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February 4, 2003

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**BY HAND DELIVERY**

Mr. Geoffrey H. Griffis
Chairperson
Board of Zoning Adjustment
441 Fourth Street, N.W., Suite 210
Washington, DC 20001

Re: Submission of Pre-Hearing Statement; App. No. 16980 (301 12th Street, S.E.; Square 991, Lot 75)

Dear Chairperson Griffis:

Enclosed for the record is the Applicant's Pre-Hearing Statement in the above-captioned matter.

Sincerely,

Lyle M. Blanchard

199793
Enclosure
cc: All Copies by Facsimile or First Class Mail
Ms. Julie S. Olson, Chairperson, ANC 6B
Mr. Scott M. Cernick, Commissioner, ANC 6B-04
Mr. Lyle Schauer, Chairman, Planning and Zoning Committee,
Capitol Hill Restoration Society
Office of Planning (Attn: Mr. David J. McGettigan)
Ms. Sherri Pruitt
Mr. Richard Nero

BZA
Case No. 16980
Exhibit No. 40

Board of Zoning Adjustment
District of Columbia
CASE NO. 16980
EXHIBIT NO. 40

**PRE-HEARING STATEMENT IN SUPPORT OF AN APPLICATION FOR A USE VARIANCE FOR THE PREMISES AT 301 12TH STREET, S.E. TO BE USED FOR AN ARTIST STUDIO; BZA APPLICATION NUMBER 16980**

THIS PRE-HEARING STATEMENT is submitted on behalf of Scott R. Gillis, owner, by David Berkowitz, lessee and artist (proposed user) ("Applicant") by his attorneys, Jacques B. DePuy, Esquire, and Lyle M. Blanchard, Esquire, Greenstein DeLorme & Luchs, P.C., in support of an application for a use variance under section 3103.2 and 330.4 to allow the first floor of 301 12th Street, S.E. (Square 991, Lot 25) ("Property") to be used for an artist studio.[1]

I.

The Property is located in the R-4 Zone District. The Property is located on the S.W. corner of the intersection of 12th Street and South Carolina Avenue, S.E. The ground floor of the Property was used for commercial purposes for approximately 55 to 70 years, from 1924 through some time between 1978 and 1994.[2] During such time, the ground floor of this building has

[1]The original application sought approval of a special exception to change a nonconforming use (grocery store) to a non-conforming use (artist studio) and a variance from the requirement that the new nonconforming use be a "neighborhood facility". By letter to the BZA dated February 4, 2003, the Applicant, by counsel, set forth its intention to seek permission of the Board, as a preliminary matter prior to the public hearing on February 18, 2003, to amend the Application to seek a use variance for an artist studio. If such permission is granted, the Applicant will no longer pursue the application for a special exception (change in nonconforming use) and ancillary variance.

[2]Controversy has developed in the neighborhood as to when the grocery store use was actually discontinued. However, there is no controversy that in approximately 1994, when the current owner bought the property, it contained a walk-in freezer, meat slicers, smaller refrigerators for cooling beverages and similar equipment used in the operation of a grocery store. See Affidavit of Scott R. Gillis dated January 28, 2002 attached as

been used as a grocery store.[3] Instead, the Applicant seeks a use variance to allow an artist studio on the ground floor.

II.

By this Application, Applicant is seeking a use variance to allow the use of the first floor of 301 12th Street, N.W. for an artist studio under sections 3103.2 and 330.4.

The burden of proof for a use variance is well established. The Applicant must demonstrate that the Property is affected by a unique physical aspect or other extraordinary or exceptional condition, that the strict application of the Zoning Regulations will result in undue hardship to the Applicant and that granting the variance will not cause substantial detriment to the public good nor impair the intent, purpose or integrity of the zone plan. Palmer v. Board of Zoning Adjustment, 287 A.2nd 535, 538 (D.C. 1972).

The subject Application meets the required tests. First, the Property is affected by several extraordinary or exceptional conditions. Specifically, the lot (Lot 25) is exceptionally narrow, being nine (9) feet in width at its narrowest end. Second, the lot is an irregularly shaped quadrilateral with no two sides being parallel due to a 19 foot dimension on South Carolina Avenue, S.E. and the opposite side being nine (9) feet in width. (See the plat attached to the Application at Tab 6.) The lot is open to 12th Street, S.E. with its main facade along this Street. There are two exterior entry doors on the 12th Street facade, which are unusual features designed for commerce (not residential use). The Property has no back yard for privacy or residential recreation space. Also, the conditions of having

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Exhibit "B" to Statement of Existing and Intended Use to BZA Application.

[3]Buildings in S.E. Washington which are located at the corner of a major intersection, such as the subject Property, often functioned as the neighborhood grocery store with the store owner living above. In the subject property, the second floor is used as two units of rental apartments. Thus, an artist studio as a home occupancy use is not possible.

the building's main facade, entrances and address on 12th Street, S.E., are extraordinary and unlike the typical Capitol Hill rowhouse residence which has its entrance and address on its narrow facade. The Property also has an "extraordinary or exceptional situation or condition" because of its history as a nonconforming use for approximately 55 to 70 years.

Second, the strict application of the Zoning Regulations would cause exceptional and undue hardship because reasonable use of the Property cannot be made in a manner consistent with the Regulations for the R-4 District. Significant, unreasonable and burdensome alterations and improvements would have to be made, primarily to the interior of the building, to adapt it for a use allowed in the R-4 District.

The Premises have no kitchen. There are no bedrooms or closets. The existing bathroom is inadequate and substandard. The existing floor is substandard. The existing HVAC is inadequate for residential use. Some areas within the premises are unheated. Some of the interior walls are unfinished and un-insultated.

On the exterior, the prior use of the first floor as a store was well served by the useful design of having two entrances on the same facade. However, for a residential or other matter-of-right use in the R-4 District, this feature is unusual. In addition, this design interferes with the internal flow of the building and compromises internal space because it interrupts the wall of the building with an additional door.

The first floor space does not comply with the D.C. Building Code (D.C.M.R., Title 12) or the Housing Code (D.C.M.R., Title 14) requirements for a residence or other matter of right use in the R-4 District. Specifically, the first floor does not have a kitchen, a residential bathroom, or any bedrooms or closets. Moreover, the first floor lacks adequate flooring. Major alterations would have to be made to all of the utility "systems" (e.g. heating and cooling system and duct-work, electrical and plumbing). The first floor space was never designed to be anything but commercial use. The walls, floors and ceilings were all unfinished and the systems which were in place were designed to serve the refrigerators and other grocery store equipment which was left behind by the previous owner. The interior first floor of the building was designed as a commercial space. (See

attached statement prepared by the artist tenant, Mr. David Berkowitz, set forth as Exhibit "A".) Thus, significant, unreasonable and burdensome alterations and improvements would have to be made to the interior of the building to adapt it for a use allowed in the R-4 District.

In sum, with respect to this variance requirement, the unusual shape of the building, exterior configuration of entrances and interior arrangement and, most importantly, the substandard or poor condition of the existing space are such that converting the first floor of the Property to a residential or other matter-of-right use would be not be possible without significant, prohibitive and unreasonable alterations and improvements that would cause undue hardship to the owner.

Third, the requested use variance can be granted without adversely affecting the surrounding community for the following reasons:

1. There is only one (1) employee, the artist, Mr. Berkowitz, in the artist studio.

2. The artist hand-crafts only 15 to 20 guitars per year.

3. Deliveries are occasional (i.e., two (2) per month).

4. Visitors are exceedingly minimal (i.e., one (1) or two (2) per week).

5. There is only one (1) trash collection per week and it is of minimal volume.

6. The studio is fully sound-proofed and ventilated. Thus, the artist studio use produces no discernable impacts with regard to noise or odor.

7. The hours of operation are typical of a home occupation and, in addition, do not cause any adverse impacts because Mr. Berkowitz essentially has very few visitors.
8. The studio has no exterior sign.

Due to the minimal, if not negligible, impact on the surrounding neighborhood, the proposed use will not cause

substantial detriment to the public good nor impair the intent, purpose or integrity of the zone plan.

For the foregoing reasons, and on the basis of the evidence submitted with the application, it is respectfully submitted that the subject Application satisfies the legal requirements applicable to the requested use variance relief and that it therefore should be granted.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

By: _____
Jacques B. DePuy

By: _____
Lyle M. Blanchard

199656

***EXHIBIT "A"***

***DETAILED LIST OF UNIQUE AND EXTRAORDINARY CIRCUMSTANCES OF PROPERTY AND FACTS AND ARGUMENTS IN SUPPORT OF CLAIM OF UNDUE HARDSHIP IN SUPPORT OF APPLICATION FOR USE VARIANCE; APPLICATION OF SCOTT GILLIS PERTAINING TO 301 12TH STREET, S.E.***

1) **Building and lot are unique to corner businesses**
   a) Lot is open to the street and Building has entrances designed for commerce. All traditionally residential properties on Capitol Hill have entrances on their narrow facades rather than on the corner of the property.
   b) Property has no back yard for privacy or residential recreation space.
   c) There are two exterior entry doors on the same facade. This design was useful for a store. However, this feature interferes with the internal flow of the premises within the Building and compromises the efficient use of internal space.
   d) The lot is irregularly shaped and very narrow at its southern end (i.e., nine (9) feet).

2) **The premises within the Building were designed and used for many, many years for, commercial uses; it would be a hardship to convert the premises to residential use**

   a) **The Premises have no kitchen**
      i) To convert the premises would require a substantial plumbing upgrade because there is no existing plumbing for a kitchen.
      ii) A conversion would also require an electrical upgrade There is no existing electrical layout designed for a kitchen because the property never had a kitchen.
      iii) There is no place to vent a stove without plugging one of the existing windows or punching through a wall.
      iv) A conversion would require the installation of below-counter and above-counter cabinetry, a new floor, a new ceiling and new lighting fixtures.

   b) **The Premises have no bedrooms or closets**
      i) There is no existing bedroom.
      ii) The only rooms the building has (other than the bathroom and the main, open space used historically for commercial purposes) are the "finishing room" and the "storage room". Neither of these rooms could readily be converted to a bedroom.
      iii) Neither room has any closets.
      iv) The storage room has no electricity, heat or windows.
      v) The storage room has an exit to the back of the building
      iiii)The storage room walls are unfinished and un-insulated.

c) **The Premises have an inadequate and substandard bathroom**
   i) The existing sink is exterior to the bathroom (i.e., it is located on the opposite wall from the bathroom door by the secondary exterior door) and is a standard nylon plastic utility sink. The entire bathroom would have to be demolished and reconfigured in order to accommodate a sink.
   ii) A bathroom revision would require a complete reconfiguration of the plumbing in order to accommodate a sink.

d) **The existing floor is substandard**
   i) Floor is sagging and needs additional support.
   ii) Floor is just plywood. A residential conversion would require at a minimum carpet to cover the plywood.

e) **The existing HVAC is inadequate for residential use**
   i) The HVAC does not run to all rooms. There is no heat in a portion of the premises, including the "storage room". The HVAC stops in an area designated on the studio schematic plan as the "Finishing room."
   ii) Getting HVAC into the storage room would require removal of the floor in both the finishing and storage rooms in order to lay ductwork into the storage area. There is no crawl space below the storage area to accommodate ductwork.
   iii) The existing HVAC is not properly balanced to provide adequate heat/cooling to the Building.. Very little heat or cooling reaches space depicted as "the finishing area". It is very cold in the winter (50's) and hot in the summer (high 80's).
   iv) The compressor is not sized for the thermal load of a building with north and east facing exposure.
   v) HVAC cold air return is in the floor, which is inefficient and impedes room layout. Building layout for residential use, should it be converted, would require at least one more cold air return in order to efficiently balance the system.
   (vi) The large number of windows (i.e., 15) for a building of this size allow an excessive amount of heat and cold air to penetrate the interior. Some of the windows would need to be replaced with newer, insulated windows.

f) **Existing electrical service is not designed for residential use**
   i) None of the electrical wiring is internal.
   ii) All electrical service is surface mounted in ¾" conduit.
   iii) None of the electrical service is mounted at residential heights; all electrical outlets are mounted in quad boxes mounted at bench height of 40".
   iv) The electrical panel is surface mounted in main work area.

3) **The Premises never were in condition for residential use**
   a) The Premises had various refrigerators and other grocery store equipment when the property was purchased.

b) At the time of the purchase of the property, the walls were all unfinished (with the exception of the wall in the main work area from the bathroom to the front door and the area between the bathroom and the corner of the exterior door wall in the tool area), the plaster had fallen down and most of the plaster had been removed. The wall to the finishing area was just the original rough hewn timbers and wooden lath with which the building was originally built. Some of the walls were all raw brick. The storage room is half old brick and half unfinished cinderblock.