BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application of Donatelli & Klein
3700 Georgia Avenue, N.W.

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

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I. Background

The Subject Property is located along Georgia Avenue, N.W and includes Lots 42, 43, 805, 806, 812, 816, 817, 818 and 819 in Square 2900. Square 2900 is bounded on the north by Quincy Street, on the south by Rock Creek Church Road, on the west by 9th Street, on the east by Georgia Avenue and is to the northwest of New Hampshire Avenue. The Subject Property comprises the eastern portion of Square 2900, extending back to 9th Street at its northern end, and is thus irregularly shaped. The Georgia Avenue-Petworth Metrorail station comprises a large portion of Square 2900. The Subject Property is currently unimproved, contains approximately 59,002 square feet and is split-zoned R-4 and C-3-A.

The Applicant proposes to develop the Subject Property with a 140-unit multi-family residential building that includes ground floor retail and three flats each with two dwellings. An underground parking garage will be provided to provide a total of 188 parking spaces.

In order to proceed with this development, the applicant seeks the following areas of relief from the Zoning Regulations: 1) Variance relief from §773 to allow thirteen percent of the residential area to be provided as recreation space instead of fifteen percent; 2) Special exception relief in order to extend the provisions of a less restrictive district into a more restrictive district under §2514.2; 3) Special exception relief for a twenty-five percent parking reduction for the retail uses under §2108.2;

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and 4) Special exception relief in order to permit accessory parking spaces serving residential and commercial uses in the R-4 zone district under §214.

Pursuant to §3113.8 of the Zoning Regulations, the Applicant will file its Statement of the Applicant with the Board no fewer than 14 days prior to the public hearing for the present Application. In that Statement, and at the public hearing, the Applicant will provide testimony to meet its burden of proof to obtain the Board's approval of the requested variance and special exception relief. Following herein, as required by the Board's application process, is a summary statement indicating how the Applicant will meet said burden of proof.

II. Burden of Proof

A. Variance Relief

The test for variance relief is in three-parts: (1) demonstration that a particular piece of property is confronted with some exceptional condition or situation; (2) such that, without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty upon the property owner; and (3) that the relief requested can be granted without substantial detriment to the public good or zone plan.

(1) Exceptional Condition or Situation:

As noted above, the Subject Property shares Square 2900 with the Georgia Avenue-Petworth Metrorail station. The location of the Metrorail station causes the Subject Property to be exceptionally long, narrow, and irregularly shaped. The location of the Metrorail entrance on Lot 42 of the Subject Property, along with the substantial setback from Georgia Avenue that includes numerous bus shelters, metro related mechanical equipment, and an irregularly shaped curb create an even

narrower site. Portions of the Subject Property are also affected by exceptional topography, with a substantial grade change of approximately twenty feet from one end of the site to the other, that pose challenges for the development's design.

(2) Resulting Practical Difficulty:

The Applicant will demonstrate that the strict interpretation of the Zoning Regulations will result in a practical difficulty upon the Applicant.

Section 773 of the Zoning Regulations requires that residential uses in the C-3-A District provide fifteen percent of their gross floor area as qualified residential recreation space. Strict adherence to the Zoning Regulations would require that the proposed development be required to provide 24,225 square feet of residential recreation space, fifty percent of which would be required to be outdoor recreation space. The proposed development includes 21,085 square feet of residential recreation space, ninety-four percent of which is outdoors.

As noted above, the remaining building space is extremely narrow for much of the site. In order to have reasonably configured living spaces, along with required core components, it is not feasible to provide the full fifteen percent of the residential gross floor area as residential recreation space. The applicant is, however, providing thirteen percent of the residential gross floor area as residential recreation space, along with substantial private terraces. When the private terraces are included in fact over fifteen percent recreation space is provided. In order to provide privacy to units abutting terrace spaces on distinct building levels, certain areas that would otherwise be devoted to residential recreation space are instead private terraces.

(3) No Harm to Public Good or Zone Plan:

The Applicant will demonstrate that the proposed project can be undertaken without harm to the public good and without threat to the integrity of the zone plan. The proposed development will significantly increase the vibrancy and physical character of the Georgia Avenue-Petworth area.

The proposed development is providing thirteen percent of the area devoted to residential uses as recreation space. In addition to this space, the proposed development includes private recreation space in the form of outdoor terraces. There are also a number of recreational opportunities in the vicinity of the Subject Property, including, among others, portions of Rock Creek Park to the west.

B. Special Exception Relief

In order to accomplish the proposed development, the Applicant seeks special exception approval pursuant to §§2514.2 and 2108 of the Zoning Regulations regarding roof structure requirements in commercial zoning districts.

(1) Section 2514.2

As discussed above, the subject property is split-zoned, resulting in portions of the subject property having differing levels of restriction for zoning purposes. Of the two zoning classifications for the property, the R-4 classification, accounting for approximately 13,210 square feet of land area, is the more restrictive. The Applicant seeks a special exception pursuant to §2514.2 in order to extend the lesser restrictive zoning classification, C-3-A, into the existing R-4 zoning district to less than the 35 foot (35') depth allowed by the Regulations.

Section 2514.2 of the Zoning Regulations provides that, "[i]f approved by the Board of Zoning Adjustment, the regulations applicable to that portion of a lot located in a lesser restrictive use district 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 use district ..." In order for the Board to approve such an extension of the zoning boundary, certain enumerated requirements must be met by the Applicant, as set forth in Section 2514.2 (a), (b) and (c).

The first of these requirements reads, "(a) [t]he extension shall be limited to that portion of the lot in the more restrictive use district but not exceeding thirty-five feet (35 ft.); ..." The Applicant proposes to extend the C-3-A zoning line thirty-five feet across the portion of the property that is zoned R-4.

Section 2514.2(b) further provides that, "[i]n authorizing an extension, the Board shall require compliance with §2514.1(d); ..."Section 2514.1(d), in turn, addresses density calculations and limits density for certain of the residential zones, including the R-4 zone. The Regulations state that any portion of the lot located in an R-4 district shall be deemed to be limited to a floor area ratio of 0.9. The portion of the R-4 land area not included in the requested extension will maintain a floor area ratio of 0.9.

Section 2514.2(c) requires demonstration that the extension will have "no adverse effect on the present character and future development of the neighborhood; ..." The proposed project satisfies this requirement by providing the Georgia Avenue community with a residential building that includes ground level retail.

(2) Section 2108

Section 2108.1 of the Zoning Regulations permits the Board to reduce the amount of parking spaces required for non-residential uses under Section 2101.1 in

accordance with Section 3104 of the Zoning Regulations. Section 2101.1 of the Zoning Regulations requires fifty-five parking spaces for the retail uses as follows: one space for each additional 300 square feet over 3,000 square feet (19,350-3,000=16,350/300=fifty-five spaces). The proposed development provides forty-two retail parking spaces, but in total includes 188 parking spaces which is significantly more parking than the total required for all uses at the site. However, because the anticipated use of the retail will be by local residents arriving on foot and patrons arriving from the adjacent Metrorail station, the applicant requests a special exception to reduce the parking required for the retail use by twenty-five percent.

The criteria set forth in Section 2108 of the Zoning Regulations are satisfied as follows:

(a). The amount of required parking spaces shall not be reduced by more than twenty-five percent.

The retail component includes 19,350 square feet, which requires fifty-five parking spaces. The Applicant proposes to devote forty-two parking spaces to the retail use, which is a reduction of twenty-five percent.

(b). The Board shall give consideration to the following:

(i). Nature and Location of the Structure

The Project is located on Georgia Avenue, in an emerging area, and adjacent to the Georgia Avenue-Petworth Metrorail station. The proposed retail will be neighborhood-serving retail, not destination retail, and will be accessed primarily by residents of the area and patrons arriving from the adjacent Metrorail station.

(ii). Maximum number of students, employees, guests, customers, or clients who can reasonably be expected to use the proposed building or structures at one time

The proposed retail will primarily be neighborhood-serving, as evident by its configuration and size, and will be accessed by area residents and patrons arriving from the adjacent Metrorail station.

(iii). Amount of traffic congestion existing or that the building or structure can reasonably be expected to create in the neighborhood

As will be discussed by the applicant's traffic witness, there will not be any adverse traffic congestion related to this project.

(iv). Quantity of existing public, commercial or private parking, other than curb parking, on the property or in the neighborhood which can reasonably be expected to be available when the building or structure is in use

This retail will primarily be accessed by neighborhood residents. The amount of garage space provided for the proposed project is sufficient for its parking needs.

(v). Proximity to public transportation, particularly Metrorail stations, and the availability of public transportation service in the area

The Project is situated on top of the Georgia Avenue-Petworth Metrorail station, with the entrance to the station being on the applicant's property. In addition, numerous Metrobus routes run along Georgia Avenue immediately adjacent to the site.

Finally, the special exception 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. The project provides an important development of residential and retail uses in a growing area of the city. The project also results in the development of vacant, under-utilized property. Accordingly, the project will not adversely affect adjacent or nearby property and will serve to benefit this redeveloping area.

(3) Section 214.1

Section 214.1 of the Zoning Regulations permits the Board to permit accessory parking spaces elsewhere than on the same lot or part of a lot on which any principal R-4 use (based on R-1 provisions) is permitted subject to the following provisions:

(i). Accessory parking spaces shall be in an open area or in an underground garage no portion of which, except for access, shall extend above the level of the adjacent finished grade.

All of the parking spaces will be located in an underground garage.

(ii). Accessory parking spaces shall be located in their entirety within two-hundred feet of the area to which they are accessory.

The parking spaces are located within two-hundred feet of the area to which they are accessory.

(iii). Accessory parking spaces shall be contiguous to or separated only by an alley from the use to which they are accessory.

The parking spaces will be located contiguous to and on the same lot as the uses to which they are accessory.

(iv). All provisions of chapter 23 regarding parking lots shall be complied with, except that the Board may in an appropriate case under §2303.3 modify or waive the conditions specified in §2303.2 where compliance would serve no useful purpose.

All applicable provisions of chapter 23 will be complied with.

(v). It shall be deemed economically impracticable or unsafe to locate accessory parking spaces within the principal building or on the same lot on which the building or use is permitted because of the following:

(a). Strip zoning or shallow zoning depth;
(b). Restricted size of lot caused by adverse adjoining ownership or substantial improvements adjoining or on the lot;
(c). Unusual topography grades, shape, size, or dimensions of the lot;
(d). The lack of an alley or the lack of appropriate ingress or egress through existing or proposed alleys or streets; or
(e). Traffic hazards caused by unusual street grades or other conditions.

The parking garage of the proposed development is configured in a way that situates parking spaces serving the retail and apartment uses in the portion of the garage that is located in the R-4 zone district. This is a necessary configuration, in that the location of the underground portions of the adjacent Metrorail station and entrance do not allow the entirety of the

commercial spaces or residential apartment parking spaces to be located within the C-3-A zone district.

(vi). Accessory parking spaces shall be so located, and facilities in relation to the parking lot shall be so designed, that they are not likely to become objectionable to adjoining or nearby property because of noise, traffic, or other objectionable conditions.

The parking spaces will be located in the underground garage that serves the entire project. The garage will not be visible to adjoining or nearby properties and granting this special exception will not create any additional noise, traffic, or other objectionable conditions.

(vii). Before taking final action on an application for use as an accessory parking space, the Board shall submit the application to the D.C. Department of Transportation for review and report.

The Applicant acknowledges that this application will be reviewed by the D.C. Department of Transportation.

For all the above reasons, the Applicant satisfies its burden of proof for special exception relief from §2514.2 of the Zoning Regulations.