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936 N STREET, LLC –BZA FILING STATEMENT

(Discussion of Existing and Intended Use and Satisfaction of the Variance Relief Standards)

Background

The property that is the subject of this application is known as Lot 832 in Square 368 and has an address of 936 N Street, NW (the "**Property**"). The Property consists of approximately 3,994 square feet and is located in the R-4 Zone District. The Property is also located in the Blagden Alley/Naylor Court Historic District. The Property is owned by 936 N Street, LLC (the "**Applicant**").

The Property is improved with a former apartment building that was constructed prior to the adoption of the Zoning Regulations in 1958. Originally, the apartment building included thirteen units. The existing building is a non-conforming structure devoted to a conforming use, as the existing building occupies approximately 78.3% of the lot. The R-4 Zone District permits a maximum lot occupancy of only 40% as a matter-of-right for this type of strucuture.

Attached as Exhibit A is a copy of the building permit issued by the Building and Land Regulation Administration ("**BLRA**") of the Department of Consumer and Regulatory Affairs ("**DCRA**") authorizing the renovation of the existing building in order to create seven condominium units. The proposed renovation of the structure included the addition of a mezzanine within the existing third floor. That mezzanine consists of only 870 square feet. The total square footage of the renovated structure includes 9,945 square feet, with 3,025 square feet located in the basement. Plans/elevations, sections and photographs of the proposed renovation

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are attached as Exhibit B. As noted on the approved building permit, the proposed renovation was approved by DC Historic Preservation Division ("HPD") staff.

The Applicant commenced construction activity on the Property pursuant to the approved building permit. Subsequently, a stop work order was issued by BLRA. The Applicant was informed by the Office of the Zoning Administrator that the previously approved mezzanine was a fourth floor and the proposed renovation required variance relief from the requirements of 11 DCMR §400.1 and §2001.3.

Present Application

The Applicant requests that the Board of Zoning Adjustment ("**BZA**" or "**Board**") grant variance relief from 11 DCMR §400.1 and §2001.3. The proposed renovated structure satisfies the standards for variance relief from the BZA under 11 DCMR § 3103.2. In order to satisfy the standards for area variance relief, the Applicant will be required to satisfy a three part test. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment,* 579 A.2d 1164, 1167 (D.C. 1990).

(1) the property must be subject to an extraordinary or exceptional situation or condition;

(2) a practical difficulty will result if the applicant is required to satisfy 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 the variance application.

The Applicant meets the test as follows:

1. An extraordinary or exceptional situation or condition is inherent to the Property

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 [footnote omitted]." *Id.* at 293-294. The Court held that the exceptional situation standard of the variance test may be met where the required hardship inheres in the land, or the property (i.e., the building on the land).

The Property is subject to an extraordinary or exceptional situation or condition. The existing vacant building occupies approximately 78.3% of the Property so it is deemed to be a nonconforming structure. In addition, the Property is also located in the Blagden Alley/Naylor Court Historic District which limits the ability to remove portions of the structure.

2. A practical difficulty exists in satisfying the strict application of the requirements of the Zoning Regulations

The Applicant is also faced with a practical difficulty due to the existing nonconformity of the structure. Since the building is presently over the permitted lot occupancy in the R-4 District, the creation of any additional gross floor area requires variance relief from §2001.3. In order to renovate the existing vacant structure, it is necessary to add additional square footage. The strict application of the height regulations also pose a practical difficulty for the Applicant because an addition to the top of the structure is the only (and best) alternative for providing appropriate living spaces in the existing structure. The strict application of the 3-story limit would prohibit the provision of this additional space, even though the height of the structure with the proposed addition, will not exceed the 40 foot height limit in the R-4 District.

3. No harm to the public good or to the zoning plan will occur as a result of the approval of the variance application

Relief can be granted without substantial detriment to the public good. The addition of the mezzanine/"fourth" story does not negatively impact the surrounding properties. The

proposed height of the mezzanine/fourth floor level is still within the permitted 40 foot height limit in the R-4 District. The proposed height of the structure is generally consistent with buildings in the general area.

The variance can also be granted without impairing the intent, purpose and integrity of the Zone Plan. The apartment building on the Property stood vacant for a number of years, was a general eyesore for the neighborhood and created opportunities for unwanted and illegal activity on the Property. The proposed renovation of this structure will return the Property to a vibrant and important contributor to the neighborhood. The additional 870 square feet of gross floor area included in the mezzanine level of the structure does not increase the overall lot occupancy of the structure, yet provides the necessary amount of square footage to make this renovation project financially possible.

Conclusion

As demonstrated above, the application meets the criteria set forth in 11 DCMR § 3103.2 for variance relief. The Applicant respectfully requests that the BZA schedule this application for a public hearing at the earliest possible date.