BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Re: Application of Ray A.. Hwang and Mathew Depue

BZA Application No. 17155
Public Hearing: ~~April 6~~ May 4, 2004
ANC 1A

**SUPPLEMENTAL STATEMENT OF APPLICANT RESPONDING TO OFFICE OF PLANNING'S REPORT**

I. Nature of Relief Sought

The Applicant seeks a use variance from the provisions of section 330.5(c) and the lot area provisions of section 401.3 to allow a 4-unit condominium development in the R-4 zone for property located at 3518 - 10th Street, N.W., Washington, D.C. 20011.

II. Jurisdiction

The Board has jurisdiction to grant the requested relief pursuant to Section 3103.2 of the Zoning Regulations. The Applicants' clear satisfaction of their burden of proof is set forth below.

III. Background of the Application

The Applicants, Ray A. Hwang and Mathew Depue, are the owners of the subject property located at 3518 - 10th Street, N.W., Washington, D.C. 20011. The subject property is zoned R-4. The subject property contains approximately 2,597 square feet of land, and is improved with a three-story single family detached dwelling with a basement. The property is part of a duplex built in the early 1900's. Except for one multifamily housing property located north of the subject property in the middle of the block, rowhouses and semi-detached dwellings are the predominant uses in 3500 block of 10th Street, N.W.

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Prior to acquisition by the Applicants, the property was vacant and had been abandoned for a long period of time. Reports of the period of vacancy from members of the community range from ten to twenty-five years. The condition of the property has created a situation in which the property has been used by people to sell and use illegal drugs and for prostitution. Also, trespassers have been able to establish the property as their residence without caring for the safety of the community or upkeep of the property. Persons assaulting and robbing members of the community have used the property as a safe harbor.

Because the property had not been cared for over an inordinately long period of time, the physical structure has deteriorated. Problems with its roof and deteriorating structure have caused problems to the immediately adjacent property. The filth and litter that have accumulated in the property over the years have attracted rats which have plagued the community and have been difficult to exterminate. Much of the electrical wiring, plumbing and molding have been removed. At the time of purchase, each of the four levels of the property was extensively littered with human feces, discarded personal effects, useless clothing and furniture, and miscellaneous other items of debris.

The property's use by trespassers for drug activity, prostitution and shelter, as well as extensive evidence of rodents, continued after purchase. Abandoned vehicles at the rear of the property also appeared to serve as a harbor for drug use and prostitution. With the assistance of the Metropolitan Police Department, the owners were able to secure the property and prepare it for this application.

The use and area variances will allow the conversion of the property to four separate condominium units on each floor and the basement. Although the existing lot area of the property is 2,597 square feet, and, therefore, 28% less than the 3,600 square feet required under section 401.3, the size of each floor in the property is almost 50% greater than the floor size of most of the rowhouses in the neighborhood. Thus, the large interior living space of each unit in the subject property more than compensates for the shortfall in lot area size. The property can accommodate two parking spaces in the rear.

## IV. COMMUNITY SUPPORT AND PARTICIPATION

The community, especially through Advisory Neighborhood Commission 1A, has actively participated in the planning of this project. Applicant has received the approval of the members in the district where the property is located. At the regularly scheduled meeting of ANC 1A in April, 2004, the ANC voted to recommend approval of the application, subject to Applicants and the single member district reaching an agreement on allocating one of the four units for housing for low income persons. An agreement has been reached, and the application, as amended, will be submitted for approval at the May 12, 2004 meeting of ANC 1A.

## V. APPLICANT MEETS THE TEST FOR THE REQUESTED RELIEF

Under Section 5-424(g)(3) and 11 DCMR section 3103, the Board is authorized to grant a use and area variance when it finds that three conditions exist:

[1] [E]xceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulation, or by reason of

> [E]xceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,
>
> [2] The strict application of any regulation...would result in Peculiar and exceptional practical difficulties to or
>
> Exceptional and undue hardship upon the owner of the property...
>
> [3] Provided that the 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.

[Brackets and spacing added.]

An "extraordinary or exceptional situation or condition" exists as to the subject property. The property is in a neighborhood of predominantly row houses with three other duplexes and one multifamily property in the middle of the block. The subject property is the only property that is currently unoccupied. It also is the only one that has been unoccupied for at least the last ten years and perhaps even the last twenty-five years. Over this period of vacancy and abandonment, harsh weather conditions and extensive vandalism caused extraordinary and exceptional deterioration to the property. In addition, the property during the many years of vacancy and abandonment served as a site for illegal drug sales and use, prostitution, as well as living quarters for such persons and other trespassers. The property also reportedly harbored perpetrators of petty theft and assault in the community.

The social blight the property has caused because of these extraordinary and exceptional conditions is substantiated by members of the community. The Advisory Neighborhood Commission supports the application inasmuch as the first level unit will

be earmarked for families or persons with gross income of at least $30,000. The extent of repairs substantiating the extraordinary and exceptional deterioration of the property due to weather conditions and vandalism over the twenty-five year period is illustrated in the itemized construction cost estimate for the work required to fortify and waterproof the roof, interior and exterior of the property.

A. Exceptional situation or condition of a specific piece of property.

***The Office of Planning "does not agree that the dilapidated state of the structure is unique or exceptional." OP refers to Applicant's comparison of estimated renovation costs, "which shows that the renovation of the lot as a single-family semi-detached dwelling would result in a loss of $299,804, a flat would result in a loss of $783, and a 4-unit apartment would result in a gain of $99,082." The Office, however, states that "all of these estimates include the cost of the land as $305,000, which is approximately $200,000 more than the assessed value." OP concludes that "OP is very concerned about accepting "purchase price" as a practical difficulty or exceptional situation of the property because it results from the actions completely within the control o f the purchaser. The Office of Planning does not find the evidence provided compelling, that the condition of the structure is exceptional." [See OP Report at 4 - 5.]***

OP misses the point on this issue. The condition of the property is but one of the factors contributing to the "exceptional situation" in this case. Applicant does not contend that such condition, in and of itself, constitutes the "exceptional situation or condition." The subject property is the only property in the 3500 block of 10th Street, N.W. that is currently vacant and has been vacant and abandoned over at least the last

ten (10) years. All of the other properties are occupied by working class people who generally maintain their properties. The situation with respect to the subject property is "exceptional" because:

1. The property has been vacant and abandoned for at least ten (10) years;
2. The deteriorated condition of the property has caused damage to the adjacent property;
3. The vacancy and deterioration of the property has fostered the use of the property for illegal drug sales and use, as well as prostitution;
4. The vacancy and abandonment of the property has enabled perpetrators of assault and petty theft to seek refuge in the property;
5. The condition of the property has attracted rats that have plagued the neighborhood and have proven difficult to exterminate.

OP focused only on the first factor listed above, the physical condition of the property, and property repair estimates in concluding that an "exceptional situation" does not exist with respect to the subject property. Applicant submits that, in addition to the first factor identified by OP, the remaining four factors listed above in a neighborhood of working class people where all of the properties, except the subject property, are generally maintained, demonstrate that an "exceptional situation" exists with respect to this particular piece of property. Thus, Applicant has established that an "exceptional situation" exists in this case.

B. Hardship/Practical Difficulty

***OP concludes that no hardship or practical difficulty would result from strict application of the zoning regulations, in part, because "it appears that the applicant paid too much for the land [sic] and [sic] therefore the hardship arises out of applicant's actions rather than the dilapidated state of the structure." See OP Report at 5.***

OP in determining that Applicant would not suffer a financial hardship if the Application were denied did not take issue with any of Applicant's cost comparisons for renovating the property as a single-family semi-detached dwelling, a flat or a four unit condominium. OP simply focused on the purchase price of the property.

Applicant submits that a determination of whether financial hardship would result to the Applicant should not be based on OP's unsubstantiated opinion as to fair market value of a particular piece of property. OP refers to the tax assessed value of the subject property as a basis for concluding that Applicant paid too much for the property. While tax assessed value may be a starting point for determining fair market value, the market itself is the best indicator. Applicant purchased the property in an arm's length transaction based on what was available in the market at the time of purchase. To suggest, as does OP, that purchaser had control over the purchase price and elected to overpay simply defies logic and ordinary business experience.

Absent any basis other than it's unsubstantiated assessment of fair market value of the property in this case, OP cannot be found to have rebutted Applicant's offer of proof on the financial hardship that would result if this Application is denied. Attached hereto as Exhibit 1 is an investment and return statement for the property's use as a

single family residence. Attached hereto as Exhibit 2 is an investment and return statement for the property's use as a flat. In both cases, the acquisition cost of the property is the same, but the estimates for construction reflect each separate use. Each statement shows that the costs to conform the property for use as either a single family residence or flat are extraordinary and exceptional in light of the extensive deterioration and vandalism to the property over a twenty-five year period. In both cases, the statements show that because of the high cost of renovation the owner does not have an opportunity for return from the use of the property either as a single family residence or as a flat.

This is not a case in which the owner would receive a greater return from the property by converting it to a four-unit condominium. This is a case in which because of the "exceptional situation or condition" of the property due to deterioration and vandalism over an extended period neither use as a single family residence nor as a flat provides any opportunity to the owner for return. An opportunity for any return is available in this case only if the application is approved and the owner can convert the property to a four-unit condominium. Such opportunity for return is illustrated in Exhibit 3.

C. Community benefit and Integrity of Zoning Map and Regulations.

In addition to the tests discussed above, Section 3102 further requires that the relief requested could be granted, provided that it will not be a substantial detriment to the public good or substantially impair the intent, purpose and integrity of the zone plan.

***OP takes the position that "the additional parking, loading, and trip generation of the proposed use are not compatible with the existing***

***neighborhood."*** In so concluding, OP simply has not correctly assessed the "existing neighborhood."

The residents in the same block as the subject property are of the opinion that the proposed use will mean less traffic than the illicit traffic of persons previously moving in and out of the property. Traffic of persons will be substantially different in degree and kind.

The degree of people traffic is likely to be less if the application is approved. Currently, people moving in and out of the property have ranged from drug users and sellers to prostitutes and vagrants, and are virtually unlimited in number. If the application is approved, the traffic of people will be limited to the same people who own their individual units.

The traffic of people also will be different in kind if the application is approved. If the application is approved, families owning their individual units will be moving in out of the property. The traffic of property owners in contrast to the traffic of drug users and sellers, as well as prostitutes and vagrants, will enhance the safety and stability of the community.

Also noteworthy, the property itself affords parking spaces for two cars. Thus, on street parking is necessary for only two cars. For this reason, vehicular traffic would not be significantly increased if the application were granted, and the impact on parking to the community would be virtually the same as if the property were used as a single family residence and less than prior to acquisition by the Applicants.

For the reasons stated above, Applicant submits that it has met its burden of proof in this case, and respectfully requests the Board to approve the Application.

Summary Reports

| Type of House | Total Remodeling Costs | Expected Individual Sales Price | Total Expected Sales Price | Profit |
|---|---|---|---|---|
| Single Family | $ 949,804.58 | $ 650,000.00 | $ 650,000.00 | $ (299,804.58) |
| Duplex | $ 980,783.58 | $ 490,000.00 | $ 980,000.00 | $ (783.58) |
| 4 Unit | $ 1,080,917.58 | $ 295,000.00 | $ 1,180,000.00 | $ 99,082.42 |

****The cost data is based on RS Means Residential Cost Data 2004. Means is a recognized producer of accurate cost data for residential and commercial construction industry.

EXHIBIT 1

## Single Family Construction Cost Analysis

| Item | Quantity |
|---|---|
| Living Area ($ft^2$) | 2900 |
| Number of Full Bathrooms | 4 |
| Number of Half Bathrooms | 1 |
| Number of Full Kitchens | 1 |
| Number of Fire Places | 2 |
| Number of Entry and Exit | 1 |
| Number of HVAC Systems | 2 |
| Number of Electrical Systems | 2 |
| Number of Appliances | 1 |
| Number of Decks | 2 |
| Alarm system | 1 |

**Additional Items:**

-Slate Roof for both building and porch
-Breezeway and porches
-Site Improvements
-Hot Water System

**Cost Break Down**

**Fixed Costs**

| Item | Unit Cost | Qty. | | Cost |
|---|---|---|---|---|
| Purchase of Property: | | | | |
| Sales Price | | | $ | 305,000.00 |
| Closing Costs | | | $ | 25,000.00 |
| Costs to Obtain Property: | | | | |
| Total Interest | | | $ | 38,031.00 |
| ***based on expected sale date of November 2004 | | | | |
| Demolition Costs | | | $ | 25,000.00 |
| Main Building Cost (as stated in Means statement) | | | $ | 359,171.58 |
| Porch | | | $ | 8,440.00 |
| Windows | $ 250.00 | 44 | $ | 12,000.00 |
| Basement Excavation | | | $ | 15,000.00 |
| Fencing and Landscaping | | | $ | 13,000.00 |
| Sky Lights | | | $ | 1,370.00 |
| Sprinkler System | | | $ | 16,000.00 |
| Driveway Pavement | | | $ | 3,000.00 |
| Exterior Paint | | | $ | 4,000.00 |
| Interior Paint | | | $ | 14,800.00 |
| Bars on Windows | $ 300.00 | 22 | $ | 6,600.00 |
| Exterior Lighting | | | $ | 2,000.00 |
| Hardwood Flooring | | | $ | 25,715.00 |
| Insulation | | | $ | 3,000.00 |
| Total Fixed Cost | | | $ | 877,127.58 |

**Variable Costs (additional items not covered in building costs)**

| Item | Unit Cost | Qty. | | Cost |
|---|---|---|---|---|
| Full Bathrooms | $7,872.00 | 3 | $ | 23,616.00 |
| Bathroom Vanities | $ 872.00 | 3 | $ | 2,616.00 |
| Half Bathrooms | $3,061.00 | 1 | $ | 3,061.00 |
| Bathroom Vanities | $ 872.00 | 1 | $ | 872.00 |
| Full Kitchens | $8,917.00 | 0 | $ | - |
| Upgrade Kitchen Cabinets | $ 656.00 | 1 | $ | 656.00 |
| Upgrade Kitchen Countertops | $1,280.00 | 1 | $ | 1,280.00 |
| Appliances | $8,969.00 | 1 | $ | 8,969.00 |
| Fire Places (1st) | $5,190.00 | 1 | $ | 5,190.00 |
| Fire Places (additional) | $2,925.00 | 1 | $ | 2,925.00 |
| Entry and Exit | $1,236.00 | 0 | $ | - |
| HVAC Systems | $4,555.00 | 1 | $ | 4,555.00 |
| Electric | $1,487.00 | 1 | $ | 1,487.00 |
| Decks | $8,656.00 | 2 | $ | 17,312.00 |
| Alarm System | $ 138.00 | 1 | $ | 138.00 |
| Total Variable Cost | | | $ | 72,677.00 |

| | | |
|---|---|---|
| Total Variable + Fixed Cost | $ | 949,804.58 |

EXHIBIT 2

Duplex Construction Cost Analys[redacted]

| Item | Quantity |
|---|---|
| Living Area ($ft^2$) | 3700 |
| Number of Full Bathrooms | 4 |
| Number of Half Bathrooms | 2 |
| Number of Full Kitchens | 2 |
| Number of Fire Places | 4 |
| Number of Entry and Exit | 2 |
| Number of HVAC Systems | 2 |
| Number of Electrical Systems | 2 |
| Number of Appliances | 2 |
| Number of Decks | 2 |
| Alarm system | 2 |

Additional Items:
-Slate Roof for both building and porch
-Breezway and porches
-Site Improvements
-Hot Water System

Cost Break Down

Fixed Costs

| Item | Unit Cost | Qty. | | Cost |
|---|---|---|---|---|
| Purchase of Property: | | | | |
| Sales Price | | | $ | 305,000.00 |
| Closing Costs | | | $ | 25,000.00 |
| Costs to Obtain Property: | | | | |
| Total Interest | | | $ | 38,031.00 |
| ***based on expected sale date of November 2004 | | | | |
| Demolition Costs | | | $ | 25,000.00 |
| Main Building Cost (as stated in Means statement) | | | $ | 359,171.58 |
| Porch | | | $ | 8,440.00 |
| Windows | $ 250.00 | 44 | $ | 12,000.00 |
| Basement Excavation | | | $ | 15,000.00 |
| Fencing and Landscaping | | | $ | 13,000.00 |
| Sky Lights | | | $ | 1,370.00 |
| Sprinkler System | | | $ | 16,000.00 |
| Driveway Pavement | | | $ | 3,000.00 |
| Exterior Paint | | | $ | 4,000.00 |
| Interior Paint | | | $ | 14,800.00 |
| Bars on Windows | $ 300.00 | 22 | $ | 6,600.00 |
| Exterior Lighting | | | $ | 2,000.00 |
| Hardwood Flooring | | | $ | 25,715.00 |
| Insulation | | | $ | 3,000.00 |
| Total Fixed Cost | | | $ | 877,127.58 |

Variable Costs (additional items not covered in building costs)

| Item | Unit Cost | Qty. | | Cost |
|---|---|---|---|---|
| Full Bathrooms | $7,872.00 | 3 | $ | 23,616.00 |
| Bathroom Vanities | $ 872.00 | 3 | $ | 2,616.00 |
| Half Bathrooms | $3,061.00 | 2 | $ | 6,122.00 |
| Bathroom Vanities | $ 872.00 | 2 | $ | 1,744.00 |
| Full Kitchens | $8,917.00 | 1 | $ | 8,917.00 |
| Upgrade Kitchen Cabinets | $ 656.00 | 2 | $ | 1,312.00 |
| Upgrade Kitchen Countertops | $1,280.00 | 2 | $ | 2,560.00 |
| Appliances | $8,969.00 | 2 | $ | 17,938.00 |
| Fire Places (1st) | $5,190.00 | 1 | $ | 5,190.00 |
| Fire Places (additional) | $2,925.00 | 3 | $ | 8,775.00 |
| Entry and Exit | $1,236.00 | 1 | $ | 1,236.00 |
| HVAC Systems | $4,555.00 | 1 | $ | 4,555.00 |
| Electric | $1,487.00 | 1 | $ | 1,487.00 |
| Decks | $8,656.00 | 2 | $ | 17,312.00 |
| Alarm System | $ 138.00 | 2 | $ | 276.00 |
| Total Variable Cost | | | $ | 103,656.00 |

| | | | | |
|---|---|---|---|---|
| Total Variable + Fixed Cost | | | $ | 980,783.58 |

EXHIBIT 3

4 Unit Construction Cost Analysis

| Item | Quantity |
|---|---|
| Living Area ($ft^2$) | 3700 |
| Number of Full Bathrooms | 6 |
| Number of Half Bathrooms | 0 |
| Number of Full Kitchens | 4 |
| Number of Fire Places | 4 |
| Number of Entry and Exit | 5 |
| Number of HVAC Systems | 4 |
| Number of Electrical Systems | 4 |
| Number of Appliances | 4 |
| Number of Decks | 4 |
| Alarm system | 4 |

Additional Items:
-Slate Roof for both building and porch
-Breezway and porches
-Site Improvements
-Hot Water System

Cost Break Down

Fixed Costs

| Item | Unit Cost | Qty. | | Cost |
|---|---|---|---|---|
| Purchase of Property: | | | | |
| Sales Price | | | $ | 305,000.00 |
| Closing Costs | | | $ | 25,000.00 |
| Costs to Obtain Property: | | | | |
| Total Interest | | | $ | 38,031.00 |
| ***based on expected sale date of November 2004 | | | | |
| Demolition Costs | | | $ | 25,000.00 |
| Main Building Cost (as stated in Means statement) | | | $ | 359,171.58 |
| Porch | | | $ | 8,440.00 |
| Windows | $ 250.00 | 44 | $ | 12,000.00 |
| Basement Excavation | | | $ | 15,000.00 |
| Fencing and Landscaping | | | $ | 13,000.00 |
| Sky Lights | | | $ | 1,370.00 |
| Sprinkler System | | | $ | 16,000.00 |
| Driveway Pavement | | | $ | 3,000.00 |
| Exterior Paint | | | $ | 4,000.00 |
| Interior Paint | | | $ | 14,800.00 |
| Bars on Windows | $ 300.00 | 22 | $ | 6,600.00 |
| Exterior Lighting | | | $ | 2,000.00 |
| Hardwood Flooring | | | $ | 25,715.00 |
| Insulation | | | $ | 3,000.00 |
| Total Fixed Cost | | | $ | 877,127.58 |

Variable Costs (additional items not covered in building costs)

| Item | Unit Cost | Qty. | | Cost |
|---|---|---|---|---|
| Full Bathrooms | $7,872.00 | 7 | $ | 55,104.00 |
| Bathroom Vanities | $ 872.00 | 7 | $ | 6,104.00 |
| Half Bathrooms | $3,061.00 | 0 | $ | - |
| Bathroom Vanities | $ 872.00 | 0 | $ | - |
| Full Kitchens | $8,917.00 | 3 | $ | 26,751.00 |
| Upgrade Kitchen Cabinets | $ 656.00 | 4 | $ | 2,624.00 |
| Upgrade Kitchen Countertops | $1,280.00 | 4 | $ | 5,120.00 |
| Appliances | $8,969.00 | 4 | $ | 35,876.00 |
| Fire Places (1st) | $5,190.00 | 1 | $ | 5,190.00 |
| Fire Places (additional) | $2,925.00 | 3 | $ | 8,775.00 |
| Entry and Exit | $1,236.00 | 4 | $ | 4,944.00 |
| HVAC Systems | $4,555.00 | 3 | $ | 13,665.00 |
| Electric | $1,487.00 | 3 | $ | 4,461.00 |
| Decks | $8,656.00 | 4 | $ | 34,624.00 |
| Alarm System | $ 138.00 | 4 | $ | 552.00 |
| Total Variable Cost | | | $ | 203,790.00 |

| | | | | |
|---|---|---|---|---|
| Total Variable + Fixed Cost | | | $ | 1,080,917.58 |

Residential Cost Estimate per *RS Means Residential Cost Data 2004*

| | |
|---|---|
| **Owner's Name:** | Matthew Depue and Ray Hwang |
| **Residence Address:** | 3518 10th Street, NW |
| **City, State, Zip Code:** | Washington, DC 20007 |

| | |
|---|---|
| **Class of Construction:** | Custom |
| **Residence Type:** | 3 Story |
| **Configuration:** | All |
| **Occupancy:** | Single Family |

Linving Area

| | |
|---|---|
| **First Level:** | 905 ft$^2$ |
| **2nd Level:** | 960 ft$^2$ |
| **3rd Level:** | 960 ft$^2$ |
| **Basement:** | 875 |
| **Total:** | 3700 ft$^2$ |

Main Building

| | | Costs per ft$^2$ |
|---|---|---|
| **Cost Per ft$^2$ of Living Area (from RS Means booklet):** | | 86.6 |
| **Basement Addition:** | 100 % Finished | 13.1 |
| **Roof Cover Adjustment:** | Slate | 2.48 |
| **Central Air Conditioning:** | | 0 |
| **Heating System Adjustment:** | | 2.2 |
| **Total Main Building cost per ft$^2$:** | | 104.38 |

| | | | | | |
|---|---|---|---|---|---|
| **Main Building= Total Cost** | 104.38 | x | 3700 | x | 0.93 |
| | **Cost per ft$^2$** | | **Living Area(ft2)** | | **Row House Multiplier** |

= $ 359,171.58

** Note the cost above is the exterior building cost, one full bathroom and one full kitchen