VARIANCE REQUEST FOR THREE NEW ROWHOMES UNDER CONSTRUCTION AT FOLGER PARK NORTH
206, 208 & 210 D STREET, SE
LOTS 26, 27 & 28, SQUARE 763

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I. Specific Variance requested:

from Title 11, Chapter 4, Section 401.3

Lot Width – 11%

Lot Area – 15%, 15%, 17% respectively.

II. The Property

The Property and homes currently under construction are located at 206, 208 and 210 D Street, SE, previously identified as Lots 800, 801 and 802. These new homes are located in the Capitol Hill Historic District, across from Folger Park and adjacent to the Washington Sports Club. **See Exhibit 2** for the Plat dated July 10, 2003.

a. **Prior residences on the Property.** Information gained from Sanborn Fire Maps dated 1928 (**Exhibit 4**) as well as archived records from the D.C. Recorder of Deeds (**Exhibit 5**) show that as of the late 1920s, a home was located on each of Lots 800, 801 and 802 with addresses identified as 208, 210 and 212 D St.

b. **Former Pepco structure.** In April, 1942, Pepco applied for a permit to construct a building on the Property (see **Exhibit 6**) (note: upon information and belief, the structure, at the time of it being razed, was a current non-conforming structure, with a non-conforming use of structure)

Pepco abandoned the structure sometime in the 1980's, leaving it locked and boarded up.

III. Statement of Proposed Use of the New Homes

The homes currently under construction are three level, 2 family flats with fully finished English basements and off-street parking. Construction is brick, with the external and common walls being formed using block v. wood framing. Architectural design is French Victorian. Safety features include full sprinkler systems and fire-rating between all floors. All design and construction is in accordance with all applicable aspects of the Construction Codes.

BZA
Case No. 17108
Exhibit No. 4

Board of Zoning Adjustment
District of Columbia
CASE NO. 17108
EXHIBIT NO. 4

Specifications and plans for the new homes. **See Exhibit 1**

IV. Permit History for the Property.

Preface: **12 months, 20 days**: elapsed time from first application for permits until issuance of final permits (8/5/02 to 8/25/03)

Chronological List of Events

June, 2002	Owner meets with Zoning to assess buildable status of lots 800, 801 & 802. It is concluded that lots are buildable as a matter of right, under Chapters 20, 2001.4, and/or Chapter 4, 401.1 and 401.2
July, 2002	Application submitted for raze of Pepco building
8/5/02	First application for building permits
9/12/02	First signature approval by Zoning (on permit routing sheet)
9/5/02 – 11/13/02	Signature approvals for Erosion Control, Mechanical Eng, Electrical Engineering, cleared for EIS and by Quality Control (per routing sheet)
11/13/02	Raze permit issued
11/20/02	Owners notified that permit must be first approved by Historic Preservation, therefore the plans were pulled from the file room and needed to be resubmitted
12/27/02	Revised plans resubmitted
2/23/03	New zoning official enquires as to nature of matter-of-right construction, Owners engage outside zoning consultant to meet with Zoning Administrator – compliance re-confirmed under Chapters 20, 2001.4 and/or Chapter 4, 401.1 and 401.2
4/29/03	Due to excessive time that permits have been in review, project architect advised to file for Foundation Only permit, as this is a less complex permit and may be able to be reviewed in a more timely manner.

5/23/03	**Foundation permits issued**
6/15/03	Building razed on/about mid thru end of June
6/28/03	balance of building permits put on 'hold' by Zoning, pending yet another review of code compliance.
7/1/03	Commencement of construction for foundations
7/22/03	Review concluded, matter-of-right construction and code compliance re-confirmed.
8/25/03	**Building Permits issued** – construction continues
9/2/03	First Stop Work Order issued – reason cited as "Invalid Raze Permit" - Inspector alleges that permit had been 'forged'
9/4/03	Owners meet with officials at Permits section, and validity of raze permit is re-confirmed. *No problem found.*
9/5/03	First SWO lifted (3 + days lost)
9/15/03	Second Stop Work Order issued – *no code violation cited*
9/16 – 9/18	As owners had no indication of what the alleged code violation was, Owners sit in lobby of Zoning (suite 2500) for no less than 5 hours each day, awaiting meeting with Zoning officials
9/20/03	Owners meet with Zoning Officials to determine the nature of the code violation. During meeting of approx. 1 hour in length, no violation is ever cited to the owners
9/20 – 9/30	After repeated written requests to identify the nature of the alleged code violation go unanswered, Owners confer with member of DC Appropriations Subcommittee, as well as with a representative from the Mayor's Policy Office.
9/30/03	Written response from DCRA citing non-compliance with 401.3 (18' and 1800sf width and area requirement for new construction)
10/2/03	Meeting as set up by Congressman's/Mayor's office with officials at DCRA. Owners state their case to DCRA, with supporting documentation, however DCRA declines to review the information and closes the meeting, offering only to lift the stop work order if Owners a) indemnify the District of Columbia, and b) agree to pursue width/area variance thru BZA

10/2/03	Owners, with no other viable options, concede to DCRA's offer and are asked to provide a draft of the indemnification letter agreement to DCRA's counsel for review prior to signature
10/7/03	Owners provide draft letter to DCRA
10/7 – 10/15	No response from DCRA on draft letter agreement
10/15/03	DCRA contacts owners and demands immediate delivery, in person (fax will not be accepted) of letter by COB. As Owner could not physically get to downtown DC by COB, signed letter agreement was faxed to DCRA as of 3PM
10/16/03	Owner personally delivers two original, signed copies of letter agreement to DCRA for countersignature. Letter agreement still not signed by DCRA. Owners awaiting a) ratified copy of agreement, and b) DCRA referral letter, so that they can proceed with submission of BZA variance request.
10/29/03	Owners receive fax from DCRA of revised letter agreement, one with does not accurately reflect the agreement made during the Oct 2 meeting. Further, this inaccurate revised agreement was accompanied by a fax cover sheet that stated " This is the final draft as reviewed by our General Counsel. You must return on your letterhead by close of business 10/30/03."
10/30/03	Owners speak with Zoning, parties agree to make changes that will reflect the conversations of Oct 2. Owners make changes to their copy of the agreement, sign it and fax it to DCRA for countersignature.
11/4/03	Rcvd fax of DCRA letter formally referring project to BZA for approval. Original letter being sent via mail to Owner's address
11/7/03	Submission of Variance Request

VI. HOW THIS REQUEST MEETS THE THREE-PART TEST

PART 1 PROJECT IS CONSISTENT WITH THE GENERAL INTENT OF THE ZONING REGULATIONS

- **Zoning confirmation – Expert Witness:** Mr. Fred Greene, former Director of Planning for BZA and Zoning, reviewed the project for compliance in early 2003, and concurs that the project is matter-of-right construction. Further, Mr. Greene will testify in support of the project at the BZA hearing.

- **Numerous previous reviews and approvals.** As detailed in section III above (Permit History of the Property) the homes under construction were carefully, and repeatedly, reviewed for compliance throughout the permit process.

- **Consistency with specific Codes:**

  NOTE: The intent of this section is to prove how the requested variance would be consistent with the nature and intent of the existing codes and regulations; and as such any reference to existing codes should be interpreted as being for this specific purpose only –

  BACKGROUND:

  Prior residences on the Property. Information gained from Sanborn Fire Maps dated 1928 (**Exhibit 4**) as well as archived records from the D.C. Recorder of Deeds (**Exhibit 5**) show that as of the late 1920s, a home was located on each of Lots 800, 801 and 802 with addresses identified as 208, 210 and 212 D St. One interesting fact that was uncovered during the research is that there exists at least one known person who lived in the neighborhood as a young man, and that can attest to the existence of the three homes. This gentleman is the father of one of the ladies who works in the archive file room at the Recorder of Deeds.

  Former Pepco structure. In April, 1942, Pepco applied for a permit to construct a (current non-conforming structure, with a non-conforming use of structure) building on the Property (see **Exhibit 6**)

  - Lots 800, 801 & 802, which were pre-existing from the former homes, were kept intact from 1942 – the present.

  - The entire value of the Pepco building, from 1942 thru 2003, was assessed to Lot 801, with Lots 800 and 802 being taxed with building values of $0.00 and identified in city tax records as being unimproved.

  - Per Exhibit 6, the original Pepco "Plat for Building Permit", the building's footprint sat principally on Lot 801 (middle lot), and encroached for approx.

8.5 feet onto each of the 'end' lots, resulting in an encroachment onto each end Lot of approx. 187sf, which further results in that building having encroached upon approx. 12% or less of the total area of each end Lot.

In order to properly interpret the referenced Codes, below, one must first look to how certain terms are defined for use within the Construction Codes.

These definitions are set forth in Title 11, Chapter 1 (below).

EXCERPT FROM: TITLE 11, CHAPTER 1

199 DEFINITIONS

199.1 When used in this title, the following terms and phrases shall have the meanings ascribed:

The words "occupied" and "used" shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupied, offered for occupancy";

Lot - the land bounded by definite lines that, when occupied or to be occupied by a building or structure and accessory buildings, includes the open spaces required under this title. A lot may or may not be the land so recorded on the records of the Surveyor of the District of Columbia.

Lot of record - a lot recorded on the records of the Surveyor of the District of Columbia"

- **Consistency with Chapter 20, section 2000.4 (with support from 2000.2 and 2000.5)**

2000.2 , 2000.4, and 2000.5 read as follows:

2000.2 Within the districts established by this title, or in amendments that may later be adopted, there exist structures, uses of land, and uses of structures that were lawful before this title was adopted or amended, but that would be prohibited, regulated, or restricted under the terms of this title or future amendments to this title. It is the intent of this title that nonconformities may not be enlarged upon, expanded, or extended, nor may they be used as a basis for adding other structures or uses prohibited elsewhere in the same district.

2000.4 Any nonconforming use of a structure or of land, or any nonconforming structure lawfully existing on May 12, 1958, that remains nonconforming, and any use or structure lawfully existing that became nonconforming on May 12, 1958, may be continued, operated, occupied, or maintained, subject to the provisions of this chapter.

2000.5 Nonconformities shall be regulated in the following categories:

(a) Nonconforming use of land, including land use with a structure incidental to the use of the land;

Upon information and belief, the location on the property of the former structure was non-conforming, as it was located not entirely within a single platted lot, (the "middle lot") and did partially encroach upon the two outlying 'end' lots).

Further, its use was non-conforming (electrical substations are not allowed in R-4 Districts, and are only allowed under a special exception in R-1 Districts, code section 207.1).

CONCLUSION: The nonconforming use of the land, specifically the use of the three pre-1958 lots ('use' as defined by Title 11, above) is *consistent* with the intent of the Zoning Regulations. These lots were *designed to be used* (and were previously used) for residential homes. The former Pepco structure did not change the use of the land, as the use of that Pepco structure was non-conforming, the building was a structure incidental to the use of the land, (Section 2000.5 (a)) and therefore continuation of the *designed use* of the land would be *consistent* with the best intent of the Zoning Regulations.

- **Consistency with Chapter 4, section 401.1**

401 MINIMUM LOT DIMENSIONS (R)

401.1 states: " Except as provided in chapters 20 through 25 of this title, in the case of a building located, on May 12, 1958, on a lot with a lot area or width of lot, or both, less than that prescribed in § 401.3 for the district in which it is located, the building may not be enlarged or replaced by a new building unless it complies with all other provisions of this title. "

CONCLUSION: Notwithstanding that the project would be lawful under Chapter 20, 2000.4 (above), The former Pepco building was built prior to 1958, on a lot with width and area less than prescribed for by 401.3, and therefore construction of new building would be *consistent* with the intent of Section 401.1

- **Consistency with Chapter 4, Section 401.2**

Chapter 4, Section 401.2 states:

401.2 Except as provided in § 401.3, in the case of an unimproved lot in single ownership on November 1, 1957, that has a lot area or width of lot less than that specified in § 401.3 for the district in which it is located and that does not adjoin another unimproved lot in the same ownership, a

structure may be erected on the lot if both the lot area and width of lot are at least eighty percent (80%) of the lot area and width of lot specified under § 401.3; provided, that the structure shall comply with all other provisions of this title.

Note: Section 401.2 above uses the term 'lot' and not 'lot of record'.

Therefore, Lots 800 and 802 should be considered 'unimproved' from 1942 to present, as they were:

1. taxed as unimproved lots from 1942 thru to present day (see excerpt of tax information, below)

   Tax year 2001 Assessment (end lot) (typical of 1942 – 2001 records) *

   Land - $57,880
   Building - $0
   Total - $57,880

   Tax year 2004 Assessment (end lot) *

   Land - $63,670
   Improvement – Not Available
   Total Value - $63,670

   * tax documents for both TY 2001 and 2003 are on file.

   AND

2. the former Pepco structure was located principally on lot 801, and only encroached upon 12% of lots 800 and 802

CONCLUSION: Lots 800 and 802 both exceed 80% of the prescribed 1800sf area requirement and 18' width requirement, in compliance with Section 401.2. Further, allowing new homes to be built on lots 800 and 802 is *consistent* with the intent of Section 401.2, that being to prevent any pre-1958 lots from being 'landlocked' and hence being unbuildable,

which is exactly the situation that would result when a new home is erected on Lot 801, as construction on lot 801 is *consistent* with 401.1, above. A mere 187sf of encroachment upon a 1500sf lot should not categorize that lot as "improved".

PART 2. **THE HOMES WILL BE BENEFICIAL TO THE COMMUNITY**
(and present no substantial detriment to the public good)

a. **New quality-built homes will add to the city tax base.** These new homes will bring new revenue to the District, while eliminating an abandoned eye-sore structure. (see **Exhibit 8, photos)**

b. **The homes are located at the former site of an abandoned and boarded up electrical substation.** In compliance with DCRA's stated goal of reducing the number of abandoned buildings in the District, the owners applied for and were granted a valid, proper raze permit for the building in November, 2002 (although demolition could not commence until foundation permits were granted, as demolition would result in a large hole, and any unnecessary prolonged existence of that hole was considered by the owners to be an unnecessary public safety risk).

c. **Project was supported and approved by ANC 6B.** The project was presented to ANC 6B on two occasions in February, 2003. At a request from members of the ANC, a first, informal presentation was done on/about February 7, 2003. Response to the proposed homes was very positive. At the request of members of the ANC, so as to give the neighborhood as much notice as possible to attend the formal ANC meeting on Tuesday, Feb 11th, we printed up flyers and handed them out/posted them throughout the neighborhood on Saturday, Feb 8th and Monday, Feb10th. At the formal ANC meeting on the 11th, the proposed homes were again presented and met with favorable response, and the ANC members formally voted to support the project (see **Exhibit 7,** Mar 03 Hill Rag, page 30, Bill Van Den Toorn's "News Roundup" Article entitled "ANC Gives Nod to Two Housing Projects")

d. **Project was supported and approved by the HPRB** (with input from Capitol Hill Restoration Society) The then-proposed homes were presented and received approval (delegation to staff) during the March, 2003 public meeting. The owners worked with HPO staff to finalize details of the plans, and received signature approval from HPO in May, 2003.

e. **Project was supported and approved by the Commission of Fine Arts (CFA).** The owners presented the elevations for the homes to the CFA members in February, 2003. CFA gave their approval of the preliminary design.

f. The designs for these homes are consistent with the neighborhood, in the following categories:

1. Architectural Style: Homes are French Victorian, which is prevalent in this part of Capitol Hill, and is the style favored by the Historical Preservation Office for new construction.

2. Lot Size: The average lot size of the Homes under construction is 1,501sf, which is *3% larger* than the average of the five lots that adjoin the Property. (1,454sf ave. for the homes at 318-326 2nd St) (note 1)

3. Square Footage of Homes: The Homes under construction are, on average, 15% larger than the adjoining homes (new homes average 3,000sf vs. 2,600sf for the existing homes) (note 1)

Note 1: lot size and building square footage used are as shown on the D.C. website, Taxpayer Service Center

Further, the new homes provide for the following:

- **Lessening of Street Congestion - Each home provides for off-street parking**: The homes under construction each provide, by current Code, one off-street parking space. This removal of cars from street parking will lessen congestion in the neighborhood.

- **The homes do not impair light or ventilation for any neighboring homes.** The western boundary of the homes is a 30+ feet from the closest neighbor (see **Exhibits 1 & 8**). The eastern boundary faces a 15' public alley and a commercial building.

- **Homes are only residences on the 200 block of D Street:** These three homes do not adjoin any other rowhomes, and are the only homes on this block that face Folger Park.

- **Homes of less than 18' width are not uncommon on Capitol Hill.** Numerous homes exist in the neighborhood that are between 15 -17.5 feet in width. These homes form the visual landscape of the neighborhood, and do not present to the viewer the appearance of narrowness, or of not blending in to the architecture of the neighborhood.

- **The homes are properly built within the lot lines.** The homes under construction are located entirely within the boundaries of their lots, as documented by the wall check survey performed by a surveyor certified by the DC Surveyor's office (see **Exhibit 3**)

PART 3. FINANCIAL HARDSHIP CAUSED IF VARIANCE IS NOT GRANTED

- **Personal Financial Loss and Bankruptcy.**

  In reliance upon the permits previously granted for these homes, the owners commenced construction in June, 2003 and as of the date of this submission have expended in excess of $1.25M to develop and construct these homes. The denial of this variance request would cause the owners to forfeit their existing bank construction loan, which would result in foreclosure against the property, and likely cause one or more individual member owners to lose substantially all of that person's assets, and force the individual(s) into bankruptcy.

- **Denial of Variance will also cause Hardship to the District of Columbia.**

  Denial of Variance will result in abandonment of the construction, as the Owner would have no means by which to demolish, re-design and re-build the homes, the result of which will be a partially finished vacant building, which would be of substantial detriment to the community.

Given the above, this variance request should be approved.

CONCLUSION.

For the reasons stated herein and with consideration of further information as provided at the hearing, we as the Applicant/Owner respectfully submit that the variance request should be approved and the ongoing construction should continue to completion.

Respectfully Submitted,

For Folger Park North, LLC

By: _____ member

Capitol City Development LLC, Member
Chris M. Doerfler, Member

Delaplane Investment, LLC, Member
Kathleen Ann Jordan, Managing Member

Capitol City Development LLC, Member
Alger E. Stoneburner, Member