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THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application of Taylor Property Development LLC
Square 2848, Lot 44
1360 Kenyon 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 4,721.87 square foot, four-story, nine-unit apartment building in the R-4 district at premises 1360 Kenyon Street, N.W. (Square 2848, Lot 44) (the "Property"). The Property is located on the south side of Kenyon Street, N.W., approximately halfway between 13th and 14th Streets. A 16-foot wide public alley abuts the Property to the south. The apartment building was built prior to 1958 and is a nonconforming structure devoted to a conforming use. The Applicant proposes to renovate and add 1,244 square feet to the building, and to reduce the number of units from nine small, short-term rental units to five market-size condominium units.

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.

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The Property is located in the R-4 zone, which permits a maximum percentage of lot occupancy of 40% (§403.2) for structures other than row dwellings, flats, churches, public schools, and apartment conversions. The existing apartment building has a lot occupancy of 57.96%, which includes the area of the open court at the east side of the rear of the building. (*See* definition of "building area" in Section 199 of the Zoning Regulations). There 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 the percentage of lot occupancy requirements.

The proposed additions at the second, third and fourth floor levels will not create any new nonconformity of structure and addition combined. However, the proposed addition will extend the existing second through fourth floors to the rear and will increase the existing non-conformity with respect to open court width. Accordingly, the Applicant also seeks relief from Sections 2001.3(b)(1) and (b)(2).

Section 400.1 provides a maximum height of three stories and 40 feet in the R-4 zone. The existing building is four stories and measures 44.0208 feet in height. The second through fourth floors will be extended to the rear to make more livable units, but the height of the building will not be increased.

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 is an existing open court along the east lot line that does not currently comply with the court width requirements of Section 406.1. The open court currently has a width between 3.08 and 3.5 feet, which is less than the requirement of 16 feet, 5-5/16 inches based upon the open court's proposed height of 49.33 feet. The Applicant proposes to

construct the addition out to the existing east wall of the open court, 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) the 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 creates an exceptional situation. The exceptional situation or condition of the building is that it is a relatively small row building that has a long history of use as an apartment house for nine units. The building contains a total of 4,721.87 square feet of gross floor area, and the nine existing

units range in size from 350 to 726 square feet. Research indicates that there are no other similar row buildings, with such a large number of sub-standard size units, in the entire area. These existing dwelling units, which are mostly two-room apartments, are not marketable as long-term residences, and in fact were last used as short-term transient units, which is not in keeping with the character of the R-4 zone.

B. <u>Strict Application of the Regulations Would Result in a Practical Difficulty to the Owner</u>:

In order to add to the non-conforming building and conform to the 40% lot occupancy limitation, as set forth in Section 2001.3(a), approximately 25% of the existing building footprint at the first floor level (332.66 square feet) would need to be removed. This would theoretically be in the rear portion of the building. However, this is the area where the building addition will be located, so, if this was to theoretically occur, the net result would be a reduction of overall gross floor area, which is not practical.

If the Board waives the provision of subsection 2001.3(a) regarding lot occupancy, then the strict application of Section 2001.3(b) with regard to the open court width regulations would still result in a practical difficulty. There is a non-conforming open court at the east property line. The open court has a width of between 3.08 and 3.5 feet. The required width of the open court, based upon the proposed court height, is 4 inches per foot of height of court, or 16 feet, 5-5/16 inches. The lot is only 16.67 feet wide. This would eliminate the possibility of an addition at the fourth floor level, and require a court setback of 13.33 feet at the third level addition (resulting in an interior space of 2.33 feet wide), a court setback of 9.96 feet at the second level addition (resulting in an interior space of 5.71 feet wide), and a court setback of 6.44 feet at the first level addition (resulting in an interior space of 9.23 feet wide. This would

result in a net reduction of 1,244.16 square feet from the project, and would compromise the interior unit layouts.

The neighboring building to the east has a mirror-image open court, and together they share a fire escape for egress purposes. Moving the exterior wall of the Subject Property further away from the fire escape would, as described above, result in a practical difficulty for both buildings.

The open court (which counts toward the existing lot occupancy calculation because of its existing width) is not required, and theoretically could be filled in. However, this would also result in the elimination of the fire escape, which provides a required means of egress, thereby resulting in a practical difficulty.

The strict application of Section 2001.3(b) with regard to height would pose a practical difficulty. The extension of the fourth floor to the rear of the site extends, but does not increase, the non-conforming height of the building. The existing gross floor area of the fourth floor is 569 square feet. When the stairway and corridor are subtracted, the unit size on the fourth floor is only 512 square feet. This is clearly too small for a market-size unit, and would create a practical difficulty. The proposal is to create a market-size, two-bedroom unit of 1,230.40 square feet on the fourth floor. If the ceiling of the addition was lowered by 4.0208 feet to comply with the 40-foot height limitation, this would result in a ceiling height of less than 5 feet, which would be uninhabitable.

C. <u>No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose or Integrity of the Zone Plan</u>:

There will be no substantial detriment to the public good by approving the project with the lot occupancy, height and open court width as shown. These are existing conditions, and have existed for many years. The lot occupancy is not proposed to change. Moreover, the

proposed extensions of the height and open court width are no greater than the existing height and open court width, and the proposed new portion of the open court will abut an open area on the adjacent property to the east.

The proposed renovations and addition are necessary to convert the building from nine sub-standard, tenement-size apartments to five market-size, modern condominium units. The Columbia Heights area is undergoing a tremendous revitalization, and the renovation and upgrading of this residential building will allow a decrease in the number of units, and will put the building back to a productive use. This will not create a precedent for other buildings, as there is no other building similarly situated in the area. There will be no increase in building height or lot occupancy, and no change in the width of the open court from this proposal.

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