical difficulty in developing a specific building of a historical nature at specific locations. The BZA has taken notice of the design limitations imposed by existing buildings of architectural or historic significance. See, for example BZA Case Nos. 16116 (June 5, 1996) and 16131

(February 3, 1997). The Board has found that when an applicant's plans were changed and developed to preserve architecturally significant and unique buildings it could determine that unique and practical difficulties and exceptional conditions were presented at the site. In the present case, the existing structure is one of the four complete remaining examples of the early automotive garage types built in the early twentieth century. Preservation of such a significant type of building is a difficulty that owners of the property must overcome to successfully develop the project.

The Applicant wishes to emphasize that this request for variance relief is not made as a matter of convenience or as a matter of cost. Nor is it an attempt by the Applicant to make the most profitable use of the land. Instead this application is an honest attempt to create reasonable and efficient use of a non-conforming structure in a manner that meets the express purposes of the Reed-Cooke Overlay District.

Thus, there are significant and substantial inherent factors in both the land and the existing structure which justify and sustain a finding of exceptional topographical conditions or other extra-ordinary or exceptional conditions that result in peculiar or exceptional practical difficulties. DeAzscarte v. D.C. Board of Zoning Adjustment, 388 A 2d 1233 (D.C. App. 1978).

2. The practical difficulty can be remedied without substantial detriment to the public good and without substantially impairing the intent, purposes and integrity of the Zoning Regulations and MAP. The requested variances would not result in any harm to the immediate neighborhood and would, in effect, effectuate the stated purposes of the Reed-Cooke Overlay District. Clearly, the District was intended to produce additional housing for the area while maintaining desirable small businesses that enhance the residential nature of the surrounding community. The Zoning Commission has primarily determined that such additional housing in the area is consistent with the Comprehensive Plan. The Commission has also determined that additional housing will not adversely affect the use and enjoyment of existing residential properties in the neighborhood nor would the addition of more housing adversely effect the public good.

A. Applicant Meets the Requirements for a Special Exception under Sections 1403 and 3108 of the Zoning Regulations

Under Section 3108 of the Zoning Regulations, the Board is authorized to grant special exceptions where, in the judgement of the Board, the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property. Section 1403 of the Regulations provide that the Board may grant an exception from the specific requirements of the Reed-Cooke

Overlay District if certain specified criteria are met. As explained below, King's Creek's proposal fully meets those criteria.

1. **The use, building or feature at the proposed site, intensity and location substantially advance the stated purposes of the Reed-Cooke Overlay District**

The Reed-Cooke Overlay was intended to provide new housing, protect existing housing, maintain appropriate heights and densities, encourage small-scale business development, protect nearby residences and ensure that non-residential uses serve the local community. The Applicant's proposal is completely compatible with these express purposes. King's Creek's proposal provides thirteen new housing units. The height and density of the proposed project is, due to topography and existing structures compatible with the heights and densities of other buildings and developments in the immediate area. the proposal also provides for retention of The Brass Knob, a long serving local business that provides for the needs of housing renovators in the immediate area. The project will be developed by a local construction company which employs local residents and thus addresses the employment needs of the local communities. The project is designed to be self-sufficient in construction staging , thus protecting local residences from any undue harm or adverse impacts.

2. **Vehicular egress and access is designed to minimize pedestrian conflict and creates no objectionable traffic conditions**

The proposed project will utilize the existing rear entrance to the building as its primary means of parking access. Thus there will be no interference with pedestrian traffic. Only thirteen cars will utilize the garage space and will have no appreciable effect on traffic conditions in the area. The alley way ensures that most traffic will not utilize Champlain Street as egress to the site.

3. **Adequate Off-Street Parking is provided for the Users**

One parking space is provided for each new housing unit created by this project. There is existing parking for the use of The Brass Knob. Most customers, however, arrive by foot as is typical for a truly local retail business.

4. **There is no noise associated with the operation of the proposed uses that will adversely affect the neighbors**

The existing structure was built as an automotive garage and has brick and masonry walls surrounding concrete slabs. No particular noise will be generated by the retail or housing uses that would adversely affect

the quality of life in the neighborhood. Construction of the addition will be in accordance with applicable law and regulation and will not produce any adverse effect. Construction will occur primarily within the existing structure, thus minimizing most associated noise.

5. **There is no associated storage of materials, or outdoor processing, fabricating, or repair associated with the project**

As previously stated, the bulk of the construction will occur within the building. There is no outdoor processing or storage associated with the existing retail use or planned housing units.

6. **The use, building, or features of the proposed project will not adversely affect adjacent property nor will it be detrimental to the public health , safety or welfare**

This projected is designed to complement the Reed-Cooke neighborhood by increasing the available housing stock without detracting from that already available. King's Creek has worked hard to contact its neighbors and incorporate their views and concerns into the design of the project. ANC 1C has voted unanimously to support this application at its public forum on April 16, 2002. It is inherent in the nature of the project that it will produce no detrimental or otherwise adverse effects in its own environs. For these reasons, this proposal qualifies for the grant of the requested special exception.

III Witnesses

The following Witnesses will present testimony in this case for the applicant:

1. Gregory Kearlay, Associate AIA, Inscape Architects
2. Dominique Kostelac, King's Creek, LLC

IV Conclusions

It is for these reasons that King's Creek LLC submits that it has met its burden of proof under the applicable Zoning Regulations and is entitled to the variance and special exception relief that is requested.

Respectfully submitted,

By _____
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