BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE
DISTRICT OF COLUMBIA

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APPLICATION OF
GTOWN 32nd STREET, LLC, and
STRATEGIC DEVELOPMENT, LLC

BZA Application No. _____
ANC 2E

STATEMENT OF THE APPLICANT

This is an application of Gtown 32nd Street, LLC, and Strategic Development, LLC ("**Applicants**"), for area variance relief from the rear yard requirements of Title 11, Section 404.1 of the District of Columbia Municipal Regulations ("**DCMR**"). The Applicants own the subject property, which is located at 1517 32nd Street, NW (Square 1270, Lot 74), and 1521 32nd Street, NW (Square 1270, Lots 19 and 20) ("**Property**"). The Applicants propose to construct two rowhouses on the Property: one house on Lots 19 and 20 and one house on Lot 74, both of which will not conform to the minimum rear yard requirements of the Zoning Regulations. Both rowhouses will be single-family homes and conform to the DCMR in all other ways. We request that the Board of Zoning Adjustment treat the relief requested for these two rowhouses as one application.

I.

Nature of Relief Sought

The Property is located in the R-3 Zone District, which permits row dwellings as a matter-of-right. Under § 404.1 of the Zoning Regulations, the minimum rear yard for a structure in the R-3 Zone is 20 feet. The Applicants request variance relief from § 404.1 to construct two rowhouses on the Property that have rear yards that are less than 20 feet. The rear yard at 1521 32nd Street, NW, is to be 18 feet 2 inches on average, 11 feet and 5/8ths of an inch at its most narrow point, and 25 feet 4 inches at its widest point. The rear yard at 1517 32nd Street, NW, is

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to be 18 feet 10 inches. The necessary zoning relief has been self-certified as shown on the attached Exhibit A. The Applicants' satisfaction of the standards for granting area variance relief is discussed in detail in Section IV of this statement. In addition to this application, the Applicants will be seeking a subdivision to combine Lots 19 and 20 into one new record lot. Since these lots are located within the Bowie-Sevier historic landmark, subdivision approval by the Mayor's Agent for Historic Preservation ("**Mayor's Agent**") will be required.

II.

Jurisdiction of the Board

The Board of Zoning Adjustment (the "**Board**") has jurisdiction to grant the relief requested pursuant to §3103 of the Zoning Regulations.

III.

Background

A. Description of the Property and Surrounding Area

The Property is located in Georgetown on the east side of 32nd Street, NW, between P and Q Streets, NW. It is currently unimproved. The neighborhood generally is characterized by rowhouses of various sizes, from very small to very large. The Property has a land area of 5,150 square feet which is comprised of the 3,145 square feet of Lots 19 and 20 and the 2,004 square feet of Lot 74. The Property is located in the R-3 Zone District and the Georgetown Historic District. The Property is also part of the Bowie-Sevier historic landmark site. The maximum lot occupancy for a row dwelling in the R-3 Zone District is 60% and the maximum height is 40 feet or 3 stories. There is no maximum FAR in the R-3 Zone District. Accordingly, the Applicants would be permitted to construct, as a matter-of-right: (a) a rowhouse with a footprint of approximately 1,835 square feet of gross floor area and a total gross floor area of approximately 5,505 square feet on Lots 19 and 20 (assuming three above grade stories); and (b) a rowhouse

with a footprint of approximately 1,203 square feet of gross floor area and a total gross floor area of approximately 3,609 square feet on Lot 74 (assuming three above grade stories).

Due to the shallow lot depth of the Property and the diagonal intersection of the Property's lot lines with 32nd Street, the rowhouses permitted as a matter-of-right would be forced closer to the street if full rear yards were required on the Property as dictated under the DCMR. In fact, by the Decision and Order dated December 24, 2003 (attached hereto as Exhibit K) and the Modified Decision and Order dated May 20, 2004 (attached hereto as Exhibit L), the Mayor's Agent for Historic Preservation approved houses on Lots 74 and 75 that had complying rear yards and smaller front yards than those proposed by this application (as shown on Exhibit D) ("**Plans**"). However, both of those decisions have been challenged by the neighbors of the Property and are presently pending in the District of Columbia Court of Appeals as *David M. Halley, et al., vs. District of Columbia Mayor's Agent for Historic Preservation*, Case No. 04-AA-__. One primary issue neighbors raised with the site plan approved by the Mayor's Agent in Exhibits K and L was the lack of adequate setback for the houses from 32nd Street, NW, although such a setback is not mandated by the Zoning Regulations.

At the specific request of Ward 2 Councilmember Jack Evans and with the support of the representatives of ANC 2E, the Applicants entered into discussions with the adjacent neighbors to try to reach a resolution regarding the development of the property. After over nine (9) months of discussion, the Applicants entered into a Settlement Agreement (defined below) with the neighbors, Councilmember Evans, and ANC 2E mandating the significant front yard setbacks as shown on the proposed Plans (The Plans are the same site plans attached to the Settlement Agreement.). Therefore, strict enforcement of the rear yard requirement at the Property creates substantial practical problems because the houses cannot be located any closer to the street than currently shown on Exhibit D. Councilmember Evans and the neighbors were aware from the

first meeting that pushing the houses back to create additional front yard setbacks would likely reduce the provided rear yard to less than the required 20 feet required under 11 DCMR § 404.1 and had no objection to such a configuration. If the rear yard requirements were rigidly enforced, the desired front yard set backs could not be provided, and the current litigation over the Mayor's Agent Orders would likely continue. The resolution negotiated in the Settlement Agreement, brokered by Councilmember Evans and ANC 2E to satisfy all parties impacted by the proposed construction, would be negated.

The two rowhouses proposed for the Property are part of a larger development by the Applicants on lots surrounding the Property. The Applicants have received all necessary approvals to build one single family house on Lot 73 in Square 1270 (1525 32nd Street, NW), just north of the Property and on the same side of the street, and have started construction of that house. The Applicants plan to build a fourth house on Lot 75 in Square 1270 (1515 32nd Street, NW), just south of the Property and on the same side of the street (together with Lot 73, the "**Surrounding Lots**"). The house on Lot 75 meets the front yard setbacks (as shown on Exhibit D) but complies with the required rear yard.

B. History of the Property

Historically, the Property and Surrounding Lots were part of the land associated with the Bowie-Sevier Mansion, which is located at 3124 Q Street, NW. The land related to the mansion was subdivided in May 1881 as a result of a lawsuit of one of the heirs to the Bowie-Sevier property. The majority of the lots in Square 1270 were created at that time. In 1953, a descendant of the Sevier family bequeathed the Bowie-Sevier house and its grounds, including the Property and Surrounding Lots, to the Episcopal Church Home of the Diocese of Washington ("**Home**"). As a result, construction of the nursing wing of the Home began on the Property and Surrounding Lots in 1956. In the mid-1990's, Herbert S. and Patrice R. Miller purchased the

Bowie-Sevier mansion and its grounds with the nursing wing located on the Property and Surrounding Lots for conversion to residential use. Apparently, the nursing wing existed on parts of the Property and Surrounding Lots at least until February 1998.

Since the Property is in the Georgetown Historic District and the Bowie-Sevier house is a historic landmark, Mr. and Mrs. Herbert Miller applied to the Mayor's Agent for the approval of subdivision in H.P.A. No. 98-218 (*In re: The Bowie-Sevier House, 1998*). This subdivision reconfigured the lots in Square 1270 related to the Bowie-Sevier house by creating Lots 73, 74, and 75. Lots 19, 20 and 21 were left untouched. The Mayor's Agent for Historic Preservation order for the approval of subdivision in H.P.A. No. 98-218 is attached as Exhibit I.

In 2002, the Millers sold Lots 19, 20, 74 and 75 to the Applicants. When the Applicants purchased the Property, the Property was unimproved.

There has been a long history regarding the development of the Property and Surrounding Lots since the purchase of these parcels by the Applicants. In a letter dated July 12, 2001, Michael Johnson, the Zoning Administrator, confirmed to the Miller's attorney that each of Lots 19 and 20 could be developed with a rowhouse as a matter of right as conditioned under 11 DCMR § 401.2 of the Zoning Regulations. ANC 2E filed an appeal of the July 12, 2001 letter to the Board. In the resulting Appeal No. 17034, the Board upheld the appeal and effectively denied the construction of one house on each of Lots 19 and 20 in Square 1270 under 11 DCMR § 401.2. 11 DCMR § 401.2 provides that:

> Except as provided in § 401.3, in the case of an unimproved lot in single ownership on November 1, 1957, that has a lot area or width of lot less than that specified in § 401.3 for the district in which it is located and that does not adjoin another unimproved lot in the same ownership, a structure may be erected on the lot if both the lot area and width of lot are at least eighty percent (80%) of the lot area and width of lot specified under § 401.3;

provided, that the structure shall comply with all other provisions of this title.

The Board determined that the exemptions offered under 11 DCMR § 401.2 to allow a waiver from the minimum lot size requirements were not applicable because the subject properties were improved on November 1, 1957, even though the nursing wing was not yet completed and no Certificate of Occupancy was issued. BZA Appeal No. 17034, dated May 12, 2004, is attached as Exhibit J. Arguably, under the Board's ruling, the Applicants could have applied for to re-construct two houses on Lots 19 and 20 under §401.1, but decided instead to seek a subdivision as part of the resolution with the neighbors.

Further, additional development history on the Property and Surrounding Lots includes an application to the Mayor's Agent for the approval of new construction in the Georgetown Historic District in H.P.A. No. 03-480 and No. 03-481 (*In re: Darrin Phillips, et al*). That case proceeded along the following timeline:

- December 24, 2003 – Mayor's Agent ordered approval of the Applicants' request for new construction conditioned upon the Applicants working with HPRB staff to create a design for the houses that would accommodate a sidewalk and protect and nurture mature trees (attached hereto as Exhibit K).

- April 2, 2004 – Counsel for the Applicants requested approval of the modified site plan for the houses at 1515 and 1527 32nd Street, NW, as consistent with the December 24, 2003 Order (attached hereto as Exhibit L).

- May 20, 2004 – Mayor's Agent concludes the Applicants made a reasonable effort to meet the condition of the December 24, 2003 Order and the revised site plan is in compliance (attached hereto as Exhibit M).

- June 9, 2004 – Mayor's Agent issued an Order vacating the May 20, 2004 Order and scheduling a new hearing since the Applicants did not respond (due to lack of service) (attached hereto as Exhibit N).

- June 23, 2004 – Mayor's Agent issued an Order that it would reconsider his Modified Decision and Order issued on May 20, 2004 and hold another hearing on June 30, 2004 (attached hereto as Exhibit O).

- September 24, 2004 – Mayor's Agent issued an Order vacating the June 9, 2004 Order and reinstating the May 20, 2004 Order. As a result of this Order, the Mayor's Agent for Historic Preservation gave its final approval of development on Lots 74 and 75 in Square 1270 over the objections of neighbors (attached hereto as Exhibit O).

The first and second Orders listed in the above timeline were appealed to the District of Columbia Court of Appeals and the cases were consolidated as *David M. Halley, et al., vs. District of Columbia Mayor's Agent for Historic Preservation*, Case No. 04-AA-__. The cases are now pending, but are to be dismissed under the provisions of the Settlement Agreement.

As discussed above, after the application to the Mayor's Agent was finally approved and the proceedings were appealed to the Court of Appeals by the neighbors, the Applicants and the neighbors entered into lengthy negotiations to settle their issues about the development on Lots 19, 20, 74, and 75 at the request of Ward 2 Councilmember Jack Evans and representatives of ANC 2E. As a result, the neighbors and the Applicants entered into a settlement agreement by which the Applicants agreed to alter the site plans for Lots 19, 20, 74, and 75 to meet certain requirements and the neighbors agreed to withdraw their opposition to the development plans, including the Applicants' application for new construction to the Historic Preservation Office,

and support this Board of Zoning Adjustment application (the "**Settlement Agreement**" attached hereto as Exhibit P).

C. Description of the Proposed Development

The Applicants request permission to construct two rowhouses on the Property (the "**Project**") as shown on Exhibit D. One house will be on the to-be-combined Lots 19 and 20 after Mayor's Agent subdivision approval, at 1521 32nd Street, NW, and the other house will be on Lot 74, at 1517 32nd Street, NW. The house at 1521 32nd Street, NW, will be approximately 26 feet 4 inches high under the Zoning Regulations. The house at 1517 32nd Street, NW, will be approximately 33 feet high under the Zoning Regulations. The lot occupancy for Lots 19 and 20 and Lot 74 is 58.3% and 60%, respectively. Therefore, both houses are well under the 40 foot maximum height and the 60% maximum lot occupancy allowed in the R-3 Zone District.

Importantly, even though the Project will be situated on Lots 19, 20 and 74 in a manner not meeting the minimum rear yard size, the construction planned on the Property and the Surrounding Lots lot will conform to the Zoning Regulations in all other respects, including minimum lot width, lot occupancy, height, and minimum lot size.

The Project would bring a distinct architectural presence to the portion of 32nd Street, NW, on which it sits. It would compliment the historical architecture surrounding it with a pair of stately Georgian brick facades. In addition, the Project will be abutted by a permanent green area which will be landscaped as shown in the Settlement Agreement, accessible to the public, and permanently deeded to the owners of Lots 19 and 20 (the "**Green Space**"). A permanent easement will be placed on the Green Space, ensuring the landscaping and condition. The Green Space will be a special amenity particularly for those living close to the Property.

In addition, the Applicant shall place and register a conservation easement on each house on the Property and Lot 75 with the Recorder of Deeds (each a "**Conservation Easement**"). The Conservation Easements shall be held by the Foundation for the Preservation of Historic Georgetown (the "**Foundation**").

D. Area of Necessary Relief

As stated, the slight relaxation of the rear yard requirements of the Zoning Regulations would allow the Applicants to construct rowhouses on the Property that would be more acceptable to the neighbors than those approved by the Mayor's Agent for Historic Preservation. In addition, the rear yards for the Property back up to the rear yard for the Millers' property which is heavily-landscaped and contains a wide open area with a pool and a large retaining wall. At the portion of the Millers' property immediately abutting the Property's rear yards, there are many bushes to shield the structures on the Property. Further, the topography of that portion of the Millers' back yard drops off significantly and contains a retaining wall to further obscure the Property. Therefore, there will be no impact on the living space or residence of adjacent District residents though additional space will be provided in front of the houses as a setback along 32nd Street, NW.

The Project requires an area variance from § 404.1 of the Zoning Regulations. Under § 404.1 of the Zoning Regulations, the minimum rear yard required in the R-3 Zone District is 20 feet. The rear yard on Lots 19 and 20 is to be 18 feet 2 inches on average. The rear yard on Lot 74 is to be 18 feet 10 inches. Thus, the Project requires area variance relief from the minimum rear yard requirements.

IV.

The Application Meets the Requirements for Area Variance Relief under § 3103.2 of the Zoning Regulations

An applicant requesting an area variance must prove that: (i) the property is affected by an exceptional or extraordinary situation or condition; (ii) that the strict application of the Zoning Regulations will result in a practical difficulty to the applicant; and (iii) that the granting of the variance will not cause substantial detriment to the public good or substantially impair the intent, purpose or integrity of the zone plan. *See Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). As set forth below, the Applicants meet this test for the requested variance from the minimum rear yard requirements of 11 DCMR § 404.1.

A. The Property is Affected by an Exceptional Situation or Condition

In *Clerics of St. Viator v. D.C. Board of Zoning Adjustment,* 320 A. 2d. 291, 293-294 (D.C. 1974), the D.C. Court of Appeals held that the exceptional situation or condition standard goes to the "property," not just the "land." The BZA may "weigh more fully the equities in an individual case." *National Black Child Development Institute v. D.C. Board of Zoning Adjustment*, 483 A.2d 687, 690 (D.C. 1984).

Further, it is not necessary that the uniqueness arise from a single situation or condition on the Property. Rather, it may arise from a "confluence of factors." *Gilmartin*, 579 A.2d at 116. For example, in *French v. Board of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995), the Court of Appeals upheld the granting of a variance from 11 DCMR § 217.1 based on the Board's findings that several circumstances existed which, when considered together, made the property unique. In *French*, the circumstances cited by the Board were the site's "irregular shape, steeply sloping grade, the large size and physical configuration of the existing building, and its previous history of chancery use." *Id.* The Board determined "it is not reasonable to consider the building for single-family purposes due to its size, configuration, and history, and that the variance will ensure the preservation of and continued use of the existing structure." *Id.*

Furthermore, it is not necessary that the Property be unreservedly unique. Rather, the Applicants must prove that the Property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood. In *Gilmartin*, the Court of Appeals rejected the idea that a property was not unique because the asserted exceptional condition was common to other types of properties in other zoning districts. *Gilmartin,* 579 A.2d. at 1167. The Court explained:

> the rationale behind the uniqueness test is that difficulties that are common to or affect an entire neighborhood, or a substantial portion thereof, are properly addressed by seeking amendment of the regulation themselves from the Zoning Commission. If such problems were addressed through individual variances, the effect would be a *de facto* amendment of the zoning regulations by the BZA because requests by other owners similarly situated would have to be granted.... [...] The test follows from its rationale. To support a variance it is fundamental that the difficulties or hardships [be] due to unique circumstances peculiar to the applicant's property and not to the general conditions in the neighborhood.

Id. at 1169 (internal quotations and citations omitted; alterations in original). One of the factors the BZA may consider in evaluating whether a property is unique is the property's past zoning history. *Monaco v. Board of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979).

Here, the Property and Surrounding Lots are affected by several factors that create an exceptional condition. Despite that fact, two of the four rowhouses that the Applicants are constructing, those on the Surrounding Lots, will conform in all manners to the Zoning Regulations. Only the two rowhouses on the Property will require the rear yard variance.

One factor that creates an exceptional condition on the Property is the Property's inclusion in the Bowie-Sevier House historic landmark. The inclusion in the Bowie-Sevier House historic landmark puts constraints on the development of the Property beyond those created by the Georgetown Historic District. Therefore, the houses on the Property and

Surrounding Lots must be compatible with both the Georgetown Historic District and the Bowie-Sevier House.

Furthermore, the Property is unique because of the unusual shape of its lots. 32nd Street, NW, cuts through Lots 19, 20, and 74 at an angle such that a large piece is taken out of the front of the lots. This configuration makes any structure built on the Property encroach the shallow edge of the lot lines created by the diagonal cut. The odd alignment of the street and the need to have an adequate front yard setback, as required by the Settlement Agreement, means that the rear yard must be slightly reduced. There is no practical way to push the houses back and therefore satisfy the neighbors, without encroaching on the rear yard. There is also no way to further shrink the footprint of the houses; the footprint has been shrunk as much as practical. Further, Lots 19 and 20 have the similar diagonal cut through them in the back of the lots. Such a double diagonal cut configuration at 1521 32nd Street, NW, creates an even greater exceptional condition since Lots 19 and 20 are constrained by diagonal lot lines at both the front and back.

Perhaps most important, the zoning and historic preservation procedural history described above regarding the Property and Surrounding Lots is unique. As discussed, the Property has been the subject of a historic preservation application for subdivision, a BZA Appeal, historic preservation applications for new construction and revisions to related plans (the Orders for which are currently on appeal), and a long settlement negotiation between the Applicants and the neighbors. The Applicants' plans to build a house on each of Lots 19 and 20 were not upheld by the Board in BZA Appeal No. 17034 as the Applicants contested ANC 2E's appeal of the Zoning Administrator's decision to apply the 11 DCMR § 401.2 waiver to Lots 19 and 20. That appeal of ANC 2E was granted and the Applicants could not proceed to build the rowhouses they planned on each of those two lots. That ruling from the Board further adds to the unique difficulties with the Property. As a result of Appeal No. 17034, the Applicants could pursue two

other alternatives: (i) build two rowhouses on Lots 19 and 20 and Lot 74 or (ii) build three rowhouses including one on Lot 19 and one on Lot 20 under 11 DCMR § 401.1 and one on Lot 74. However, any such development that does not have the front setback described in the Settlement Agreement, is likely to be appealed.

Following Appeal No. 17034, the Applicants' plans for development of Lots 19 and 20, 74 and 75 were approved by the Mayor's Agent. Once the Applicants met the conditions of the December 24, 2003 Decision and Order (and the May 20, 2004 Modified Decision and Order), the plans (and revisions) for the Property were approved in their final form by the Mayor's Agent. The Mayor's Agent's December 24, 2003 Decision and Order and May 20, 2004 Modified Decision and Order were appealed to the Court of Appeals as noted above. Presumably, the Applicants could also seek subdivision and new construction approval from the Mayor's Agent for a new house complying with the Zoning Regulations on Lots 19 and 20, and obtain Mayor's Agent approval, but any resulting Order would also likely be appealed.

The Settlement Agreement with the neighbors is another exceptional condition impacting the Property that seeks to alter the site plan approved by the Mayor's Agent and pushes back buildings that could be built on the Property as a matter-of-right. The neighbors' request for additional front yard setbacks on the Property and Lot 75 in the Settlement Agreement requires that the houses be pushed slightly back into the rear yard. The depth of the houses was reduced as much as practicable while still providing suitable corridors and minimum room sizes. As discussed, the diagonal cut into the Property makes the satisfaction of the front yard setback a difficult task.

The confluence of the historical impact of the Bowie-Sevier house, the unusual shape of the lots on the Property, the procedural history with the Mayor's Agent, the Settlement

Agreement with the neighbors, and past zoning treatment make the Property unique in ways beyond those immediately related to the land.

B. Strict Application of the Zoning Regulations Would Result in Practical Difficulty to the Applicants

To satisfy the second element for an area variance standard, the Applicants must demonstrate "practical difficulty." 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. "Increased expense and inconvenience to applicants for a variance are among the proper factors for [the] BZA's consideration." *Id.* Some other 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.*

It would be unduly burdensome for the Applicants to comply with the Zoning Regulations regarding the rear yard requirements on the Property for several reasons. The Project plan as attached hereto as Exhibit D, requiring rear yard relief, is the result of a plan that has been changed as a result of negotiations with neighbors of the Property. After the plans were initially approved by the Mayor's Agent, the Applicants entered into the lengthy negotiations with neighbors as discussed above. The result of the negotiations was the Settlement Agreement that required the houses on the Property to be set back 15 feet from the narrowest portion from the curb on Lots 19 and 20 and 14 feet from the narrowest portion from the curb on Lot 74. These new, additional front yard setbacks requested by the neighbors push the rowhouses back

into the required rear yard.[1] The Applicant cannot comply with a strict rear yard setback requirement while meeting the requested front yard set back. The footprint of the houses cannot be further reduced because the room sizes and corridors would not be functional. The burden for compliance with the rear yard requirements, in the face of the front yard setbacks of the Settlement Agreement are further compounded by the unusual shape of the lots on the Property. As mentioned above, Lots 19 and 20 are cut in the front and the back of the lots by sharp diagonal lines. Lot 74 is cut in the front by a sharp diagonal line.

It is important to note that the Applicants are constrained to build only rowhouses similar to those contemplated by the site plan attached as Exhibit D. The only use permitted on the Property is the conforming single family residential use. Given the community's (and preservation officials') desire to limit the height of the houses on the Property, and the houses can not be shifted any more, some slight variations in the rear yard requirement should be accommodated to allow for the construction of a viable, functioning house and allow for the only beneficial use of the Property. Given the additional constraints of the Settlement Agreement, the Applicants can only comply with matter-of-right development by creating a row house that would be undesirable due to the shallowness created by the 20 foot rear yard.

All of these difficulties are unique to the Property because of its long procedural history, inclusion in the Bowie-Sevier House historic landmark and its unusual lot configuration. Since the variance requested is only a very small variance from 11 DCMR § 404.1, the difficulties and uniqueness of the Property more than justify the requested variance. On Lots 19 and 20, the variance would be a rear yard 1 foot 10 inches smaller than that required by the § 404.1, or a

[1] Although arguments might be made that the Settlement Agreement with the neighbors is a self-created hardship, such a concept is only applicable to use variance cases where an applicant must prove "undue hardship" for the second element of a variance test. In the instant case, the Applicant is requesting an area variance and, therefore, only must demonstrate "practical difficulties" for the second element of the variance test. *Downtown Cluster v. D.C. Bd. of Zon. Adj.*, 675 A.2d 484, 491 (D.C.App. 1996).

variation of 9% of the 20 foot rear yard requirement. On Lot 74, the variance would be rear yard 1 foot 2 inches smaller than that required by the § 404.1, or a variation of 6% of the 20 foot rear yard requirement. These variations are negligible given the extent of the front yard setback and protections the neighbors already receive in the Settlement Agreement.

C. Relief Can Be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose, and Integrity of the Zone Plan

The requested variance can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the Zone Plan. Indeed, granting the requested variance relief advances the intent and goals of the Zone Plan for this area as defined in the Comprehensive Plan.

The Project will not undermine the Zone Plan since the result will be consistent with the predominately rowhouse development in the neighborhood.

Moreover, the Project will not change the overall permitted density on the Property or the total size of development. The only effect will be that the Property will be developed with two rowhouses pushed further from the street and into the rear yard, as requested by neighbors. Essentially, the Applicants are taking the rear yard that would be required in the back of the house and adding a great amount more to the setback in the front of the house. Basically, to build rowhouses on the Property, one can either have a front yard set back or a rear yard that conforms with the Zoning Regulations.

Accordingly, the Project will not disrupt the Zone Plan with regard to the aesthetic character of the neighborhood in the area; instead, it will enhance it. Likewise, the Project will have no effect on the light and air available to the Millers' residence or the new rowhouses on the Property. Instead, the area immediately abutting the Property's rear yard is the well-buffered

and expansive rear yard of the Millers' property, which has a high wall, landscaping, and favorable topography to provide ample screening. The policies that underlie the rear yard requirements of the Zoning Regulations is not as relevant in this situation since the impacted houses are arranged so their rear yards meet. Further, other neighbors support this application and do not object to the request for a variance. It is particularly important that the Applicants will actually be adding to the open green space that is available for the community by providing the large landscaped Green Space between 1521 32nd Street, NW, and 1525 32nd Street, NW.

It should be noted that both ANC 2E and Councilmember Jack Evans support this application as embodied in the Settlement Agreement. Both ANC 2E and Councilmember Evans are parties to the Settlement Agreement and were heavily involved in the negotiations that created that document.

Further, the Applicants will be installing sidewalks on the Lots 19, 20, 74 and 75 and will be preserving the trees that are between the areas planned for the footprints of the rowhouses and 32nd Street, NW. These aspects of the design of the Property and Surrounding Lots were items requested by the neighbors. Both aspects were areas of importance in the Mayor's Agent's hearings on historic preservation. The Applicant has obliged the requests of the neighbors, even providing more than required by the Mayor's Agent's Order of May 20, 2004, by providing both a brick sidewalk on private property and preserving the trees on the Property. The Applicant has also agreed to an expedited and coordinated construction schedule in order to minimize neighborhood disruption and has entered into construction management conditions as stipulated in the Settlement Agreement. All of these factors serve to minimize the impact of the development.

VI.

Exhibits in Support of Application

A. BZA Form 135, Self Certification

B. Zoning Map & Sanborn Atlas Excerpts

C. Building Plat

D. Proposed Plans, including landscape plans

E. Deed, Covenant and Maintenance Agreement

F. Authorization Letter from Property Owners

G. Photographs of the Property

H. BZA Form 120, Application

I. DCRA Office of Adjudication order for the approval of subdivision in the Georgetown Historic District in H.P.A. No. 98-281 (*In re: The Bowie-Sevier House, 1998*)

J. Board of Zoning Adjustment Appeal No. 17034, dated May 12, 2004

K. Decision and Order of the Mayor's Agent for Historic Preservation, dated December 24, 2003

L. Modified Decision and Order of the Mayor's Agent for Historic Preservation, dated May 20, 2004

M. Order (Granting Motion For Reconsideration Of Modified Decision and Order) of the Mayor's Agent for Historic Preservation, dated June 9, 2004

N. Order of the Mayor's Agent for Historic Preservation, dated June 23, 2004

O. Second Modified Decision and Order of the Mayor's Agent for Historic Preservation, dated September 24, 2004

P. Copy of Settlement Agreement between Applicants and neighbors, dated April 28, 2005

Q. List of Owners of Property within 200 feet of the Subject Site

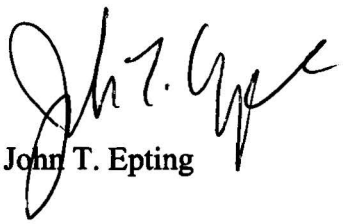
R. Statement of Existing and Intended Uses

VII.

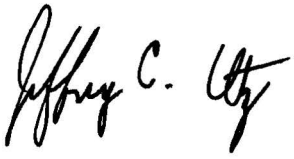
Conclusion

For all of the above reasons, the Applicants respectfully request approval of the subject application.

Respectfully submitted,



John T. Epting



Jeffrey C. Utz

June 21, 2005

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