IV.

THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARINACES FROM LOT AREA AND PARKING

A. Standards for Granting a Variance

Under D.C. Code Section 5-424(g)(3) and 11 DCMR 3103.2, the Board is authorized to grant variances from the strict application of the regulations where it finds three conditions exist:

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(1) the property is unique because, *inter alia*, of its size, shape or topography or other extraordinary or exceptional situation or condition;

(2) the owner would encounter practical difficulties or undue hardship if the Zoning Regulations were strictly applied; and

(3) the variance would not cause substantial detriment to the public good and may be granted without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. See *French v. District of Columbia Board of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); see also, *Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

In the case of an area variance, the Applicant must show that the uniqueness of the property imposes a practical difficulty on the Applicant's ability to comply with the Zoning Regulations and such variance will not injure the public good or substantially impair the intent and purpose of the Zoning Regulations and Map. In the subject case, the variances relate to the small area of the Property, the practical difficulties of developing the Property, the undue hardship of the Property and the exceptional situations and conditions affecting this Property. The requested variances from lot area and parking

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requirements of the Zoning Regulations meet the requirements for the approval of area variance.

B. Variance Relief Under Section 330.5 and 401.3 (Lot Area)

The Applicant is seeking a variance from the requirements of Section 401.3 of the Zoning Regulations that require a multiple unit residential dwelling have at a minimum 900 square feet of land for each dwelling unit. The Property has approximately 2,283 square feet of land individually and 4,566 collectively. The Applicant is proposing three residential dwelling units for lot 36 and thus would be required under the Zoning Regulations to have 2,700 square feet of land. The Applicant is proposing four residential dwelling units for lot 37 and thus would be required under the Zoning Regulations to have 3,600 square feet of land. Lot 36 and Lot 37 are small narrow lots that make it impossible for the Applicant to restore and rehabilitate the dwellings for the cost and receive a fair and reasonable return arising out of the ownership of the Property.

1. <u>The Property is Unique and Affected by an Exceptional Situation or Condition.</u>

The dwellings on the Property are unique because they are 90 plus years old and are deteriorating to the point were nothing will be able to be saved, rehabilitated and restored. A vast majority of the other property in the area have been restored and rehabilitated. These dwellings are unique because they are old and historic and are badly deteriorating and could collapse. The unique condition of deterioration of these dwellings makes them a danger to the community.

The Applicant cannot put the Property to any conforming use and expect to receive a fair and reasonable return arising out of the ownership of the Property. The dwellings on the Property are shells and have and will continue to deteriorate until nothing can be saved. The cost to rehabilitate the dwellings is going to be approximately $700,000 to $800,000. The cost to acquire the Property was approximately $400,000. The total development cost to use the dwellings as a conforming use will be approximately $1,200,000 (this does not include soft costs). The most likely conforming use would be a single family rowhouse. Single

family rowhouses in the area are selling for approximately $250,000 and up. There is no single family rowhouses in the area selling for $675,000 to $700,000 which the Applicant feels is a fair and reasonable return arising out of the ownership of the Property. The Applicant is going to restore and rehabilitate the dwellings on the Property and continue their historic value and characteristics to the neighborhood. The dwellings on the Property cannot be renovated economically due to their poor condition and outdated building standards unless a variance is granted to allow for three residential units on Lot 36 and four residential units on Lot 37. The sale of the seven condominium units will allow the Applicant to make a fair and reasonable return arising out of the ownership of the Property. The Board has granted variance relief after a showing of an economic burden where no matter of right zoning whatsoever was economically feasible. Proof of economic burden is relevant to a decision of whether to grant a variance where applicant is not merely seeking the most favored zoning for its land but faces difficulty financing any improvement of property under current zoning designation, *Tyler v. D.C. Board of Zoning Adjustment*, 606 A.2d 1362 at 1366 (D.C. 1992). The Applicant should be granted a variance once he has shown that there are no alternatives for the site that would conform to Zoning Regulations and are feasible as a matter of right. *Myrick v. District of Columbia Board of Zoning Adjustment*, 577 A.2d 757 (D.C. 1990). A area variance shall be granted when there are no feasible alternatives that would comply with the Zoning Regulations. *Association for Preservation of 1700 Block of N St., N.W., & Vicinity v. District of Columbia Bd. of Zoning Adjustment*, 384 A2d. 674 (D.C. 1978). The 900 square feet of land required for each residential unit creates practical difficulties for the Property because it is not economically feasible to abide by the Zoning Regulations and there are no feasible alternatives that would comply with the Zoning Regulations.

2. **Strict Application of the Zoning Regulations would impose a Peculiar and Exceptionally Practical Difficulty on the Applicant.**

The Applicant would suffer a practical difficulty if the area variance requirement is not granted because the Applicant would have to: (1) Leave the Property in its current condition until market conditions dictate the Applicant could receive a fair and reasonable return arising out of the ownership of the Property. Current market conditions would not allow for that until 8 to 10 years or more which in the mean time the dwellings on the Property will have most likely collapsed and will still impose a dangerous situation to the community. (2) As mentioned in 1 above, rehabilitate the Property for an uneconomical sum that would not allow the Applicant to receive a fair and reasonable return arising out of the ownership of the Property. (3) Demolish the existing dwellings and construct dwellings that were smaller in size and were not consistent with the other houses in the community and still would not allow the Applicant to receive a fair and reasonable return arising out of the ownership of the Property.

3. **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.**

A variance from the 401.3 would not be of substantial detriment to the public good or substantially impair the intent and purpose and integrity of the Zoning Regulations and Map. A granting of the variance would actually be a substantial benefit to the public good because two abandoned, deteriorating, crumbling and condemned rowhouse dwellings that are used for drug activity, vagrancy and has rodent infestation will be restored and rehabilitated which will add to the neighborhood character and quality of life. The well-being of the neighboring properties is likely to be improved with the re-occupation of these now abandoned dwellings. The proposed multiple unit residential dwelling does not adversely affect the use or enjoyment of any abutting or adjacent dwelling or property. The light and air available to neighboring properties are not unduly

affected, and the privacy of use and enjoyment of neighboring properties are not unduly compromised. In fact the neighbors abutting or adjacent to the Property are very much in favor of the proposed multiple unit dwelling for the Property. The multiple unit dwelling is consistent with the Zoning Map and Plans because an R-4 District is primarily low to medium density which this project is definitely in accordance with. An R-4 District is zoned primarily residential which the project will be residential homeownership of condominiums. The project will be consistent with the neighborhood, the Zoning Map and Zoning Regulations because the neighborhood has apartment buildings, condominiums, cooperatives and commercial.

C. Variance Relief Under Section 2101.1 (Parking)

The Applicant is also seeking relief from the requirements of Section 2101.1 of the Zoning Regulations. Section 2101.1 requires a multiple unit residential dwelling in the R-4 District to provide one space for each three dwelling units. The Applicant is proposing three dwelling units for lot 36 and thus would be required under the Zoning Regulations to provide one space. The Applicant is proposing four dwelling units for lot 37 and thus would be required under Zoning Regulations to provide two spaces. Square 479 were lot 36 and 37 are situated in does not have an alley and thus no rear yard access. Due to the location of the Property in very close proximity to two metro stations, several major bus lines, several parking lots and the fact that the 500 block of O Street has only three dwellings within its borders and all three of the dwellings are condemned and abandoned parking will not be a problem for the future residents of the Property or the residents of the neighborhood.

A area variance shall be granted when there are no feasible alternatives that would comply with the Zoning Regulations. *Association for Preservation of 1700 Block of N St., N.W., & Vicinity v. District of Columbia Bd. of Zoning Adjustment*, 384 A2d. 674 (D.C. 1978).

1. **The Property is Unique and Affected by an Exceptional Situation or Condition.**

As mentioned herein, the Property is unique because it has no rear yard access and the front yard is approximately 5 feet deep and the side yard is approximately 41/2 feet wide. The uniqueness of the Property gives the Applicant no real options to provide on site parking for residents to meet the requirements of the Zoning Regulations. The Property is affected by an exceptional situation and condition because the Property is situated in Square 479 which has no alley and thus no way to access the rear yard of the Property the only area were the Applicant could provide parking in accordance with the Zoning Regulations.

2. **Strict Application of the Zoning Regulations would impose a Peculiar and Exceptionally Practical Difficulty on the Applicant.**

The Applicant would suffer a practical difficulty if the variance from the parking requirement is not granted because the Applicant would have to demolish the existing dwellings and construct dwellings that were smaller in size in order to allow access to the rear yard or seek easements from property owners on the side with the side yard in order to widen the side yard to allow for rear yard access. The practicalities of these options are not practical at all because they would cause an undue hardship on the Applicant for the following reasons: (1) demolishing the dwellings and building smaller dwellings would not be economically viable and would ruin the character of the Property and (2) getting easements from side yard property owners is not economically viable and impractical because they all have small rear yards.

3. **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.**

A variance from the parking space requirement would not be of substantial detriment to the public good or substantially impair the intent and purpose and integrity of the Zoning Regulations and Map. As mentioned herein, the Property

is located within several blocks of the Convention Center/Mount Vernon Square, Shaw/Howard University and Chinatown Metro Stations and several major bus routes on 6th Street, 7th Street/Georgia Avenue, New York Avenue and New Jersey Avenue. The surrounding properties consist of a Community Center with a parking lot in the 600 block of O Street, the O Street Market, a Baptist Church with a parking lot on the other side of Square 479, an old DCPS Public School building with a parking lot in the 400 block of O Street and several medium to large apartment complexes in the area that have parking lots. The most important and significant fact is that the 500 block of O Street has only three dwelling situated within its borders and all three are abandoned and condemned and two of the dwellings comprise the Property. There are enough parking spaces in the block to park at a minimum 9 vehicles legally. The Applicant estimates that three or four condominium owners will have cars and the rest will use mass transit or other means other than individual automobiles to get to and from work or anyplace else. The proposed multiple unit residential dwelling does not adversely affect the use or enjoyment of any abutting or adjacent dwelling or property. The light and air available to neighboring properties are not unduly affected, and the privacy of use and enjoyment of neighboring properties are not unduly compromised. The multiple unit dwelling is consistent with the Zoning Map and Plans because an R-4 District is primarily low to medium density which this project is definitely in accordance with. An R-4 District is zoned primarily residential which the project will be residential homeownership of condominiums and consistent with the Zoning Map and will not impair or be inconsistent with the Zoning Regulations.

VI.

WITNESSES

A. Representative of BlueSky Housing O Street, LLC

B. Representative of Killette & Associates, Architects

VII.

COMMUNITY SUPPORT

At its regularly scheduled public meeting on November 6, 2002, ANC 2C unanimously voted to support this Application.

VIII.

CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for a variance under the Zoning Regulations. Accordingly, the Applicant respectfully requests the Board to Grants the Application.

Respectfully submitted,

Graves & Horton, LLC

By: _____
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