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STATEMENT OF EXISTING AND INTENDED USE AND
STATEMENT OF SATISFACTION OF APPLICANT'S BURDEN
OF PROOF FOR AREA VARIANCES

Application of 1515 15th Street, LLC, Jacob A. Kamerow, Trustee and Edith Kaplan, Trustee

January 20, 2004

This statement ("Statement") is of the existing and intended use of the proposed building and an explanation as to the manner in which the application ("Application") of 1515 15th Street, LLC, Jacob A. Kamerow, Trustee and Edith Kaplan, Trustee ("Applicant") meets the specific tests and burden of proof identified in the Zoning Regulations for the area variances described below. This Statement is submitted on behalf of the Applicant by its attorneys, Greenstein DeLorme & Luchs, P.C., by Jacques B. DePuy, Esquire and Lyle M. Blanchard, Esquire.

Summary of Application. The Application seeks area variances pursuant to the Zoning Regulations, 11 DCMR § 3103.2, from the maximum lot occupancy requirement under section 772, from the minimum area and other requirements pertaining to residential recreation space under section 773 and from the minimum loading requirements under section 2201.

Property Description; Existing Zoning. The property is located at 1515 15th Street, N.W. (Square 209, Lots 919-921, also known as Lot 100) ("Property" or "Site"). The current use of the Property is as a retail paint store with associated surface parking. (See copies of survey and certificate of occupancy in Exhibit "A".)

The property is bounded on the north by Church Street, N.W., on the west by 15th Street, N.W. and on the south by P Street, N.W. In the late 1980's, a portion of the east-west public alley which previously bisected the Property was closed. In order to allow access to the remaining portion of the public alley, an easement was created through the Property between the alley and P Street, N.W. to the south.

The Site is zoned C-3-A/Arts and is located in the Greater Fourteenth Street Historic District. Matter of right uses in the C-3-A zone district include, inter alia, multiple residential dwelling and retail uses (Sec. 741). The Arts Overlay District is intended to encourage retail and residential uses and to expand the housing supply in the overlay district (Sec. 1900.2). In addition to promoting the housing supply, the Arts Overlay District and the C-3-A zone district are intended to expand business and job opportunities.

The Historic Preservation Review Board ("HPRB") reviewed the Project several times and gave its preliminary approval to the proposed new construction at the June, 2003 meeting.

BZA
Case No. 17137
Exhibit No. 4

Board of Zoning Adjustment
District of Columbia
CASE NO.17137
EXHIBIT NO.4

Existing and Intended Use. The current improvements consist of a one story retail building constructed over a closed ten (10) foot east-west public alley. This portion of the alley was closed pursuant to D.C. Law 7-207 (March 16, 1989) to facilitate the construction of the paint store. The Site currently contains 24 surface parking places.

The Applicant intends to raze the existing building and construct a seven-story residential building with ground floor and below grade retail and service uses on the Site. The proposed mixed-use, residential and retail building will contain 105 residential (condominium) apartment units and 23,940 square feet of retail space, of which 9,870 square feet is at grade (the "Project"). The Project will exceed parking requirements by providing 167 parking spaces on three levels of below grade parking. 123 parking spaces are required.

Statement of Satisfaction of Burden of Proof for Zoning Relief Sought. The Applicant submits that, based upon (i) its Application and the materials submitted in conjunction therewith, (ii) the evidence to be presented at the public hearing and (iii) other evidence to be submitted subsequent hereto, it will satisfy and comply with the applicable legal standards and burdens of proof for the area variances requested. Specifically, the Application will satisfy the requirements of Section 3103.2 of the Zoning Regulations.

First, the Applicant must show that the property is unique by reason of its exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situation or condition. The Property is unique in shape and has an exceptional condition. The Site has a unique shape with a significantly longer frontage on P Street (167.25 feet) than on Church Street (96 feet). The Site wraps asymmetrically around the entire western side of Square 209. The property also has an unusual condition due to an alley easement which bifurcates the Site, thus restricting the areas of available construction. This alley easement requires an opening on P Street to allow for access to the ten (10) foot wide east-west public alley. The Property is also within the Greater 14th Street Historic District, which required extensive consideration of the proposed plans by the Historic Preservation Review Board (HPRB) and led to construction and design solutions which have caused or exacerbated certain zoning relief (as discussed below).

The second prong of the area variance test is that strict application of the Zoning Regulations would result in a peculiar and exceptional practical difficulty. The Applicant submits that the Application complies with this requirement because the unique conditions of the Site result in and cause such practical difficulty.

Lot Occupancy. The maximum lot occupancy in the R-4/Arts District is seventy-five (75%) percent (§ 772). The Project provides a lot occupancy of 79.78%, thus requiring a variance of 4.78%. The proposed structure includes features requested by the HPRB which have caused the project to exceed the lot occupancy standard.

The Church Street portion of the Site could have remained unimproved to reduce lot occupancy. However, in response to requirements imposed by HPRB, the Church Street portion

of the Site is being improved with townhouse features to provide continuity of building facades along Church Street. These townhouse features on Church Street add to the lot occupancy.

Similarly, the east side of the building was pushed further eastward at HPRB's request, thus causing an larger percentage of the Site to be occupied than would have otherwise been the case. Typical load width for a residential building is 65 feet. However, the building along 15th Street must be 75 feet in width to allow the top two floors of the Project to set back at a distance satisfactory to HPRB. Thus, were it not for the HPRB requirements, the portion of the Site occupied by the east side of the building would not have been improved and would have been available to reduce the percentage of lot occupancy of the Project.

The alley easement also causes the Project to exceed lot occupancy requirements. Due to the location of the easement on the Site, the Applicant must provide an area for vehicular access to the public alley. Because this alley area is covered by the upper floors of the Project, it must be counted in the lot occupancy of the Project. If the area above or to the east of the alley easement were not developed, the continuity of building facades along P Street would be interrupted and the vitality of the street would be adversely affected.

Thus, the HPRB design requirements and the portion of the lot occupied by the alley easement are practical difficulties which increase the lot occupancy of the Project.

Residential Recreation Space. The practical difficulties discussed above for lot occupancy also adversely impact the Applicant's ability to provide the amount of required residential recreation space. Residential recreation space is often provided at the rear of the building or on the roof in order to optimize the use of such areas. However, as discussed below, certain spaces on the Site or in the building that might otherwise have been available for use as residential recreation space are not available because of such practical difficulties.

The Applicant proposes to devote 1,380 square feet of exterior open space at the rear of the building in a courtyard and additional area. Interior recreation space consists of 1,848 square feet. The public recreation space equals 3,228 square feet or 3.1% of the 110,000 square feet gross floor area of the Project. In addition, a majority of the units will include private balconies or roof top terrace space which total 8,726 square feet. If the "public" and "private" residential recreation space were to be combined, the amount of total residential space provided would equal 11,954 square feet or 10.86%.

No additional outdoor recreation space is reasonably available. The design of the roof has been minimized to allow for smaller upper stories (set-back in the massing of building) to relate to the size and scale of the historic buildings on 15th Street. Additional outdoor recreation space is prevented due to the reduced upper stories, the mechanical systems space and building code requirements.

On the ground level, no additional outdoor residential recreation space can be provided. The alley easement intrudes on the Site from south to north, creating a pedestrian and vehicle access area to the public east-west alley. The loading facilities are located at grade. Therefore, no additional area is available for outdoor residential recreation space on the ground level.

The interior of the ground level is substantially devoted to retail and thus cannot be devoted to additional residential recreation space. Such retail has been provided in furtherance of the Arts Overlay purposes. The balance of the ground floor space serves as residential, service-related office or core serving the residential above and the parking and retail below. In addition, any conversion of the below-grade parking spaces to residential recreation space would displace parking which is extremely important to the neighborhood.

Furthermore, the below grade retail space will be marketed to a health club/gymnasium. The Applicant intends to provide a two (2) year membership to residential unit owners. While not exclusively for resident's use, this benefit will be made available to residents in lieu of public recreation space.

Thus, the indoor residential recreation space and the outdoor recreation space in the rear cannot be supplemented by additional recreation space without compromising the objectives of the Arts Overlay District or reducing much needed on-site parking.[1]

The amount of the variance requested from the required residential recreation space is 11.9%. A reduction of the amount of residential recreation space required is reasonable in consideration of (i) the practical difficulties inherent in the Property and (ii) the amount of private recreation space provided. Moreover, there are ample places to walk, jog, run and bicycle nearby. In addition, current market conditions are such that many projects are not able to provide the total amount of residential recreation space required.

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1 The residential recreation space requirement has proven difficult for many applicants to comply with in many other projects including several projects in the subject square and elsewhere in the city. The requirement is contrary to the goals of the underlying zone district of maximizing housing and increasing pedestrian activity. Recently, both the Board and the Zoning Commission have recognized that the requirement is inappropriate for an urban neighborhood and have thus granted variances from this provision, oftentimes at significant percentages. See, e.g., March 19, 2002 BZA Transcript (BZA Applications 16841 and 16848) at 41 and 75-76; December 18, 2001 BZA Transcript (BZA Application 16809)(wherein a member of the Board referred to this requirement as "antiquated".) The Board and the Commission have requested that OP study further these "onerous and impractical" requirements and recommend appropriate amendments to the Zoning Regulations to remedy the outmoded nature of the requirements for residential recreation space. (Id.) Until such time as amendments are adopted, applicants must seek relief from the Board to reduce the amount of residential recreation space on a case by case basis.

Loading. The Project will provide three loading facilities as follows: one (1) berth at 30 feet, two (2) service/delivery spaces at 20 feet and one (1) platform at 209 square feet. If the matter-of-right requirements were strictly applied, the residential component of the Project would require one (1) additional berth at 55 feet and the retail component would require one (1) additional berth at 30 feet and (2) platforms at 100 square feet each. This would mean the Project would be required to provide five (5) loading berths and service/delivery spaces, an amount more typical for downtown office buildings two or three times the size of the project.

The 30 feet berth and two (2) service/delivery areas are sufficient for both the residential and retail users. The loading berth and delivery areas will be used substantially by residents when they move in. Subsequent use by residents will only be sporadic moving in and out and, as such, can be restricted to times which pose the least amount of conflict with retail users. Likewise, retail users can be restricted to reasonable times which cause the least amount of conflict with the loading needs of the residents. Further, it is likely that the timing of build-outs for retail tenants will be different from move-in dates of the residential tenants because such build out will generally occur after the residents have moved in. Thus, through contractual restrictions, any conflict between the loading needs of residents and retail tenants will be minimized.

The site constraints and size (i.e., width) of the alley and alley easement area make providing additional berths and service/delivery spaces impractical without adversely impacting the preferred residential and retail components, the building footprint and the design of the building. The practical difficulty of providing the additional berths arises from incorporating the access easement area into the site.[2] Because of the easement, the Applicant is unable to meet the loading requirements while providing residential and retail space at the Property.

Under the third prong of the variance test, the Project will provide substantial benefits to the community including underground parking, ground floor retail and quality residential space. There will also be a lack of adverse impacts from the variances requested resulting in no "substantial detriment to the public good" and no substantial impairment of "the intent, purpose and integrity of the Zoning Regulations and Map."

The Site is within the C-3-A zone district, which permits medium density residential/office development. The Site is also within the Uptown Arts – Mixed Use Overlay District, and meets the purpose and intent of the objectives of the overlay district under 11 DCMR § 1900.2 in the manner discussed below (objectives are in *italics*):

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2. A similar loading variance issue was granted by the Board in Application No. 16832. In that case, the alley access easement created turning radius constraints which made it unlikely that a tractor trailer, normally the user of a 55 foot loading berth, would able to utilize the loading areas without sacrificing parking, retail or residential space.

• (a) *encourages a scale of development, a mixture of building uses, and other attributes such as safe and efficient conditions for pedestrians and vehicular movement* – the proposed Project is at a scale approved by HPRB and contains a mixture of uses as required by the Arts Overlay district. In addition, the retail entrances on P and 15th Streets alternate between the entrances for the residential access on Church and 15th Streets. The parking garage ingress and egress will not adversely impact the parking garage of a nearby residential development on P Street;

• (b) *require retail, entertainment and residential uses that encourage pedestrian activity* the Project will provide a strong mix of retail, service and residential uses and will encourage pedestrian activity on P and 15th Streets;

• (d) *expand the area's housing supply in a variety of price ranges* – this large Project will provide 105 residential unit spaces which have a considerable range in size and price;

• (f) *strengthen the design character and identity of the area* – the design, as approved by the HPRB, will successfully evoke the themes of the row houses and small apartment buildings along 15th Street while still providing visual interest compatible with the Historic District; and

• (g) *encourage adaptive reuse of older buildings in the area and an attractive combination of new and old buildings* – the new and attractive building providing ground floor and below ground retail on P and 15th Streets and ground floor residential on 15th and Church Streets and above ground residential housing on all three streets will meet this objective.

In addition, the proposed development is consistent with the Comprehensive Plan Generalized Land Use Map designation for the Site of Moderate Density Mixed Use (Residential and Commercial) Land Use Category. The proposal also meets the following Uptown Arts Special Treatment Objectives under § 1130 (objectives are in *italics*):

• (a) *promote the historic character of the area* – the HPRB has approved the design as being in conformance with the historic character of the area;

• (e) *encourage street level retail and service uses* – the proposal includes appropriately scaled street level retail on 15th and P Streets;

• (k) *address the narrow commercial sites to encourage suitable scale and massing* – the Church Street "in fill" was given townhouse features and the massing of the two top floors was moved back significantly from the 15th Street façade at the request of HPRB in order to achieve suitable scale and massing;

• (l) *adequate parking facilities to support development policies* – the Project provides parking spaces well in excess of what would be otherwise required (123 spaces would be required. The project is providing 167 spaces.); and

• (n) *the provision of new housing opportunities* – this large project with its 105 residential unit spaces maximizes new housing opportunities.

In addition to the considerable public and community benefits of the proposal, the Applicant's Project -- and specifically the requested variances -- will not create substantial adverse impacts or detrimental effects on the public. The lot occupancy variance will not cause a substantial adverse effect. The residential recreation space variance will have no adverse impact because of the extensive amount of "private" recreation space provided in the form of balconies and terraces. Ample loading facilities will be provided even with a variance from certain loading requirements.

Conclusion. For the reasons set forth above, 1515 15th Street, LLC, Jacob A. Kamerow, Trustee and Edith Kaplan, Trustee, by and through counsel, submits that the Application has satisfied (and will satisfy) all applicable zoning requirements and the requisite burden of proof and, therefore, should be granted.

Respectfully submitted,

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