Preliminarily Statement Outlining How The Application Meets The Required Burden of Proof

The Applicant is seeking the following relief from the Board of Zoning Adjustment: special exceptions to construct a new residential development (§ 353), to construct and operate a child development center for 90 children (§ 205) and to extend the provisions of the less restrictive R-5-A zone into the more restrictive R-2 zone (§ 2514.2) and a variance to extend the R-5-A provisions more than 35 feet into the R-2 District (§ 2514.2(a)). The Applicant will establish through its Statement of the Applicant to be filed no fewer than fourteen days prior to the hearing on the subject application, as well as at the public hearing, that the subject application meets the burden of proof for the granting of the requested special exception and variance relief. A preliminary summary of how the application meets the required burden of proof follows.

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I. Special Exception for New Residential Development

The Applicant proposes to meet the criteria for new residential development as follows:

A. The Board shall refer the application to the D.C. Board of Education for comment and recommendation as to the adequacy of existing and planned area schools to accommodate the number of students that can be expected to reside in the project. (§353.2)

The application will be referred to the D.C. Board of Education. However, the project is an apartment house for seniors which can be expected to generate no school age children.

B. The Board shall refer the application to the D.C. Departments of Transportation and Housing and Community Development for comment and recommendation as to the adequacy of public streets, recreation and other services to accommodate the residents of the project and the relationship of the proposed project to public plans and projects. (§353.3)

The application will be referred to the D.C. Departments of Transportation and Housing and Community Development. The lot fronts on two streets, H Street and Hayes Place. The main entrance to the building will be on H Street. There will be a circular drive leading to the main entrance for pick-up and drop-off. There will be a sidewalk on H Street in front of the building. Parking will provided in two surface lots, accessed off a fifteen foot wide public alley to the east of the building, which has access through from H Street to Hayes Place. There will also be a driveway from Hayes Place into one of the lots. The project will provide 49 parking

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spaces. Only 16 spaces are required, 12 for the apartments and 4 for the child development center. Loading will be provided off the public alley in one corner of the "T" shaped building. The building will occupy only 28.5% of the lot. All areas not devoted to the building or parking will be appropriately landscaped. Grading will meet all acceptable standards to prevent soil erosion.

C. The Board shall refer the application to the D.C. Office of Planning for comment and recommendation on the site plan, arrangement of buildings and structures, and provisions of light, air, parking, recreation, landscaping, and grading as they relate to the future residents of the project and the surrounding neighborhood. (§353.4)

See the comments on ¶B, above.

D. In addition to other filing requirements, the developer shall submit to the Board with the application, four (4) site plans and two (2) sets of typical floor plans and elevations, grading plans (existing and final), landscaping plans, and plans for all new rights-of-way and easements. (§353.5)

All the required plans have been submitted.

II. Special Exception for a Child Development Center

The Applicant proposes to meet the criteria for a child development center as follows:

A. The center shall be capable of meeting all applicable code and licensing requirements. (§205.2)

The Applicant is in discussions with the appropriate code and licensing officials in order to determine that the proposed center will meet all applicable requirements.

B. The center shall be located and designed to create no objectionable traffic condition and no unsafe condition for picking up and dropping off children or elderly persons. (§205.3)

The center will service a maximum of 90 children, most residing in and around the local area. The center will be located in the basement of the subject building, which has generous windows due to the grading of the lot. The center will not generate a significant amount of automobile traffic and will not create unsafe traffic conditions or unsafe conditions for picking up and dropping off children.

C. The center shall provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees, and visitors. (§205.4)

A minimum of 4 spaces are required for the maximum of 15 teachers and employees on the premises at any one time. A total of 49 parking spaces are provided on site, more than three times the minimum required. The Applicant anticipates that many visitors to the site will be residents from the surrounding area who will not drive to or need parking at the site.

D. The center, including any outdoor play space provided, shall be located and designed so that there will be no objectionable impacts on adjacent or nearby properties due to noise of activity, or visual or other objectionable conditions. (§205.5)

All activities of the center will be managed and placed in such a way that the activities of the children will not disrupt adjacent or nearby properties, including outdoor play areas that the Applicant may establish along the side of the building. As mentioned above, the proposed center will not have an adverse impact on traffic because the center will primarily serve children in the nearby area who, it is anticipated, will walk or be walked to the site.

E. The Board may require special treatment in the way of design, screening of buildings, planting and parking areas, signs, or other requirements as it shall deem necessary to protect adjacent and nearby properties. (§205.6)

*The Applicant submits that its proposed development plan is adequate to protect adjacent and nearby properties (*See *architectural drawings).*

F. Any off-site play area shall be located so as not to result in endangerment to the individuals in attendance at the center in traveling between the play area and the center itself. (§205.7)

The Applicant is currently studying whether an off-site play area is necessary. If the Applicant decides to provide such an area, such area will be located so as not to result in endangerment to the individuals in attendance at the center in traveling between the play area and the center itself.

G. The Board may approve more than one (1) child/elderly development center in a square or within one thousand feet (1,000 ft.) of another child/elderly development center only when the Board finds that the cumulative effect of these facilities will not have an adverse impact on the neighborhood due to traffic, noise, operations, or other similar factors. (§205.8)

The Applicant is not aware of any child/elderly development center within 1,000 feet of the subject site

H. Before taking final action on an application for use as a child development center and/or elderly day care center, the Board shall submit the application to the D.C. Departments of Public Works and Health, the D.C. Office on Aging and the D.C. Office of Planning, for review and written reports. (§205.9)

The Applicant will provide responses to the reports submitted by the above-referenced agencies, if any, at the appropriate time.

I. The referral to the D.C. Department of Human Services shall request advice as to whether the proposed center can meet all licensing requirements set forth in the applicable laws of the District. (§205.10)

The Applicant will provide responses to the reports submitted by the above-referenced agency, if any, at the appropriate time.

III. Special Exception for a Zone Boundary District Line Crossing a Lot

Section 2514.2 of the Zoning Regulations provides that if approved by the Board of Zoning Adjustment, the regulations applicable to that portion of a lot located in a less restrictive zone that control the use, height, and bulk of structures and the use of land may be extended to that portion of the lot in a more restrictive zone provided that certain criteria are satisfied. In the present case, the vast majority of the site is zoned R-5-A; however, the western-most portion of the property is zoned R-2. That portion of the site will be entirely devoted to open space and will not include any portion of the proposed building. The Applicant requests this special exception to allow it to mass all of the proposed building on the portion of the lot most suitable for development.

The criteria are satisfied as follows:

A. The extension shall be limited to that portion of the lot in the more restrictive use zone district but not exceeding thirty-five feet. (§2514.2(a))

The proposed extension will use the full 35 feet and the applicant seeks a variance to extend for the full western portion of the lot (discussed more fully below).

B. In authorizing the extension, the Board shall require compliance with §2514.1(d), which states that for computation purposes, any portion of the lot located in an R-2 District shall be deemed to be limited to a floor area ratio of 0.4 FAR. (2514.2(b))

No portion of the building will be located within the area zoned R-2. The provisions of the R-5-A District establish the permitted FAR of 0.9.

C. The extension shall have no adverse effect upon the present character and future development of the neighborhood. (§2514.2(c))

The extension of the R-5-A zone into the small portion of the R-2 zone will have no adverse impact on the present character and future development of the neighborhood. The adjacent development to the north and south of the extension area is residential development which would benefit from the light and air provided because no development will occur in the R-2 portion of the site.

D. The Board may impose requirements pertaining to design, appearance, screening, location of structures, lighting, or any other requirement it deems necessary to protect adjacent or nearby properties. (§2514.2(d))

Because there will be no portion of the building located within the R-2 area, there will be no adverse impact on adjacent or nearby properties.

Finally, all three special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to affect adversely the use of neighboring properties.

IV. Variance to extend the R-5-A provisions more than 35 feet into the R-2 District

In order to obtain approval of the requested variance, the Applicant must show that: 1) the subject property suffers from an extraordinary or exceptional condition; 2) strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulty to the Applicant; and 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. The Applicant proposes to meet its burden as follows:

A. Extraordinary or Exceptional Condition

The subject property is an extremely unusually shaped site. It has a smaller amount of frontage on Hayes Place than on H Street and it has an extension on its western end that is an interior portion of the square which has no street frontage and is sandwiched between lots which face on the streets. The zoning boundary line is not square to either of the streets and has no relationship to any existing lot configuration. The lot also has a drainage and sewer easement which reflects the location of a public alley which has been closed.

B. Strict Application Would Result in a Practical Difficulty to the Owner

The western portion of the property extends to approximately 160 feet from the boundary line between the R-5-A and R-2 zones. If the Board were only able to grant the special exception for the 35 foot distance, approximately 125 feet would be limited to development under the R-2 District, which is basically limited to detached and semi-detached dwellings. Since this portion of the site has no street frontage, development must be undertaken as part of the eastern portion lot which is in the R-5-A District. Failure to allow the extension to the end of the property will deprive the owner of the beneficial use of that part of the site.

C. No Detriment to the Public Good Nor Impairment to the Intent, Purpose and Integrity of the Zone Plan

Approval of the variance will cause no detriment to the public good. No construction will occur on the R-2 portion of the site. The density moved to the R-5-A portion of the site can easily be accommodated within all the specified area and bulk requirements (e.g., lot occupancy, height, yards). Approval of the variance will assist in facilitating the project, which will provide new affordable housing for seniors, always in short supply.