D.C. BOARD OF ZONING
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BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application of Thomas P. Brown, III, James C. Brown, and Raymond K. Brown
1121 14th Street, NW

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

I. Background:

The Subject Property, Lots 868 and 869 in Square 247, is currently unimproved and utilized as a parking lot. The Applicant wishes to construct an 11-story office building with ground floor retail on the Subject Property, with premises address of 1121 14th Street, NW. The Subject Property is zoned C-4, which permits, as a matter of right, a height of 130 feet and a density of 10.0 FAR.

The Subject Property is roughly L-shaped, bounded by 14th Street, NW, to its west, a public alley to its south, public alley and private property to its east, and private property to its north. The land records contain a covenant among property owners adjacent to a closed public alley which prohibits above-grade construction on a small portion (measuring five feet in depth and approximately 43 feet in length) in the northeasternmost section of the Subject Property. This building restriction was placed upon this portion of the Subject Property as part of the closing of a 10-foot alley running through the northern portion of Square 247.

In order to accomplish its proposed project, the Applicant seeks variance relief from §776 of the Zoning Regulations, establishing court requirements in the commercial zoning districts. Pursuant to §3113.8 of the Zoning Regulations, the Applicant will file its Statement of the Applicant with the Board no fewer than 14 days prior to the public hearing for the present Application. In said Statement, and at the public hearing, the Applicant will provide testimony to meet its burden of proof to obtain the Board's approval of the requested variance relief. Following herein, as required by the Board's application process, is a summary statement indicating how the Applicant will meet said burden of proof.

II. Burden of Proof:

A. Variance Relief

The test for variance relief is three-part: (1) demonstration that a particular piece of property is confronted with some exceptional condition or situation; (2) such

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that, without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty upon the property owner; and (3) that the relief requested can be granted without substantial detriment to the public good or zone plan.

(1) Exceptional Condition or Situation:

The Applicant will demonstrate that the Subject Property is exceptionally confronted with a combination of: (1) development restrictions placed upon it; and (2) shape and location. As a result of the alley closing process, a portion of the Subject Property may not be built upon, resulting in the creation of a court along a section of the eastern, or rear portion of the Subject Property. The resulting court is defined as a closed court under the Zoning Regulations as a result of the existence of private property immediately east and north of the Subject Property.

(2) Resulting Practical Difficulty:

The Applicant will demonstrate that the strict interpretation of the Zoning Regulations will result in a practical difficulty upon the Applicant. Because this rear portion of the Subject Property cannot be built upon, a closed court is automatically created, whereas a court would not otherwise be required to be provided in the C-4 District.

In those instances where courts are provided, they must conform to certain dimensional requirements under the Zoning Regulations. In the present case, a complying closed court is required to be a minimum of 32.5 feet deep and have a minimum area of 2,112.5 square feet. The Applicant proposes to provide a five-foot deep court (only that portion of the Subject Property prohibited from being built upon) and 213 square feet in area. Without relief from §776, the Applicant would be prevented from utilizing a portion of the site or would have to exclude said portion from the project. Such a situation would work a detriment to the site and to the area. If a compliant court were to be included in the site, the resulting building footprint would be so compromised that the project would no longer be feasible.

This circumstance is exacerbated by the vaguely L-shaped nature of the Subject Property and the fact that area closer to adjoining and confronting properties (i.e. the "panhandle" portion of the Subject Property) may be built upon as a matter of right. As a result of this unusual shape of the Subject Property, the resulting building footprint would result in a terribly inefficient and impractical floor layout and loss of necessary building density for the viability of the project.

(3) No Harm to Public Good or Zone Plan:

The Applicant will demonstrate that the project can be undertaken without harm to the public good and without threat to the integrity of the zone plan. Most importantly, the building restriction, and the ostensible underlying purpose of light and air protection for residential uses at the neighboring Thomas House Apartments, is being furthered by the project as proposed by the Applicant. Above-grade construction will not encroach upon the five-foot wide portion of land subject to the building restriction, thus ensuring that light and air are not compromised to neighboring property owners.

As a result of the exceptional configuration of properties in this unusually-shaped corner of Square 247, the court proposed to be provided will also satisfy the objectives of the zone plan for courts in that it will provide sufficient light and air for occupants of the proposed new construction on the Subject Property. Grant of relief from the court requirements will likewise work no detriment to the zone plan. The building will have the same footprint and appearance from 14th Street, NW, as it would were the project not to include the five-foot wide sliver of land that is subject to the building restriction. The Applicant wishes to take advantage of the additional building density generated by the small portion of land (current Lot 869) and transfer it elsewhere within the Subject Property. This approach represents an efficient use of the Subject Property, contravenes no aspect of the building restriction, and is not detrimental to the public good or the zone plan.