BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application of Jefferson LLC
Square 2994, Lots 23, 24 and 25
5401 – 5407 9th Street, N.W.

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

I. Background:

This is an application pursuant to 11 DCMR Section 3103.2 for an area variance from Section 2001.3 of the Zoning Regulations to allow the renovation and addition to an existing apartment building in the R-4 district at premises 5401-5407 9th Street, N.W. (Square 2994, Lots 23, 24 and 25) (the "Property"). The Property is located on the northeast corner of 9th Street and Jefferson Street, N.W. A 12-foot public alley abuts the Property to the east. The apartment building was built prior to 1958 and is a nonconforming structure devoted to a conforming use. The Applicant proposes to renovate the building for 39 units. The Applicant also proposes to construct a mezzanine level above the existing third floor.

Section 2001.3 of the Zoning Regulations provides that enlargements or additions to a nonconforming structure devoted to a conforming use may be made to the structure, provided:

(a) The structure shall conform to percentage of lot occupancy requirements;

(b) The addition or enlargement itself shall:

(1) Conform to use and structure requirements; and

(2) Neither increase or extend any existing, nonconforming aspect of the structure; nor create any new nonconformity of structure and addition combined.

The Property is located in the R-4 zone, which permits a maximum percentage of lot occupancy of 40% (§403.2). However, the existing structure has a lot occupancy of 72%. There

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will be no change to the lot occupancy of the building as a result of this application. Thus, the Applicant seeks relief from Section 2001.3(a) since the existing structure does not conform to percentage of lot occupancy requirements.

The proposed addition of the mezzanine level above the third floor of the existing apartment house conforms to the R-4 use requirements since apartment houses are permitted in the R-4 zone. The proposed addition will not create any new nonconformity of structure and addition combined. However, the proposed addition does not conform to the structure requirement for court width (Section 406.1), and the proposed addition will increase the existing non-conformity with respect to court width. Accordingly, the Applicant also seeks relief from Sections 2001.3(b)(1) and (b)(2).

Section 406.1 of the Zoning Regulations provides that open courts in the R-4 zone must have a minimum width of 4 inches per foot of height of court, but not less than 10 feet. As shown on the attached plans, there are two existing courts at the north lot line that do not currently comply with the court width requirements of Section 406.1. Court 1 currently has a width of 2.25 feet, which is less than the requirement of 12.08 feet based upon the court's height of 36.25 feet. Court 2 currently has a width of 11.58 feet, which is less than the requirement of 12.08 feet based upon the court's height of 36.25 feet. The Applicant proposes to construct the mezzanine level out to the existing north wall of the building, and thus seeks relief from Sections 2001.3(b)(1) and (b)(2).

The Applicant will establish through its Statement of the Applicant to be filed no fewer than fourteen days prior to the hearing on the subject application, as well as through testimony and evidence at the public hearing, that the subject application meets the burden of proof for the

granting of the requested variance. A preliminary summary of how the application meets the required burden of proof follows.

II. Burden of Proof:

In order to obtain approval of the requested variance, the Applicant must show that: 1) the subject property is affected by an extraordinary or exceptional situation or condition; 2) strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulty to the Applicant; and 3) 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. The Applicant proposes to meet its burden as follows:

A. Extraordinary or Exceptional Condition:

The exceptional situation or condition standard applies to the property, not just the land, and the property generally includes the permanent structures existing on the land. *See Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A. 2d 291, 293-94 (D.C. 1974). In this case, the existence of a non-conforming apartment house on the Subject Property gives to an exceptional situation. The Applicant intends to renovate and enhance the existing building since it blends with the character and design of the surrounding neighborhood. However, the existing apartment house was constructed prior to 1958, and therefore does not comply with the current lot occupancy and court width requirements.

B. Strict Application Would Result in a Practical Difficulty to the Owner:

The strict application of the court width regulations will result in a practical difficulty. There are two non-conforming courts at the north property line. Court 1 has a width of 2.25 feet and Court 2 has a width of 11.58 feet. The required width of the court, based upon the proposed

court heights are 14.53 feet for Court 1 and 16.09 feet for Court 2. In order to comply with the court width regulations, Court 1 would need to be set back an additional 12.28 feet at the mezzanine level, and Court 2 would have to be set back an additional 4.51 feet at the mezzanine level. This would result in a practical difficulty because the Applicant would have to eliminate 355 square feet of the building and would also result in a significant number of design changes to the mezzanine level and third floor. This would result in a practical difficulty.

C. No Detriment to the Public Good Nor Impairment to the Intent, Purpose and Integrity of the Zone Plan:

There will be no substantial detriment to the public good by approving the project with the court widths as shown. Moreover, the proposed court widths will not substantially impair the intent, purpose or integrity of the zone plan. Court 1 and Court 2 abut an open area on the adjacent property to the north, and Court 2 abuts a 12 foot public alley to the east. Moreover, the deficiency in width of the court widths involves only the mezzanine level of the building. The courts at this level are above the heights of the abutting buildings to the north. This will provide ample open space, above the abutting buildings, to satisfy the purpose of the requirements that are otherwise imposed in the court width requirements.

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