STATEMENT OF BURDEN OF PROOF FOR VARIANCE RELIEF

Bloom Builders, Inc. (the "Applicant" or "Bloom Builders") requests area variance relief from the rear yard requirements of the Zoning Regulations, and use variance relief from the Zoning Regulations' prohibition of extending a nonconforming use to a portion of a structure that was not previously used for a nonconforming use at the time of the adoption of the Zoning Regulations. These variances are necessary in order for the Applicant to reconfigure the existing building on the property located at 5608 Broad Branch Road, N.W. Lot 78 in Square 1997, (the "Property"). The granting of such relief will allow the Applicant to return a viable market use to the Property. The Applicant is entitled to variance relief pursuant to 11 DCMR §3103.2, because it can demonstrate: (1) an extraordinary or exceptional situation or condition of the Property; (2) undue hardship and practical difficulty in satisfying the strict application of the Zoning Regulations; and (3) no harm to the public or to the zone plan will occur as a result of the approval of these variance applications.

Extraordinary or Exceptional Situation or Condition

The D.C. Court of Appeals held in *Clerics of St. Viator v. D.C. Board of Zoning Adjustment,* 320 A. 2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the "property", not just the "land"; and that "property generally includes the permanent structures existing on the land." *Id.* at 293-294. Indeed, the Court repeatedly has rejected the idea that the exceptional situation and practical difficulty justifying a use variance must arise from the physical aspects of the land. *See National Black Child Development*, 483 A.2d at 690; *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979).

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The BZA has previously determined that the Property is subject to an exceptional or extraordinary situation or condition. In BZA Order No. 15905 (approved by Bench Decision on February 9, 1994) the BZA granted an area variance for the Property in order to create a record lot for the Property that did not satisfy the rear yard requirements. Just as in the previous BZA case, the Property is subject to an extraordinary or exceptional situation or condition.

Practical Difficulty – Area Variance – Rear Yard Requirements

The D.C. Court of Appeals has established a two part test for determining whether an applicant has met its burden of proof. The applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome" and that the practical difficulty is "unique to the particular property." *Gilmartin,* 579 A.2d at 1170. The Court of Appeals has held that the "nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." *Id.* at 1171. Some factors that the BZA may consider are "the weight of the burden of strict compliance," "the severity of the variance(s) requested," and "the effect the proposed variance(s) would have on the overall zone plan." *Id.*

The Applicant faces a practical difficulty in satisfying the strict requirement of the rear yard requirement. As noted above, the BZA previously granted an area variance to create a record lot that included a building on the Property that did not satisfy the rear yard requirements of the Zoning Regulations. The Applicant is not proposing to tear down the existing building, rather it is merely proposing to reconfigure the existing building. Thus, the Applicant faces a practical difficulty that is similar to the practical difficulty that was noted by the BZA for the Property in 1994.

Undue Hardship – Use Variance - Extension of Non-Conforming Use

In order to satisfy the undue hardship standard, the Applicant must demonstrate that a reasonable use cannot be made of the Property in a manner consistent with the Zoning Regulations. (See *Palmer v. Board of Zoning Adjustment,* 287 A. 2d. 535, 542.) The Property is located in the R-1-B Zone District which permits single family residential use as a matter-of-right. The longstanding use of the existing building on the Property as a neighborhood market, the large size of the structure, the significant cost of renovations that are necessary to renovate the building, and the filing (and subsequent withdrawal) of a historic landmark designation application for the Property establish obstacles that prevent the Applicant from making a reasonable use of the Property consistent with the R-1-B District matter-of-right uses. Therefore, the Applicant has satisfied the undue hardship standard of the variance test.

No Harm to the Public or to the Zone Plan

Granting the requested variance relief will not cause harm to the public or to the zone plan because the proposed project has been carefully designed to mitigate any adverse impacts on the neighboring properties. In addition, neighborhood market use has existed on the Property for over 80 years and predates the establishment of the Zoning Regulations. The return of a viable market to the Property will continue a use on the Property that has been viewed by the community as a benefit.